



**Were v Officer Commanding Station, Bumala Police Station & 2 others (Miscellaneous Criminal Application E017 of 2026) [2026] KEHC 6204 (KLR) (8 May 2026) (Ruling)**

Neutral citation: [2026] KEHC 6204 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
MISCELLANEOUS CRIMINAL APPLICATION E017 OF 2026**

**SM MOHOCHI, J**

**MAY 8, 2026**

**IN THE MATTER OF CHAPTER 4 AND ARTICLES 20, 22, 23(1),  
27 (I), 29(A) AND 49 (I) (H) OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF SECTION 123 OF THE CRIMINAL  
PROCEDURE CODE, CHAPTER 75 LAWS OF KENYA**

**BETWEEN**

**ERICK OCHIENGI WERE ..... APPLICANT**

**AND**

**OFFICER COMMANDING STATION, BUMALA POLICE STATION .... 1<sup>ST</sup>  
RESPONDENT**

**DIRECTOR OF CRIMINAL INVESTIGATIONS, BUSIA (DCI). .... 2<sup>ND</sup>  
RESPONDENT**

**THE DIRECTOR OF PUBLIC PROSECUTION ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

IN THE MATTER OF CHAPTER 4 AND ARTICLES 20, 22, 23(1), 27 (I), 29(a) AND 49 (I) (h) OF [THE CONSTITUTION](#) OF KENYA

AND

IN THE MATTER OF SECTION 123 OF THE CRIMINAL PROCEDURE  
CODE, CHAPTER 75 LAWS OF KENYA

BETWEEN

ERICK OCHIENGI WERE.....APPLICANT



VERSUS

OFFICER COMMANDING STATION,

BUMALA POLICE STATION.....1<sup>ST</sup> RESPONDENT

DIRECTOR OF CRIMINAL

INVESTIGATIONS, BUSIA (DCI). .....2<sup>ND</sup> RESPONDENT

THE DIRECTOR OF

PUBLIC PROSECUTION.....3<sup>RD</sup> RESPONDENT

RULING

1. Before me is a Notice of Motion Application for Anticipatory Bail dated 4<sup>th</sup> May 2026 wherein the Applicant seeks the following relief(s);
  - i. SPENT
  - ii. Pending hearing and determination of this Application, this Honourable Court be pleased to issue an order restraining the Respondents, their agents or servants from arresting, harassing, intimidating or in any way interfering with the Applicant's liberty.
  - iii. This Honourable Court be pleased to direct that the Applicant do present himself before the Director of Criminal Investigations (DCI) for purposes of recording any statement, and in the event of arrest, the Applicant be released on anticipatory bail/bond on such terms as the Court may deem fit.
  - iv. This Honourable Court be pleased to issue such further orders as may be necessary for the protection of the Applicant's fundamental rights and freedoms.
  - v. Costs of the Application be provided for.
2. The Applicant Erick Ochiengi Were a resident of Butula SubCounty, Busia County contends in his deposed Sworn Affidavit dated 4<sup>th</sup> May 2026 that;
  - i. That he is an aspiring political leader intending to contest for the position of Member of County Assembly (MCA) in the 2027 General Elections.
  - ii. That he is actively involved in civic awareness and advocacy within Butula Sub-County, where he champion accountability, transparency, and responsible use of public resources.
  - iii. That in the course of my advocacy, he highlighted mismanagement at St. Catherine's Butula, a public institution for physically challenged students, where learners lacked food, the environment was deplorable and unconducive and institutional resources including livestock had been depleted due to mismanagement.
  - iv. That due to the awful situation, he mobilized members of the public in peaceful demonstrations demanding accountability, which led to intervention by education authorities and eventual administrative changes at the institution.
  - v. That, following these events, certain individuals including Prof. Chris Ngacho, Wenseslus Ngacho, John Ogang'a and Patrick Obuya became hostile towards him and have consistently subjected him to public verbal attacks and intimidation. These are former politicians.



- vi. That, he responded to such attacks in public forums and through civic discourse, strictly within the confines of political expression and public interest advocacy.
  - vii. That, he has also expressed political views regarding leadership and governance within my community, which has further escalated hostility against me.
  - viii. That recently, a report was made against him at Bumala Police Station and there have been deliberate efforts by influential individuals to procure my arrest.
  - ix. That he is aware that pressure has been exerted on officers at both Bumala Police Station and Murumba Police Post to ensure that he is arrested.
  - x. That as a result, he is under constant fear of arrest, harassment and possible unlawful detention, and I am unable to live peacefully at my residence.
  - xi. That he has not committed any criminal offence, and the intended arrest is purely aimed at silencing his voice and undermining his civic engagement.
  - xii. That unless this Honourable Court intervenes, his constitutional rights, including his right to liberty and freedom of expression, are under imminent threat.
  - xiii. That, his Application is made in good faith and in the interest of justice.
3. The Court had Certified the Application as Urgent, directed the same be served upon All the Respondents for an inter Parte hearing on the 8<sup>th</sup> May 2026.
  4. The 3<sup>rd</sup> Respondent conceded to the Application and was not opposed.

