

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KIBERA
MISC. CRIMINAL APPLICATION NO. E053 OF 2026

SAMSON OKIYA SIKARO.....1ST
APPLICANT
MWANAIDI CHEMELI SAIDI.....2ND
APPLICANT
KAREN WANGARE.....3RD
APPLICANT

VERSUS

INSPECTOR GENERAL OF POLICE.....1ST
RESPONDENT
DIRECTOR OF CRIMINAL INVESTIGATIONS.....2ND
RESPONDENT
DIRECTOR OF PUBLIC PROSECTIONS.....3RD
RESPONDENT

RULING

1. The Applicants have moved this Court by Notice of Motion dated 7th April 2026, brought under certificate of urgency, seeking orders for anticipatory bail. The application is supported by the affidavit of the 1st Applicant sworn on the same date, with authority of the 2nd and 3rd Applicants.
2. The Applicants depose that they have been identified by the Respondents as persons of interest in ongoing investigations concerning the alleged disappearance of Raphael Tuju, giving rise to a real and imminent apprehension of arrest and detention.
3. It is further deponed that one Stephen Okoth Mwanga, an associate linked to the same investigations, was arrested on 2nd April 2026 and remains in custody at Lang'ata Police Station without being charged, despite having cooperated with investigators, including recording a statement. The Applicants

contend that the charge sheet relied upon discloses no offence against the said Stephen Okoth Mwanga, nor does it implicate him, the only named accused being Raphael Tuju. They assert that his continued detention is unlawful, arbitrary, and devoid of legal foundation, particularly as no plea has been taken.

4. The Applicants aver that the Respondents' conduct, including a press statement indicating an intention to pursue persons of interest, demonstrates a likelihood of similar unlawful arrest and detention. They maintain that they are not flight risks, are willing to cooperate with investigations, and seek the intervention of the Court to safeguard their constitutional rights.
5. At this stage, the Court's duty is not to determine the merits of the intended investigations or the truth of the allegations made against the Applicants, but to ensure that the constitutional rights and fundamental freedoms guaranteed to every person are not placed in jeopardy through unlawful, arbitrary or excessive State action.
6. Article 49(1) of the Constitution guarantees an arrested person the right to be released on bond or bail on reasonable conditions, pending charge or trial, unless compelling reasons are demonstrated. While anticipatory bail is not expressly provided for in statute, nothing in the Constitution bars the Court from granting such relief where the circumstances disclose a real threat to the enjoyment of constitutional rights and where intervention is necessary to prevent their violation.
7. Article 22(1) of the Constitution further accords every person the right to institute proceedings where a right or fundamental freedom has been denied, violated, infringed or is threatened. That provision is sufficiently broad to encompass applications

seeking anticipatory protection against threatened unlawful arrest or abuse of power by investigative agencies.

8. At this stage, the Court is only required to be satisfied that the apprehended threat to the Applicant's liberty is not idle, remote or speculative. From the material placed before the Court, including the police summons and the requirement that the Applicant deposit police cash bail, it is evident that investigations are ongoing and that the Applicant faces the real possibility of arrest and arraignment. In those circumstances, and without making any definitive findings on the merits of the complaint under investigation, the Court is satisfied that unless the orders sought are considered, the Applicant's right to liberty and security of the person under Article 29 of the Constitution may be placed at risk.
9. Having considered the application, the supporting affidavit of the applicant, and the annexures thereto, I hereby order as follows:
 - i) The applicants herein are each admitted to anticipatory bail in the sum of **Kenya Shillings Fifty Thousand (Kshs. 50,000)** to be deposited in court.
 - ii) For the avoidance of doubt, the respondents are at liberty to investigate or charge the applicant for any criminal conduct. However, they shall not arrest or detain the Applicants in view of order (i) above or until further orders of the court.
 - iii) The applicants' advocates are further directed to escort the applicant to the offices of the 2nd respondent for questioning and/or interrogation within **seven (7) days** from the date hereof and not later than **1st May 2026**.
 - iv) Upon the conclusion of investigations, and if a decision to charge the applicants has been made, the respondents

shall not arrest or detain the applicant but he shall be informed of the court where he is to appear for plea taking.
v) Order (iv) shall remain in force until plea has been taken and the trial court has set new bail/bond terms in which case the orders of this court shall lapse.

**Ruling dated and delivered virtually on this 23rd day of
April 2026**

**D. KAVEDZA
JUDGE**

ORIGINAL