

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT ELDORET**

**CRIMINAL MISC. APPLICATION NO. E177 OF 2025**

**IN THE MATTER OF AN APPLICATION FOR BAIL PENDING ARREST  
(ANTICIPATORY BAIL) UNDER THE COURT'S INHERENT ORIGINAL  
JURISDICTION BY ABC**

**AND**

**IN THE MATTER OF CHAPTER 10 AND ARTICLES 20, 22, 23(1),  
27(1), 29, 165(3) (b), 258(1) OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF SECTIONS 39, 123, 124 OF THE CRIMINAL  
PROCEDURE CODE LAWS OF KENYA DENNIS NYAMU**

..... **APPLICANT**

**=VERSUS=**

**DIRECTOR OF PUBLIC PROSECUTION ..... 1<sup>ST</sup>  
RESPONDENT**

**INSPECTOR GENERAL OF POLICE ..... 2<sup>ND</sup>  
RESPONDENT**

**THE OCS LANGAS POLICE STATION ..... 3<sup>RD</sup>  
RESPONDENT**

**THE HON. ATTORNEY GENERAL ..... 4<sup>TH</sup>  
RESPONDENT**

**Coram: Before Hon. Justice R. Nyakundi**

**MS Ego Kipkemboi & Co Advocates**

**Ms Sidi for the DPP**

**RULING**

1. Before Court is a notice of motion dated 9<sup>th</sup> December 2025 expressed to have been brought Under Articles 20, 22, 23(1) and 27(1) of the Constitution of Kenya, Sections 39, 123 and 124 of the Criminal Procedure Code Cap 75 of the Laws of Kenya and all enabling provisions of the Law seeking for the following orders.

*(a) Spent.*

*(b) This Honourable Court be pleased to admit the Applicant to Anticipatory Bail or bail pending arrest or charge on such terms as the court may deem fit.*

*(c) This Honourable Court be pleased to issue a conservatory order restraining the respondents, their servants, agents, junior officers and/or anybody from effecting and/or anybody from arresting, harassing or otherwise interfering with the Applicant herein pending the hearing and determination of this application.*

*(d) The Honourable Court be pleased to issue a conservatory order restraining the respondents, their servants, juniors, officers and/or anybody whatsoever acting under their directions or departments or offices from arresting, harassing or otherwise interfering with the applicant herein pending the hearing and determination of this application.*

*(e) The Respondent be prohibited from releasing/engaging the media with any further adverse information regarding the alleged investigations touching on the matter on the matter.*

*(f) That the Respondents, whether acting by themselves, their agents, representatives and/or all other officers subordinate to them, be restrained from summoning, arresting, holding, detaining, incarcerating and/or in any other way interfering with the Applicant's liberty and/or in any other way without following the due process of the law.*

*(g) Other order and/or directions as this Honourable Court deems fit and just.*

*(h) The costs of this application be provided for.*

2. Which application is grounded on the following grounds:

- (a) That Applicant has credible information that certain police officers intend to arrest him on allegations that are malicious and intended to settle personal scores.*
- (b) That few weeks ago he was embroiled in an altercation with members of the public at a local joint which led to his firearm taken by officers from Langas police station, since then he has been receiving threats from anonymous people threatening for me life*
- (c) That Applicant has been. forced into hiding due to persistent harassment and intimidation by police officers acting outside legal process.*
- (d) That Applicant has not been served with any OB number, summons, or written communication contrary to constitutional and policy requirements.*
- (e) That Applicant is a licensed firearm holder, fully compliant with the Firearms Act, and therefore not a flight risk.*
- (f) That conduct of the police appears off-the-books, undocumented, and outside proper channels, including DCI, ODPP and NPS procedures.*
- (g) That incident has caused members of his immediate family and relatives to be apprehensive, anxious and/or fearful for their safety and lives generally to the extent that he had to procure for them temporary accommodation.*
- (h) That the power of arrest by the police service is being used by the respondents to harass, intimidate and oppress the applicant unnecessarily, yet he is a law-abiding citizen of this country and equally entitled to the secure and equal prosecutions of the law as provided for in Articles 49(1) and 50(1) of the Constitution of Kenya.*
- (i) That the intended arrest and/or prosecution by the police officers is for an extraneous purpose intended to settle a personal vendetta. It is malicious, vexatious and oppressive, perpetrated by the respondents.*

