



**Mwanthi v Inspector General, National Police Service & 2 others (Petition E013 of 2024) [2025] KEHC 7085 (KLR) (30 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7085 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
PETITION E013 OF 2024  
AN ONGERI, J  
MAY 30, 2025**

**BETWEEN**

**PHILIP MATHEKA MWANTHI ..... APPLICANT**

**AND**

**THE INSPECTOR GENERAL, NATIONAL POLICE SERVICE ... 1<sup>ST</sup>  
RESPONDENT**

**THE DIRECTOR OF PUBLIC PROSECUTION ..... 2<sup>ND</sup> RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The application coming for consideration is the one dated 1<sup>st</sup> October 2024 brought under Section 123(1) *Criminal Procedure Code*, Cap 75, Articles 3, 22, 23, 29 and 39 of *the Constitution* of Kenya, 2010, Inherent Jurisdiction of the Court and general principles of natural justice and the rule of law and all other enabling provisions of the Law seeking the following orders:-
  - i. That this application be and is hereby certified urgent owing to the urgency of the Petitioner's circumstances.
  - ii. That pending the hearing and determination of this Petition, an interim conservatory restraining order be and is hereby issued to restrain the police from arresting and locking the Petitioner up without first presenting him before a Court of Law.
  - iii. That pending the hearing and determination of this Petition, bail pending arrest be granted to the Petitioner to assure his freedom and security of his person and his freedom of movement and to prevent the police from arbitrarily arresting him whilst going on with his routine day to day duties as a professional teacher.



- iv. That a declaratory order that the National Police Service cannot and should not arrest or cause the arrest and charging of the Petitioner before any Court of Law in a bid to settle a civil boundary dispute between the Applicant and Samuel Mbokomu Chongo.
  - v. That costs be provided for.
2. The application is based on the following grounds:-
- i. The applicant is a teacher by profession duly employed by the Teachers Service Commission posted at Gitobo Primary School in Taveta Sub-County as a headteacher.
  - ii. The Applicant is aware of ongoing police investigation focusing on him regarding an alleged crime of causing grievous body harm to one Samuel Mbokomu Chongo which is purported to have occurred during a boundary delineation exercise on 4.2.2023 attended by officials from the Land Ministry, the complainant and the Applicant's siblings being Enock Jumanne Mwanthi and Daniel Kasanga to establish the boundary between the Applicant's parcel of land being Plot No. 1759, Plot No. 1760 belonging to Jumanne Mwanthi and Plot No. 1739 belonging to Samuel Mbokomo Chongo.
  - iii. The criminal investigations are actuated by malice, an abuse of the powers of the police and an affront to administration of justice.
  - iv. The Applicant is willing to cooperate and assist the police officers with the investigations but is apprehensive to do so since the police are seeking him with the sole intention of locking him up pending investigations and later charging him in court.
  - v. The Applicant is therefore seeking anticipatory bail to assure his freedom and security of his person and his freedom of movement and to prevent the police from arbitrarily arresting him whilst going on with his routine day to day duties of being a professional teacher.
  - vi. This court has inherent jurisdiction and power to hear this matter.
3. The application is supported by the affidavit of the Applicant sworn on 1<sup>st</sup> October 2024 as follows:-
- i. That I am the Petitioner/Applicant herein and I am competent to swear this affidavit.
  - ii. That I swear this affidavit in support of the Notice of Motion filed herewith.
  - iii. That by profession, I am a teacher duly employed by the Teachers Service Commission posted at Gitobo Primary School within Taveta Sub-County as a headteacher.
  - iv. That on 4<sup>th</sup> February 2023, at Mtisoni village within Taveta Sub-County, officials from the Ministry of Lands together with my siblings Enock Jumanne Mwanthi and Daniel Kasanga together with Samuel Mbokomo Chongo attended an exercise to ascertain and delineate the boundary between Plots No. 1760, 1759 and 1739 belonging to Enock Jumanne Mwanthi, myself and Samuel Mbokomo Chongo respectively.
  - v. That after the boundary was ascertained, a commotion ensued where Samuel Mbokomo Chongo dissatisfied with the Ministry Lands officials decision, engaged my brothers in a violent manner thereby causing body harm to them.
  - vi. That my siblings reported the matter and were issued with P3 forms to get treatment.



