

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KAKAMEGA**  
**CR.MISCELLANEOUS APPLICATION NO E126 OF 2025**

**GEORGE ODUORI OLUOCH .....**  
**APPLICANT**

**VERSUS**

**DIRECTOR OF CRIMINAL INVESTIGATIONS .....** **1ST**  
**RESPONDENT**

**DIRECTOR OF PUBLIC PROSECUTIONS .....** **2ND**  
**RESPONDENT**

**AND**

**JOSEPHAT OUMA OMOYO T/A ZION AHADI MEDICLINIC LTD.....**  
**INTERESTED PARTY**

**RULING**

1. Before this Court is a Notice of Motion brought pursuant to Articles 22, 23 and 165(3) of the Constitution of Kenya 2010 in which the Applicant seeks orders that:
  - a. The application be certified urgent.
  - b. The Applicant be granted anticipatory bail pending contemplated arrest by the 1st Respondent.
  - c. The Court sets reasonable terms pending any possible arraignment before a competent court.
  
2. The application is supported by the affidavit of the Applicant who avers that he has been receiving numerous calls from unknown persons concerning allegations of fraud and that he reasonably apprehends

imminent arrest by officers attached to the Directorate of Criminal Investigations.

3. The Applicant further deposes that he has not been actively involved in the running of the company associated with the complaint and expresses his readiness to cooperate with investigators by recording a statement whenever required and to attend court should charges be preferred against him.

### **Submissions of the Parties**

4. The Court directed that the application be canvassed by way of written submissions. However, at the time of preparing this ruling, the Respondents had not filed submissions despite having been afforded an opportunity to do so.
5. The Court therefore proceeds to determine the application based on the pleadings, the supporting affidavit on record and the applicable law.
6. It is settled law that submissions merely highlight parties' legal arguments and do not constitute evidence. **In Daniel Toroitich Arap Moi v Mwangi Stephen Muriithi & Another**, the Court of Appeal held that ***submissions cannot take the place of evidence and that a court may determine a matter based on the material properly placed before it.***

7. Similarly, in **Republic v Director of Public Prosecutions Ex parte Chamanlal Vrajlal Kamani & 2 Others**, the Court held that ***failure by a party to file submissions does not bar a court from rendering its decision so long as the parties were given an opportunity to be heard.***
8. Accordingly, this Court will determine the application on its merits based on the material available on record.

### **Issue for Determination**

9. Having considered the pleadings before it, the Court finds that the issue for determination is:
  - a. **Whether the Applicant has satisfied the threshold for the grant of anticipatory bail.**
10. Although anticipatory bail is not expressly provided for in statute, Kenyan courts have recognized it as a constitutional remedy designed to safeguard fundamental rights, particularly the right to liberty and security of the person.
11. Article 29 of the Constitution of Kenya 2010 guarantees every person the right not to be deprived of freedom arbitrarily or without just cause.
12. The jurisprudence on anticipatory bail was articulated in **W’Njuguna v Republic**, where the Court held that ***anticipatory bail may issue where an applicant demonstrates that state agents***

***are likely to breach constitutional rights through unlawful arrest or harassment.***

13. The courts have also emphasized that anticipatory bail is not intended to shield suspects from lawful investigations. In **Muriithi v Inspector General of Police & 3 Others**, the Court held that an applicant must demonstrate a credible threat to constitutional rights and not merely speculative fears.

14. Similarly, in **Wilson v Director of Public Prosecutions & 2 Others**, the Court reiterated that anticipatory bail should only issue where there exists a real and reasonable apprehension of arrest coupled with a likelihood of violation of constitutional rights.

#### **ANALYSIS**

15. The Applicant's case is predicated on the apprehension that he may be arrested in connection with alleged fraudulent activities involving a company linked to the Interested Party.

16. The Applicant has deposed that:

- He has been receiving persistent calls concerning the alleged fraud.
- He has not been actively involved in the operations of the company in question.
- He is ready and willing to cooperate with investigators and to present himself whenever required.

17. The Court recognizes that investigative agencies such as the Directorate of Criminal Investigations are constitutionally and

statutorily mandated to investigate criminal complaints. Courts should therefore exercise caution not to interfere with lawful investigations.

18. However, the Court equally bears the constitutional obligation to protect individual rights where credible threats to liberty are demonstrated.

**19. *In Mburu v Director of Criminal Investigations & 2 Others, the Court held that anticipatory bail may be granted where the applicant demonstrates reasonable apprehension of arrest but also expresses willingness to cooperate with investigative authorities.***

**20. Further, *in Oloo v Director of Public Prosecutions & 3 Others, the Court emphasized that anticipatory bail should serve to balance the individual's right to liberty with the State's obligation to investigate criminal conduct.***

21. Applying these principles to the present case, the Court observes that:

- a) The Applicant has demonstrated reasonable apprehension of arrest.
- b) There is no evidence before the Court to suggest that the Applicant intends to evade investigations.
- c) The Applicant has indicated his willingness to cooperate with investigative authorities.

22. In the circumstances, the Court is satisfied that the appropriate course is not to halt investigations, but to ensure that the Applicant's liberty is safeguarded in the event of arrest.

## **DETERMINATION**

23. Having carefully considered the application, the affidavit evidence on record and the applicable legal principles, the Court finds that the Applicant has established sufficient grounds to warrant limited protection pending investigations.

### **ORDERS**

24. Accordingly, the Court makes the following orders:
- i. In the event that the Applicant is arrested in connection with the subject matter under investigation, he shall be released on anticipatory bail in the sum of Kshs. 100,000 with one surety of a similar amount.
  - ii. The Applicant shall present himself before the Directorate of Criminal Investigations, Kakamega, within seven (7) days for purposes of recording a statement if required.
  - iii. The Applicant shall fully cooperate with investigators and attend court whenever required.
  - iv. These orders shall remain in force until the Applicant is formally charged before a competent court or until further orders of this Court.
  - v. Mention on 23.6.2026 for further directions.
  - vi. Right of Appeal 14 days.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 17<sup>th</sup> DAY OF MARCH, 2026.**

**S.N.MBUNGI**

## **JUDGE**

### **In the Presence of:-**

CA: Zilda/Velma

Ms Kiu for ODPP present.

Applicant absent, though aware of the ruling date.

Advocate for Applicant absent, though aware of the ruling date.

Court Assistant to upload the ruling on the CTS forthwith.