



Gichuki & 3 others v Republic (Miscellaneous Criminal Application E125 of 2025) [2025] KEHC 8306 (KLR) (Crim) (10 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8306 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
MISCELLANEOUS CRIMINAL APPLICATION E125 OF 2025**

**MW MUIGAI, J
JUNE 10, 2025**

BETWEEN

**NICHOLAS GICHUKI 1ST APPLICANT
BRIAN ADAGALA 2ND APPLICANT
MARK DENVER KARUBIU 3RD APPLICANT
CHRISTOPHER WAMAE 4TH APPLICANT**

AND

REPUBLIC RESPONDENT

RULING

1. On 6/5/2025, the Applicants, Nicholas Gichuki, Brian Adagala, Mark Denver Karubiu & Christopher Wamae filed Application seeking anticipatory bail pending arrests through this Court’s inherent jurisdiction based on the Supporting Affidavit. The Application was/is made to the Respondents, Law Enforcement Agency.
2. The Court granted orders that each accused person to appear at the Police Station upon being summoned with Respective advocate, investigations to be launched except arresting the suspects before arraignment in court.
3. On 5/5/2025, The Investigation Team DCI filed Notice of Motion before Chief Magistrate’s Court Milimani and sought orders granting investigations including search according to Section 118,119,120 & 121 of Criminal Procedure Code and retrieval of exhibits with regard to Section 23 & 27 of Computer Misuse & Cybercrimes Act No 5 of 2018 and the Court granted orders.



4. On 18/5/2025, the Applicants filed in the instant application; Certificate of Urgency that despite being released on free bond by DCI and honoring Summons when served to attend, they are denied access to information contrary to Article 35 of the Constitution and are deprived of their assets and gadgets and their constitutional rights violated.
5. Annexed is the Originating Notice of Motion seeking protection of the law under Articles 25,27,28,29,47,49 50 & 51 of the Constitution. An Application for Leave to commence proceedings in the nature of Judicial Review based on Rule of law, Fair Administrative Action Act,2015 & Law Reform Act.
6. On 3/6/2025, the Court sought to peruse the Court file. The 4/6/2025 Mr Mutiso submitted to Court that the Application is for leave to file Judicial review seeking to review the Chief Magistrate's Court Orders of 5/5/2025. The application was served to all parties and responses had not been filed yet. The Counsel sought to make oral submissions on the Application.
7. Mr Mwandawiro for ODPP representing the Respondents confirmed receipt of the instant Application that was served and he raised the Preliminary Objection that the instant Application is for leave to file Application for Judicial Review, the prayers sought are in the nature of Judicial Review. In light of the High Court (Organization & Administration) Act, the Application ought to be transferred to the Judicial Review Division.
8. Mr Willis Otieno objected to the P.O.by the Respondents, that the Application was properly before this Court, the High Court is properly constituted and the Court's jurisdiction is based on the Court's supervisory jurisdiction to look into investigations conducted. The Organization of the High Court is conceded; still the Appropriate forum is the Criminal Division of the High Court, because what is at stake are questions of investigations culminating with Court orders from the CM's Court a Court within the High Courts Criminal Division supervisory jurisdiction.
9. The Applicants rights were violated, the Applicants are young and deprived of their source of livelihood, their cameras and gadgets were confiscated by DCI. Justice ought to be administered expeditiously, housekeeping issues should not find their way to the justice of the case. The Application ought to proceed and the Court considers application for leave to file Judicial Review ought to proceed.
10. Mr Maanzo stated that DCI conducted a search and then came to Chief Magistrate's Court to seek Court orders for what was already done. They are in Court so that the Law/Constitution are not broken further.
11. Mr Mutiso reiterated that 2nd Respondent misused power in carrying out investigations, due process and right to privacy have been infringed. Despite Respondents being served, they declined and refused to file response which is already disregard and disrespect to the Court.
12. Mr Mwandawiro for ODPP submitted that the High Court has original jurisdiction in Civil and Criminal matters but this is a Judicial Review Application and given the opportunity will file responses.

Determination.

13. The essence of a preliminary objection was by Law, JA and Sir Charles Newbold P. in *Mukisa Biscuits Manufacturing Co Ltd vs West End Distributors* (1969) EA 696. At page 700, Law, JA stated that:

“ a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation



or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

14. Owners of the Motor Vessel “Lillian S” Vs. Caltex Oil (Kenya) Ltd [1989] KLR Nyarangi J 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 tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.” “Subject to clause (5), the High Court shall have-

Jurisdiction

15.

