



**Mburu v Director Criminal Investigations & 2 others (Criminal Case E199 of 2025) [2025] KEHC 12321 (KLR) (Crim) (12 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 12321 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL CASE E199 OF 2025  
MW MUIGAI, J  
AUGUST 12, 2025**

**BETWEEN**

**WINFRED WAMBUI MBURU ..... APPLICANT**

**AND**

**DIRECTOR CRIMINAL INVESTIGATIONS ..... 1<sup>ST</sup> RESPONDENT**

**INSPECTOR GENERAL OF POLICE ..... 2<sup>ND</sup> RESPONDENT**

**OFFICE OF PUBLIC PROSECUTIONS ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The Applicant Winfred Wambui Mburu, Applicant filed Certificate of Urgency Application suing the Respondents for alleged unwarranted arrest of the Applicant.
2. The Notice of Motion brought under Articles 3,10,19,20,22,25,27 & 49, 159 & 259 of the Constitution, the Applicant sought Court orders that pending the determination of this Application and/ or ongoing investigations by Respondents and/or arraignment before a Court of Law, any investigations/interrogations to be conducted at DCI HQ Mazingira House or any [specified] Police Station within Nairobi County and to attend in the company of her Advocate or be arraigned before CM Milimani CT Nairobi or any other [designated] Court within Nairobi County.
3. Any further orders by the Court.



## Supporting Affidavit

### A summary of the Affidavit is as follows;

4. The Applicant deposed that following complaint lodged by one Selina Byomdo Sine, Complainant in a cyber bullying offence she reported against the Applicant who is employed at Kenyatta University, DCI Kilifi visited the University in April 2025 with intention to arrest her take to Kilifi to record a statement over the complaint. The Kenyatta University Security intervened and proposed that the statement was recorded within the University precincts where the alleged offence occurred.
5. On 30/5/2025, the Applicant recorded the statement and it was shared with DCI Kilifi. The said Officers despite the statement have continued to pursue her.
6. On 17/7/2025, the Applicant stated that she took her child to hospital and her employer called her that Officers from Kitengela Police Station were looking for her to go and record a statement. On the same day in the evening a grey Subaru vehicle without Reg Number Plates was outside her residence.
7. On 21/7/2025, the Police Officers came to the Kenyatta University and asked for her whereabouts and wanted to pick her and take her to record statement which she already recorded.
8. The Applicant deposed that she is oppressed and powers of arrest being abused as [it] is for extraneous purposes and not in upholding the Constitution and rule of law.
9. The Applicant deposed that the Respondents have not officially summoned to the Police Station and the motive of arrest [seems] to be for torture, mistreat, harm, harass or even kill her and is justified fearing for her life in the hands of the Respondents.

### Court Proceedings

10. The matter was first filed in Court before Presiding Judge on 28/7/2025 and referred to this Court.
11. The directions granted were that the Application to be served to Respondents for response [oral/written] owing to end of Judicial Term the matter was for mention on 31/7/2025.
12. On 31/7/2025 service by Applicant's Counsel was confirmed via e-mail but the Respondents had not received seen the same as there was no presence physically online representation or comment.
13. Be that as it may the matter is due for consideration due to urgency expressed.

### Analysis & Determination

14. This Court considered the Application and taken into account the short period granted to Respondents to received consider comment and reply to the Application. However, in light of the alleged unfolding circumstances, it is important for the Court to set out legal mandate and rights due to each party in the circumstances.
15. Investigations- legal mandate is bestowed on the National Police Service (NPS) under Article 243 (3) Objects & Functions of NPS outlined under Article 244 and the command of NPS is by Inspector-General (IG) in terms of Article 245 (4) on investigations and enforcement of the law. Section 24, 25, 57 & 62 of National Police Service Act 2011, Section 29 31 32 33 36 & 36 A, 118-121 Criminal Procedure Code & Section 180 of Evidence Act expand on various duties, types and processes of investigations among others.



16. Relying on the Constitutional and Statutory provisions, Police Officers are within their legal mandate to receive complaint(s) record the complaint and embark on investigations and law enforcement. The Police Officers herein are investigating the complaint by Complainant Selina Byomdo Sine
17. On the other hand, the Applicant, a person of interest suspect in the matter under investigation claims that in the course of Police Officers carrying out their investigations, they have followed her all the way from Kilifi to Kenyatta University, Nairobi and sought to take her to Kilifi to record a statement. The Applicant recorded the statement within the University and it was shared with DCI Kilifi. The events outlined culminating to the instant Application amount to Applicant's apprehension of her safety and security. The Applicant is hesitant to meet engage and confer with the said Police Officers to be taken to Kilifi as she claims the offence if at all occurred in Nairobi. The Applicant concedes that the Police Officers are investigating a complaint made by a citizen against her and is ready to cooperate albeit in fear.
18. The Applicant like all citizens is also protected by the law Article 26, 27, 28, 29 & 50 of the Constitution.
19. 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.
20. The above provision of the Constitution underscores that anticipatory bail is a creature of judicial craft in Kenya- but as the order is granted by different courts so does the relief of anticipatory bail remain at large; increasing the danger of having a relief without specific genre, character, scope, core and content.
21. In the case of Oloo v Director of Public Prosecution & 3 others (Miscellaneous Criminal Application E004 of 2024) [2024] KEHC 4836 (KLR) (24 April 2024) (Ruling), Hon. Aburili LJ at paragraph 18 and 19 opined that:

“ 18        However, where anticipatory bail has been considered, courts have applied the threshold for an application for violation or threatened violation of right under Article 23 and 165(3) of the Constitution. As we engage with this phenomenon, I only find it instructive that the core of orders under Article 23 and 165(3) should be properly-fashioned as to be in accord with the Constitution of Kenya, 2010 as redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights should be ascertained.

19        Thus, care should be taken not to adopt an amorphous practice in the name of anticipatory bail which may be a less austere approach for redress for violation or threatened violation of the Bill of Rights and fundamental freedoms intended in the Constitution, and perhaps make it a toll to place unnecessary impediment upon constitutional function and mandate of other state organs.”

22. In Republic v Chief Magistrate Milimani & Another Exparte Tusker Mattresses Ltd & 3 Others [2013] eKLR Hon. Odunga J (as he then was) took the trouble to come up with the standard required in evaluating applications for anticipatory bail and 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.”

23. Therefore, the Court ought to ensure enforcement of each institution’s mandate and protect each citizen’s rights a delicate balance to maintain. In the instant case, the Applicant is apprehensive and has not been subjected to any irregular illegal and unlawful act or omission. To ensure the Law Enforcement Institutions execute their mandate in accordance with the law; continue investigations to logical conclusion and allay fear of harm as perceived by the Applicant the court grants following orders/directions;

### **Disposition**

1. The Applicant Winfred Wambui Mburu and her Advocate on record to appear attend to any Police Station summoned directed or informed of by Police Officers until completion of investigations.
2. The Police Officers continue to carry out investigations into the complaint by the Complainant Selina Byomdo Sine
3. The Applicant is employed at Kenyatta University and has a minor child and not at this stage a flight risk, therefore, she shall present deposit passport at the relevant Police Station upon the official visit
4. The Applicant shall be on anticipatory bail/bond of Ksh 100,000/- with 1 surety during the pendency of investigations.

**RULING DELIVERED SIGNED & DATED IN OPEN COURT ON 12/8/2025 AT CRIMINAL DIVISION HIGH COURT NAIROBI**

**M.W.MUIGAI**

**JUDGE**

