



REPUBLIC OF KENYA



KENYA LAW
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**Mukofu v Director of Public Prosecutions & 3 others (Constitutional
Petition 7 of 2021) [2023] KEHC 2689 (KLR) (24 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2689 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CONSTITUTIONAL PETITION 7 OF 2021**

WM MUSYOKA, J

MARCH 24, 2023

BETWEEN

GAITANO LISUTSA MUKOFU PETITIONER

AND

DIRECTOR OF PUBLIC PROSECUTIONS 1ST RESPONDENT

DIRECTOR OF CRIMINAL PROSECUTIONS 2ND RESPONDENT

CLEMENT AKHANYALA KHAYUMBI 3RD RESPONDENT

ATTORNEY-GENERAL 4TH RESPONDENT

RULING

1. The application for determination is dated September 15, 2021. It seeks 1 principal prayer: stay and suspension of criminal proceedings and investigations against the petitioner, pending hearing and determination of the petition herein.
2. The background is set out in the application and the petition, and the supporting documents. It revolves around Isukha/Mukhonje/1751, which the petitioner says he bought from the 3rd respondent, and caused to be transferred to his name. The 3rd respondent contends that the petitioner got the property transferred to his name through forgery and fraud, for he never sold the property to him, and alleges that he lost some documents, which suggests that the petitioner then used them to have the property transferred to his name. It is on that basis that the 1st and 2nd respondents are involved in the matter.
3. I note that there is a burial dispute that ended up in court, where the petitioner was seeking to restrain the 3rd respondent from interring the remains of his kin on the subject land. It would appear that the interment element of the dispute was resolved by consent, but the status of the property is still out there.



4. Am not called upon, at his stage, to determine the petition on its merits, but to preserve the status quo pending determination of the petition. The matter lies at the intersection between a civil dispute on ownership of property between 2 contending parties, and criminal proceedings where 1 of them alleges that the other acquired title to the property by fraud. In such cases, there is always the possibility that the criminal process is being used to advance ulterior purposes. The petition seeks to have the court unravel that. That cannot, however, be determined until the matter is heard on its merits.
5. Am persuaded that there is merit in the application dated September 15, 2021, and I consequently allow it, in terms of prayer 3 of the application. The matter shall thereafter be fixed for mention for directions on disposal of the petition.

DELIVERED DATED AND SIGNED IN OPEN COURT AT KAKAKMEGA THIS 24th DAY OF March 2023

WM MUSYOKA

JUDGE

Mr Erick Zalo, Court Assistant.

Mr Mbaka, instructed by Omwando Mbaka & Company, Advocates for the petitioner.

Mr Juma Collins, instructed by the Attorney-General, for the 2nd and 4th respondent.

Mr Khayumbi, instructed by JI Khayumbi & Company, Advocates for the 3rd respondent.

