



REPUBLIC OF KENYA



KENYA LAW
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**Makobo v Inspector General of Police & 3 others (Petition
E003 of 2025) [2025] KEHC 9471 (KLR) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9471 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
PETITION E003 OF 2025**

FN MUCHEMI, J

JULY 3, 2025

**IN THE MATTER OF ARTICLES 22, 23, 5, 27, 28, 29, 39, 40,
47, 50 AND 165 OF THE CONSTITUTION OF KENYA, 2010**

BETWEEN

ANNE MWIKALI MAKOBO PETITIONER

AND

INSPECTOR GENERAL OF POLICE 1ST RESPONDENT

THE ASSISTANT CHIEF NDITHINI (MSINGA) 2ND RESPONDENT

JINNAH KALOKI 3RD RESPONDENT

OCS CAPITAL HILL POLICE STATION 4TH RESPONDENT

RULING

1. This Notice of Motion dated 28/01/2025 was filed by the Petitioner herein. I have perused the file although the matter is labelled ad a petition. The motion was filed under certificate of urgency and sought for several orders to restrain the respondents from harassing, intimidating, prosecuting, the applicants pending hearing and determination of this petition and application.
2. The matter came before the judge in chambers on 29/01/2025 under certificate of urgency. The court declined to grant any of the orders sought based on provisions of Article 157 of the *Constitution*. However, on consideration that the appellant was entitled to be heard, this court directed the applicant to serve the respondents and that responses be filed within 14 days. However, the court directed the parties to maintain status quo.
3. The applicant served the office of the ODPP Thika on the 4th February 2025 as per the affidavit of service dated 19th day of February 2025. No other affidavit of service was filed. It follows that the 1st,



- 2nd and 3rd respondent were never served with both the petition and the application. The ODPP was discharged from those proceedings on 20/02/25 for the reason that it was not a party to the petition.
4. The petitioner's counsel on 20/03/2025 applied to file an Amended Petition. He was given leave to file it within 3 days. The petition amended on 20th March 2025 was later filed joining the ODPP office as the 5th respondent.
 5. The matter came for mention on 17/06/2025 whereas the petitioner's advocate Mr Swaka, the 3rd respondent's counsel were present. Mr. Kalwa conceded to the amended application. He gave reasons of wanting to save time.
 6. Ms Torosi for the 5th respondent raised the issue jurisdiction in that the cause of action arose at Masiga Machakos County and should not have been filed in Thika High Court. The counsel applied to have the file transferred to Machakos High Court. The station investigating the matter was in Ndathini, Machakos County.
 7. Mr. Kalwa supported the application for transfer to Machakos Court while Ms Kamau for Swaka for the petitioner opposed it arguing that this court has jurisdiction to dispose of the application under Article 165 of the Constitution.
 8. Having heard the three counsels on the application on transfer of this petition, I hereby make a few observations. The petitioner filed this petition after being threatened with criminal charges, an act she labels as a violation of her constitutional rights, thus the basis of this petition. It is not disputed that the so called criminal matter is being investigated by OCS. Ndithini Police station in Masinga County which is within the jurisdiction of Machakos High Court. The petitioner has been appearing before the DCI Nadathini pending either being discharged or being charged with a criminal offence. As such, this matter has nothing to do with Thika High Court region and ought to have been filed at Machakos High Court.
 9. Section 12 of the Civil Procedure Act provides that a matter shall be filed where the subject matter is situated. It is not in dispute that the subject matter herein is a parcel of land situated in Masinga area. Article 165 of the Constitution does not define geographical jurisdiction and it is left to the Civil procedure Act to guide parties in the place of suing.
 10. Section 7 of the Act provides that a suit shall be filed where the defendant resides. None of the respondents resided within Thika. It is the petitioner who resides in Thika and a plaintiff or petitioner ought to comply with Section 7 and Section 12 of the Civil Procedure Act.
 11. The petitioner further argued that Article 22 and 23 of the Constitution do not impose geographical boundaries on where a suit shall be filed. This is correct and other provisions of Civil Law provide for details of how suits shall be filed and those provisions should be respected. The fact that this is a constitutional petition does not allow a petitioner to file their petition in any High Court in Kenya. If this was to be allowed, it would create a recipe for confusion in filing of suits in the country. The control imposed under Section 7 and 12 provides for order in filing of suits.
 12. I am of the considered view that this petition ought to have been filed in Machakos High Court.
 13. This file is hereby forwarded to the Deputy Registrar Machakos High Court for onward transmission to the Presiding judge.
 14. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 3RD DAY OF JULY 2025.



F. MUCHEMI
JUDGE

