



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mansukhlal & 4 others v Director of Criminal Investigations & 2 others (Miscellaneous Application E240 of 2021) [2025] KEHC 5357 (KLR) (Crim) (24 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5357 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**  
**CRIMINAL**  
**MISCELLANEOUS APPLICATION E240 OF 2021**  
**CJ KENDAGOR, J**  
**APRIL 24, 2025**

**BETWEEN**

**NARMADABEN MANSUKHLAL ..... 1<sup>ST</sup> PETITIONER**  
**FONES DIRECT LIMITED ..... 2<sup>ND</sup> PETITIONER**  
**PHONE LINK LIMITED ..... 3<sup>RD</sup> PETITIONER**  
**BRAND IMPORTS LIMITED ..... 4<sup>TH</sup> PETITIONER**  
**FUTURE MEDIA KENYA LIMITED ..... 5<sup>TH</sup> PETITIONER**

**AND**

**DIRECTOR OF CRIMINAL INVESTIGATIONS ..... 1<sup>ST</sup> RESPONDENT**  
**DIRECTOR OF PUBLIC PROSECUTIONS ..... 2<sup>ND</sup> RESPONDENT**  
**ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. This Ruling pertains to the Petition dated 21<sup>st</sup> July, 2021. The Petitioners are account holders with Charterhouse Bank Limited, a bank that was registered and operated within the Republic of Kenya. The Bank was placed under statutory management in 2006, and in 2021, the Central Bank of Kenya appointed the Kenya Deposit Insurance Corporation as the liquidator.
2. The Petition states that the Petitioners submit the Petition on their own behalf and on behalf of other account holders of the specified Bank.
3. The Petition seeks the following orders;



- a. A Conservatory Order be and is hereby issued restraining the Respondents from summoning, investigating or initiating any criminal prosecution against the petitioners and any other person(s) named in the Court Order issued on 9<sup>th</sup> June, 2021 in Misc. Criminal Application No. E1875 of 2021, Directorate of Criminal Investigation v Central Bank of Kenya & Others, inclusive of any other account holders of Charterhouse Bank Limited not named in the said Order, arising from any transactions undertaken with Charterhouse Bank Limited and the accounts held therein.
- b. A Declaratory Order be and is hereby issued that the decision of the Respondents to initiate investigations against the petitioners and the persons named in the Court Order issued on 9<sup>th</sup> June, 2021 in Misc. Criminal Application No. E1875 of 2021, Directorate of Criminal Investigation v Central Bank of Kenya & Others inclusive of any other account holders of Charterhouse Bank Limited not named in the said Order, in relation to contractual commercial transactions undertaken with Charterhouse Bank Limited is illegal and unconstitutional.
- c. A Declaratory Order do hereby issue that the petitioners' right to fair administrative action was infringed by the respondents in purporting to initiate criminal investigations against the petitioner and the persons named in the Court Order issued on 9<sup>th</sup> June, 2021 in Misc. Criminal Application No. E1875 of 2021, Directorate of Criminal Investigation v Central Bank of Kenya & Others inclusive of any other account holders of Charterhouse Bank Limited not named in the said Order, arising from a contractual commercial relationship with Charterhouse Bank Limited.
- d. A Declaratory Order that the petitioners' rights under Articles 25, 27, 29, 47 and 50 of the Constitution have been infringed including the rights of the persons named in the Court Order issued on 9<sup>th</sup> June, 2021 in Misc. Criminal Application No. E1875 of 2021, Directorate of Criminal Investigation v. Central Bank of Kenya & Others inclusive of any other account holders of Charterhouse Bank Limited not named in the said Order, by the impugned act of the respondents purporting to open investigations from a commercial relationship between the petitioner and others with their banker.
- e. An Order of certiorari do hereby issue removing into the High Court for purposes of being quashed and quashing the requisition to compel attendance dated 13<sup>th</sup> July, 2021 issued to the petitioner by the 1<sup>st</sup> respondent together with the summons dated 22<sup>nd</sup> June, 2021 and 14<sup>th</sup> July, 2021.
- f. An Order of certiorari do hereby issue removing into the High Court for purposes of being quashed and quashing the Orders issued on 9<sup>th</sup> June, 2021 in Nairobi Misc. Criminal Application No. E1875 of 2021, Directorate of Criminal Investigation v Central Bank of Kenya & Others.
- g. An Order of prohibition be and is hereby issued, prohibiting the respondents from continuing with any further investigations or commencing prosecution of the petitioner and the persons named in the Court Order issued on 9<sup>th</sup> June, 2021 in Misc. Criminal Application No. E1875 of 2021, Directorate of Criminal Investigation v Central Bank of Kenya & Others inclusive of any other account holders of Charterhouse Bank Limited not named in the said Order, arising from the commercial transactions between them and Charterhouse Bank Limited.
- h. Costs of this petition.



