



**Malde & 2 others v Republic (Miscellaneous Criminal Application
571 of 2010) [2025] KEHC 13521 (KLR) (Crim) (29 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13521 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
MISCELLANEOUS CRIMINAL APPLICATION 571 OF 2010
AM MUTETI, J
SEPTEMBER 29, 2025**

BETWEEN

**MILAN JAYENDRA MALDE 1ST APPLICANT
JAYENDRA KHIMJI MALDE 2ND APPLICANT
RANJAN JAYENDRA MALDE 3RD APPLICANT**

AND

REPUBLIC RESPONDENT

RULING

1. The applicant by way of Notice of Motion dated 16th September 2025 moved this court to vacate an order issued on 1st November 2010 by the learned Honourable Justice Warsame (as he then was).
2. The order was restraining the applicant from travelling out of the jurisdiction of this country without the express permission of the court.
3. The applicant at the time the order was issued, was charged with various offences in Nairobi Criminal Cases No. 1564 of 2010, Criminal Case No. 1545 of 2010 and Criminal Case No. 1568 of 2010.
4. The applicant has moved this court under the provisions of Articles 39, 47 (I) and 165 (3) (a) of the Constitution as read together with Section 3(1) of the Judicature Act.
5. The applicant has also placed reliance on Section 5 and 25 of the High Court (Organization and Administration Act.)
6. The crux of the application is that the criminal cases which formed the substratum of the order have since been determined thus the restriction on travel against the applicant is unnecessary and uncalled for.



7. The applicant has stated in his supporting affidavit sworn on 16th September 2025 that he has severally applied through letters to the court to have the restriction order lifted in vain.
8. According to the applicant, he needs to travel out of the country for treatment but he is unable to do so because of the restriction order.
9. The state did into oppose the application. Ms Ogega prosecution counsel submitted that the criminal matters having been concluded, there is no reason for maintaining the order.
10. The Freedom of movement and residence is guaranteed under Article 39 of the Constitution. It is not a right granted by the state to individuals but is an inherent human right without which individuals may not be able to fully enjoy their other constitutionally guaranteed rights.
11. The applicant has asserted his right under Article 43 (1) (a) and 43 (2) to access the medical care and to seek emergency treatment outside Kenya.
12. It is this right that he says that he is unable to enjoy because of the restriction order.
13. The court appreciates that under Article 39 (2) of the Constitution every person has the right to leave Kenya.
14. The right cannot be limited otherwise than as contemplated under Article 24 of the Constitution.
15. The limitation must be fair and justifiable in an open and democratic society.
16. The restriction placed against his travel during the pendency of the criminal cases cited was constitutionally permissible but once the cases were concluded any further restriction on his freedom of movement was and is constitutionally untenable.
17. The restriction order having been granted to ensure that he remained within the jurisdiction of the country pending trial, lapsed once the trial in all the cases against him ended.
18. Accordingly, this court finds that there is no basis to continue restricting the applicant's movement since he is a free man.
19. The restriction order dated 1st November 2010 by the Hon. Justice Warsame (as he then was) is hereby lifted and the applicant Milan Jayendra Malde is at liberty to travel out of the country of Kenya unless there are other orders issued by other courts restricting his movement.
20. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 29TH DAY OF SEPTEMBER 2025.

A. M. MUTETI

JUDGE

In the presence of:

Court Assistant: Habiba

Nyaribo for the Applicant

Mr. Opundo for the state

