



**Moriasi v Director of Public Prosecutions & 2 others (Miscellaneous Application E033 of 2024) [2024] KEHC 5362 (KLR) (Crim) (30 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 5362 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
MISCELLANEOUS APPLICATION E033 OF 2024  
LN MUTENDE, J  
APRIL 30, 2024**

**BETWEEN**

**ASTARICO OMARIBA MORIASI ..... APPLICANT**

**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... 1<sup>ST</sup> RESPONDENT**

**DIRECTOR OF CRIMINAL INVESTIGATIONS ..... 2<sup>ND</sup> RESPONDENT**

**THE INSPECTOR GENERAL OF POLICE ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. Astarico Omariba Moriasi, the Applicant, through an application dated 22<sup>nd</sup> January, 2024, seeks to be admitted to anticipatory bail/bond on reasonable terms pending arrest and charging in any court of competent jurisdiction and a conservatory order restraining the Respondents from interfering with his liberty.
2. The application is opposed because the applicant is to be charged with the offence of obtaining money, Ksh, 1,309,554/- with false pretence contrary to Section 313 of the Penal Code, having duped the complainant in the matter that he was capable of purchasing for him a motor vehicle. That sufficient evidence was gathered and the 1<sup>st</sup> Respondent has recommended charging of the applicant.
3. I have considered the application, affidavits in support and opposition, and, rival submissions of Counsel for the parties. In the case of *Republic vs Chief Magistrate Milimani & Another, Ex parte Tusker Mattresses Ltd & 3 Others [2013]* eKLR, it was stated as follows:

“... 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.”

4. The applicant does not dispute the fact that there is a recommendation to have him charged. His argument is that he has written a letter to the DPP seeking a comprehensive review of the charge. According to him the charge has no basis.
5. This is a matter where this court is being called upon to interfere with charging of a person where a question has been established to be answered by the individual. The court should not be seen to be interfering with the investigative and prosecutorial powers of the respondents unless there is a cogent reason which is non-existent herein. There is no ground for grant of anticipatory bail.
6. In the result, the application herein fails. Accordingly, it is dismissed.
7. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 30<sup>TH</sup> DAY OF APRIL, 2024.**

**L. N. MUTENDE**

**JUDGE**

In The Presence Of:

Ms. Odembo holding brief for Mr. Mutuma for ODPP

Court Assistants – Habiba/ Fatuma/Hadija