- i. Any further relief or orders that this honourable Court may deem just and fit to grant.
4. The Petition is supported by Supporting Affidavits deponed by the 1<sup>st</sup> Petitioner, Dilpun Govindji Lakhamshi for the 4<sup>th</sup> Petitioner and Esther Njeri Gitau for the 5<sup>th</sup> Petitioner.
5. A Notice of Motion Application dated 21<sup>st</sup> July, 2021, seeking similar orders in the Petition to be issued in the interim pending the hearing and determination of the Petition, was filed alongside the Petition. However, the Petitioners subsequently did not prosecute it after they obtained interim orders on 26<sup>th</sup> July, 2021 pending the hearing and determination of the Notice of Motion Application.
6. From the pleadings on record, only the 1<sup>st</sup> and 2<sup>nd</sup> Respondents participated in the proceedings. The 1<sup>st</sup> Respondent filed a Replying Affidavit sworn on 25<sup>th</sup> July, 2024 by Inspector Ian Mukumbu Makumi, attached to the Directorate of Criminal Investigations. The 2<sup>nd</sup> Respondent filed grounds of opposition dated 17<sup>th</sup> September, 2024.
7. The Petition was canvassed by way of written submissions. Only the Petitioners submitted written submissions; the Respondents failed to do so, even after the Court indulged them several times.

### **Petitioners' Case**

8. The Petitioners aver that their relationship with Charterhouse Bank Limited is purely contractual and commercial and has no connection to the pursuit of criminal justice in the public interest. They submit that any grievance arising out of this relationship should be dealt with under the civil law process.
9. The Petitioners challenge the criminal investigations initiated by the 1<sup>st</sup> Respondent, arguing that there is no complainant upon whose complaint the investigations are instigated. The 1<sup>st</sup> Petitioner challenges the requisition to compel attendance that was issued to her over allegations stated to be a violation of the *Banking Act* and Central Bank of Kenya Prudential Guidelines.
10. The Petitioners argue that the investigations are launched in bad faith, as they are conducted 15 years after the Bank was placed under statutory management. They argue that the period is excessive and that the lengthy delay without explanation infringes upon their rights to a fair hearing.
11. The Petitioners accuse the Central Bank of Kenya of colluding with the Respondents and assert that the Respondents are acting arbitrarily and without any legal basis.

### **1<sup>st</sup> Respondent's case**

12. The 1<sup>st</sup> Respondent asserts that investigations were launched upon receipt of an intelligence report and a complaint received on or about 23<sup>rd</sup> April 2021 against the Directors and depositors of Charterhouse Bank Limited on allegations of conspiracy to defraud contrary to Section 317 of the *Penal Code*, obtaining credit by false pretence contrary to Section 316 of the *Penal Code* and frauds on sale of property contrary to Section 318 of the *Penal Code*. The inquiry file opened following the complaint was registered as No. 74 of 2021.
13. The 1<sup>st</sup> Respondent stated that, as part of the investigations, it obtained court orders to inspect books of accounts and safe depository boxes held by the Central Bank and the Liquidator of Charterhouse Bank to facilitate the investigations. Further that they issued summons requiring attendance of the Directors and depositors for questioning and recording of statements as they had reason to believe that the persons had information that would aid in the investigation of the alleged offences.
14. The 1<sup>st</sup> Respondent argues that their actions were within the 1<sup>st</sup> Respondent's mandate and were not made in bad faith or unlawfully. According to the 1<sup>st</sup> Respondent, investigations were ongoing until



they received an order issued by the High Court of Kenya in Nairobi, Commercial and Tax Division, Civil Case No. E708 of 2021, which restrained the continuance of the investigation process.

