



REPUBLIC OF KENYA



KENYA LAW
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**Chepkwony & another v Republic (Miscellaneous Criminal Application
E083 of 2025) [2025] KEHC 15318 (KLR) (29 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15318 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS CRIMINAL APPLICATION E083 OF 2025
HI ONG'UDI, J
OCTOBER 29, 2025**

BETWEEN

WESLEY CHEPKWONY 1ST APPLICANT

JOHN KIRUI KIPKEORI 2ND APPLICANT

AND

REPUBLIC RESPONDENT

*(Orders by Hon K. Mugo Resident Magistrate on 17th April,
2025 in Molo Chief Magistrate Criminal Case No. E2095 of 2024)*

RULING

1. The applicants vide their notice of motion dated 30th April, 2025 seek the following orders:
 - i. &
 - ii. Spent
 - iii. That the honourable court pleased to review and set aside the ruling of 17th February 2025 delivered by the Chief Magistrate's court at Molo in criminal case No. E2095 of 2025.
 - iv. That the honourable court pleased to review and set aside the proceedings of 17th April, 2025 in the Chief Magistrate's court at Molo in criminal case No. E2095 of 2025
 - v. Spent
2. The application is premised on the several grounds on its face and the authorised supporting affidavit sworn by the 1st applicant on 22nd May, 2025. The applicants have raised three (3) main issues which are as follows:
 - i. Duplicity of the charge sheet



- ii. Ruling dated 17th April, 2025
- iii. Nullity of the proceedings conducted by the trial court on 17th April, 2025.
3. The Application was opposed by the respondent who filed a replying affidavit sworn by the principal prosecution counsel M/s Emma Okok.
4. The application was canvassed through written submissions.

Applicant's submissions

5. The same were filed by Bore, Malanga and Co. advocates and are dated 22nd August, 2025. Counsel submitted on the 3 issues. On duplicity of the charge he referred to the element of destruction of hay worth Ksh 1,050,000/= in both counts. In support he cited the case of Hassan Jillo Bwanameka & another V Republic [2018] eKLR where the court stated:

“The rule against duplicity provides that the prosecution must not allege the commission of two or more offences in a single charge... as a matter of fairness, a person charged is entitled to know the crime alleged so as to prepare an appropriate defence. ”

Also see: Wabwire V Republic (Criminal Appeal E032 of 2023) [2024] KEHC 1989 (KLR),

6. On violation of the right to fair trial counsel argued that the trial court's decision to proceed with the hearing in the absence of the defence counsel on a date fixed for mention deprived the applicants their right to adequate preparation and Legal representation. See David Njoroge Macharia V Republic [2011] eKLR.
7. Counsel finally submitted that this court has supervisory jurisdiction to call for and examine the record of subordinate courts to satisfy itself of the correctness, legality or propriety of proceedings. Relying on section 362 of the Criminal Procedure Code and Article 165 (6) and (7) of *the Constitution* he argued that this was an appropriate case for this court to deal to prevent a miscarriage of justice.

Respondent's submissions

8. These are dated 22nd September, 2025 having been filed by the principal prosecution counsel M/s Emma Okok. It is her submission that the court delivered a ruling on 17th April, 2025 in respect of the issue of the duplicity of the charge sheet. Further that the applicants had not demonstrated to this court any valid reasons for setting aside or reviewing of the said ruling and order issued on 17th April, 2025. Its her argument that if the applicants are aggrieved by the ruling the proper thing to do would be lodge an appeal on the same.
9. Reference was made to the case of Director of Public Prosecution V Joseph Murimi Mugweru [2020] eKLR where the court observed as follows:

“The purpose of the revisionary powers of the High Court is to correct manifest irregularities or illegalities and give appropriate directions. The court is also empowered to determine the regularity of any proceedings of any such Subordinate Court. - Criminal Revision No. 4 of 2019 at Machakos — Joseph Nduri Mbuvi —v- R (2019) eKLR. ”

See also:

- i. Republic v John Wambua Munyao & 3 others [2018] eKLR and



- ii. Republic V Samuel Gathuo Kamau [2016] eKLR

On this issue counsel reiterated the need for an appeal of the said ruling.

10. However, counsel conceded that the proceedings conducted on 17th April, 2025 were unprocedurally conducted, on a mention date and in the absence of counsel for the defence. She thus asked the court to set aside the said proceedings.

Analysis and determination

11. I have carefully considered the record and submissions by both counsel. This matter is before this court by virtue of Article 165(6) and (7) of *the Constitution* which provide as follows:

6. The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
7. For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.

Section 362 of the Criminal Procedure Code further provides:

Power of High Court to call for records

The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.