### **Analysis And Determination**

5. Having heard the Parties oral argument, the sole issue in my mind is whether the application meet the threshold for grant of relief of anticipatory bail and conservatory orders?
6. Let me state that the relief of Anticipatory bail is a unique relief flowing from the constitutional safeguards against infringement of or threatened infringement of any of the fundamental rights
7. *The Constitution* of Kenya, 2010, provides for; (a) bail of arrested person under article 49(1)(h); and (b) appropriate reliefs under article 23(3) for breach or threat of breach of the Bill of Rights.
8. The Unique relief being sought is tailored and granted by the court as an appropriate relief under article 23(3) of *the Constitution*.
9. The standard required in evaluation of application for anticipatory bail was elaborated by Odunga J (as he then was) in the case of Republic vs Chief Magistrate Milimani & Another Exparte Tusker Mattresses Ltd & 3 Others [2013] eKLR as follows:

“However before going to the merits of the instant application it is important to note that what is sought to be prohibited is the continuation of investigation rather than a criminal trial. The Court must in such circumstances take care not to trespass into the jurisdiction of the investigators or the Court which may eventually be called upon to determine the issues hence the Court ought not to make determinations which may affect the investigations or the yet to be conducted trial. That this Court has power to quash impugned warrants cannot be doubted. However, it is upon the ex parte applicant to satisfy the Court that the discretion given to the police to investigate allegations of commission a criminal offence ought to be interfered with. It is not enough to simply inform the Court that the intended



trial is bound to fail or that the complaints constitute both criminal offence as well as civil liability. The High Court ought not to interfere with the investigative powers conferred upon the police or the Director of Public Prosecution unless cogent reasons are given for doing so.”

10. This court’s jurisdiction is activated an application for redress for threat of breach of Rights and fundamental freedom of the applicant.
11. Article 29 of *the Constitution* of Kenya provides as follows:
  - “Every person has the right to freedom and security of the person, which includes the right not to be
    - a. deprived of freedom arbitrarily or without just cause;
    - b. detained without trial except under a state of emergency in which case the detention is subject to Article 58;
    - c. subjected to any form of violence from either public or private sources;
    - d. subjected to torture in any manner, whether physical or psychological;
    - e. subjected to corporal punishment in a cruel, inhuman or degrading manner.”
12. While the Application is unopposed, this court has a duty and is obligated to consider whether the same is of merit to allow and the relief sought can thus not be granted as a matter of course
13. The applicant has claimed a threatened violation of his right and fundamental freedom by the Police. That owing to his political, civic engagement, activism especially his online advocacy his political detractors have consistently lodged criminal complaints against him with sole intention of punishing him and that he is apprehensive that should he be arrested he shall be denied police bond.
14. The Applicant explicitly states that he is willing to assist the police with any investigations and recording his statement while enjoying his liberty hence the Application and that the Orders sought will not impede criminal investigations (if any)
15. In the case of Republic vs Chief Magistrate Milimani & Another Exparte Tusker Mattresses Ltd & 3 Others (Supra), Odunga J (as he then was) held that anticipatory bail ought not to be granted to prohibit investigations.
16. In the case of Richard Makhanu vs Republic [2014] eKLR, the court held the firm view that orders for anticipatory bail or bond must not be sought with the intention of pre-empting the outcome of investigations.
17. Any relief by whatever name called say, anticipatory bail, requires courts to ensure that interference with the functions of other bodies and institutions established by law; statute or *the Constitution* of Kenya, is only on cogent and robust reasons. Merely feeling inconvenienced by investigations is not sufficient reason for relief. Proof of violation, infringement or threat or contravention of a person’s right under *the Constitution* of Kenya is required.
18. The Applicant herein had contended that the Respondents had been harassing him with investigations for alleged crimes connected with his online advocacy while exercising his freedom of expression.



19. These allegations are quite specific and needed such specific details and independent evidence to prove. These are the kind of allegations which should have been accompanied by succinct details of his claim as to create a vivid picturesque of the events he is complaining of.
  20. The Applicant attempted to serve his Application upon the 1<sup>st</sup> and 2<sup>nd</sup> Respondents who refused service urging that the same be served 500kms away in Nairobi.
  21. Notwithstanding the applicant failure provide proof thereof. The Court takes judicial notice of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents of arresting suspects in minor criminal infractions, denying them police bond as a punishment to detain them over weekends as a punishment. Of equivalent judicial notice is politicization of policing in Kenya a practice to be condemned. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents elected to ignore this Application whereas their input would have enriched the ruling.
  22. Accordingly, having carefully considered the affidavit evidence, the oral submissions by Ms. Omolo Advocate, this court does not finds the Applicant's fundamental rights are threatened of being infringed, contravened or violated.
  23. Investigations are legal processes aimed at fact finding of commission of crime in our justice system and do not, per se amount to infringement on the rights or fundamental freedoms of the person under investigations. As long as investigations are carried out in accordance with the law and rules, the processes thereto must be allowed to run their course for proper administration of justice.
  24. The Application dated 4<sup>th</sup> May 2026 is found to be of merit and is allowed.
  25. In exercising caution and balancing the interests of the parties to ensure a citizen's fundamental right is not infringed this court is thus duty bound to admit the Applicant to a cash bail of kshs 10,000/- payable to the court.
  26. The Applicant shall be expected to present himself before the DCIO Bumala Police station not later than the 14<sup>th</sup> of May 2026, for the police to record any statement and if the 1<sup>st</sup> and 2<sup>nd</sup> Respondent have valid charges to prefer then he shall be arraigning while admitted on bail.
  27. This Matter shall be mentioned on the 14th May 2026 to determine if the Applicant has been charged.
- It is So Ordered

**SIGNED, DELIVERED VIRTUALLY ON TEAMS PLATFORM ON THIS 8<sup>TH</sup> DAY OF MAY, 2026**

.....

**MOHOCHI S.M**

**JUDGE**

