



**Murgor & 3 others v Director of Public Prosecutions & 5 others; Ndichu  
& 5 others (Interested Parties) (Constitutional Petition E110 of 2022)  
[2023] KEHC 2618 (KLR) (Constitutional and Human Rights) (31 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2618 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CONSTITUTIONAL AND HUMAN RIGHTS  
CONSTITUTIONAL PETITION E110 OF 2022**

**AC MRIMA, J**

**MARCH 31, 2023**

**BETWEEN**

**STEPHANIE CHEPKOSGEI MURGOR & 3 OTHERS ..... PETITIONER**

**AND**

**THE DIRECTOR OF PUBLIC PROSECUTIONS & 5 OTHERS .. RESPONDENT**

**AND**

**EDWARD WANYOIKE NDICHU & 5 OTHERS ..... INTERESTED PARTY**

**RULING**

1. This ruling is in respect of the Notice of Motion dated 11<sup>th</sup> April, 2022. The application was taken out by Edward Wanyoike Ndichu and Paul Mwaura Ndichu, the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties herein.
2. The gist of the application is an order seeking the consolidation of this Petition with High Court of Kenya at Nairobi Constitutional Petition No. E106 of 2022 Edward Wanyoike Ndichu and Paul Mwaura Ndichu v The Director of Public Prosecutions & 2 Others; Stephanie Chepkosgei Murgor & 3 Others (Interested Parties).
3. The Applicants gave 9 reasons for the consolidation ranging from the commonality of issues of law and facts, the nature of the reliefs sought, the need for expeditious dispensation of justice among others.
4. The application was supported by an Affidavit sworn by Mr. Kimani Kinyanjui, the Counsel for the Applicants.
5. With an exception of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents, the rest of the parties supported the application.



6. In opposition to the application, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents filed Grounds of Opposition dated 6<sup>th</sup> June, 2022.
7. The application was heard by way of oral submissions. Counsel were heard by the Court on their rival positions.
8. This Court has carefully considered the application alongside the submissions and the decisions referred therein. I will, however, not reproduce verbatim the submissions tendered, but will take the content thereof into account in this discussion.
9. The subject of consolidation of suits is a well-trodden route in the judicial circles. Courts have, without number, expressed themselves on the legal principles governing the subject.
10. The Supreme Court of Kenya in Petition No. 14 of 2013 *Law Society of Kenya v Centre for Human Rights and Democracy and 12 Others* (2014) eKLR, observed as follows on the subject: -
 

..... the essence of consolidation of suits is to facilitate the efficient and expeditious disposal of disputes, and to provide a framework for a fair and impartial dispensation of justice to the parties. Consolidation was never meant to confer any undue advantage upon the party that seeks it, nor was it intended to occasion any disadvantage towards the party that opposes it...
11. The Supreme Court of India in *Prem Lala Nabata & Another v Chandni Prasad Sikaria*, (2007) 2, Supreme Court Cases 551 at paragraph 18 had the following to say on consolidation of suits: -
 

.... it cannot be disputed that the Court has power to consolidate suits in appropriate cases. Consolidation is a process by which two or more causes or matters are by order of the Court combined or united and treated as one cause or matter. The main purpose of consolidation is therefore to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action. The jurisdiction to consolidate arises where there are two or more matters or cause pending in the Court and it appears to the Court that some common questions of law or fact arises in both or all the suits or that the rights to relief claimed in the suits are in respect of or arise out of the same transaction or series of transactions; or that for some other reason, it is desirable to make an order consolidating the suits....
12. In Mombasa HCCC No. 992 of 1994 *Nyati Security Guards and Services v Municipal Council of Mombasa*, the Court enumerated the factors to be considered in consolidation requests as follows: -
 

.... the situations in which consolidation can be ordered include where there are two or more suits or matters pending in the same court where: -

