

REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISC CRIMINAL APPLICATION NO E144 OF 2025

MATHEW **KORE**
CHEBOI.....APPLICANT

VERSUS

DIRECTOR OF PUBLIC PROSECUTION.....1ST
RESPONDENT

INSPECTOR GENERAL OF POLICE.....2ND
RESPONDENT

OCS, KAPCHEROP POLICE STATION.....3RD
RESPONDENT

Coram: Before Hon Justice R. Nyakundi
Mr. Mathew Kore Cheboi, the Applicant
M/s Sidi Kirenge for the State

RULING

1. Before this court is an application dated 15th day of September 2025 premised under Articles 19, 20, 21, 22, 23, 159 and 258 of the Constitution of Kenya 2010; Rules 13 and 19 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013 and section 123 of the Criminal Procedure Code where the Applicant is seeking the following orders:
 - a. *Spent.*
 - b. *That the applicant Mathew Kore Cheboi be admitted to anticipatory bail pending any contemplated arrest or charge and/or action by the Respondents and/or their agents namely, police officers and/or any other person or persons who may be so instructed by them to undertake any such arrest and/or adverse action in connection to a civil dispute involving the late Benjamin Kimutai Keino Kayon*

- c. *That the applicant Mathew Kore Cheboi be admitted to anticipatory bail with the terms and conditions that the court may deem reasonable in the circumstances pending any contemplated arrest or charge by the respondents and/or their agents and or any other person or persons who may be so instructed by them to undertake any such arrest.*
 - d. *That should the applicant be required for questioning, I should be summoned through proper procedure and/or presented before the court without arrest, intimidation or harassment.*
 - e. *That the respondents be directed to supply and avail a copy of the charge sheet, which he is being summoned to explain and/or expound on.*
 - f. *Any other remedy that the court deems fit and just.*
 - g. *The cost of this application be borne by the respondents.*
2. This application is based on the grounds in which the Applicant herein Mathew Kore Cheboi averred that: -
- a. *I lawfully purchased a parcel of land measuring 50 by 100 from the late Benjamin Kimutai Keino Kayon in July for Kshs. 600,000/= way before his demise.*
 - b. *Following his death, one Gabriel, purporting to be an uncle to the deceased unlawfully encroached on the land, interfering with my boundary.*
 - c. *I reported the matter to Kapcherop Police station vide OB No. 15/06/09/2025 but instead of receiving protection I was subjected to harassment and intimidation by police officers acting under the influence of the Assistant Chief and Jonathan Komen alias Gabriel.*
 - d. *On 12/9/2025 I was summoned by the police officers from Kapcherop Police station but was not informed of any charge. A senior officer later threatened me with the arrest despite the issue at hand being purely civil in nature.*

- e. *I am apprehensive that the Respondents herein are acting in an opaque and secretive manner and yet they are likely to make a decision that may adversely affect me at any time.*
 - f. *I am afraid my fundamental rights and freedoms are likely to be infringed and hampered as I am already being subjected to administrative action that is unreasonable and unfair and contrary to the provisions of the Constitution.*
 - g. *I am apprehensive that the Respondents are holding information that may affect me and are summoning me on the basis of that information without giving and/or revealing the same to me and that they shall use that information adversely against me.*
 - h. *I am apprehensive that the Respondents might take some adverse action against me such as arresting and/or detaining me at any time and hence has moved to this Honourable Court seeking for anticipatory bail.*
 - i. *The Applicant is aggrieved by the manner in which the Respondents are acting as they are acting in secrecy, in an opaque manner and never have they at any time informed the applicant that they have been investigating him or not and/or making inquiries about him.*
 - j. *The Applicant is apprehensive that the Respondents will arrest and or detain him at any juncture and hence it is in the interest of justice that this Court intervenes and ensures that the Respondents act in accordance with the law.*
 - k. *I am ready and willing to cooperate with any investigations or authority and present myself when lawfully required to do so.*
3. The Application is supported by the annexed affidavit sworn by the Applicant which deponents echo the grounds in support of the application.

Decision

4. The Applicant herein is seeking leave of this court to exercise the constitutional powers under Article 49(1)(h) to arrest him and grant anticipatory bail. I take cognizance that in Kenya there are no express provisions both in the Constitution and the Criminal Procedure Code which are the primary tools of reference on bail provisions but the right is implicit within the Bill of Rights in chapter four of our Constitution which then brings into perspective the canons of anticipatory bail. Why is anticipatory bail important to Kenyan people? It is focused on Article 27 of equality from discrimination, Article 28 on human dignity, Article 29 on security and freedom of the person, Article 50 on fair trial rights and the legal remedies within the constitutional framework.
5. The jurisprudence on anticipatory bail in Kenya is not settled as a fixed or automatic remedy; even where a prima facie case has been established, the grant of anticipatory bail remains discretionary. However, it can now be said that the key legal principles governing anticipatory bail are fairly well settled. First, anticipatory bail is generally not available in respect of grave or serious offences, such as murder, manslaughter, and sexual offences. Second, it is not an absolute right within the letter and spirit of Article 49(h) of the Constitution.
6. The applicant in this case has deponed in his affidavit that the issue giving rise to his application for anticipatory bail emanates from the purchase of a parcel of land from the late Benjamin Kimutai prior to his demise. He states that on 15th September 2025, he was subjected to harassment by the National Police Service over that purchase, which he considers to be a purely civil dispute. He therefore contends that the resolution of the matter lies not within the criminal justice system, but in a civil claim to determine the legality of the transaction in question. This is an area in which the court must exercise its discretion with the utmost care and circumspection to ensure that it does not usurp the constitutional mandate of the National Police Service under Articles 244

and 245 of the Constitution. I consider the grant of anticipatory bail to be an extraordinary remedy, one that touches on fundamental rights and freedoms, and which must therefore be exercised sparingly and only in exceptional circumstances.

7. It is also my strong view that the interest of justice would be better served by first appreciating the existence of prima facie evidence before the courts can act objectively and in consonance with principles governing the grant of bail which are now recognized over the years. It is not a case where one can take Criminal Procedure Code as one finds it on grant of bail provisions and proceed to grant anticipatory bail. The applicant must first demonstrate that he or she has reason to believe that he or she may be arrested by the police for a bailable offence. Such belief must be based on reasonable grounds, and not on mere fear of being summoned by the Commanding Officer or the Investigating Officer of a police station.
8. I have applied my mind to the application and the affidavit of the applicant seeking anticipatory bail and I am satisfied that there is no prima facie evidence demonstrating reasonable grounds for the belief that the applicant is likely to be arrested so as to warrant the issuance of an order for anticipatory bail to shield him or her from such accusations. Accordingly, the application is found to be without merit and is hereby dismissed. It is so ordered.

**DATED, SIGNED AND DELIVERED VIE EMAIL AND CTS AT ELDORET
THIS 31ST DAY OF MARCH 2026**

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

