

**RULING**  
**HCCRMISC E014 OF 2026**



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYAMIRA**  
**(CHERERE-J)**  
**HCCRMISC E014 OF 2026**  
**IN THE MATTER OF AN APPLICATION FOR GRANT OF ANTICIPATORY**  
**BAIL**  
**BETWEEN**  
**NICK OMARI.....APPLICANT**  
**AND**  
**THE DIRECTORATE OF CRIMINAL INVESTIGATIONS....1ST RESPONDENT**  
**THE DIRECTOR OF PUBLIC PROSECUTIONS.....2ND RESPONDENT**

**RULING**

1. The Applicant, Nick Omari, has moved this Court by way of a Notice of Motion dated 23<sup>rd</sup> February 2026 seeking anticipatory bail pending investigations and any intended arrest arising from allegations of forgery.
2. The application is brought under Article 49(1)(h) of the Constitution, Section 123(3) of the Criminal Procedure Code and other enabling provisions of the law.
3. The Applicant states that he has been summoned by officers from the Directorate of Criminal Investigations in relation to alleged forgery of a death certificate connected to the estate of the late Jackson Nyaboga Guto in Nyamira High Court Succession Cause No. 7 of 2021. He avers that he has cooperated with investigators and recorded statements but apprehends arrest and therefore seeks protection by way of anticipatory bail.

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4. As rightly submitted for the Respondents, the Applicant had previously moved this Court in **Nyamira High Court Constitutional and Human Rights Petition No. E004 of 2024** seeking related reliefs. The determination of the present application, however, is not based on the existence or outcome of that earlier matter, but on the circumstances presently placed before the Court.
5. Anticipatory bail is an extraordinary remedy granted to protect a person whose liberty is threatened through unlawful arrest, harassment or abuse of the criminal justice process.
6. The Constitution establishes the framework governing criminal prosecutions. Under Article 157(6)(a) of the Constitution, the Director of Public Prosecutions has the power to institute and undertake criminal proceedings against any person before any court in respect of any offence alleged to have been committed. Article 157(10) further provides that the Director of Public Prosecutions shall not require the consent of any person or authority and shall not be under the direction or control of any person or authority in the exercise of those powers.
7. The material before the Court shows that investigations were conducted and the investigation file forwarded to the Office of the Director of Public Prosecutions for review. It is apparent that the Director of Public Prosecutions has since considered the matter and advised that the Applicant be arrested and charged in respect of the alleged offence. Once the constitutionally mandated prosecutorial authority has reviewed the

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investigation file and made a decision to prefer charges, the matter properly falls within the criminal justice process and the Court ought to exercise restraint unless it is demonstrated that the process is unlawful or an abuse of the court process.

8. The Applicant has not placed before this Court material demonstrating that the intended arrest or prosecution is unlawful or undertaken in abuse of the criminal justice process. The Constitution itself safeguards the rights of any person who is arrested. Article 49 guarantees the rights of arrested persons, including the right to be brought before a court as soon as reasonably possible and the right to be released on bond or bail on reasonable conditions unless there are compelling reasons.
9. Whereas the Court finds no basis to conclude that the intended arrest or prosecution is unlawful or constitutes an abuse of process, the Court retains a residual discretion, in the interests of justice, to grant limited anticipatory protection so as to facilitate the Applicant's orderly engagement with the criminal justice process.
10. Accordingly, it is hereby ordered:
  - 1) **The Applicant is granted anticipatory bail on condition that he executes his own bond of KES. 20,000 which shall be for 14 days from today's date**
  - 2) **Within that period, the Applicant shall report to the Sub-County Criminal Investigations Officer (SCCIO), Borabu Sub-**

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County in Nyamira County for further directions in relation to  
the investigations in issue

3) Upon reporting as directed, the matter shall thereafter  
proceed in accordance with the law.

4) File closed

DELIVERED AT NYAMIRA THIS      19<sup>th</sup>      DAY OF      March  
2026



WAMAE.T. W. CHERERE

JUDGE

**Appearances**

Court Assistant    - Anita

Applicant            - Present

For the Applicant - Mr. Charo for Muthoga & Omari Advocates

For the DPP         - Mr. Chirchir (SADPP)