  - (a) Some common question of law or fact arises in both or all of them; or
  - (b) The rights or relief claimed in them are in respect of, or arise out of the same transaction or series of transactions, or
  - (c) For some other reason it is desirable to make an order for consolidating them.
13. Returning to the matter at hand, there is no dispute that three Petitions arose from the events of the 16<sup>th</sup> and 17<sup>th</sup> October, 2021 at Emara Ole- Sereni Hotel in Nairobi between the Petitioners and the Interested Parties herein. The Petitions are the two sought to be consolidated herein and the other one is High Court of Kenya at Nairobi Constitutional Petition No. E145 of 2022 *Munira Hassan*



14. The instant Petition seeks the following reliefs: -
1. A declaration that the Petitioner's rights under Article 25, 27(1), 27(2), 27(3), 27(4), 28, 29(a), 29(d), 29(f), 40,47,48, 49, 50(1), 73, 75(1) and 157 of the Constitution of Kenya have been violated and infringed upon by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Respondents
  2. A declaration that the decision by the 1<sup>st</sup> Respondent to charge the Petitioners was a violation of Article 157(10) of the Constitution of Kenya and was influenced by extraneous motives in contravention of Article 73 of the Constitution of Kenya.
  3. An order of prohibition be and is hereby issued permanently prohibiting the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> Respondent, or any of their officers from summoning, interrogating, arresting, investigating, institution or continuing with any criminal prosecution against the Petitioners in connection with or relating to complaints lodged by the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Interested Parties in respect of, or relating to any offences allegedly arising from or connection with the 17<sup>th</sup> October 2020, incident, at Emara Ole Sereni Hotel, Nairobi.
  4. That an Order for *Certiorari* be and is hereby issued to bring to this Court to be quashed the criminal proceedings against the Petitioners against the Petitioners herein in Magistrate's Court Criminal Case No. E388 of 2022, *Republic v Cheryll Chelimo Murgor, Munyira Hassan Mohammed, Samuel Dennis Ramdas and Patrick Kipngetich Koech*.
  5. A declaration that the Petitioners are entitled to general exemplary and punitive damages against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondent may be assessed by his honourable Court for the unjustified physical and psychological suffering.
  6. An award for compensation against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents as may be assessed by this Honourable Court for gross violation of the Petitioners' fundamental rights and freedom as specified, of not less than KShs. 25,000,000/- for each Petitioners therefore totalling KShs.100,000,000/-
  7. Interest on the general, exemplary, aggravated, and or punitive and special damages from the date of filing this Petition.
  8. The Cost of and incidental to the Petition be borne by the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Respondents in any event.
  9. Such further or other relief as the Honourable Court may deem fit, just and expedient to grant.
  10. That the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Respondent and the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties do pay the costs of this Petition.



15. Petition No. E106 of 2022 seeks the following reliefs: -

- a. An order of *certiorari* to remove into this Honourable Court and quash the decision/actions of the first and second Respondent to charge and prosecute the Petitioners in Kibera Chief Magistrate Criminal Case no. E210 of 2022
- b. An order of prohibition directed to the Respondents, prohibiting further proceedings in Kibera Chief Magistrates Court Criminal Case No E210 of 2022 and further prohibiting the first and second Respondents from instituting any future charges against the ex-parte applicants/petitioners in respect to the subject.
- c. An Order of *Certiorari* to be issued against the Respondents quashing/setting aside the decision of the respondent to arrest and charge and or prosecute the Petitioners in Kibera Chief Magistrates Court Criminal Case No. E210 of 2022
- d. That the costs of this application be awarded to the applicant in any event.
- e. Any other relief as this Honourable Court may deem fit and expedient to grant

