



**Chesos v Inspector General of Police & 2 others; Independent Police
Oversighting Authority (Interested Party) (Criminal Miscellaneous
Application E143 of 2024) [2025] KEHC 9054 (KLR) (27 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9054 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL MISCELLANEOUS APPLICATION E143 OF 2024**

RN NYAKUNDI, J

JUNE 27, 2025

BETWEEN

MATHEW CHESOS APPLICANT

AND

INSPECTOR GENERAL OF POLICE 1ST RESPONDENT

DIRECTOR OF CRIMINAL INVESTIGATION 2ND RESPONDENT

DIRECTOR OF PUBLIC PROSECUTION 3RD RESPONDENT

AND

**INDEPENDENT POLICE OVERSIGHTING AUTHORITY INTERESTED
PARTY**

RULING

1. Before this court is an application dated 8th day of November 2024 expressed to be brought under the provisions of Art. 19, 20, 21, 22, 23(1), 26(1) and (3) 28, 29, 31, 47, 49 (1) (h), 50(2) (a) and 165(3) of the Constitution in which the applicant seeks the following orders:
 - i. Spent.
 - ii. That this honorable court be pleased to arrest and release the applicant on appropriate, just reasonable bond/bail terms and in such other conditions that the court deems appropriate
 - iii. That there be an order for the release of the applicant’s motor vehicle registration number KDE xxxD held at Kamukunji police station on condition that the investigation officer takes photo of the said motor vehicle or any such condition that the court deems just
 - iv. That any other deemed expedient in the circumstances



2. The application is anchored on various grounds which I have reproduced as hereunder:
- a. That the applicant is apprehensive that his right to liberty might at any time be infringed to settle personal scores.
 - b. That this court on 28th October, 2024 by an order issued on the same day ordered the respondents who were guilty of subverting the law to the disadvantage of the applicant herein, to release his motor vehicle previously held under similar circumstances and further that the applicant to attend to the police station if summoned.
 - c. That to this day, the applicant has never been summoned.
 - d. That the applicant has on numerous occasions been shot at, threatened, his property seized and close family members arrested on baseless allegations and on the guise that police are conducting an arrest.
 - e. That notably, the applicant's brother has recently been arrested by over 20 armed police officers in civilian purportedly in pursuit of the applicant herein who has never been summoned to answer to any charges.
 - f. That as a consequence of his brother's unlawful arrest, the applicant's motor vehicle was held and is currently detained at Kamukunji police station on no grounds.
 - g. That the applicant has been made aware that the police are on his trail on allegation that he was involved in the business of ethanol which was allegedly found in his possession, an assertion that the applicant is strange to.
 - h. That the applicant is a family man, and a business man with high societal standing, and he is apprehensive that a public arrest might ruin his reputation and standing in the society, and ultimately ruin his business
 - i. That unless the orders sought herein are granted, the applicant might suffer a grave injustice as a result of his constitutional rights risk being violated.

Determination

3. I have considered the application crafted and the nature of the orders sought by the applicant. The applicant essentially seeks anticipatory bail terms from this court.
4. The question of anticipatory bail is a discretionary issue. In other jurisdictions, anticipatory bail is available to a person who has been arrested by the court. It is therefore a special and unique relief in our Criminal justice system with no express provision in our laws. I am however cognizant and alive to the fact that there have been arguments advanced that anticipatory bail could be and ought to be tailored by the court as a proper relief under Art. 23(3) of the *Constitution*.
5. In *Republic v Chief Magistrate Milimani & Another Ex parte Tusker Mattresses Ltd & 3 Others* [2013] eKLR Odunga J appreciated this novel philosophy and the standard required in evaluation of applications for anticipatory bail when he stated 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.”

6. At a glance of the affidavit in support of the application and the grounds relied on by the applicant, it is evident that the applicant is apprehensive that he might be arrested at any point. He alleged that on numerous occasions he has been shot at, threatened, his property seized and close family members arrested on baseless allegations and on the guise that police are conducting an arrest.
7. Arresting one under unclear circumstances and in a hurried manner is one thing while prosecuting him/her successfully is another aspect all together. Even if the police believe that they have overwhelming evidence against a suspect, they must be civil enough. They ought not to act at the whims of the complainant but act in accordance with the law and the constitutional dictates.
8. Having gone through the record and the application in its entirety, I am satisfied that the applicant has demonstrated that his right to be presumed innocent is threatened to be violated if he is arrested in the manner that he has described in his supporting affidavit. As a result, the instant application is allowed to the extent that the applicant herein is arrested by this court and granted bail pending any case that may be instituted against him. The applicant shall deposit a cash bail sum of Two Hundred Thousand (Kshs. 200,000/=) within 14 days from today and he shall be required to report to the OCS Central Police Station after every two weeks until a formal charge has been initiated, which formal charge should be presented before court within 90 days from today for the applicant to take plea. Further, the applicant will be required to attend court for plea upon which the bond terms herein granted will lapse and the cash bail so deposited shall be refunded.
9. Orders accordingly.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 27TH DAY OF JUNE 2025.

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R. NYAKUNDI

JUDGE

