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**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
CRIMINAL DIVISION**

**MISCELLENAOUS APPLICATION NO.067 OF 2023  
ARISING FROM REVISION APPLICATION NO.8 OF 2023  
ARISING OUT OF CRIMINAL CASE**

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**NO.536/2022,629/2022,691/2022,746/2022,630/2022, &  
710/2022**

**BEFORE THE CHIEF MAGISTRATES COURT OF ENTEBBE AT  
ENTEBBE**

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**KYAGABA CHARLES (Suing through Mulindwa) -APPLICANT  
VERSUS**

**UGANDA-----RESPONDENT**

**BEFORE HON: JUSTICE ISAAC MUWATA**

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**RULING**

This application is brought by notice of motion under Article 23,28(3) & 50 of the Constitution of the Republic of Uganda, section 33 of the Judicature Act, Rule 2 of the Criminal Procedure (Applications) Rules. The applicant seeks the following orders.

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1. An order granting the applicant Anticipatory bail barring the respondents, its agents which include the State House Anti-corruption unit, the police, and any other security agency from arresting the applicant in respect of the charges of malicious damage to property, criminal trespass & Forcible Detainer arising out of any complaint by anybody from the area of land located at Zziru Bukasa Parish Ssisa Sub County , Kajjansi Town Council Wakiso District which is still under determination vide Civil suit No.133 of 2014 and 229 of 2018 and land at Bunkabira, Nakigalala, Kungulutale Parish,Ssisa Sub county,Kajjansi Town Council Wakiso District comprised on Busiro Block 456 Plots 14 and 471-533 formally plot 15, on Busiro Block 456 Plots 16,17,18,19,& 20 of 2021 formally plot 4 that is still under determination in Civil Suit No.650 of 2021 formally civil suit No.046 of 2018 from the High Court of Uganda at Mpigi and Civil

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40 Suit No.358 of 2018 until all civil disputes touching on the suit  
land are finally determined.

2. An order directing all state agencies to thoroughly investigate all  
the alleged crimes committed by the applicant on the suit land  
and he be arraigned in court to take plea

45 3. An order directing the respondent to halt the continued  
duplication of criminal files touching the suit land against the  
applicant.

4. Any other relief that this court may deem fit in the circumstances.

The grounds of the application are set out in the affidavit of Mulindwa  
50 George and are briefly that;

a) The Applicant was arrested on the 5<sup>th</sup> day of September 2022 by  
the agents of the Anti-Corruption Unit State House on charges of  
malicious damage to property and criminal trespass over suit land  
at Ziru-Wamala Parish Ssisa County Kajjansi Town council Wakiso  
55 District) that is subject to the High Court's determination in Civil  
Suits No. 133 of 2014 and No. 229 of 2018.

b) The Applicant was later charged at different time intervals in  
criminal cases No. 536 of 2022, 629 of 2022, 691 of 2022, 630 of  
2022, 710 of 2022, 810 of 2022 and 746 of 2022 in the Chief  
60 Magistrates' Court of Entebbe with Criminal trespass contrary to  
Section 302 (a) and malicious damage contrary to Section 335 of  
the Penal Code Act. These charges were touching on both land in  
Ziru-Wamala Parish, Sisa Sub County, Kajjansi Town Council,  
Wakiso - District and land at Nakigalala Kunguluntale Parish, Ssisa  
65 Sub County, Kajjansi Town Council, Wakiso-District.

c) That these files were presented at different intervals before the  
Chief Magistrate Court for bail, upon satisfying the bail  
requirements as stipulated by the law, the Applicant was granted  
bail in criminal cases no. 536 of 2022, 629 of 2022, 691 of 2022,  
70 630 of 2022, 710 of 2022 and 831 of 2022.

d) That these files were occasionally presented in phases to bar the  
applicant from ever getting out of prison and that when he is

75 granted bail in the morning by afternoon as his trying to pay bail monies in the bank, another file is brought to court and ready for plea taking.

80 e) That indeed on the 14/11/2022, after payment of all bail monies, the Applicant while walking to his freedom, was often re-arrested by police officers [agents of Anti-corruption state house] and police officers from Entebbe police station who had cordoned off the court and taken to Entebbe police station.

85 f) That on the 16<sup>th</sup> day of November,2022, the applicant was further charged with the offence of malicious damage to property contrary to section 335 of the Penal Code in Criminal Case No.746 of 2022 and 831 of 2022 before the Chief Magistrates Court of Entebbe yet again.