16. And, Petition No. E145 of 2022 prays for the following orders: -

1. A declaration be and is hereby issued that all the acts and ot threatened acts by the Respondents and their agents of of harassment, intimidation, questioning, investigations, charging, prosecution against the Petitioner by the Respondents amount to an infringement against the Petitioner's constitutional rights as enshrined in the Bill of rights and are therefore unconstitutional.
2. A declaration is hereby issued that the action so f the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and or their agents are unfair, unreasonable irrational, illegal and the acts of harassment, intimidation, questioning, investigations charging prosecution charge or prosecute the Petitioner has been made in abuse of power and malice in contravention of Article 47 of the Constitution and section 4, 5 and 7 of fair administrative Act.
3. An order of *certiorari* be an is hereby issued to quash the decision/actions of the 1<sup>st</sup> and 2<sup>nd</sup> Respondent's to charge and prosecute the Petitioner in Kibera Chief Magistrates Court in Criminal Case No. E388 of 2022 Republic v Stephanie Chepkosgei Murgor, Chelimo Murgor, Munyra Hassan Mohammed, Samuel Dennis Ramdas and Patrick Kipng'etich Koech.
4. An order of prohibition be an is hereby issued to prohibit further proceedings in Kibera Chief Magistrates Court in Criminal Case No. E388 of 2022 Republic v Stephanie Chepkosgei MURgor, Chelimo Murgor, Munyra Hassan Mohammed, Samuel Dennis Ramdas and Patrick Kipng'etich Koech.
5. An order of prohibition directed t the Respondent prohibiting the 1<sup>st</sup> and 2<sup>nd</sup> Respondent from instituting any future charges against the Petitioner arising from the same/similar facts herein and/or in respect to the subject proceedings in in Kibera Chief Magistrates Court in Criminal Case No. E388 of 2022



Republic v Stephanie Chepkosgei Murgor, Chelimo Murgor, Munyra Hassan Mohammed, Samuel Dennis Ramdas and Patrick Kipng'etich Koech

6. An order of *Certiorari* to be issued against the Respondent quashing/setting aside the decision of the Respondents to arrest charge and /or prosecute the Petitioners in in Kibera Chief Magistrates Court in Criminal Case No. E388 of 2022 Republic v Stephanie Chepkosgei Murgor, Chelimo Murgor, Munyra Hassan Mohammed, Samuel Dennis Ramdas and Patrick Kipng'etich Koech
  7. An order of permanent injunction be and is hereby issued restraining the 1<sup>st</sup> and 2<sup>nd</sup> Respondent whether by themselves any other person acting on their instructions from prosecuting, charging, arresting, harassing in any manner whatsoever intimidating, causing arrest threatening to arrest and or interfering with the Petitioner's fundamental rights in respect to any matters as outlined in the instant petition.
  8. An order of *Certiorari* to quash the decision of the Respondents to charge and prosecute the Petitioners on the charges preferred against vide charge sheet dated 9<sup>th</sup> March 2022 at Kibera Law Courts in Criminal Case No. E388 of 2022 Republic v Stephanie Chepkosgei Murgor, Chelimo Murgor, Munyra Hassan Mohammed, Samuel Dennis Ramdas and Patrick Kipng'etich Koech
  9. General and exemplary and aggravated damages under Article 23(3) of the Constitution of Kenya 2010 for the unconstitutional conduct of the Respondent.
  10. Costs of this Petition.
  11. Any other relief as this Honourable Court deems fit to grant.
17. From the foregoing, it is apparent that the focus of the three Petitions is to challenge the exercise of the powers of the Respondents which culminated with the decisions to prefer charges against the respective Petitioners in the three Petitions. The 1<sup>st</sup> – 4<sup>th</sup> Respondents, however, laid more premium on the responses to each Petition. Whereas the 1<sup>st</sup> – 4<sup>th</sup> Respondents may have different factual responses to each of the Petitions, such responses will only go to the extent of demonstrating that the 1<sup>st</sup> – 4<sup>th</sup> Respondents acted within the Constitution and the law in making the impugned decisions.
18. Further, the 1<sup>st</sup> – 4<sup>th</sup> Respondents' position ought to be distinguished in that the nature and reliefs sought in the three Petitions are not similar to the purpose of the criminal cases facing the Petitioners. Therefore, the issues to be canvassed in the Petitions are completely different from those in the criminal cases against the Petitioners and the Interested Parties.
19. Going by the legal principles as developed by Courts on consolidation applications and the position taken by the 1<sup>st</sup> – 4<sup>th</sup> Respondents against the application, it appears that the 1<sup>st</sup> – 4<sup>th</sup> Respondents seem not to draw the distinction between the nature and reliefs in the Petitions and those in the criminal cases. To that extent, the 1<sup>st</sup> – 4<sup>th</sup> Respondents do see the Petitions herein as the criminal cases, a position which cannot be right.
20. Having said so, it, therefore, comes out that there is reasonable no legal bar to decline the application. The application seeks to expedite the disposal of not only the Petitions, but also the criminal cases which are now stayed pending the outcome of the Petitions.
21. Consequently, the following orders do hereby issue: -