12. Upon receipt of the notice of motion herein on 23rd May, 2025 this court called for Molo Chief Magistrate's Court Criminal Case No. E2095 of 2025. The said file with typed proceedings and a copy of the ruling delivered on 17th April, 2025 were availed. The same have been examined by this court and below are the findings:

- i. On 16th April, 2025 when the matter came up for hearing there was one witness present. The case did not proceed since the applicants' counsel raised the issue of the defect in the charge sheet. After submissions by both the defence and prosecution the court recorded thus:

“Directions will be given tomorrow – 17/4/2025. Andrew Mogoma will get Ksh 500/= ground transport plus today's subsistence”.

- ii. There was no mention of a ruling or hearing of the case. Therefore, for the trial court to have come up with a ruling and hearing is not clear
- iii. Secondly, 17th April, 2025 not having been a hearing day as per the record the trial court could not have turned it into a hearing day without the consent of the defence.
- iv. Thirdly, an accused person has a right to legal representation. Article 50(2) (g) of our Constitution provides:

(2) Every accused person has the right to a fair trial, which includes the right—

- (g) to choose, and be represented by, an advocate, and to be informed of this right promptly;



13. The applicants have an advocate of their own choice on record. This advocate was in court on 16th April, 2025 and heard the trial court's pronouncement on what was coming up on 17th April, 2025. He was never informed of the sudden change. Counsel for the respondent has wisely conceded that the proceedings of 17th April, 2025 were unprocedural. My finding is that the said proceedings are a nullity and are hereby set aside.
14. The next issue is on the charge sheet. It will be useful for me to set out the charges: The applicants were charged with two counts:

Count I

Forcible entry contrary to section 90 of the penal code. The particulars were that the applicants on the 29th day of October, 2024 at Kapsita location in Molo sub-county within Nakuru county with others not before court in order to take possession thereof, entered on the parcel land No. Nakuru/Kapsita/2385, measuring approximately 20 acres the property of Andrew Magoma in a violent manner by forcefully cultivating and destroyed pasture (hay grass) valued at Kshs 1,050,000/= by spraying with herbicide chemicals.

Count II

Setting fire to cultivated crop produce contrary to section 334 (a) of the penal code. The particulars being that the applicants on the 29th day of October, 2024 at Kapsita location in Molo sub-county within Nakuru county with others not before court wilfully and unlawfully set fire to crop of cultivated produced namely pasture (hay grass) valued at Kshs 1,050,000/= the property of Andrew magoma.

15. The respondent has opposed the submissions in respect of the alleged defective charge arguing that since the ruling was delivered on the same, the only way to challenge it is through an Appeal.
16. A perusal of the 1st count reveals that the applicants and others allegedly entered onto the complainant's land violently in order to take possession. Secondly, they destroyed the hay grass valued at Ksh 1,050,000/= by spraying it with herbicide chemicals. The 2nd count talks of the same hay grass valued at Kshs 1,050,000/= being set on fire by the applicants and others.
17. My finding on this is that the two alleged actions are covered in the 1st count while the 2nd alleged action is again covered in the 2nd count. So, will the applicants be answering the charge of spraying chemicals and or setting on fire on the hay grass each valued at Ksh 1,050,000/= ? The law on framing of charges requires clarity in the charge sheet as stated in section 134 of the Criminal Procedure Code as follows:

“Every charge or information shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged”.

18. Is this an issue which should go on Appeal? My answer is in the negative. The reason being that the defect in the charge sheet here is on the face of the document. Any person keenly reading this charge sheet will see that. This court has the mandate under section 362 of the Criminal Procedure Code to address such an issue where the said provision refers to the “correctness, legality or propriety of any finding, sentence or order recorded or passed”. In my view the charge sheet herein is defective for being a duplicity. It has put the applicants in a difficult situation to understand what offence/offences they are facing.



19. In exercise of this court revision powers I hereby direct as follows:

- i. The charge sheet is fatally defective for duplicity.
- ii. The prosecution is granted 14 days within which to prepare a properly framed charge sheet for registration in the Molo Chief Magistrate's Court.
- iii. The proceedings including the ruling of 17th April, 2025 are hereby set aside for being unprocedural
- iv. This file to be re-allocated to any Magistrate at CM's Court Molo besides Hon H. Mugo – Resident Magistrate.
- v. The applicants and their advocate to appear before Molo Chief Magistrate's Court for plea taking on 19th November, 2025 at 9.00am

Orders accordingly.

DELIVERED VIRTUALLY, DATED AND SIGNED THIS 29TH DAY OF OCTOBER, 2025 IN OPEN COURT AT NAKURU.

H. I. ONG'UDI

JUDGE

