



**Ngure v Director of Public Prosecutions & another (Petition
E008 of 2022) [2025] KEHC 15697 (KLR) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15697 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
PETITION E008 OF 2022
EM MURIITHI, J
OCTOBER 30, 2025**

BETWEEN

JULIUS GICHOBI NGURE APPLICANT

AND

DIRECTOR OF PUBLIC PROSECUTIONS 1ST RESPONDENT

INSPECTOR GENERAL OF THE NATIONAL POLICE

SERVICE 2ND RESPONDENT

RULING

1. The applicant filed a Notice of Motion dated 19th February, 2025 seeking the following orders:
 1. Spent.
 2. That the honourable court be pleased to issue orders for reinstatement of the interim orders issued on 25th January, 2023 staying the proceedings in Kerugoya Criminal Case Number E570 of 2021 pending the hearing and determination of the hearing and determination of the petition.
 3. Spent.
 4. That the honourable court be pleased to review and set aside the orders issued on 29th March 2023 directing the Petitioner/Applicant to be charged with the offence of perjury.
 5. That the costs of this application be provided for.
2. The application is based on the grounds set out in the application and the supporting affidavit of the applicant. The Petitioner/Applicant's case is that he filed a constitutional petition challenging the criminal proceedings in Kerugoya Criminal Case Number E570 of 2021 which matter is pending in court and had been fixed for mention on 24 May 2023. He had sought for orders for stay of



the proceedings in Kerugoya Criminal Case Number E570 of 2021 through the Notice of Motion application dated 9th December 2022 which stay orders were issued on 25th January 2023 for 30 days. On 1st March, 2023, the court further extended the stay orders for a further 30 days until 29th March 2023.

3. Further, the applicant avers that on 29th March 2023, the court gave orders that the Petitioner/Applicant had perjured himself by stating in his pleadings that he was seeking for the matter to be heard on an urgent basis since he was taking care of his elderly mother who had since passed on which was an inadvertent error made during the drafting of his pleadings which the Petitioner/Applicant did not intend to make. When the matter come up for hearing on 29th March, 2023, the interim stay orders were not extended since the court gave orders that he be committed to remand for perjury and therefore I did not have the opportunity to request for the extension of the interim stay orders.
4. The applicant urges that it is in the interest of justice that the interim orders issued on 25th January 2023 staying the Kerugoya Criminal Case Number E570 of 2021 be reinstated. It is also in the interest of justice that the criminal proceedings in Kerugoya Criminal Case Number E229 of 2023 be stayed pending the hearing and determination of the petition since the charges emanated from this petition which is still pending before court.

Replying Affidavit

5. The respondent on 17th June, 2025 deposed to a Replying Affidavit and reiterated the averments in the applicant's supporting affidavit.
6. The 1st respondent avers that the applicant/petitioner moved this Court on 25th and 28th of November 2022 seeking inter alia an order to quash the proceedings in Kerugoya Criminal Case No E570 of 2021 with averments that the same were preventing him to take care of his sickly mother {Janet Wangige Nguni}. There was evidence that the said {Janet Wangige Nguni} was mentally impaired as certified by a doctor Mburu on his medical report dated 28th December, 2020. The same was certified urgent and the trial Judge directed the responses to be filed of which the same was complied with.
7. Further, the respondent avers that this Court rendered Itsself after oral submissions by the respondents who were able to demonstrate that the averments by the Petitioner /Applicant were not true as applicant's mother was deceased. The Applicant had informed the Court that he had filed a Petition number E001 of 2021 which was pending where he was seeking to be guardian to his mother {Janet Wangige Nguni}. The information of his mother (Janet Wangige Nguni) being deceased had not been disclosed by the applicant/petitioner to the Court.
8. Moreover, the respondent avers that the Court being satisfied that the applicant /Petitioner had lied under oath Ordered that he be charged accordingly for perjury. the contents and prayers in Petition No E001 of 2022 and in Criminal Case number E570 of 2021 as pared before have not changed.
9. Lastly, this Court having rendered itself exhaustively should declare itself functus officio and order the Applicant/Petitioner to face charges of perjury as held in the proceedings of 29th March, 2023.



