



Ouyang & 10 others v Anti-Terrorism Police Unit & another (Miscellaneous Criminal Application 214 of 2024) [2025] KEHC 15257 (KLR) (Crim) (22 October 2025) (Ruling)

Neutral citation: [2025] KEHC 15257 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
MISCELLANEOUS CRIMINAL APPLICATION 214 OF 2024
AM MUTETI, J
OCTOBER 22, 2025**

BETWEEN

- ZILIANG OUYANG 1ST APPLICANT**
- SOON FUH SIEW 2ND APPLICANT**
- LIM WEI SEANG KELVIN 3RD APPLICANT**
- YUEN WENG KIN 4TH APPLICANT**
- PRASHIKA RAI 5TH APPLICANT**
- SAHEED OLAKUNLE ADEGOKE 6TH APPLICANT**
- PAUL KWAMINA DANTSE 7TH APPLICANT**
- KYADDONDO MICHAEL 8TH APPLICANT**
- DANIEL SIBOLLA 9TH APPLICANT**
- CHELSEA DEON 10TH APPLICANT**
- EDWARD WAFULA SIMIYU 11TH APPLICANT**

AND

- ANTI-TERRORISM POLICE UNIT 1ST RESPONDENT**
- REPUBLIC THRU' THE DIRECTOR OF PUBLIC PROSECUTION 2ND RESPONDENT**



RULING

1. This court on the 15th August 2025 gave orders releasing the applicants on bail pending the decision to charge. The orders on bail were that each of the Applicants was required to deposit Ksh. 100,000 each and deposit their passports in court.
2. The ODPP has indicated that a decision to charge has been made thus the instant file should be closed and the passports released to the Anti Terrorism police Unit of the Nationally Police Service.
3. According to Mr. Omondi the passports are intended to be used as exhibits on the intended trial of the 7th Applicant who is to be charge with offences related to Trafficking in persons. The court made the orders for release do the applications on Bail in a bid to promote and uphold the right to liberty under Article 38.
4. The holding of the passports of the foreigners was meant to ensure that they are not able to leave the jurisdiction of this court pending the investigations. It has now been indicated by the prosecution that a decision to charge has been made. Thus the motion dated 18th September 2025 is hereby spent and thus the instant file should be closed. I have considered the application dated the 9th October 2025 the supporting affidavit and all the annexures thereto.
5. Ms Ogega in the certificate accompanying the Notice of Motion indicated that the 7th Applicant had already been charged in Kahawa Law courts and objected to the taking of Plea citing the pending of the instant motion.
6. It was on that basis that counsel sought the release of the passports to the Investigating Officer for use in the criminal trial. it is not contested by the applicant's that There are proceedings pending in Kahawa Law courts. The only argument advanced by counsel for Respondents is that the 5th and 7th (Applicants in the original motion) need to have their passports released to them for purposes of visa renewal. Mr. Omondi for the state objected to that prayer arguing that the 5th & 7th Applicants can still apply for the renewal of the visas while the passports are the custody of the investigating officer.
7. How that is possible baffles me since the applicants need to appear at the visa renewal desk in person. With the original passport. It is thus not tenable to argue that since there are criminal proceedings about to commence the passports of the Applicants be confiscated and that they should not be allowed the window to process new visa. That would be very draconian position to hold. The applicants including 5th & 7th Applicants have their presumption of innocence right under Article 50 (2) of *the Constitution* until they are proven to be guilty of any charge.
8. To withhold their passports in a manner that would deprive them the opportunity to renew the passports would be in humane and contrary to Article 28 of *the Constitution*. The right to Human dignity must be respected and protected. They 5th and 7th Applicant have every right to be accorded human dignity by giving them an opportunity to renew their visas. If the court was to order thee released of their passport to the ATPU, how would they be able to obtain them for the purposes of renewal. It is important to highlighting the fact that the 5th and 7th Applicants are still innocent in the eyes of the law this they must be left to enjoy all their rights without hindrance. The court is alive to the fact that for them to remain in the country their visas require renewal thus the need for the passports. Further, if the 5th and 7th Applicants are foreigners then how do they continue residing in Kenya without a valid visa? The denial of access to the passport would complicate their status n thee country thus the need to ensure that they get an opportunity to renew.



9. In the end the court finds that to deny them the opportunity would most likely amount to psychological torture contrary to Article 29 (d) of *the Constitution*. The prosecution has indicated that it requires the passports for purposes of using them in evidence. The 5th and 7th Applicant can therefore have the passports released to their counsel who shall execute a professional undertaking that he shall avail them to the ATPU investigators immediately after the visa's are renewed.

Accordingly the orders I grant are that:-

- a. cashbail of Ksh. 100,000/= deposited by each of the applicants it so be returned to the depositors.
- b. The passports of the rest of the applicants other than the 5th and 7th Applicant be released to the investigator.
- c. The counsel for 5th and 7th Applicant shall execute a professional undertaking to surrender the passports of 5th & 7th Applicants to the Investigating Officer upon renewal of the visas.
- d. The passport for 5th and 7th Applicant be released to Mr. Reene Advocate upon providing the undertaking in (c) above to the Deputy Registrar of this court.
- e. Mr. Reene advocate is to ensure that the 7th Applicant appears before the court for purposes of plea on 27th October 2025 to confirm compliance.
- f. Mention of this matter on 28th October 2025 to confirm compliance.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 22ND DAY OF OCTOBER 2025.

A. M. MUTETI

JUDGE

In the presence of:

Habiba: Court Assistant

Isaac Rene for Applicants

Omondi for Respondent

Nairobi High Court Criminal Misc. Appl. No. 214 of 2025 – Ziliang Ouyang & 10 others -vs – Anti Terrorism Police Unit & Ano.

