



**Ouko v Independent Policing Oversight Authority & another (Miscellaneous Civil Application E103 of 2025) [2025] KEHC 13275 (KLR) (Civ) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13275 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**  
**CIVIL**  
**MISCELLANEOUS CIVIL APPLICATION E103 OF 2025**  
**NW SIFUNA, J**  
**SEPTEMBER 25, 2025**

**BETWEEN**

**DIXON OMONDI OUKO ..... APPLICANT**

**AND**

**INDEPENDENT POLICING OVERSIGHT AUTHORITY ..... 1<sup>ST</sup> RESPONDENT**

**JUDITH SERETI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Plaintiff is a Kenyan national. The 1<sup>st</sup> Respondent the Independent Policing Oversight Authority (popularly known by the acronym IPOA) is a state agency established by an Act of Parliament (The *Independent Policing Oversight Authority Act*, Act No. 35 of 2011) for the purpose of providing for civilian oversight of the work of the police. The 2<sup>nd</sup> Respondent is a staffer at the Authority.
2. Sometime in the months of November 2022 and May 2023, police officers raided the Applicant's premises and confiscated his computers. The Applicant alleges that apart from confiscating computers, those police officers also attempted to extort him. Aggrieved by that incident, he lodged a complaint to IPOA as the police overseeing authority. The reference number of the Complaint is IPOA/CMU/1474/2023.
3. Following which complaint, the police officers that conducted the said raid were identified and recorded statements at the Authority's office. The Applicant who was the complainant in that complaint requested the Authority to furnish him with those statements.
4. The 2<sup>nd</sup> Respondent on behalf of the Authority, informed the Applicant that the Authority could not supply those statements, documents and records. Its argument being that those statements, documents



and records were confidential and sensitive. As that they contained the officers' personal details and contacts. Aggrieved by that response, he filed this Application.

5. The Application which is dated 1<sup>st</sup> February 2025, cited Articles 35, 47 and 48 of the Kenya Constitution; as well as Sections 7(1) (c), 24 and 29 (1) (e) of the Independent Policing Oversight Authority Act. The same which is supported by a Supporting Affidavit of the Applicant, has sought the following orders:

1. An order compelling the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to provide the Applicant with copies of statements made by police officers in relation to the complaints lodged by the Applicant under Reference Number IPOA/CMU/1474/2023.
2. An order directing the Respondents to provide any reports, records, or documentation related to the Applicant's complaints concerning unlawful raids conducted by police officers on the Applicant's premises in November 2022 and May 2023.
3. Any other orders it deems fit to safeguard the Applicant's rights under the Constitution and the law.
4. Costs of the Application.

6. The Application has stated that it is based on the following grounds:

1. That the Applicant's premises were unlawfully raided by police officers in November 2022 and May 2023 without warrants.
2. That during these raids, computers were confiscated, and extortion attempts were made against the Applicant.
3. That the Applicant duly reported these incidents to the Independent Policing Oversight Authority (IPOA) under Reference Number IPOA/CMU/1474/2023.
4. That despite repeated requests, IPOA and its agent, the 2<sup>nd</sup> Respondent, have failed and/or refused to furnish the Applicant with statements and records made by the Police Officers involved in the unlawful raids.
5. That Section 7(1)(c) of the IPOA Act mandates IPOA to provide victims of unlawful police conduct with relevant information to enable them to institute civil proceedings for compensation.
6. That Section 29(1)(e) of the IPOA Act further obligates IPOA to assist complainants with any action contemplated under Section 7- hence reinforcing its duty to facilitate access to the requested information.
7. That the Respondents' refusal to provide the requested records amounts to violation of the Applicant's right to access information as guaranteed under Article 35 of the Constitution and undermines his right to seek justice and redress.
8. That the information sought is crucial for the Applicant to effectively pursue civil proceedings for compensation in respect of injuries, damages and losses sustained due to the unlawful actions of the Police Officers.
9. That It is in the interest of justice that this Court compels the Respondents to disclose the requested information to uphold the Applicant's constitutional and statutory rights.