- 1) Jurisdiction of the Court flows from the Constitution of Kenya. Article 165 (3) (d) of the constitution reads as follows:
 - 3) Subject to clause (5), the High Court shall have—
 - (a) unlimited original jurisdiction in criminal and civil matters;
 - (b) jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;

JUDICIAL REVIEW

- 2) According to Michael Fordham, Judicial Review Handbook, 6th edition, Hart Publishing, 2012, regards judicial review as the rule of law in action and a central control mechanism of Administrative Law (public law) by which the Judiciary discharges the Constitutional Responsibility of protecting against abuses of power by Public Authorities.
16. Section 9(1) of FAAA provides that aggrieved parties may without unreasonable delay approach the High Court or a subordinate court upon which original jurisdiction has been conferred under Article 22(2) of the Constitution; which requires Parliament to enact legislation to give original jurisdiction in appropriate cases to subordinate courts to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Right.
17. Section 10(2) of Fair Administrative Action Act (FAAA) provides;
- The Chief Justice has the discretion to make rules regulating the procedure and practice in matters of judicial review.
- 3) The Fair Administrative Action Act (FAAA)(Koome) Rules 2024 provide for Jurisdiction of Superior Courts vide Section 21as follows;

The High Court, Employment & Labor Relations Court and Environment & Land Act shall have power to hear and determine, at first instance or on appeal, any judicial review application within respective areas of jurisdiction of the Courts based on the subject matter and substance of the application.
 - 4) High Court (Organization & Administration) Act 2015 provides jurisdiction of the High court as



18. Section 5. Jurisdiction of the Court

The Court shall exercise—

- (a) the jurisdiction conferred to it by Article 165(3) and (6) of *the Constitution*; and
- (b) any other jurisdiction, original or appellate, conferred to it by an Act of Parliament.

Section 11. Establishment of Divisions

19.

(1) For purposes of promoting effectiveness and efficiency in the administration of justice and promoting judicial performance, the Chief Justice may, where the workload and the number of judges in a station permit, establish any of the following divisions—

- (a) the Family and Children Division;
- (b) the Commercial Division;
- (c) the Admiralty Division;
- d) the Civil Division;
- (e) the Criminal Division;
- (f) the Constitutional and Human Rights Division;
- (g) the Judicial Review Division; and
- (h) any other division as the Chief Justice may, on the advice of the Principal Judge determine.

20. From the above outline of legislative enactments that point to Judicial review applications, it is apparent, the High Court derives jurisdiction from *the Constitution* and subsidiary legislation to hear and determine Civil and Criminal applications.

21. Whereas the High Court, particularly in Nairobi Kisumu & Mombasa are administratively organized into the above listed specialized Divisions, the Divisions are to enhance efficient case management in specialized areas of Law and the High Court is not devoid of jurisdiction.

22. The other High Court stations by virtue of workload and personnel, the Resident Presiding Judge(s) hears and determines both Criminal and Civil matters.

23. Judicial Review matters ought and are initiated and processed in the Judicial Review Division within the Constitutional Division. However, where as in the instant case the subject matter and substance of the Application is mainly review of Court orders emanating from CM's Court within supervision by Criminal Division of the High Court, then the instant Application is properly filed before this Court.

24. The *Fair Administrative Action Act* 2015 & Fair Administrative Action Rules 2024 introduce a degree of flexibility in case allocation. In the Rules definition of Court includes a Tribunal. Consequently, whereas this 'Court' holds in esteem all Divisions of the High Court with regard to the Application at hand, the substance arise from orders by the CM's Court, the Application challenging the process of investigations in criminal oriented circumstances and these issues are linked to the Criminal justice process, therefore can be heard in the Criminal division of the High Court.



Disposition.

1. The Preliminary Objection is not upheld.
2. The instant application shall be heard and determined in Criminal Division of the High Court in exercise of revision jurisdiction.
3. The Respondents are at liberty to exercise their right to file and serve Responses within requisite period.
4. Due to exigencies of duty and workload, this matter be placed before Court No 2 for directions on 12/6/2025 on hearing and determination.

RULING DELIVERED DATED & SIGNED IN OPEN COURT ON 10/6/2025 IN CRIMINAL DIVISION OF THE HIGH COURT NAIROBI VIRTUALLY/PHYSICALLY

M.W. MUIGAI

JUDGE

