



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA COUNTY

COURT NAME: MOMBASA HIGH COURT

CASE NUMBER: HCCRMISCAPPL/E188/2025

FIDDIE OMOLO VS ODPP AND INSPECTOR GENERAL OF POLICE

### RULING

1. The Chamber Summons dated 24th November 2025, filed by the applicant, seeks the following orders:
  - a) Spent
  - b) Spent
  - c) Spent
  - d) That the applicant be granted anticipatory bail on such reasonable terms as the Court deems fit;
  - e) Costs of the application.
2. The application is supported by the affidavit of Feddie Torvil Omolo sworn on 24th November 2024.
3. The State did not file any response in opposition.
4. The applicant contends that he is the founder and Executive Director of Variable Care Society, a human rights organisation with offices and operations across Kenya, duly registered under the Societies Act (Laws of Kenya). He states that in 2023 he exposed fictitious payment claims as fraudulent, having been colluded in by certain staff.
5. On 9th September 2024 he was arrested while on holiday in Malindi, arising from a contractual dispute between the purported complainants and Variable Care Society. He was detained at Malindi Police Station for three days and released unconditionally on 12th September 2024.
6. On 17th April 2024 he was arrested in Kisumu while on official business and transferred to Malindi Police Station on the same account. He was later released on police bail of Ksh. 50,000



without charge.

7. On 21st November 2025 he was arrested at Eldoret Airport en route to Nairobi and detained for five hours at Eldoret Police Station. He alleges that those who arrested him claimed to be police officers executing an alleged warrant from Malindi Police Station and that he was released after being forced to surrender a bribe of Ksh. 100,000.

8. The applicant states that he has never been required to record any statement or to take plea for any offence, but has been arrested on three occasions pursuant to a fictitious complaint by persons intent on abusing the criminal process to settle what is essentially a civil matter. He avers that he has been pursued by persons he suspects to be police officers seeking to arrest him for purposes of extortion, and that he lives in fear — apprehensive even when in public or when there is a knock at his residence.

9. I have considered the application and the supporting affidavit. The issue for determination is whether the application has merit and the orders this Court should make.

10. The question of anticipatory bail has been the subject of judicial consideration. There are no express statutory provisions for anticipatory bail; it is a special relief the Courts have developed and may grant in appropriate circumstances. This Court derives jurisdiction to grant such relief from Articles 23, 28, 49(h) and 165(3) of the Constitution. See *Caroline Kuthia Karanja v. ODPP & 2 Others* [2021] eKLR; *Paul Ole Kuyana & Anor v. ODPP & 2 Others* [2021] eKLR; *Samuel Muciri W’Njuguna v. Republic* [2004] eKLR; *Kipkerich Koskei v. ODPP & 2 Others* [2018] eKLR, among others.

11. In *Sevakal & Another v. Director of Public Prosecutions & 4 Others* (Misc. Criminal Application No. E039 of 2024) [2024] KEHC 15796 (KLR) (Crim) (16 Dec 2024) (Ruling), the Honourable Lady Justice L. N. Mutende at paragraph 14 held:

“The burden to demonstrate the claim of constitutional violation lies with the applicant.

The Judiciary Bail and Bond Policy Guidelines provide that:

“The High Court may grant anticipatory bail, that is, bail pending arrest, provided the applicant demonstrates that his or her right to liberty is likely to be compromised or breached unlawfully by an organ of the State that is supposed to protect this right. Further, the applicant must demonstrate that the apprehension of arrest is real and not imagined or speculative.”

12. In the present case, it is not in dispute that no formal complaint has been lodged against the applicant in respect of the alleged offence. It is also not in dispute that he was arrested and released after payment of Ksh. 50,000 at Malindi Police Station. Despite the payment of cash bail on 17th April 2025, the applicant has not been charged in court and the police continue to pursue the matter. The applicant apprehends that the police are tracking his movements and may ambush him with unplanned arrest. He further avers that he was arrested at Eldoret Airport while en route to Nairobi. These facts are uncontroverted.

13. I am satisfied that the applicant has demonstrated a real risk that his fundamental rights are likely to be breached.

14. The Court cited *Richard Makhanu v. Republic*, Bungoma High Court Misc. Criminal Application No. 10 of 2015, wherein a concurrent court observed:



“With regard to the issue of anticipatory bail, it is usually granted where there is alleged to be serious breaches by a State organ. In W’Njuguna v. Republic, Nairobi Misc. Case No. 710 of 2002, (2004) 1 KLR 520, the court held that anticipatory bail can be granted ‘...when there are circumstances of serious breaches of a citizen’s rights by an organ of the State which is supposed to protect the same.’”

15. The Court further cited Eric Mailu v. Republic & 2 Others, Nairobi Misc. Cr. Application No. 24 of 2013, in which it was emphasised that anticipatory bail “...would only issue when there was serious breach of a citizen’s rights by organs of State.”

16. In Mandiki Luyeye the Court observed that where the identity of officers allegedly harassing an applicant is not established, the applicant’s fears may be unsubstantiated and insufficient to show infringement of constitutional rights. However, that is not the position here where the applicant has established repeated arrests and detention without charge.

17. Having found that there is no indication that any charge has been preferred against the applicant and noting the unexplained payment of cash bail at Malindi Police Station, I find it incongruous that an officer would repeatedly arrest the applicant without providing legal reasons. Such conduct would cause serious anxiety and apprehension and would amount to harassment and a breach of fundamental rights.

18. I find that the applicant has met the threshold for the grant of anticipatory bail.

19. Accordingly, the application dated 24th November 2025 is allowed in the following terms:

- a) The Applicant is admitted to anticipatory bail.
- b) The Applicant shall execute a bond of Kshs. 100,000/= or deposit cash bail of Kshs. 100,000/= within the next 14 days.
- c) The Applicant shall avail himself for interrogation by officers of the Respondents as and when lawfully requested and shall cooperate with the investigators.
- d) The police are ordered to finalise their investigations and determine whether to charge the Applicant within six (6) months from the date of this ruling.

20. There shall be no order as to costs.

DELIVERED, DATED AND SIGNED at MOMBASA this 25th day of FEBRUARY, 2026.

Ruling delivered through Microsoft Teams Online Platform.

.....  
WENDY KAGENDO MICHENI  
JUDGE

Signed in the presence of:

SIGNED BY/FOR:  
HON. LADY JUSTICE WENDY MICHENI



THE JUDICIARY OF KENYA.  
MOMBASA HIGH COURT  
HIGH COURT CRIMINAL  
DATE: 2026-02-27 17:48:18