On application for bail before the same court in criminal case No.746 of 2022, court declined granting bail giving reason that the applicant did not have a fixed place of abode even after granting him bail in previous applications before her.

90 The Applicant, observant with the practice of the state, through his lawyers sought leave of court to raise preliminary points of law touching the legality and propriety of the charges to wit:

95 1. Whether the charging and prosecution of the accused person for the offences of malicious damage to property in Criminal Case No. 536 of 2022, 629 of 2022, 691 of 2022 and 746 of 2022 Entebbe on the basis of complaints by various persons in respect of land at Ziru-Wamala Parish Sisa Sub County Kajjansi Town Council Wakiso District which land is subject of an ongoing land civil dispute vide High Court Land Division Civil Suit No. 133 of 2014 and Civil Suit No. 229 of 2018 is proper, Legal and constitutional.

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105 2. Whether the charging and prosecution of the accused person for the offences of malicious damage to property and Criminal trespass in Criminal Case No. 630 of 2022 and 710 of 2022 on the basis of a complaint by Michael Jikens Katende in respect of Land comprised on Busiro Block 456 Plots 16, 17, 18, 19 and

20 formally Plot 4 which land is subject of an ongoing a land civil dispute vide High Court Land Division civil suit 358 OF 2018 AND 0650 OF 2021 is proper, Legal and constitutional.

110 The Chief Magistrate in her ruling declined to grant the orders prayed for and dismissed the Applicant's preliminary points of law stating that there was no miscarriage of justice being occasioned unto the Applicant among other reasons.

115 a) That the applicant has since filed Revision Application No.8 of 2023 challenging the decision of the Chief Magistrate and seeks that the same be accordingly set aside among other orders

120 b) That The applicant is held captive in prison over charges whose legality is being challenged before this honourable court that clearly depict a direct criminalisation of land disputes actions that have been condemned by this court

c) That from the foregoing it is in the interest of justice that this court grants this application as the same protects the right to liberty of the applicant enshrined under the constitution

125 d) That by this court granting anticipatory bail to the applicant, it will protect the sanctity of court, respect of court orders and prevent abuse of court process and the rights of the applicant still in prison

Both parties filed their submissions which I have considered in determining this application.

### **Consideration**

130 Article 28(3)(a) of the Constitution presumes every person charged with a criminal offence innocent until proved guilty or pleads guilty. Under Article 23(1) of the Constitution every person has a fundamental right to liberty which can only be deprived in the exceptional circumstances provided therein. To preserve this presumption of  
135 innocence and the fundamental right to liberty, article 23(6)(a) of the Constitution Grants Court the discretion to grant or deny bail to any person charged with a criminal offence. This discretion can be exercised irrespective of the gravity or seriousness of the offence

charged with. **See: Kananura & 3 others V Uganda HCMA No.01,02 & 03 of 2013**

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However, the issue before me is whether this court has the discretion to grant bail before a person is arrested or appears before Court for charges to be read out to him. This is referred to as anticipatory bail.

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The applicant relied on the Kenyan case of **W, Njuguna V Republic (2004) eKLR** where the court held that for anticipatory bail to be granted, there must be circumstances of serious breaches of a citizen's rights by an organ of the state which is supposed to protect the same.

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Counsel for the applicant also relied on the case of **Mandiki Luyeye V Republic [2015] eKLR** where it was held that anticipatory bail is aimed at giving remedy for breach or infringement of fundamental constitution rights. The court further held that anticipatory bail cannot issue where the applicant labors under apprehension founded on unsubstantiated claims. That court also emphasized that the fear of breach of a fundamental right must be real and demonstrable.

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Counsel for the applicant submitted that this honorable court is vested with jurisdiction to entertain an application of this nature.

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Counsel for the respondent in objection argued that the concept of anticipatory bail has no legal basis in our legal order and the authorities cited by counsel for the applicant have no binding force in Uganda. He submitted that the applicant has recourse to apply for bail at the trial court or High Court as the circumstances maybe but not anticipatory bail.

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In Uganda, there is no express provision for anticipatory bail in our laws or in the constitution. It is not statutorily defined and is not contemplated under Article 23(6)(a) of the Constitution which generally provides for the right to apply for. In jurisdictions where anticipatory bail is practiced, it is expressly provided for in their law.

