



REPUBLIC OF KENYA



KENYA LAW
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Githieya v Director of Public Prosecution & 2 others; Menkerios & 3 others (Interested Parties) (Petition E027 of 2023) [2025] KEHC 6371 (KLR) (6 May 2025) (Ruling)

Neutral citation: [2025] KEHC 6371 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
PETITION E027 OF 2023
DO CHEPKWONY, J
MAY 6, 2025**

BETWEEN

FRANCIS MWAURA GITHIEYA PETITIONER

AND

DIRECTOR OF PUBLIC PROSECUTION 1ST RESPONDENT

CHIEF MAGISTRATE COURT 2ND RESPONDENT

THE HONOURABLE ATTORNEY GENERAL 3RD RESPONDENT

AND

HAILE MENKERIOS INTERESTED PARTY

ABEBA WOLDEHAIMANOT ABBAY INTERESTED PARTY

WINA TRADING COMPANY LTD INTERESTED PARTY

SAVOYA LOGISTICS LTD INTERESTED PARTY

RULING

1. This Ruling determines the Notice of Motion application dated 8th June, 2023 brought under Certificate of Urgency wherein the Petitioner seeks the following orders:-
 - a. Spent.
 - b. Spent.
 - c. That upon hearing interpartes thereafter, this Honourable Court be pleased to grant the Petitioner/Applicant an order of stay of proceedings in Milimani Criminal Case No. E4325 of 2020 (*R v Francis Mwaura & Another*) pending the hearing and determination of the Constitutional Petition filed herein.



- d. Spent.
 - e. Spent.
 - f. That the costs of this application be provided for.
2. The Application is based on the grounds as set out on its face and the Supporting Affidavit sworn by the Applicant on 8th June, 2023. The Applicant avers that he was charged in Milimani Criminal Case No.E4325 of 2020 based on Commercial transactions involving the 3rd Interested Party and other third parties. It is his view that the decision to charge him is an abuse of the ODPP's powers and prays that the court determines the legality of the said charges against him before the Criminal Case can proceed lest this Petition will be rendered nugatory.
 3. The 3rd Respondent filed Grounds of Opposition dated 11th November, 2023 wherein it has stated that the subject of the Petition arose in Milimani Magistrate's Court and as such the case should be transferred to the appropriate forum. It is the 3rd Respondent's contention that the Applicant has not demonstrated how he will suffer prejudice or how his right to access justice will be infringed if the petition is heard at a court where the cause of action arose.
 4. The 3rd Respondent also asserts that the mere allegation that the rights and fundamental freedom of the Petitioner have allegedly been contravened is not sufficient to entitle the Petitioners the remedies sought in the Petition, without first demonstrating the real danger faced. It has further averred that the application is an abuse of court process and ought to be dismissed with costs to the Respondents.
 5. The 1st Interested Party also filed a Notice of Preliminary Objection dated 7th February, 2024 wherein he has raised the following grounds:-
 - a. That this Honourable Court lacks the requisite jurisdiction to entertain the application and the alleged Petition and therefore the same should be dismissed forthwith.
 - b. That the suit is fatally defective for want of form and content as there is no Constitutional Petition filed in court to warrant the orders sought in the said application.
 6. The 1st and 2nd Interested Parties similarly filed Grounds of Opposition opposing the application while arguing that the Applicant is forum shopping given that the High Court in Nairobi has supervisory jurisdiction over the Milimani Chief Magistrates' Court where he faces the Criminal charges. They aver that the Applicant has not demonstrated how his rights have been threatened contrary to Article 50(4) of the Constitution in view of the multiple Counts of Obtaining Money by False Pretence contrary to Section 313 of Penal Code that he has been charged with. According to the Interested Parties, the prosecution has a right to prosecute the Applicant with the said offences and the Applicant is only seeking to interfere with their mandate. The Interested Parties have also averred that the application does not disclose any violation of the Applicant's rights and is only meant to delay the prosecution of Milimani Criminal Case No. E4325 of 2020, which amounts to abuse of the court process that it ought to be dismissed with costs.

Analysis and Determination

7. Having considered the pleadings filed by parties in this case, this Court finds it necessary to first determine the objection raised in the Notice of Preliminary Objection and Grounds of Opposition on whether it is clothed with the Jurisdiction to handle the matter given the assertions that the cause of action arose in Nairobi and the criminal charges against the Petitioner were initiated at Milimani Magistrates' Court.



8. It is trite that jurisdiction is everything and without it, a court must down its tools. This Principle was laid out in the case of *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd.* [1989], where the Court held as follows:-

“Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction....Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before Judgment is given.”

9. Having perused the pleadings and the annexures thereto, it is common ground that the criminal charges against Petitioner were initiated at Milimani Chief Magistrates’ Court vide Milimani Criminal Case No.E4325 of 2020 which falls under the supervisory Jurisdiction of the Milimani High Court. The charge sheet by which the Applicant is charged clearly shows that the transactions which form this cause of action were done in Nairobi County.

10. In view of this, this Court is therefore persuaded that the Milimani High Court is the most appropriate forum which is vested with the territorial jurisdiction to handle the Petition filed herein. For this reason, this Court finds that it lacks the appropriate territorial supervisory Jurisdiction to hear and determine this Petition to the extent that any order it may issue would be rendered void for want of jurisdiction.

11. This Court thus proceeds to order that:-

- a. This Petition dated June 8, 2023 be and is hereby transferred to Milimani High Court for hearing and determination.
- b. Mention on May 19, 2025 before the Presiding Judge of the Constitutional and Petition Division at Milimani for directions.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 6TH DAY OF MAY, 2025.

D. O. CHEPKWONY

JUDGE

In the presence of:

Mr. Mwiti counsel for the Applicant

M/S Ndeda counsel for the 1st Respondent

M/S Wanjiru counsel for the 2nd and 3rd Respondents

Court Assistant - Martin

