



Kimata v Ethics & Anti-Corruption Commission & 2 others (Miscellaneous Criminal Application E045 of 2024) [2025] KEHC 4904 (KLR) (Anti-Corruption and Economic Crimes) (25 April 2025) (Ruling)

Neutral citation: [2025] KEHC 4904 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ANTI-CORRUPTION AND ECONOMIC CRIMES
MISCELLANEOUS CRIMINAL APPLICATION E045 OF 2024**

**BM MUSYOKI, J
APRIL 25, 2025**

BETWEEN

JOSEPH MJURAGE KIMATA APPLICANT

AND

ETHICS & ANTI-CORRUPTION COMMISSION 1ST RESPONDENT

INSPECTOR GENERAL NATIONAL POLICE SERVICE 2ND RESPONDENT

DIRECTOR OF PUBLIC PROSECUTIONS 3RD RESPONDENT

RULING

1. By a notice of motion dated 11th September 2024, the applicant prays this court for bail and/or bond and conservatory orders in the following terms.
 - a. Pending preferring of any charge (if any) in any court of competent jurisdiction anywhere in Kenya, the applicant be admitted to anticipatory bail and/or bond at such reasonable terms and conditions that this court may deem just and fit in the circumstances.
 - b. The court be pleased to issue a conservatory order restraining the respondents, their servants, agents, junior officers and/or anybody from arresting, charging or harassing the applicant without conducting investigations and according him an opportunity to be heard or without issuing him with summons to appear at any offices to record statement(s) if need be.
 - c. This court do issue further orders within its discretion as it deems fair and just in light of the prevailing circumstances.
 - d. The costs be in the cause.



2. There two prayers in the application which I have not reproduced because they have been overtaken by events or spent and are not due for consideration in this ruling. The face of the application has 22 grounds upon which the prayers are sought which in my view oscillate around complaint that the applicant is in the verge of being arrested and charged out of malicious and baseless investigations and that the respondents' actions are a violation of the applicant's constitutional rights.
3. The applicant is an engineer working for Kenya Rural Roads Authority (hereinafter referred to as 'the Authority') which is a public body. The 1st respondent by a letter dated 30th January 2024 asked the Director General of the Authority to facilitate and release four officers of the Authority including the applicant to appear in its offices for purposes of interview and recording of statement for purposes of investigations for suspected cases of conflict of interest and misappropriation of funds at the Authority's Kiambu region for the financial years 2015/2016 and 2022/2023.
4. The applicant alleges that he was transferred from Kiambu region to Kirinyaga Kirinyaga region in 2016 but when he went to the respondent's offices in obedience of the above stated letter, he was interrogated on a specific tender in Kerugoya and not Kiambu. He claims that his house was raided on 4th September 2024 at 6 am by the 1st respondent's officers armed with court warrants who proceeded to do a random search. In the process of the search, he claims that his family was harassed and his wife arrested and taken to the 1st respondent's offices for interrogation. In the process, the officers took away documents of title, log books, phones and other personal effects belonging to his family.
5. The applicant avers that the 1st respondent is engaged in a witch hunt as he left Kiambu region in 2016 and has nothing to do with that region. He also complains that the 1st respondent misled him on the nature of investigations and he lives in fear as the 1st respondent has since the time he visited its offices not engaged him despite his efforts and that of his advocates to reach out. He further claims that his rights guaranteed under Articles 25, 27, 28, 29, 47, 49 and 50 of the Constitution are being violated.
6. The 1st respondent has opposed the application through a replying affidavit sworn by one Christine Ombaka on 23rd September 2024. Christine avers that the 1st respondent received information on cases of conflict of interest and accumulation of unexplained wealth by the applicant. Following this, the 1st respondent is in the process of investigating the applicant for engaging in conflict of interest by trading with the Authority through a proxy involving a sum of Kshs 311,125.109.90 between 2016 and 2023. She adds that the 1st respondent has investigated the applicant without violation of his rights as it has followed the law and it is in public interest that the investigations be concluded.
7. The application was argued by way of written submissions. I have read the applicant's submissions dated 4th November 2024 and those of the 1st respondent dated 22nd November 2024. The 3rd and 4th respondents have not filed any papers in opposition to the application. It is not clear to me why the two respondents were joined in the application because there is nowhere in the application, supporting affidavit or the portioner's submissions have any allegations been levelled against them. There has been no demonstration at all that the 2nd and 3rd respondents have contemplated any move or action against the applicant.
8. An applicant who seeks an anticipatory bail or bond must satisfy the court that his rights are in real and not imagined danger of being violated by the respondent. As indicated above, it is not clear why the applicant joined the 2nd and 3rd respondents who he has not accused of anything. In the circumstances this application will be considered as against the 1st respondent only who shall hereinafter be referred to as the respondent.