Petitioner/applicant submissions

Whether orders for stay of proceedings issued on 25th January, 2023 in Kerugoya Criminal Case Number E570 of 2021 should be reinstated

10. It is the Petitioner/Applicant's submission that the charges in Kerugoya Criminal Case Number E570 of 2021 for creating disturbance was instituted against him on 15th July, 2021 when his mother was still alive and he was the one taking care of her and that the proceedings prevented him for taking care of her.
11. Further, he submits that when the matter came up for hearing on 29th March 2023, the interim stay orders were not extended since the court gave orders that he be committed to remand for perjury and therefore he did not get an opportunity to request for the extension of interim stay orders.

Setting aside the orders for perjury charge

12. It is the Petitioner/Applicant's submission the on 29th March, 2023, the court gave orders that he be charged with perjury and he was subsequently charged with perjury contrary to section 108 (1) as read with section 110 of the Penal Code in Kerugoya Criminal Case Number E229 of 2023 which is also pending before court.
13. In the decided case of R v Clegg (1868) 19 LT 47). (EA 1851, as quoted in James Mulinge v Freight Wings Ltd & 3 others [2016] KEELRC 11 (KLR) cited by the applicant, the Court held that:

“The false statement must be made deliberately, not inadvertently or by mistake. The statement must be material, so significant to the case, rather than of negligible relevance. The statement may be an opinion offered by an expert witness who does not genuinely hold that opinion.”
14. It is the Petitioner/Applicant's submission that the court concluded that he had committed perjury by stating in his pleadings that he was seeking for the matter to be heard on an urgent basis since he was prevented from taking care of his elderly mother who had since passed on which was an inadvertent error made during the drafting of his pleadings which he did not intend to make.

Respondent submissions

15. This Court rendered itself after oral submissions by the respondents who were able to demonstrate that the averments by the Petitioner /Applicant were not true as applicant's mother was deceased.
16. The Applicant had informed the Court that he had filed a Petition number E001 of 2021 which was pending where he was seeking to be guardian to his mother {Janet Wangige Ngure} with full knowledge that the mother was deceased.
17. The information of his mother {Janet Wangige Ngure} being deceased had not been disclosed by the applicant/petitioner to the Court. The Court being satisfied that the Applicant /Petitioner had lied under oath ordered that he be charged accordingly for Perjury.

Issues

18. Two issues arise for determination:
 - a. Whether orders for stay of proceedings issued on 25th January, 2023 in Kerugoya Criminal Case Number E570 of 2021 should be reinstated.



- b. Whether the honourable court be pleased to review and set aside the orders issued on 29th March, 2023 directing the Petitioner/Applicant to be charged with the offence of perjury.

Analysis

Whether orders for stay of proceedings issued on 25th January, 2023 in Kerugoya Criminal Case Number E570 of 2021 should be reinstated.

19. The Court's power to stay criminal proceedings is anchored in Article 165 (6) and (7) of *the Constitution* and Sections 362 and 364 of the Criminal Procedure Code (Cap 75), which empower the High Court to call for and examine the record of any criminal proceedings before any subordinate court to ensure the correctness, legality, or propriety of any finding, sentence, or order.
20. Under Article 165(6) and (7) of *the Constitution*, the High Court exercises supervisory jurisdiction over subordinate courts and may issue appropriate orders to ensure justice is not defeated.
21. On 25th January, 2023, this Court issued interim orders staying the proceedings in Kerugoya Criminal Case No. E570 of 2021, and the same were extended to 29th March, 2023. The orders lapsed following the court's direction that the Applicant be charged with perjury.
22. The Applicant contends that the failure to extend the stay orders arose because of the perjury finding, and that his omission was inadvertent and not deliberate. He asserts that unless the stay orders are reinstated, he will be prejudiced since the criminal proceedings in E570 of 2021, which are the subject of this petition, will proceed before the constitutional issues are determined.
23. In the present case, the Applicant has demonstrated that the petition challenging the constitutionality of the criminal proceedings is still pending before this Court. As shown below, it would therefore be in the interest of justice and to preserve the substratum of the petition that the stay orders previously granted be reinstated pending the hearing and determination of the petition.

Whether the honourable court be pleased to review and set aside the orders issued on 29th March, 2023 directing the Petitioner/Applicant to be charged with the offence of perjury.

