



**Komen & another v Republic (Miscellaneous Criminal Application  
E160 of 2025) [2025] KEHC 10294 (KLR) (Crim) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10294 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
MISCELLANEOUS CRIMINAL APPLICATION E160 OF 2025  
AM MUTETI, J  
JULY 10, 2025**

**BETWEEN**

**SAMMY SILAS KOMEN ..... 1<sup>ST</sup> APPLICANT**

**BRIAN KIPTOO KIPLAGAT ..... 2<sup>ND</sup> APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicants in this matter filed the instant application on the 19<sup>th</sup> June 2025 and obtained interim orders from this court pending the hearing and determination of the Application.
2. The applicants while enjoying the orders granted by this court moved to the Constitutional and Human Rights Division by way of a petition seeking similar orders according to the DPP a fact that the applicants counsel Ms Chepkorir denied in the first instance at the hearing today.
3. The court upon being informed of that fact and in the face of the blatant denial by the Applicants counsel dispatched the court Assistant of this court Mr. Kiptoo to the Constitutional & Human Rights Division who confirmed to the court that there exist a petition by the same Applicants being Petition No. E 397 of 2025.
4. Incidentally, that matter was filed by the applicants seeking similar to the ones they have sought before this court.
5. The applicants who had feigned ignorance of that fact, when confronted by this court with that fact, beat a hasty retreat and admitted that indeed they had such a petition. The denial by the Applicants of an obvious fact was utterly dishonest and smacks of a litigant out of fraudulently securing favourable orders.



6. The advocate for the Applicants told this court that her clients were misled in filing the petition but did not say by whom.
7. The conduct of the Applicants is that of a party bent on forum shopping and it is not clear to this court what it is that they were shopping for in the other court.
8. The court is left to wonder whether they were out to test waters and see whether whether the courts would issue conflicting orders so that they could embark on a smear campaign against the court or what exactly could they have been upto?
9. The conduct of the applicants reminds this court of the words of Lord Bowen in 1885 stated:

“ the state of a man’s mind is as much a fact as the state of his digestion.

It is only the applicants who can tell why they decided to file a parallel proceeding even after this court had granted them an interim order pending the hearing of this application”.
10. The order was granted on 30<sup>th</sup> June 2025 for the deferment of plea until 11<sup>th</sup> July 2025. The order basically stayed the DPP’s decision to prosecute the Applicants pending the hearing of this application.
11. An order of stay is an equitable relief. See *Mwangi v. Gitutu & Another* (Misc. Civil Appeal E008 of 2024) [2024] KEHC 2734 (KLR) (12<sup>th</sup> March 2024) Ruling.
12. It follows therefore an applicant who seeks equity must do equity. The applicants in the eyes of this court are not genuine in their quest for justice.
13. The application to deter plea was not made with a clean heart and clean mind. The conduct of the applicants betrays that of a party who is bent on abuse of court process and forum shopping.
14. This court cannot entertain a litigant who is out to cause confusion in the justice system with the obvious intention of embarrassing the courts.
15. The respondents have urged this court to dismiss this application for in their view, it amounts to an abuse of process of the court. I agree
16. The applicants had the option of withdrawing the petition number E 397 of 2025 yesterday when they appeared before the Hon. Judge in the Constitutional and Human Rights Division. They did not do so leaving the matter pending whilst this one is still alive.
17. To engage two Divisions of the High Court on the same matter is basically to test the system. The courts must promptly shut the door to such litigants.
18. In their notice of motion dated 27<sup>th</sup> June 2025 the applicants sought in prayers 2,3,4,5 and 6 to stay the taking of plea pending the Hearing of their petition.
19. The least they should have done was is to immediately withdrawn the proceeding in the Constitutional and Human Right Divisions when they appeared on 9/7/2025.
20. Having gone to that court after they had obtained orders before this court, clearly the applicants had no faith in this court.
21. The applicant cannot now be heard to say that they intend to pursue this application.
22. Forum shopping is a bad thing and it must be frowned upon by this court.



23. The only way this court can express its displeasure with the applicant conduct is to dismiss this application and allow the applicants to pursue their Petition No. E 397 of 2025.
24. The serpentine que for justice has many litigants waiting to drink from the pure waters of equity. They should not be let to wait any longer as this court engages in the hearing of a matter of a litigant who is all over the courts seeking similar reliefs.
25. If the courts were to keep their doors wide open for any member of the public to be filing multiple applications seeking similar orders before the courts, the courts would be flooded with frivolous litigation, from parties who are bent on experimenting with the different divisions of this court.
26. Any appearance that a litigant is engaged in forum shopping should invite an immediate stop order from the courts.
27. Only then will courts be left to deal with those matters where litigants approach the courts with seriousness clean hand, heart and mind in the spirit of Article 159 (2) (a) and (b) of the Constitution.
28. The applicants in this matter have emerged as mischief makers and persons who are out to abuse the court process.
29. This court is not able to comprehend why they left the petition in this other court still active and took dates knowing too well they had orders in this file.
30. The petition having been filed after the instant application the intention was to clearly pursue justice in the Constitutional and Human Rights Division. That we cannot deny them but they cannot still purport to want to maintain the instant application.
31. As a result, this court declares the instant application a blatant abuse of the legal process and is struck out.
32. The interim orders issued in the matter accordingly stand vacated.
33. Equity detests abuse of process and the applicant needs to know that those that come to courts must do so with clean hands- See Kishore Samrite v State of U.P & Others Petition No. 111 of 2011.
34. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 10<sup>TH</sup> DAY OF JULY 2025.**

**A. M. MUTETI**

**JUDGE**

In the presence of:-

Court Assistant: Kiptoo

Chepkorir for the Applicant

Ms Ogega for the Respondent

Applicant

