



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
HIGH COURT CRIMINAL CASE E196 & 198 OF 2025
(CONSOLIDATED)

SETH OKUTE.....
APPLICANT

VERSUS

DCI, IG OCS NAIROBI AREA
POLICE STATION & ODPP.....
RESPONDENT

RULING

ANTICIPATORY BAIL/BOND APPLICATION

BACKGROUND

1. The Applicant, Seth Steve Okute through Counsel filed Certificate of Urgency Application suing the Respondents for an impending 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 & Section 123 of the Criminal Procedure Code. The Applicant seeks anticipatory bail/bond on reasonable terms and as the Court shall direct until completion of investigations. The Court to also issue an order stopping arrest of the Applicant in relation to a complaint made by Ms Marjorie R. Grant on charge of conspiracy to commit a felony under **Section 393 of the Penal Code** which was withdrawn pursuant to **Section 87(a) of CPC.**

SUPPORTING AFFIDAVIT

A summary of the Affidavit is as follows;

3. The Applicant, Accused person Seth Steve Okute was charged in Magistrate's Court with one Bruno Otieno Olienda on 2 Courts; **Count1** Conspiracy to commit a felony c/s 393 of the Penal Code. **Count 2** Obtaining money by false pretenses c/s 313 of the Penal Code.
4. The particulars of the offences being that the Accused persons were alleged to have obtained USD 100,000 equivalent of Ksh 12,700,000/- from Marjorie Grant that they were in a position to pay custom duties for 33Kg of gold from Burkina Faso to Zurich a fact they knew to be false.(as per Copy of Charge Sheet attached)

5. The Applicant and another were arraigned in the Trial Court on 10/2/2023 and released on Cash bail of Ksh 100,000/- each. On 15/2/2024 in **CM Criminal case E100 of 2023** the 1st Respondent withdrew the matter under Section 87(a) CPC as shown by Copy of Court Tracking System Copy attached.
6. The Trial Court in allowing the application for withdrawal by the 1st Respondent under Section 87(a) CPC directed that the Respondents should not arrest the Applicant but summon him to attend /appear in Court and take plea.
7. In violation of the Trial Court direction, on 22nd & 23rd July 2025 while the Applicant was in Karachuonyo, Homabay, over 10 Subaru unmarked were awaiting to arrest him with regard to the withdrawn case/matter.
8. The Applicant deposed that since the withdrawal of the case he has not involved in any matter, he has remained a law-abiding citizen who is unarmed and poses no threat to any citizen or members of the public. He undertakes not to interfere with witnesses or investigations.

COURT PROCEEDINGS

9. The 1st matter was first filed in Court before Presiding Judge on 24/7/2025 and referred to this Court on 28/7/2025.

The 2nd matter was filed before Presiding Judge on 28/7/2025 and both matters were consolidated.

10. 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

11. On 31/7/2025 service by Applicant's Counsel Steve Jerry Oluoch on behalf of Counsel Oluoch Olunya Counsel for the Applicant addressed the Court at length on the contents of the Application.

12. The 1st Respondent represented by Mwandawiro for the State/ODPP informed the Court that they were served at short notice and needed time to consult file and serve response to the Application. He agreed to have the Application compromised as follows; that if there are any pending investigations to be allowed to continue and this Court should bar the same proceeding. Secondly, if a decision to charge is made by the ODPP, the Accused person/Applicant with his Advocate to

attend/appear at the Police Station. The ODPP sought time to file Response/Replying Affidavit.

13. The Court granted time the same to proceed on 12/8/2025. At 4.45 pm the Applicant's Advocate came back to Court again and made the application that since the Application was compromised on the said terms and ODPP did not object subject to the conditions set, then the Court should grant the order that the Applicant is to appear with his Advocate at any Police Station pending the determination of the Application. This Court taking into account, it was last day of judicial term, and ODPP did not object to the Applicant appearing with his Advocate to any Police Station as required, this Court granted the following orders; the Applicant suspect Seth Okute to appear with his advocate before any Police Station that is summoning him, the investigations to continue but no arrest pending formal Ruling of this Court on 12/8/2025. Mr Mwandawiro for ODPP did not object to this part of the application.

ANALYSIS & DETERMINATION

14. This Court considered the Application and oral submissions made on 31/7/2025 by both Defense Counsel & ODPP respectively. In this matter, the

Applicant Accused person was arraigned in Trial Court **CM CR CASE E 100 of 2023** and the ODPP/Prosecution withdrew the matter under Section 87 (a) CPC that is not absolute discharge one may be arraigned immediately or later on the same subject matter. Therefore, Police Officers are entitled to look for and apprehend the Applicant only in this case, the Trial Court indicated incase of such eventuality, the Applicant/Accused person to be summoned to appear in Court and take plea. This fact is not contested.

15. The law sets out the Institution's mandate and citizen's rights. 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, 30 31 32 36 & 36A & 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.

17. On the other hand, the Applicant, the Police Officers investigated and arraigned the Applicant herein in Court. This Court is not privy to details or proceedings in the Trial Court save that the matter was withdrawn under Section 87(a) CPC

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)** of the Constitution 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. In the instant case, the Applicant was already arraigned Court with charges as outlined in a copy of attached Information /Charge Sheet. It is not in dispute, that the said/same matter was withdrawn under **Section 87(a) CPC, 'but discharge of an accused person shall not operate as a bar to subsequent proceedings against him on**

account of the same facts; The Police Officers are within their mandate to exercise right of arrest in accordance with **Section 29 31 32 33 36 & 36 A of Criminal Procedure Code** either in further evidence arising from investigations of the same subject matter or conduct of further investigations. In this case, having been arraigned in Court investigations were conducted and only in light of new developments and/or evidence would arrest be imminent. But the Trial Court allowed the Applicant to be presented to Court and take plea by Summons.

24. This direction was not challenged in the Trial Court or in this Court via review or appeal and ought to be complied with. The ODPP did not object to the Application but compromised the said Application on certain conditions that this Court endorsed. To ensure the Police are not hindered in their mandate and also protect safety and security of Applicant in the absence of any inculpatory evidence he will remain at liberty on the following terms

DISPOSITION

- 1) The Applicant Seth Steve Okute and his Advocate on record to appear/ attend to OCS, Nairobi Area Police Station 4th Respondent and/or thereafter report to OCS/Investigation Officer every alternative Mondays until completion of investigations, resolution of the matter and /or arraignment in Court**
- 2) The Police Officers continue to carrying out any further investigations arising out of tor related to the subject-matter of withdrawn matter if need be; to logical conclusion.**
- 3) The Applicant though not declared flight risk, therefore, to ensure he will not leave the jurisdiction of the Court he shall present deposit passport at the OCS Nairobi Area Police Station upon the official visit to be kept until completion of investigations.**
- 4) The Applicant shall be on anticipatory bail/bond of Ksh 500,000/- with 2 sureties of Ksh 250,000/- each during the pendency of investigations.**
- 5) The Applicant who is already at liberty to avail himself to Deputy Registrar Criminal Division comply with bail/bond Terms within**

7 days of this Ruling in default warrant of arrest to issue.

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

**M.W.MUIGAI
JUDGE**

ORIGINAL