



REPUBLIC OF KENYA



**Bisumlak & 20 others v Republic (Miscellaneous Criminal Application
E006 of 2024) [2024] KEHC 6011 (KLR) (9 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 6011 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MARSABIT
MISCELLANEOUS CRIMINAL APPLICATION E006 OF 2024**

JN NJAGI, J

APRIL 9, 2024

**IN THE MATTER OF THE CONSTITUTION OF KENYA AND IN THE MATTER OF THE
REFUGEES ACT NO.10 OF 2021 AND IN THE MATTER OF CRIMINAL CASE NO. MCCR/
E005 OF 2024 AT THE CHIEF MAGISTRATE'S COURT AT MARSABIT IN THE MATTER
OF AN APPLICATION BY MECHAWIK BISUMLAK AND SAMRAWIT TEKLOM & A38
OTHERS FOR REVISION OF THE COURT'S JUDGEMENT DATED 31ST JANUARY 2024**

BETWEEN

MECHAWIK BISUMLAK 1ST APPLICANT
SAMRAWIT TEKLOM MAZROWIT TEKLOM 2ND APPLICANT
ESSY ABRAHAM HANA HABTOM 3RD APPLICANT
ELAS TEKLAM MAJOR TEKLAM 4TH APPLICANT
NAOM KUDS FINAM SOLOMON 5TH APPLICANT
ASTER HEBTEGRAM HANA GABREYENS 6TH APPLICANT
LIYA MENGSLAB ABREHET TREGAY 7TH APPLICANT
MANA SABURAWIT SEMERETEAH TECHELCLEMADIN 8TH APPLICANT
GIRMAY GIBRAB YONAS BITSUA MLALC 9TH APPLICANT
ESEYAS DAWIT EVAN KIBRON 10TH APPLICANT
BINIAN ISSIAS MARDOKEY MAYER 11TH APPLICANT
AMNET TEKEL YAFET AFEWERA 12TH APPLICANT
DANIEL TEWELDEDEMEDIN ATON GEDU 13TH APPLICANT
YORDANOS KESETE MUSSIE GEBREBHER 14TH APPLICANT
ABEL GEBRENIWET SIEM HYLE 15TH APPLICANT



DESATE KHASAG REBEL TEKESTE 16TH APPLICANT
MIHKYAH MUSSIE ROBEL KIJDANE 17TH APPLICANT
FILIMON WELE YEMANE KESETE 18TH APPLICANT
MERON ARAYA NATU RASI 19TH APPLICANT
AMUNUEL OKBUZYI ATEWESKI ASMANAW 20TH APPLICANT
BEREKET WEDEGHEBRIEL 21ST APPLICANT

AND
REPUBLIC **RESPONDENT**

RULING

1. The Applicants herein filed an application dated 1st February 2024 seeking for orders that:
 1. Spent
 2. That pending the hearing and determination this application, the Honourable Court do issue a stay of the repatriation Orders issued by the learned trial Magistrate Hon. Christine Wekesa SPM in Marsabit Law Court Criminal Case E005/2024 on 31st January 2024.
 3. That the Honourable Court do exercise its discretion to revise and revoke the orders made by the learned trial magistrate Hon. Christine Wekesa SPM in Marsabit Law Courts criminal case E005/2024 on 31st January 2024.
 4. That the Honourable Court be pleased to release the Applicants to the custody of the Department of Refugee Services for registration as asylum seekers.
2. The matter was brought to this court for purposes of revision of the lower court's order against repatriation of the Applicants. As can be seen from the above, the applicants were seeking for other orders apart from stopping the repatriation. In prayer No.3 of the Notice of Motion, the applicants were seeking for orders that they be released to the custody of Department of Refugee Services for registration as asylum seekers.
3. When the matter came up for hearing before this court, it was agreed by consent of counsel representing the Applicants and the Prosecution Counsel that the court makes an order for the Applicants to be assessed by the Department of Refugee Services (DRS) on their suitability of being granted asylum in Kenya. The order was granted.
4. The DRS filed a report with this court in which it stated that they had assessed 29 of the applicants and found 2 of them, Zeremariam Desale Kahsay and Tekle Iseyas Dawit, to be onward movers in that they had been granted asylum in Sudan as their first country of asylum before their entry into Kenya. That owing to the current situation in Sudan the two secondary movers will be granted asylum and protection in Kenya.
5. The report, signed by John Burugu, Commissioner for Refugees Affairs, states that the remaining 27 accused persons have not established a claim for asylum pursuant to the *Refugees Act* No. 10 of 2021. That an order "do issue repatriating them to their country of origin".



6. In view of the above, it is the view of this court that the orders sought for revision of the lower court's orders against repatriation have been overtaken by events as the applicants have been assessed by the DRS and some of them were found deserving of asylum and others were not. If those found not deserving of asylum are dissatisfied with the decision of the Commissioner of Refugees, their recourse is to appeal against the decision of the Commissioner in accordance with Section 14(1) of Refugees Act, 2021 which provides that:

A person aggrieved by the decision of the Commissioner under this Act may, within thirty days of receiving the decision, appeal in person or through his or her representative or through any other interested party to the Appeals Committee against the decision

7. The application for revision having been overtaken by events, the interim orders against repatriation issued by this court on 2nd February 2024 are set aside. The application dated 1st February 2024 is in the premises dismissed.

DELIVERED, DATED AND SIGNED AT MARSABIT THIS 9TH APRIL 2024

J. N. NJAGI

JUDGE

In the presence of:

Miss Wairimu HB for Miss Muraguri for Applicants

Mr. Otieno for Respondent

Court Assistant – Jarso

14 days R/A.

