



**Simiyu v Republic (Miscellaneous Criminal Case E037 of 2024)  
[2025] KEHC 889 (KLR) (29 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 889 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
MISCELLANEOUS CRIMINAL CASE E037 OF 2024  
REA OUGO, J  
JANUARY 29, 2025**

**IN THE MATTER OF CHAPTER FOUR AND ARTICLES 20,22,23  
(1), 27 (1), 29 (A) AND 49 (1) (H) OF THE CONSTITUTION  
OF KENYA 2010 AND THE CRIMINAL PROCEDURE CODE.**

**BETWEEN**

**DAVID SIMIYU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

- David Simiyu the applicant seeks to be granted a personal bond on such terms and conditions as the court may deem. The applicant claims that his rights are being violated and he is apprehensive that they will be violated further if he is not granted anticipatory bond/bail. He states that police officers attached to Kimilili police told his brother Eliud Wasike that they will arrest him so that he could withdraw the case against his elder brother Jackson Wasike. The threats have become severe and are now directed to his wife and children warning them of imminent danger that is to befall me. Because of fear of threats of arrest, he has been forced to become incommunicado and greatly minimized by movements. There is no summon before tendered to him from Kimilili Police Station. He fears that his fundamental rights enshrined in Articles 27 (1) and 29 (a) of *the Constitution* of Kenya are about to be violated and he therefore seeks protection to secure his liberty. He is entitled to bond/bail as of right as he is presumed innocent until proven guilty. The court has powers to grant anticipatory bail or bond pending the charge or trial by virtue of Article 49 (1) (h) of *the Constitution*.
- The applicant was opposed. PC Bashir Ismail Wanaswa depones as follows in a replying affidavit dated 19.7.2024. A report was made at Kimilili police station via OB entry Number 45/20/03/2024 of assault. The complainant Nickson Nyongesa recorded a statement on 21.3.2024 in which he mentioned his attackers as David Simiyu the applicant and other persons namely Eliud Khaemba,



Douglas Kahemba, and Vincent Wasike he also tendered a P3 form dully filled at Kimilili sub-county county hospital. After concluding investigations, they forwarded the file to the Director of Public prosecutions for directions on whether to charge suspects, and the file was approved. They could only find the other suspects but the applicant herein seems to have had information that they were searching for him and he has been in hiding and escaping arrest every time they go to search for him. on the 24.5. 2024 the other suspects were arraigned with the offence of assault. Other officers are looking for searching for the applicant who is at large.

3. Parties canvassed the application by way of written submissions. I have considered the rival affidavits and written submissions. In this case, the applicant claims that his fundamental rights are being breached, the respondents on the other hand state there is a case of assault against the applicant.
4. Anticipatory bail may be granted before a person is arrested. Courts have applied the threshold for an application for violation or threatened violation of rights under Articles 23 and 165(3) of *the Constitution*. In the case of W’Njuguna vs Republic (2004) eKLR the court stated that anticipatory bail should only be granted where there are circumstances of serious breaches of a citizen’s rights by an organ of the state which is supposed to protect the same. In the case of Republic vs Chief Magistrate Milimani & another exparte Tusker Mattresses Ltd & 3 Others [2013] eKLR the court held as follows;

“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.”

5. The applicant claims that his rights have been violated and that he is being harassed. In his affidavit, he states that police are looking for him to arrest over a civil case he has with his elder brother. The respondents on the other have stated that they have a report of an assault case and he is to be charged. In my view, the applicant has failed to show how his rights have been violated as enshrined in Articles 27 (1) and 29 (a). He has merely cited provisions of *the constitution* without any persuasive evidence to back his allegations. Proof of violation, infringement threat, or contravention of a person’s right under *the Constitution* of Kenya is required. His allegations remain mere allegations. As submitted by the respondent, under Articles 244 and 245 of *the Constitution* the National Police Service is mandated to enforce the law against any person. In conclusion, the applicant has not proven a threat to or infringement of any rights and fundamental freedoms in the Bill of Rights. His application lacks merit. It is dismissed. Orders accordingly.

**DATED, SIGNED, AND DELIVERED AT BUNGOMA THIS 29<sup>TH</sup> DAY OF JANUARY 2025.**

**R.OUGO**

**JUDGE**

In the presence of:

David Simiyu/ Applicant - Absent

Miss Matere For the Respondent

Wilkister -C/A