10. That the Applicant relies on his annexed Supporting Affidavit, and such further grounds as may be adduced at the hearing.
7. The Respondent opposed the Application through a Replying Affidavit and a Preliminary Objection. The Objection was that this Court lacks jurisdiction to determine this matter, as the Applicant had on the same raids, filed a Constitutional Petition in the High Court at Kiambu- namely Kiambu High Court Constitutional Petition No. E028 Of 2024 *Omondi Dick Aoko v. The Inspector General Of Police & 8 Others*. Which is still pending.
8. Both the Application and the Preliminary Objection were argued orally. This Court ordered the objection to be disposed alongside the Application; for reason that the objection was not *stricto sensu* on jurisdiction, but on the competence of the Application. As it is founded on the rule against *sub judice*.

### Analysis and Determination

9. On the Preliminary Objection, I hold that a Preliminary Objection cannot be founded on the *sub judice* rule. This is for two reasons. First, when a matter is *sub judice* another one, the consequence is that the court should do is stay the proceedings- that is a stay of proceedings and not a dismissal. Secondly, the plea of *sub judice* cannot to be raised by way of a preliminary objection.
10. The legal threshold for a Preliminary Objection, was restated by the defunct Court of Appeal for East Africa in the celebrated case of *Mukisa Biscuit Manufacturing Co. Ltd v. West End Distributors Ltd* [1969] EA 676-701.
11. Where it was stated that a Preliminary Objection should be in the nature of what used to be a demurrer and should be raising a pure point of law, one that can dispose of the suit in limine. That it ought not be raised, where the court needs to enquire into facts. On a plea of *sub judice*, one needs to examine facts and make a finding. Which is a finding of fact, done by comparing the pleadings in both suits. For that reason, the Respondents' Preliminary Objection being one requiring fact-finding is an improper Preliminary Objection. It is therefore hereby dismissed. I will now turn to the merits of the Application.
12. This Application arises from two incidents where police officers raided the Applicant's premises without warrants of search, seized his computers. He has further alleged that they also attempted to extort money from him. Further that following those raids, he lodged a complaint with the 1<sup>st</sup> Respondent the Independent Policing Oversight Authority (IPOA).
13. But that apart from recording statements, the Authority has not taken any action against those police officers; and has also refused to supply him with those statements and the other documents as are relevant to his complaint; and which he says are in the Authority's custody. Aggrieved by that inaction, he is in this Application, seeking orders compelling the Respondents to supply him with those statements, documents and records. This he has stated is pursuant not only to his right to information under Article 35 of the Constitution, but also the Authority's duty under Sections 7 (1) (c) and 29 (1) (e) of the IPOA Act.
14. Under Section 7 (1) (c), the Authority has where appropriate to provide relevant information to enable a victim of unlawful police conduct, to institute and conduct civil proceedings for compensation in respect of injuries, damages and loss of income. Under Section 29 (1) (e), the Authority has a duty to assist a complainant or any other victim with action contemplated under Section 7 (1) (i)- which is the requisition of reports, records, documents and any information from any source.