- vii. That in an interesting twist of events, Samuel Chongo also reported the same at Taveta Police Station where he was issued with an OB and P3 form and my brothers denied despite having reported the incidence before Mr. Chongo.
- viii. That this was followed up by charges being levelled prepared against my siblings in Taveta Law Courts. Two separate files were opened but the charges were later consolidated to one being Criminal Case E213 Of 2024 – Republic =vs= Enock Jumanne Mwanthi And Daniel Kasanga.
- ix. That recently I was summoned to Taveta Police Station to assist in some investigations only to find out that the police are still investigating the matter and their focus is on me in respect to the same alleged incident yet I was never present at the meeting. I was represented by my brothers as I was in school discharging my duties as a teacher.
- x. That I am aware that numerous meetings have been held at the Taveta Police Station in regard to my arrest with iota of justification and/or no notice to me.
- xi. That recently I have been receiving strange calls from CPL Job Mwangi from Taveta Police Station through his personal telephone number 0720549100 threatening my arrest if I do not comply with the complainant’s demands who is now demanding Kshs. 1Million to avert any arrests.
- xii. That I have been informed by my wife numerously that police officers occasionally visit my residential home at Langata village during the day at any time of their liking inquiring about me and my whereabouts despite having knowledge of where I work.
- xiii. That I believe that the criminal investigations against me are malicious and for the dominant purpose of exerting pressure on me to settle a civil dispute and meet the complainant’s Kshs. 1Million demand.
- xiv. That I believe that the institution of the criminal investigations against me constitute an abuse of the powers of the police. The police have no role in the process of settling civil disputes. The allegation of causing grievous body harm to Samuel Chongo is just but a resolve the boundary dispute using criminal proceedings.
- xv. That the investigations against me by the police are actuated by malice with the sole intention of locking me up and eventually pressuring me to settle a civil dispute and meet the unreasonable demand of the complaint.
- xvi. That the investigations against me by the police are against the interests of administration of justice which I am entitled to.
- xvii. That I am advised by my Advocate on record Mr. Brian Motuka which information I verily believe to be true that pursuant to Article 3 of *the Constitution* of Kenya, 2010 every person has an obligation to uphold and defend *the Constitution* of Kenya.
- xviii. That by dint of the police conduct in agreeing to be used as a weapon to settle a disputed civil dispute is in breach of their mandate to act on information provided and to act in good faith while ensuring administration of justice.
- xix. That I am informed by my Advocate which information I verily believe to be true that Article 29 of *the Constitution* of Kenya 2010 enshrines my right to freedom and security of my person which includes the right not to be deprived of freedom arbitrarily or without just cause.