## 2<sup>nd</sup> Respondent's Case

15. In the grounds of objection, the 2<sup>nd</sup> Respondent asserts that the orders sought are contrary to their mandate established under the Constitution and the law. Additionally, the 2<sup>nd</sup> Respondent contended that they are not a party to the search warrant proceedings that the Petitioners wish to stay and quash; and further state that the Office of the Director of Public Prosecutions (ODPP) did not participate in the requisition to compel attendance before the 1<sup>st</sup> Respondent.

## Analysis and determination

16. The Court has considered the petition, the affidavits, and the written submissions filed by the parties in this case. The petitioners are seeking declaratory orders, conservatory orders, and orders of certiorari. The issue for determination is whether the Petitioners have made a case for the grant of the reliefs sought in the Petition.
17. The Office of the Attorney General in Kenya is established by Article 156 of the Constitution of Kenya. The Attorney General (3<sup>rd</sup> Respondent) is the principal legal advisor to the national government and has various responsibilities, including representing the government in legal proceedings and promoting the rule of law.
18. The Petitioners have complained against the actions of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.
19. Article 157 of the Constitution establishes the Office of the Director of Public Prosecution, while Article 245 establishes the Office of the Inspector General of the National Police Service. Section 28 of the National Police Service Act establishes the Directorate of Criminal Investigations, which is under the direction, command, and control of the Inspector-General of Police.
20. Odunga J. (as he then was) stated in the case of *Republic vs Chief Magistrate Milimani & Another Exparte Tusker Mattresses Ltd & 3 Others* [2013] eKLR 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.”
21. In light of the above, the High Court must avoid intervening in the investigative powers assigned to law enforcement agencies or in the actions taken by the Director of Public Prosecutions unless there are substantial and compelling justifications for such intervention.



22. This Court will examine the conduct of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to determine if they fall short of the constitutional threshold as alleged by the Petitioners.
23. The Petitioners have argued that their relationship with Charterhouse Bank is contractual and commercial, and that initiating criminal investigations infringes on their right to fair administrative action. The presence of a contractual relationship does not serve as an obstacle to criminal investigations. Similarly, the possibility of a civil claim arising from the situation does not impede the initiation of inquiries into criminal conduct or the subsequent prosecution of any offences. Section 193A of the *Criminal Procedure Code* provides that civil and criminal jurisdictions can run parallel to each other and that neither can stand in the way of the other.
24. The ultimate standard for evaluating conduct in the pursuit of these two jurisdictions lies in determining whether either is being harnessed to further hidden agendas or to misuse the court's processes in any way.
25. The 1<sup>st</sup> Respondent explained the reasons for commencing the investigations and the process they followed. The investigations were commenced at about the same time that the Central Bank of Kenya appointed the liquidator. I have found no irregularities in the 1<sup>st</sup> Respondent's actions to obtain orders for inspecting the books of accounts and safe depository boxes held by the Central Bank and the Liquidator of Charterhouse Bank to facilitate the investigations. The merit of the application for the orders is subject to the determination of the court to which such an application is presented. The High Court has jurisdiction to invalidate contested warrants upon application if they are not obtained in accordance with the applicable legal standards.
26. The Petitioners assert that their rights under Articles 25, 27, 29, 47 and 50 have been infringed upon.
27. In the case of *Ololoso & Another v. Inspector General of Police & Another (Miscellaneous Criminal Application E003 of 2023)* [2023] KEHC 25855 (KLR), F. Gikonyo, J. addressed issues related to conduct in investigations. He stated the following:

“The exercise of the function of investigation should not be oppressive or in abuse of the process and purpose of criminal investigation to bring suspects to book. Oppression may take many and different forms depending on the circumstances of each case. But, may include, use of much or excessively intrusive tools, methods and techniques not permitted or authorized in law or which by their nature completely routs the protection of fundamental freedoms and rights in the Bill of Rights such as torture or threat to torture methods. Abuse include; to procure or force a settlement of a civil claim or debt or personal scores; and in some cases, to cover police failures or merely to please or sooth a curious public or political audience.”
28. There was no discrimination in the issuance of summons requiring attendance. The 1<sup>st</sup> Respondent explained that the intention was to summon the Directors and depositors for questioning and recording statements, as they had reason to believe that the persons had information that would aid in the investigation of the alleged offences. The summons for interview and statement recording annexed to the affidavits in support of the petition show that other individuals and institutions beyond the parties herein were summoned.
29. Furthermore, there were no instances of arbitrary arrest. The 1<sup>st</sup> Respondent duly issued summons, a process that falls squarely within the provisions outlined in Section 52 (1) of the *National Police Service Act*. This action reflects adherence to ensuring that all procedures are handled appropriately and in accordance with the law.



30. The Petitioners have also challenged the issue of investigations initiated after what they termed an unreasonable and inordinate delay. The Court observes that there are no constitutional or statutory limitations on the timelines for investigating a criminal complaint in Kenya.
31. The 2<sup>nd</sup> Respondent indicated that they are not a party to the Misc. Criminal Applications for investigations made by the 1<sup>st</sup> Respondent in exercise of its independent mandate. No decision to file charges has been made, nor have any formal charges been brought by the 2<sup>nd</sup> Respondent in connection with the facts of this case.
32. The Petitioners seek an early assessment by the Court regarding a fair trial; however, the Court cannot yet determine whether a fair trial can occur during this investigative phase.
33. The Respondents herein are required to comply with constitutional standards of human rights and fundamental freedoms in the discharge of their mandate. Based on the presented information, this Court has not found that the Respondents have failed to adhere to the standards.
34. The Civil case initiated in the Commercial and Tax Division E708 of 2021 Charterhouse Bank Limited & 2 Others vs Central Bank of Kenya & 4 Others is before a three-judge bench in the High Court. The Charterhouse Bank issue is not merely a matter concerning the Petitioners herein as individual depositors, as alleged; it is a national issue that affects other depositors, shareholders, the banking sector, and public institutions.
35. The Annexure attached to the 1<sup>st</sup> Respondent's Affidavit shows that orders were issued in the Civil Case restraining the Defendants therein, including the Respondents herein, from initiating criminal investigations and proceedings related to matters of Charterhouse Bank Limited pending the determination of the application. The 1<sup>st</sup> Respondent acknowledged in the Replying Affidavit that the order restrained the continuation of the investigation process.
36. Another critical issue that warrants the Court's attention in this case is the public interest at stake. 'Public interest' is defined by the Black's Law Dictionary 10th Edition at page 1425 as: -

The general welfare of a populace considered as warranting recognition and protection. Something in which the public as a whole has stake especially in something that justifies government regulation.
37. This Court must evaluate the orders requested in this Petition not only from the perspective of the Petitioners but also to consider whether granting these orders serves and advances the broader public good. After thorough consideration, I find that granting the requested orders at this stage will not promote the public interest.

### **Disposition**

38. I find and hold that no rights have been infringed, and there is no imminent threat to the rights and freedoms that would warrant the intervention of the High Court. Furthermore, the conservatory, prohibition, and certiorari orders sought in the Petition are not warranted and do not align with the public interest.
39. The Petition dated July 21, 2021 is dismissed with no order as to costs.
40. It is so ordered.

**DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 24<sup>TH</sup> DAY OF APRIL, 2025.**



.....

**C. KENDAGOR**

**JUDGE**

In the presence of:

Court Assistant: Beryl

Ms. Leah Ezekiel holding brief for Mr. Otieno, Advocate for the Petitioners

Mr. Chebii, ODPP for Respondents