24. The Applicant argues that his statement regarding his mother's condition was inadvertent and not deliberate, hence not constituting perjury under Section 108(1) of the Penal Code, which provides that:
- “Any person who, in any judicial proceeding, knowingly gives false testimony touching any matter which is material to any question then pending in that proceeding, is guilty of the misdemeanour termed perjury.”
25. The Court has noted the defence set up by the applicant in reliance of *James Mulinge v Freight Wings Ltd & 3 others* [2016] KEELRC 11 (KLR) and urging a setting aside of the order for the prosecution for perjury.
26. However, the determination of guilt or otherwise of the applicant for the offence of perjury is a matter before the trial court, and this Court cannot properly direct the trial court on how to determine the case. The Court will accept, however, that it may properly order stay of the criminal proceedings for perjury pending the hearing and determination of the Petition herein.



27. The Court does not accept that an order by the Court, differently constituted or not, may be reviewed for incorrect conclusion or order made allegedly without jurisdiction. The Court of Appeal in *National Bank of Kenya Ltd V. Ndungu Njau* (1997) eKLR held that:
- “A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.”
28. A conclusion on the law or fact made by a court may only be the subject of an appeal, unless it is an error on the face of the record within the meaning of the leading case of *Multichoice (Kenya) Ltd v Wananchi Group (Kenya) Limited, Communications Commission of Kenya & Kenya Broadcasting Corporation* (Civil Appeal 368 of 2014) [2020] KECA 633 (KLR) (Civ) (22 May 2020) (Judgment). See also *Kishor Kumar Dhanjiv Ndeffo Limited & others* (2011) eKLR (Ouko, J. as he then was.).
29. If it is considered that the Court erred in directing prosecution of the applicant for perjury, that is not an error on the face of the record as a breach of the Constitutional provision granting the DPP the mandate to prosecute because the Court did not find that the applicant was guilty of perjury. The direction in the Court’s minute on 29/3/2023 that “the applicant to be charged before the appropriate lower court for perjury” must, for its reference to ‘the appropriate lower court’ be interpreted to mean that the Court took the view that the applicant may have committed perjury and, the court’s position that he be prosecuted does not amount to a direction to the DPP in contravention of Article 157 (10) of *the Constitution*.
30. Even if it could be done, to review the order of the court made in discretion or on a conclusion of fact or law by another court of equal jurisdiction is inappropriate.

Conclusion

31. The crucial date relevant to the primary criminal case Kerugoya Chief magistrate’s Court NO. 570 of 2021 for creating a disturbance and cutting down trees which are the subject of the stay Petition herein is 10/7/2021.
32. The applicant faces two counts in the Criminal case as follows:
- a. Count I: Creating a disturbance in a manner likely to cause a breach of the peace c/sec 95(10) (b) of the Penal Code.
- Particulars of the Offence: Julius Gichobi Ngure on the 10th day of July 2021 at Karia Market, within Kirinyaga County, created a disturbance in a manner likely to cause a breach of peace by threatening to cut with a panga Grace Wangechi Matiro.
- b. Count II: cutting down crops of cultivated produce contrary to section 334(a) of the Penal Code.
- Particulars of the Offence: Julius Gichobi Ngure: On the 10th day of July 2021 at Karia village within Kirinyaga County wilfully and unlawfully cut down 15 banana stems of cultivated crops and 3 pumpkins plants all valued at Ksh.15,000/- the property of his father Grace Wanjiru Matiro. (sic).



33. Before the High Court is a Petition dated 25/11/2022 pending hearing and determination and seeking relief by way of termination of criminal trial of the applicant for the offence of creating a disturbance by specific orders as follows:

“The petitioner therefore prays That:

- i. The Court be pleased to declare that the charges of creating disturbance in a manner likely to cause breach of the peace contrary to section 95(1) of the Penal Code and cutting down crops of cultivated produce contrary to section 334 (a) of the Penal Code instituted by the 1st and 2nd Respondent in Kerugoya Criminal Case Number E570 of 2021, Republic v Julius Gichobi Ngure are arbitrary, oppressive and unreasonable.
- ii. The court do declare that the preferring charges against the petitioner by the 1st and 2nd Respondent in Kerugoya Criminal Case Number E570 of 2021, Republic v Julius Gichobi Ngure was in violation of Articles 10, 27, 28, 47(1)57(d), 157(11),244(c)of *the Constitution* of Kenya, 2010.
- iii. The court do issue an order for certiorari to quash the charge sheet dated 15th July 2021 against the Petitioner in Kerugoya Criminal Case Number E570 of 2021, Republic v Julius Gichobi Ngure.
- iv. The Court be pleased to prohibit the 1st Respondent from prosecuting the Petitioner in Kerugoya Criminal Case Number E570 of 2021, Republic v Julius Gichobi Ngure.
- v. General Damages for gross violation of fundamental rights and abuse of legal process.
- vi. The costs of the petition be awarded to the Petitioner.
- vii. Any other relief that the court may deem fit to grant.”