- (j) That the applicant has not been able to leave his house for fear of arrest for an offence which he has no knowledge about. I am apprehensive that my right to liberty may at any time be infringed, yet he remain innocent until proved guilty by a competent court of law.*
  - (k) That this state of affairs has left the applicant vulnerable, and if I am not granted Anticipatory Bail, I not only risk losing my business but also my reputation.*
  - (l) That the applicant is a permanent resident of Nairobi, Kenya, and there is no chance of absconding from the course of justice.*
  - (m) That the applicant undertakes to present himself before the court or police whenever required to.*
  - (n) That further he undertakes that he will not, directly or indirectly, make any inducement, threat or any promise to any person acquainted with the facts of the case to dissuade them from disclosing any such facts to the court or the police officer.*
  - (o) That the applicant is willing and ready to accept any other condition the court or police officer is willing to impose in relation to the case.*
  - (p) That it is only fair and just that this application be heard and determined urgently, and orders sought herein granted; I stand to suffer utmost prejudice and undue hardship and injustice at the hands of the Respondent.*
3. The application is supported by an affidavit sworn by the Applicant who deposed as follows:
- (a) That I am the Applicant herein and competent to swear this Affidavit.*
  - (b) That I have been reliably informed that police officers intend to arrest me at anytime without just cause.*
  - (c) That few weeks ago I was embroiled in an altercation with members of the public at a local joint which led to my firearm taken by officers from Langas Police Station, since then I've been receiving threats from anonymous people threatening for me life.*

- (d) *That the allegations prompting the intended arrest are malicious and motivated by personal grudges.*
- (e) *That due to the said threats, I have been forced into hiding for fear of unlawful arrest and potential harm. We've even made complaints and made a report on such issues with Langas Police Station, but nothing has been done since then*
- (f) *That I have not been issued with any summons, OB extract or written communication requiring me to appear before any investigative authority.*
- (g) *That I am a licensed firearm holder and fully compliant with all statutory requirements, the officers from the Langas Police Station already have my firearm in their custody.*
- (h) *That the conduct of the police has been off-the-books and undocumented, further demonstrating malice.*
- (i) *That incident has caused members of my immediate family and relatives to be apprehensive, anxious and/or fearful for their safety and lives generally to the extent that I have had to procure for them temporary accommodation.*
- (j) *That the power of arrest by the police service is being used by the interested party to harass, intimidate and oppress me unnecessarily, yet I am a law-abiding citizen of this country and equally entitled to the secure and equal prosecutions of the law as provided for in Articles 49(1) and 50(1) of the Constitution of Kenya.*
- (k) *That the intended arrest and/or prosecution by the police officers is for an extraneous purpose intended to settle personal vendetta and political scores. It is malicious, vexatious and oppressive, perpetrated by the interested party.*
- (l) *That I have not been able to leave my house for fear of arrest for an offence which I have no knowledge about. I am apprehensive that my right to liberty may at any time be infringed, yet I remain innocent until proved guilty by a competent court of law.*

- (m) That this state of affairs has left me unable to attend to my duties as a businessman in and I have a family and employees to take care of.*
  - (n) That I am a permanent resident of Nairobi, Kenya, and there is no chance of absconding from the course of justice.*
  - (o) That I undertake to present myself before the court or police whenever required to.*
  - (p) That I further undertake that I will not, directly or indirectly, make any inducement, threat or any promise to any person acquainted with the facts of the case so as to dissuade them from disclosing any such facts to the court or the police officer.*
  - (q) That I am willing and ready to accept any other condition the court or police officer willing to impose in relation with the case*
  - (r) That it is only fair and just that this application be heard and determined urgently, and orders sought herein granted; I stand to suffer utmost prejudice and undue hardship and injustice at the hands of the Respondent.*
  - (s) That all that I have deponed to herein are true to the best of my knowledge and belief save those based on information, the sources of which I have disclosed.*
4. In response to the application and the Respondent swore a replying affidavit with the following averments:
- (a) That I am a Prosecution Counsel currently at the Office of the Director of Public Prosecution, Uasin Gishu, seized with the facts in this matter and hence competent to swear his affidavit.*
  - (b) That I have read and understood the Notice of Motion Application dated 9<sup>th</sup> December 2025 and the Supporting Affidavit annexed thereto.*
  - (c) That an incident occurred at the 2am at the Tamasha Lounge on 6th October 2025 wherein the Applicant was captured grabbing a pistol from the waist of another person not before this Court, pointing the said firearm in the face of a reveler while making threatening utterances, cocking and firing the said firearm soon*