15. The Application also cited Section 24 of the Act. This section provides for the manner of lodging complaints with the Authority, as well as the manner of conducting investigations.
16. I upon considering the facts that the parties have placed before me, as well as the applicable law, I hold that the statements recorded by those police officers, as well as the reports, records and documents concerning the subject raids, is such information. Hence the Applicant is by dint of those legal provisions and Article 35 of the Constitution, entitled to the same.
17. The Respondents have in their opposition to this Application, vehemently objected the Applicant's plea before this Court. Principally arguing that the said statements contain the private details of those police officers as well as confidential information safeguarded by Section 6 (1) (d) of the Access to Information Act (Act No. 107 of 2016) and Section 24 (15) of the Independent Policing Oversight Act which, in their interpretation, categorizes the statements as confidential. The Applicant for his part maintains that the Respondent has no such protection and that those documents and information enjoy no such protection or privilege.
18. In determining this Application, I have considered the Application, (and its Supporting Affidavit), the Respondent's response, the parties' rival arguments at the oral hearing, their filed written submissions; as well as the relevant law and legal provisions including the ones cited by them.
19. IPOA is a public entity and its staff and commissioners are public servants. By this fact, both the Authority and its staff, are expected to embrace the tenets of transparency and accountability enshrined in Article 10 of the Kenya Constitution 2010. Gone are the days when the operations and actions of Government were shrouded in secrecy and mysticism. After the enactment of the Kenya Constitution 2010, so little in Government affairs can be categorized as secret and beyond the reach of the citizenry. It is litigation such as this that will help ring-fence the Constitution and promote the gains so far made under it.
20. The Applicant's plea in this Application is in line the IPOA Act, as well as Articles 10 and 35 of the Constitution. The latter is on access to information. There is the right of access to information, especially by those to whom that information relates or whose affairs the information affects. Such as the Applicant in this instant case. No where in their response and submissions have the Respondents suggested that the information the Applicant is seeking is harmful to him or public security.
21. I hold that he is entitled to information relating to the two raids that police officers conducted at his premises and the attendant seizure of computers. He is also entitled to the statements that those police officers recorded regarding his complaint; and regarding those raids and the manner in which they were conducted. Holding otherwise will render the Constitution a paper tiger. A Constitution is a solemn document that embodies a people's aspirations including the manner in which they want to be governed. It is neither a story book, school reader, nor fiction.
22. The reasons that the 1<sup>st</sup> Respondent has proffered as to why it should not provide the Applicant with those statements and documents, are mere excuses calculated for scapegoating. to enable it circumvent the Applicant's constitutional right to access information; and to enable it abdicate its public duty under the Constitution and its constitutive legislation.



23. The Authority has for instance attempted to hide behind Section 24 (15) of the IPOA Act, which states as follows:

“Notwithstanding any other written law, any document or statement drafted or made or taken during an investigation shall remain confidential until the Authority in writing determines otherwise.”

24. The Authority is relying on as the basis for its confidentiality plea, reason for its refusal to furnish the Applicant with the requested information, records and documents. On this I take the position that this provision cannot override the clear constitutional imperative created by Article 35 of the Constitution. In any case the Constitution is the supreme law, and which does not fall under the category “any other written law” referred to in Section 24 (15) of the IPOA Act. It is clear the Authority is trying to clutch on anything and any law provision in sight, to avoid supplying the documents. This is mischief.

25. This Court will not be complicit in such an enterprise or scheme; that is clearly intended to defeat a constitutional right and abrogate a constitutional duty. That is impunity. This Court has a duty to at all times uphold the letter and spirit of the Constitution, as well as to defend and protect it. Under the Constitution of Kenya 2010, no entity and no person is above the law. It is a Constitution that clearly abhors impunity.

#### **Final Orders**

26. In the end this Court finds this Application to be meritorious, and hereby allows it. In terms that the 1<sup>st</sup> Respondent the Independent Policing Oversight Authority, is hereby ordered to within 14 (Fourteen) days from the date of this ruling, supply to the Applicant, copies of all the statements it recorded from police officers regarding the complaint he lodged on the two raids that the police conducted at his premises in November 2022 and May 2023, respectively. To wit, complaint No. IPOA/CMU/1474/2023.

27. This Ruling shall also be served on the Honourable Attorney General, and on the Commission on Administrative Justice (Office of the Ombudsman).

28. The Applicant shall have the costs of this Application.

**DATED AND DELIVERED AT NAIROBI ON THIS 25<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**PROF (DR) NIXON SIFUNA**

**JUDGE**