34. The factual basis for the Petition is set out in paragraphs 3 - 8 of the Affidavit in support of the Petition as follows:

- “3. That the 15 banana stems of cultivated crops and 3 pumpkins plants I am alleged to have cut belongs to my mother, Jane Wangige Ngure who is elderly and has been suffering from dementia from the year 2017 to date. (Annexed hereto and marked as /IJGN2 a and b” is a copy of the Chief’s letter dated 27th November 2020 and Medical Report from Murang’a County Government dated 28th December 2020).
4. That on the alleged day of the offence of 10th July 2021, I was cutting down 15 banana stems and pumpkin plants erected on my mother’s land in Land Parcel Number Inoi/Kamondo/2920 so as to take care of my elderly and sickly mother, Janet Wangige Ngure since she cannot fend for herself. (Annexed hereto and marked as /IJGN3/1 is a copy of the Green Card of Land Parcel Number Inoi/Kamondo/2920.
5. That I am the one who has been living and taking care of my mother and I have even petitioned to be the guardian of Janet Wangige Ngure in Kerugoya Petition Number E001 of 2021 which is pending before the court. (Annexed



hereto and marked as "JGN4" is a copy of the Petition filed in Kerugoya Petition Number E001 of 2021)

6. That the complainant, Grace Wanjiru Matiro who is my sister caused the 1st and 2nd Respondent to institute the above criminal charges against me through malice so as to punish me for utilising the land which is for the benefit of our mother.
 7. That the 1st and 2nd Respondent preferred charges against me without doing any proper investigation on the circumstances and the situation at our home.
 8. That I have the right to take care of my sickly and elderly mother as provided under Article 57 (d) of *the Constitution* of Kenya 2010.
 9. The above-noted offences against me are a gross violation of my fundamental rights as contemplated under Article 10, 27, 28, 47(1) 57(d), 157 (11), 244 (c) of *the Constitution* of Kenya, 2010 since I was only exercising my right to take care of my sickly and elderly mother as provided under Article 57 (d) of *the Constitution* of Kenya.
 10. That since the charges were preferred against me I have been unable to properly take care of my sickly and elderly mother for fear of prosecution.”
35. It would appear that the facts are so far as relates to the date of the alleged offence of creating a disturbance and cutting down crops on 10/7/2021, the applicant’s mother was living as the applicant tells Mwangi, J. on 29/3/2023 that his mother died in August 2021.
36. However, the application for review of the order for the applicant’s charging for perjury by this very court (differently constituted) is misconceived as the alleged error is not one on the face of the record and this court cannot act on appeal from its own order.
37. The object and duty of the Court is to do justice and to grant and uphold access to justice to all who seek it in accordance with the right to access to justice under Article 48 of *the Constitution*. To bar the applicant from seeking the termination of the criminal proceedings for creating a disturbance on the ground of pending perjury prosecution which has not been proved before a criminal court is to defeat his right to access to justice. Once prosecuted for perjury, the applicant shall, if found guilty, be dealt with in accordance with the law. Before that, he is innocent until proven guilty.
38. The presentation of his petition challenging his prosecution in Criminal case No. 570 of 2021 for creating a disturbance and cutting down crops is, however, not subject to the prosecution and finding in the criminal trial for perjury.
39. This Court therefore agrees, as urged by the applicant’s counsel that, the interest of justice that the criminal proceedings for perjury in Kerugoya Criminal Case Number E229 of 2023 should be stayed pending the hearing and determination of the Petition since the charges are the result of orders issued in the Petition which is still pending before court.

Orders

40. Accordingly, for the reasons set out above, the application is granted as prayed as prayer in Prayer No. 2 of the Notice of Motion dated 19th February 2025, and a consequential coextensive order for stay of the perjury trial in Kerugoya Chief Magistrate’s Court criminal case no. 229 of 2023 is granted.



41. The Petition shall be fixed for hearing on a date to be fixed in consultation with the Counsel for the parties.

Orders accordingly.

DATED AND DELIVERED THIS 30TH DAY OF OCTOBER 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Ms. Otieno for Mrs Makworo the applicant.

Mr. Mamba for the DPP.