- thereafter leading other revelers to scamper for safety and finally exiting the said premises in a huff.*
- (d) That in the course of the commotion, a TV that was at the Tamasha Lounge was fired at and damaged.*
- (e) That A Glock Pistol with 14 rounds of ammunition and one fired cartridge were recovered from the Applicant and the scene respectively and forwarded*
- (f) for analysis. The findings were that the Applicant's firearm discharged the bullet.*
- (g) That after reviewing the CCTV footage and all the evidence above, a decision to charge was arrived at by Mr. S. G Thuo on 11<sup>th</sup> December 2026 and which was communicated to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents herein.*
- (h) That this decision to charge was not arrived at out of malice and any ill motives on any of the Respondents but after a careful analysis of the evidence on the record.*
- (i) That I am informed, which information I believe to be true, that despite being summoned, the Applicant has refused to heed to the summons of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents retreating to his residence in Nairobi, much to the chagrin of the Complainants in the matter and in a bid to evade justice.*
- (j) That I further swear this Affidavit in support of paragraph 15 of the Applicant's Supporting Affidavit seeking that the Applicant presents himself on 6<sup>th</sup> February 2026 at the Langas Police Station for taking of fingerprints and escorted to the Eldoret Law Courts for taking plea for the offences committed at the Tamasha Lounge.*
- (k) That what is deponed to herein above is true to the best of my knowledge, information and belief.*

## **DECISION**

5. Considering the circumstances of this petition the Applicant contends that his rights are likely to be infringed or violated by the Respondents if Anticipatory Bail is not granted by this Court. This area of law is litigated now and again where the Applicant or the citizens of this country do challenge any action being taken by the Police within the dictates of Section 244 and 245 of the Constitution. The basis of such application has always been the Bill of Rights which regulates the fundamental rights and freedoms.
6. The Courts have alluded to this issue in the following dictum:  
*Kasina v Attorney General & Another [2024] KEHC 7573 (KLR) and Faraj & 3 Others vs Police & 2 Others [2022] KEHC 287 (KLR), Republic v Mohammed & Another [2019] KESC 48 (KLR) and Mwaura V Republic [2024] KEHC 6362 (KLR)*. The predominant principles which run through the above decisions is that the court should not exercise discretion to interfere with criminal proceedings which are under investigations or have proceeded all the way to the trial court as provided for under Article 157(6) (7) of the Constitution, unless it is demonstrated that the proceedings are an abuse of the court process or were instituted by the State in violation of the fundamental rights and freedoms.
7. The basis of these being that the National Police Service is the only organ of the Constitution mandated to take cognizance of a crime already committed by a suspect upon which investigations are launched. The accuracy and correctness of the evidence in question is then forwarded to the Director of Public Prosecution who has the mandate to make a decision to charge or not to charge the suspect. Again, in this respect, the DPP's decision cannot be interfered with unless it is shown that he acted ultra-vires the Constitution or the applicable law. The Supreme Court in the case of **Communication of Kenya & 5 Others v Royal Media Services Limited & 5 Others [2014] eKLR, [2014] KESC 53 (KLR)** observed that:

*Although Article 22(1) of the Constitution gives every person the right to initiate proceedings claiming that a fundamental*

*right or freedom has been denied, violated or infringed or threatened, a party invoking this Article has to show the rights said to be infringed, as well as the basis of his or her grievance. This principle emerges clearly from the High Court decision in Annarita Karimi Njeru v. Republic, (1979) KLR 154: the necessity of a link between the aggrieved party, the provisions of the Constitution alleged to have been contravened, and the manifestation of contravention or infringement. Such a principle plays a positive role, as a foundation of conviction and good faith, in engaging the constitutional process of dispute settlement.*

8. The court is emphatic as demonstrated in the case of **Director of Public Prosecutions v Martin Maina & 4 Others [2017] eKLR**. Thus;

*“It is not the duty of the High Court in Judicial Review proceedings to evaluate the sufficiency of evidence in the envisaged criminal proceedings as that is the function of the trial Court of the High Court in a criminal appeal. A Judicial Review Court should not usurp the functions of a trial Court except in the clearest of cases.”*

*“A party claiming violation of rights and fundamental freedoms must therefore discharge the burden placed on him/her and demonstrate clear violation and the manner of such violation. It was not enough for the petitioner to argue that his rights were violated or threatened. He was required to show that the respondents acted contrary to constitutional provisions in the Bill of Rights that protect rights and fundamental freedoms, or that they failed to act as required by the Constitution or the law. The petitioner failed to do so in this petition.”*

9. There is always a balancing act which must be exercised within the spectrum of the letter and spirit of the Constitution. This is what the Court in **Republic vs. Chief Magistrate Milimani & Another Ex-**

