



**Omnicare Medical Limited & 3 others v Office of the Director of Public & 2 others
(Criminal Petition E004 of 2025) [2025] KEHC 4178 (KLR) (2 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4178 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL PETITION E004 OF 2025**

DR KAVEDZA, J

APRIL 2, 2025

BETWEEN

**OMNICARE MEDICAL LIMITED 1ST APPLICANT
GEORGE WAKARIA NJOROGE 2ND APPLICANT
LILIAN EDNA WANJIRU 3RD APPLICANT
ROBERT MAWEU MUTULA 4TH APPLICANT**

AND

**OFFICE OF THE DIRECTOR OF PUBLIC 1ST RESPONDENT
DIRECTORATE OF CRIMINAL INVESTIGATIONS 2ND RESPONDENT
ATTORNEY GENERAL 3RD RESPONDENT**

RULING

1. On 7th November 2024, George Wakaria Njoroge and Lilian Wanjiru filed a Notice of Motion dated 5th November 2024, seeking restraining orders against the Directorate of Criminal Investigations (DCI), the Inspector General of Police, and the Director of Public Prosecutions (DPP) to prevent their arrest. This court issued interim orders restraining their arrest or detention during investigations, granted them anticipatory bail, and directed that upon completion of investigations, they be escorted to the plea court, at which point the orders would lapse.
2. On 27th March 2025, Robert Maweu Mutula filed a similar application seeking protection from imminent arrest. The court issued orders restraining the police from arresting or detaining him pending completion of investigations. However, the court expressly stated that the applicant could only be arrested or detained upon the conclusion of investigations and once the DPP had made a decision to charge.



3. The Office of the Director of Public Prosecutions (ODPP) has now appeared before this court with summons and an affidavit of service, confirming that a decision to charge the applicants has been made and that they are required to appear before the plea court today. Mr. Ombeta has argued that the summons were not properly served. However, having reviewed the affidavit of service, this court finds no reason to doubt its validity. Furthermore, the applicants are physically present in court, indicating their awareness of the summons.
4. Mr. Nyachoti, Mr. Murage, and Mr. Owino, appearing for the victims, have sought an adjournment to respond to the application. While the application has not been opposed, Mr. Omari, Mr. Nyabeni, Ms. Wambui, and Mr. Omollo have urged the court to issue a conservatory order restraining the respondents from arresting, detaining, charging, arraigning, or prosecuting the petitioners pending the hearing of the application.
5. The State Counsel, Ms. Gichoi and Mr. Owiti, have urged this court to direct the petitioners to proceed to the lower court as per the trial court's directives. The key issue for determination is whether this court should grant a stay order preventing the prosecution of the petitioners.
6. This court had previously restrained the respondents from arresting or detaining the petitioners pending the completion of investigations. The question now arises: can this court extend such protection to prevent the petitioners from being charged? Put differently, should the court shield the petitioners from taking a plea merely because a constitutional petition has been filed?
7. In *Paul Nyaga & 2 others v Attorney General & 3 others* (Petition No 518 of 2012), the court emphasised the public interest in ensuring that crimes are prosecuted and offenders held accountable. However, it also affirmed that accused persons are presumed innocent until proven guilty. In *Michael Monari & Another v Commissioner of Police & 3 others* (Misc. Application No 68 of 2011), the court held that it is not the judiciary's role to assess the merits and demerits of an intended charge before it is formally brought before a competent court. Consequently, it would be improper for this court to intervene preemptively by issuing a conservatory order at this stage.
8. Moreover, Article 165(3)(b) of the *Constitution* vests this court with jurisdiction to halt prosecutions at any stage of trial where a violation of fundamental rights or freedoms is established. The petitioners retain the right to seek redress should any such violation arise during their prosecution.
9. In light of the foregoing, I find no basis to grant the conservatory orders sought. The petitioners will not suffer prejudice by taking a plea today or on any other date as directed by the trial court. Accordingly, the application for stay of prosecution is dismissed. I accordingly issue the following orders:
 - a. The applicants/petitioners counsel to serve the victims counsel with the application before close of business today.
 - b. The victims counsel shall file a response to the application within 7 days.
 - c. If therefore follows that the application by the victim's counsel for adjournment is allowed.
 - d. The investigating officer shall henceforth escort the applicants/petitioners to the trial court for plea as per the ruling issued by this court on 7.11.2024 and in miscellaneous criminal application No E175/2024 and 28.3.2025 in Miscellaneous Criminal application E065/2025 respectively.
 - e. This matter shall be mentioned on 8th April, 2025 for directions.

Orders accordingly.



RULING DATED AND DELIVERED IN OPEN COURT THIS 2ND DAY OF APRIL 2025

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D. KAVEDZA

JUDGE

In the presence of:

Mr. Omari, Mr. Wambui, Mr. Ombeta, Mr. Wendo and Mr. Nyambergi for the Applicants/Petitioners

Ms. Gichoi and Mr. Owiti for the State

Mr. Nyachoti and Mr. Murage watching brief for the Victims

Owino for KMPDU

Tonny Court Assistant