- xx. That the dominant purpose of the police commencing criminal investigation against me is to arrest and lock me up in a bid to exert pressure on me to settle a disputed civil dispute and meet the unreasonable demands by the complainant.
- xxi. That I am informed by my Advocate which information I verily believe to be true that Article 39 of *the Constitution* of Kenya, 2010 enshrines my right to freedom of movement. The intended arrest of my person by the police amounts to intended contravention of my right to liberty.
- xxii. That I am willing and ready to cooperate and assist the police officers with the investigations but I am apprehensive that the police are seeking me with the sole intention of locking me up pending investigations and later charging me in court.
- xxiii. That I am therefore seeking anticipatory bail to assure my freedom and security of my person and my freedom of movement and to prevent the police from arbitrarily arresting me whilst discharging my duties as a teacher.
- xxiv. That I am not a flight risk. I will not tamper with police investigations and I willingly cooperate with the police in their investigations when reasonably requested to do so within the confines of the law. Furthermore, the police are fully aware of where I live and work within Taveta Sub-County.
- xxv. That I am ready and willing to present myself before any court of law whenever my presence is needed.
- xxvi. That it is in the best interest of justice that this Honourable Court does grant me an anticipatory bail as sought herein.
4. The Respondent did not file any response to the application.
5. The Prosecuting Counsel stated orally in court that the Petition is based on mere apprehension of arrest and further that police should be allowed to do their work.
6. Further, that the ODPP has been dragged into a matter that they are not involved in and the Petitioner should respect constitutional mandates.
7. The Petitioner's Counsel urged the court to consider the application and grant the prayers sought in the application dated 1<sup>st</sup> October 2024.
8. The Learned Petitioner's Counsel further said there is already an existing criminal case where the brothers of the Petitioner have been charged.
9. He said the criminal process is being used to harass his client.
10. The sole issue for determination is whether the Petitioner/Applicant should be granted a conservatory order restraining the Respondents from arresting and prosecuting him.
11. Having carefully considered the application dated 1st October 2024, the supporting affidavit, the oral submissions by the Petitioner's Counsel, and the Prosecuting Counsel's response, the court makes the following determination:
12. The Petitioner seeks anticipatory bail and conservatory orders to restrain the police from arresting him in connection with an alleged offence of causing grievous bodily harm to one Samuel Mbokomu Chongo during a boundary dispute resolution exercise on 4<sup>th</sup> February 2023.



13. The Petitioner contends that the investigations are malicious, intended to coerce him into settling a civil dispute, and that the police have threatened his arrest unless he meets the complainant's demand of Kshs. 1,000,000.
14. While the court acknowledges the Petitioner's apprehension regarding his potential arrest, it is imperative to recognize the constitutional and statutory mandate of the National Police Service to investigate alleged crimes without undue interference.
15. Article 245 of *the Constitution* of Kenya, 2010, vests the police with the authority to detect and prevent crime, and this mandate must be respected unless there is clear evidence of abuse of power.
16. The Petitioner's claim that the criminal process is being weaponized to resolve a civil dispute is a serious allegation.
17. However, at this stage, the court has not been presented with sufficient evidence to conclusively establish that the police are acting in bad faith or for an ulterior purpose.
18. The mere fact that a civil boundary dispute exists does not, in itself, preclude criminal investigations if there are allegations of criminal conduct arising from the same incident.
19. The right to freedom and security of the person under Article 29 of *the Constitution* is not absolute. The police have the lawful authority to arrest and detain a suspect if there are reasonable grounds to believe that an offence has been committed.
20. The Petitioner's fears, while understandable, do not automatically justify anticipatory bail, especially where he has not demonstrated that the intended arrest is arbitrary or unlawful.
21. In the circumstances, the court finds that the Petitioner has not met the threshold for granting anticipatory bail or conservatory orders restraining his arrest.
22. However, the court emphasizes that the police must exercise their powers lawfully, fairly, and without undue harassment.
23. If the Petitioner is to be arrested, he must be promptly presented before a court in accordance with Article 49(1)(f) of *the Constitution*.
24. Further, any investigations must be conducted transparently and without extortion or coercion.
25. The Petitioner is at liberty to present himself to the police, accompanied by his advocate, to record a statement and clarify his position.
26. Should the police proceed with charges, the Petitioner retains the right to seek bail in the ordinary course of criminal proceedings.
27. For these reasons, the Application dated October 1, 2024 is dismissed.

**DATED, SIGNED AND DELIVERED THIS 30<sup>TH</sup> DAY OF MAY, 2025 IN OPEN COURT AT VOI HIGH COURT.**

**ASENATH ONGERI**

**JUDGE**

In the presence of:-

Court Assistant: Millicent