- a. The High Court of Kenya at Nairobi Constitutional Petition No. E110 of 2022 *Stephanie Chepkosgei Murgor & 4 Others v The Director of Public Prosecutions & 5 Others; Edward Wanyoike Ndichu & 5 Others (Interested Parties)*, the High Court of Kenya at Nairobi Constitutional Petition No. E145 of 2022 *Munira Hassan Mohamed v The Director of Public Prosecutions & 3 Others; Stephanie Chepkosgei Murgor & 5 Others (Interested Parties)* and the High Court of Kenya at Nairobi Constitutional Petition No. E106 of 2022 *Edward Wanyoike Ndichu and Paul Mwaura Ndichu v The Director of Public Prosecutions & 2 Others; Stephanie Chepkosgei Murgor & 3 Others (Interested Parties)* are hereby consolidated.
- b. Petition No. E110 of 2022 shall be the Lead File.
- c. The Parties shall, henceforth, appear in the consolidated Petitions as follows: -
- Petitioners:
- 1<sup>st</sup> - Stephanie Chepkosgei Murgor  
2<sup>nd</sup> - Cheryl Chelimo Murgor  
3<sup>rd</sup> - Samuel Dennis Ramdas  
4<sup>th</sup> - Patrick Kipng'etich Koech  
5<sup>th</sup> - Paul Mwaura Ndichu  
6<sup>th</sup> - Edward Wanyoike Ndichu  
7<sup>th</sup> - Munira Hassan Mohamed
- Respondents:
- 1<sup>st</sup> - The Director of Public Prosecutions  
2<sup>nd</sup> - Office of the Director of Public Prosecutions  
3<sup>rd</sup> - Inspector General of the National Police Service  
4<sup>th</sup> - The Director of Criminal Investigations  
5<sup>th</sup> - The Chief Magistrates Court, Kibera Law Courts  
6<sup>th</sup> - The Attorney General
- Interested Parties:
- 1<sup>st</sup> - Federation of Women Lawyers – Kenya  
2<sup>nd</sup> - Law Society of Kenya  
3<sup>rd</sup> - The Victim Protection Board
- d. The matter be placed before the Presiding Judge for further directions on way forward.

22 Orders accordingly.

**DELIVERED, DATED AND SIGNED AT KITALE THIS 31<sup>ST</sup> DAY OF MARCH, 2023.**

**A. C. MRIMA**

**JUDGE**

Ruling No. 1 virtually delivered in the presence of:



Miss Kala for Mr. Murgor, Learned Counsel for the 1<sup>st</sup> – 4<sup>th</sup> Petitioners.

N/A, for the 5<sup>th</sup> & 6<sup>th</sup> Petitioners.

N/A, for Learned Counsel for the 7<sup>th</sup> Petitioner.

N/A, for the 1<sup>st</sup> – 4<sup>th</sup> Respondents.

Mr Amanga, for the 3<sup>rd</sup> Interested Party

N/A, for the 5<sup>th</sup> & 6<sup>th</sup> Respondents.

Regina/Chemutai – Court Assistants