9. The respondent is a statutory body created under Article 79 of the *Constitution* and Section 3 of the Ethics and Anti-Corruption and Commission Act with its functions defined under Section 11 of the said Act. Among its function is to investigate and recommend to the Director of Public Prosecutions the prosecution of any acts of corruption, bribery or economic crimes or violation of codes of ethics or other matter prescribed under the Act or any other law enacted pursuant to Chapter Six of the *Constitution*.
10. The applicant has confirmed that he is an officer in public service and the investigations in question are for alleged office of conflict of interest and misappropriation of funds of a public body. The applicant has not claimed that the respondent has no mandate to carry out the said investigations. It follows without doubt that the respondent is within its constitutional and statutory mandate to carry out the investigations and is therefore acting lawfully.
11. The applicant has given a chronology of the actions of the respondent which began with summons to its offices through the Director General of the Authority. The applicant has claimed that he was transferred from Kiambu to Kirinyaga in 2016 and as such he cannot be investigated for offences claimed to have been committed in respect of the Authority's Kiambu region. Reading of the letter dated 30th January 2024 show that the same was in respect of four individuals and it made reference to two financial years, that is 2015/2016 and 2022/2023. This means that the persons named therein could fall in any of the two financial years. The applicant is mentioned in the said letter and it is therefore indisputable that the applicant was covered in that letter under 2015/2016 financial year and it is selective and incorrect for the applicant to claim that he was being summoned or investigated for the year he was not in Kiambu.
12. It is common ground that the applicant obeyed the summons and appeared before the respondent's officers and questioned. The applicant has not complained of having been mistreated, mishandled, harassed, threatened or intimidated when he appeared before the respondent's officers. He was neither arrested nor detained in violation of his rights. His only complaint is that the respondent raided his house on 4-09-2024, conducted a search, arrested his wife and carted his documents. Other than the allegation that the family was harassed during the search, there are no details or evidence of the said harassment.
13. The applicant confirms that the respondent did the search under a valid warrant of a competent court of law. The search was therefore not unlawful or illegal and despite the claim by the applicant that the search was random, there is evidence that the respondent took out an inventory of the property seized which is the normal and lawful thing to do. There is no claim or evidence that after the applicants' wife was arrested, she was unlawfully detained or her rights violated which would give the applicant apprehension of violation of his rights if he were to be arrested.
14. The court cannot stop a statutory body from performing its statutory and constitutional mandate unless it is shown that the body is doing so maliciously, capriciously or in unlawful manner and in violation of the rights of the applicant. A mere fear, apprehension or speculation of possibility of being arrested is not a sufficient ground for granting an application for anticipatory bail. In *Kelvin Okore Otieno v Republic* (2013) KEHC 6606 (KLR) it was held that;

Should the investigations culminate in the arrest of the applicant, arrest and arraignment are known processes of our legal system and per se, do not amount to infringement on the fundamental rights and freedoms of the appellant. In any case he will be entitled to bail as provided by the *Constitution*. To my mind, the apprehension by the Applicant does not meet the threshold of serious breach of his rights by a state organ.'



15. Similarly, in *Mandiki Luyeye v Republic* (2015) KEHC 8074 (KLR), the Honourable Judge held as follows;

Accordingly, it is salient that anticipatory bail is aimed at giving remedy for breach of infringement of fundamental Constitutional rights in conformity with what the Constitution envisages constitutes protection of fundamental rights and freedoms of a citizen. It cannot issue where an Applicant labours under apprehension founded on unsubstantiated claims. The fear of breach to fundamental right must be real and demonstrable. An Applicant must demonstrate the breach by acts and facts constituting the alleged breach.'

16. Prayer 4 of the application asks that the respondent be restrained from arresting the applicant without conducting investigations. This prayer falls on the face of the applicant's own admission that investigations have been going on since January 2024. Since the time the applicant appeared before the respondent's officers, he has never been arrested which means that the respondent has been carrying out investigations all along and did not deem it fit to arrest the applicant until investigations are over. The fact that the applicant was not arrested alongside his wife means that the respondents have not yet seen a reason to arrest him probably because the investigations are not complete.
17. The respondent has no mandate to charge or prosecute the applicant or any other person. That mandate lies with the 3rd respondent who evaluates evidence gathered and presented to it by the 1st respondent. That stage has not been reached and granting retraining orders will in my view be taking away constitutional and statutory mandate of the 3rd respondent against whom no case has been made out.
18. The upshot of the above is that, I find no merit in the application and the same is hereby dismissed. I make no orders as to costs.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF APRIL 2025.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

Ruling delivered in presence of Miss Esami holding brief for Mr. Nyamu for the applicant and Mr. Kisaka for the 1st respondent and in absence of the 2nd and 3rd respondents.