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However, in cases where anticipatory bail has been considered as it was in **Kananura & 3 others V Uganda HCMA No.01,02 & 03 of 2013**, the courts have applied the threshold as an application for violation or threatened violation of a right under article 50 of the Constitution. Article 50 above vests a competent Court with jurisdiction

to make a grant or an order in enforcement of the fundamental rights and freedoms.

175 I will therefore treat this application as an application for redress for  
breach or threat of breach of the applicants right to personal liberty  
brought under Article 50 of the Constitution. Under Article 50 of the  
Constitution the High Court has the jurisdiction to hear claims of  
180 infringement of fundamental rights and freedoms guaranteed under the  
Constitution.

The applicant contends that his rights to personal liberty under article  
23 of the constitution have been violated by the respondent and its  
agents.

Article 23 of the Constitution provides that,

185 **“(1) No person shall be deprived of personal liberty except in  
any of the following cases-----**

**(c) for the purpose of bringing that person before a court in  
execution of the order of a court or upon reasonable suspicion  
that that person has committed or is about to commit a  
190 criminal offence under the Laws of Uganda”**

The applicant has claimed violation of his rights to personal liberty by  
state agencies in respect of charges of malicious damage to property,  
criminal trespass and forcible detainer arising from a land dispute. He  
seeks to bar the state agencies from arresting him in respect of those  
195 charges. Before this court can grant this relief, it must ensure it is not  
interfering with the functions of other bodies and institutions  
established by law.

It is not disputed by the applicant that he faces numerous charges of  
malicious damage to property, criminal trespass in respect of the suit  
200 land. He has also been committed to the High Court on several of these  
charges. These criminal charges have different complainants and arise  
from different series of events and as such may necessitate each having  
a different case file. The Uganda Police and the DPP are still actively  
investigating matters pertaining to the applicant with some files already  
205 before the courts of law pending trial.

To bar the police an agency charged with detecting and preventing crime from arresting the applicant if they have reasonable suspicion that the applicant has committed or is about to commit a criminal offence under the law of Uganda would amount to interference with their mandate. Such a direction would not only affect the conduct of the investigations by the Police but would undermine the proper administration of justice.

The constitution also recognizes the need to place certain limitations on the rights to personal liberty and as such the right is not absolute and may be restricted in certain instances such as this. The restrictions are intended to ensure that the right to personal liberty are enjoyed within the confines of the law.

The same is with the Director of Public Prosecution a body mandated under the law to prosecute criminal cases. In the discharge of its mandate, it cannot be directed by anybody including the court on how it should exercise its powers or functions. The only limitation to the DPP's power is the obligation to exercise its powers subject to the public interest, the interests of administration of justice and the need to prevent abuse of court process. The applicant wants this court to compel the DPP to halt the continued duplication of criminal files touching the suit land against the applicant.

It's not within this court to direct the DPP on how it does its work, that would amount to interference. It is the DPP and the Police that participate in conducting investigations and collecting evidence and not the court. It is the DPP that prefers charges and sanctions files not the court so it's really within the mandate of the DPP to prosecute alleged crimes. As long as the investigations are carried out in accordance with the law, the processes thereto must be allowed to run their course for proper administration of justice.

The Constitution is cognizant of the fact that permissible restrictions on personal liberty are subject to abuse by those vested with the power to enforce such restrictions that's why it puts in place safeguards against such abuse of the powers of restrictions on the enjoyment of personal liberty provided for in Article 23 of the Constitution. Such safeguards are found under article 23 (2) which provides that the detention or

restriction of the accused person must be only in a place authorized by law.

245 The accused must also be informed of the reason for the arrest and detention, and must be able to access his or her lawyer. Article 23(4)(b) also provides that an accused person must be produced before a Court of law within 48 hours of the detention. Under article 23 (5) (b), an accused must have his or her next of kin informed of the arrest and detention.

250 The applicant is also at liberty to apply for bail as many times as possible whenever he is arraigned in court as it is within his right to do so. The applicant has at all times been produced in court has not shown that any of the above safeguards have been interfered with. It would be presumptuous for this court to make the order sought for without due regard to duty of both the DPP and other investigative agencies of the state.

255 With regard to the other issues raised by the applicant, I find that they have been properly dealt with in Revision Application 08 of 2023 by the same applicant a matter decided by my brother Justice Paul Wolimbwa Gadenya on the 28<sup>th</sup> September,2023.

260 Accordingly, the application for anticipatory bail is dismissed.

I so order.

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**JUDGE.**

265 **9/11/2023**