**parte Tusker Mattresses Ltd & 3 others [2013] eKLR** had this in mind:

*This Court expressed itself as follows: “The Court must in such circumstances take care not to trespass into the jurisdiction of the investigators or the Court which may eventually be called upon to determine the issues hence the Court ought not to make determinations which may affect the investigations or the yet to be conducted trial. That this Court has power to quash impugned warrants cannot be doubted. However, it is upon the ex parte applicant to satisfy the Court that the discretion given to the police to investigate allegations of commission of a criminal offence ought to be interfered with. It is not enough to simply inform the Court that the intended trial is bound to fail or that the complaints constitute both criminal offence as well civil liability. The High Court ought not to interfere with the investigative powers conferred upon the police or the Director of Public Prosecution unless cogent reasons are given for doing so...The warrants were issued to enable the allegations be investigated. Whether or not the investigations will unearth material which will be a basis upon which a decision will be made to commence prosecution of the ex parte applicants or any of them is a matter which is premature at this stage to dwell on.”*

10. The Applicant in this application moved the Court on Anticipatory Bail which can easily be implicit under Article 49 of the Constitution on the rights of an arrested person. It is a crucial safeguard for personal liberty hence an extraordinary remedy usually applied for the by Applicant at an ex-parte stage before even he or she submits himself or herself to the National Police Service to establish the basis of him or her being required to report to a particular Station. It is therefore not a routine remedy. What should be borne in mind is that bail under Article 49(1) (h) of the

Constitution is the rule, it does not automatic apply to Anticipatory Bail which is an exceptional remedy. It should also be clarified that an ongoing application for Anticipatory Bail does not stop the Director of Public Prosecution under Article 157(6) (7) from initiating the criminal process under the ambit of the Criminal Procedure Code. The Court in **Republic vs Chief Magistrate Milimani & Another ex-parte Tusker Mattresses Ltd & 3 Others [2013] eKLR** expressed itself as follows:

*"The Court must in such circumstances take care not to trespass into the jurisdiction of the investigators or the Court which may eventually be called upon to determine the issues hence the Court ought not to make determinations which may affect the investigations or the ye to be conducted trial. That this Court has power to quash impugned warrants cannot be doubted. However, it is upon the ex parte applicant to satisfy the Court that the discretion given to the police to investigate allegations of commission of a criminal offence ought to be interfered with. It is not enough to simply inform the Court that the intended trial is bound to fail or that the complaints constitute both criminal offence as well civil liability. The High Court ought not to interfere with the investigative powers conferred upon the police or the Director of Public Prosecution unless cogent reasons are given for doing so...The warrants were issued to enable the allegations be investigated. Whether or not the investigations will unearth material which will be a basis upon which a decision will be made to commence prosecution of the ex parte applicants or any of them is a matter which is premature at this stage to dwell on.*

11. From the perspective of this court, the Applicant needs to appreciate that the Anticipatory Bail is a Court Order from this Court or court of session allowing release on bail of a suspect to a crime before arrest for aailable offence, requiring a reasonable apprehension of arrest. In exercising discretion, the Courts evaluate

factors like the nature of the accusation, the Applicant's history, the reasons why he does not want to submit himself/herself to the Police for investigations or inquiry and whether a mere request by the Police that they require him/her to visit the police station to clarify certain matters is sufficient enough to meet the threshold for grant of Anticipatory Bail.

12. The way I see it, the necessity of Anticipatory Bail application arises mainly because sometimes influential persons try to implicate their rivals in false causes for the purpose of disgracing them or for other purpose like getting them detained in jail for some days. That is the very reason the need for Anticipatory Bail applications should be exceptional and extraordinary in character and should be granted only in exceptional cases where it appears that the person maybe falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty. What this means is that Anticipatory Bail should not be a matter of routine judicial work. In my considered view, a person cannot be admitted to Anticipatory Bail against whom a report has been lodged at any of the Police Stations in Kenya and who is yet to be placed in custody or under any form of deprivation of his or her right to liberty. I think time has come for civic education to be provided for to every Ward, Location or Sub-County on the rights of an arrested person under Article 49 of the Constitution.

13. For those reasons, I am of the considered view by operation of the law, the Applicant under Section 107, 108 and 109 of the Evidence Act has not satisfied the standard and burden of proof on a balance of probabilities with reasonable precision to be granted Anticipatory Bail. The application is therefore lost. However, as the circumstance of this case stands, the Applicant is directed in company of his Legal Counsel to submit himself to the National Police Service whose jurisdiction a complaint was lodged to investigate the Applicant. It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 11<sup>TH</sup> DAY  
FEBRUARY, 2026**

.....  
**R. NYAKUNDI**  
**JUDGE**