



**Mwangi wa Iria & 8 others v Ethics and Anti-Corruption Commission  
& another; Public Procurement Regulatory Authority & 2 others  
(Interested Parties) (Petition E002 of 2025) [2025] KEHC 16630 (KLR)  
(Anti-Corruption and Economic Crimes) (14 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16630 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
ANTI-CORRUPTION AND ECONOMIC CRIMES**

**PETITION E002 OF 2025**

**BM MUSYOKI, J**

**NOVEMBER 14, 2025**

**BETWEEN**

**MWANGI WA IRIA ..... 1<sup>ST</sup> PETITIONER  
JANE WAIGWE KIMANI ..... 2<sup>ND</sup> PETITIONER  
VALUE VIEW LIMITED ..... 3<sup>RD</sup> PETITIONER  
PATRICK MUKURIA ..... 4<sup>TH</sup> PETITIONER  
SOLOMON MUTURA KIMANI ..... 5<sup>TH</sup> PETITIONER  
JANE WANJIRU MBUTHIA ..... 6<sup>TH</sup> PETITIONER  
TOP IMAGE CONSULTANTS LIMITED ..... 7<sup>TH</sup> PETITIONER  
DAVID MAINA NJERI ..... 8<sup>TH</sup> PETITIONER  
PETER KARANJA ..... 9<sup>TH</sup> PETITIONER**

**AND**

**ETHICS AND ANTI-CORRUPTION COMMISSION ..... 1<sup>ST</sup> RESPONDENT  
OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS .... 2<sup>ND</sup>  
RESPONDENT**

**AND**

**PUBLIC PROCUREMENT REGULATORY AUTHORITY .... INTERESTED  
PARTY  
AUDITOR GENERAL ..... INTERESTED PARTY**



**RULING**

1. The petitioners approached this court vide petition dated 2<sup>nd</sup> June 2025 seeking an avalanche of 20 orders and or declarations which was accompanied by a notice of motion dated 27<sup>th</sup> April 2025 with the following prayers;
  - a. That the application be certified urgent, service be dispensed with in the 1<sup>st</sup> instance.
  - b. That a conservatory order be hereby issued, staying the proceedings in Milimani Magistrate's Court Anti-Corruption case No. ACC E012 of 2024 arising from the investigations of the 1<sup>st</sup> respondent, pending the determination of this application.
  - c. That a conservatory order be hereby issued, staying the proceedings in Milimani Magistrate's Court Anti-Corruption case No. ACC E012 of 2024 arising from the investigations of the 1<sup>st</sup> respondent, pending the determination of this petition.
  - d. That pending the hearing and determination of this application, a conservatory order do issue from this court restraining the 2<sup>nd</sup> respondent from conducting further investigations and collecting evidence into the impugned procurement process at the County Government of Murang'a, the subject of proceedings in Milimani Magistrate's Court anti-corruption case No. ACC E012 of 2024.
  - e. That pending the hearing and determination of this petition, a conservatory order do issue from this court restraining the 2<sup>nd</sup> respondent from conducting further investigations and collecting evidence into the impugned procurement process at the County Government of Murang'a the subject of proceedings in Milimani Magistrate's Court anti-corruption case No. ACC E012 of 2024.
  - f. That an order do issue from this Honourable Court expunging all exhibits evidence obtained by use of the patently defective search warrants to investigate, Milimani Chief Magistrate's Court miscellaneous application No. E949 of 2020, Milimani Chief Magistrate's Court miscellaneous application No. E872 of 2020, Milimani Chief Magistrate's Court miscellaneous application No. E3028 of 2020, Milimani Chief Magistrate's Court miscellaneous application No. 3090 of 2020 and Milimani Chief Magistrate's Court miscellaneous application No. E3147 of 2020, as the same are inadmissible for want of legality.
  - g. Any other orders the court may deem fit and expedient.
  - h. Costs of this application be provided for.
2. This court issued interim orders on 16-09-2025 staying the proceedings in the Magistrate's Court anti-corruption case number E012 of 2024 and made directions as to filing of responses to the application and submissions. Before the petitioner's said application could be heard, the 1<sup>st</sup> respondent brought a notice of motion dated 10<sup>th</sup> July 2025 which sought the following;
  - a. That this application be certified as urgent and heard on priority basis.
  - b. That this Honourable Court be pleased to strike out the application dated 27<sup>th</sup> April 2025 filed by the petitioners on grounds that the said application is sub-judice, the 6<sup>th</sup>, 7<sup>th</sup> and



8<sup>th</sup> petitioners having filed a similar application on the same facts in Milimani High Court Constitutional Petition No. E209 of 2024: Jane Wanjiru Mbuthia, Top Image Consultants Limited and David Mana Njeri vs. Office of Director of Public Prosecutions, Ethics and Anti-Corruption Commission, Public Procurement Regulatory Authority, Auditor General and Murang'a County which is pending hearing and determination.

- c. That the costs of this application be provided for.
3. It is the latter application which is the subject of this ruling. The application is supported by affidavit of Caroline W. Kamau sworn on 10-07-2025 in which she deposes that before this petition was filed, there existed a constitutional petition number E209 of 2024 filed on 23<sup>rd</sup> April 2024 in the constitutional and human rights division of the High Court at Milimani (herein after referred to as 'the first petition'). The parties in the said petition are Jane Wanjiru Mbuthia, Top Image Consultants Limited and David Mania Njeri as the petitioners and the Director of Public Prosecutions, Ethics and Anti-Corruption Commission, Public Procurement Regulatory Authority, Auditor General and Murang'a County as the respondents. The petitioners in the said petition are represented by the same firm of advocates representing them in this matter.
  4. The deponent added that contemporaneous with the first petition, there was filed an application under certificate of urgency which sought conservatory orders in respect of intended arrest, detention and charging of the petitioners. This application was placed before my senior brother Honourable Justice EC Mwita where it has been going through mentions and during the pendency of the petition, the petitioners therein filed an application seeking to stay proceedings in Milimani Chief Magistrate's Court anti-corruption case number E012 of 2024 which was also placed before Justice EC Mwita where it has been going on.
  5. It is the position of the 1<sup>st</sup> respondent that the orders sought on the application dated 14<sup>th</sup> March 2025 in the first petition is similar to the application in this petition dated 27<sup>th</sup> April 2025 which was filed while the first petition was pending for mention without disclosing this fact to this court.
  6. With the leave of this court, Caroline swore a further affidavit dated 6<sup>th</sup> August 2025 in which it is deposed that the petitioners had also filed another petition vide this court's petition number E002 of 2022 which was dismissed by Honourable Justice PJ Otieno vide judgment dated 30<sup>th</sup> September 2024. This petition had contented that the 2<sup>nd</sup> respondent had no mandate to investigate issues of procurement irregularities which was a preserve of the 1<sup>st</sup> interested party. The same issue is being the litigated in this petition.
  7. The application is opposed through an affidavit of Gilbert C. Njoroge sworn on 28<sup>th</sup> July 2025. In this affidavit, it is averred that the argument that the issues in this petition are similar to those raised in the first petition are false and consisting of half-truths. He claims that the two petitions are based on different constitutional and statutory provisions and goes on to set out the grounds upon which the two applications were based trying to demonstrate that difference.
  8. The deponent adds that the 1<sup>st</sup> respondent filed an application in the first petition seeking to have the same transferred to this court and as such the two petitions are ripe for consolidation and it will be unjust to grant the application for striking out. He adds that the petitioners in the first petition filed a notice dated 24<sup>th</sup> July 2025 seeking to withdraw the petition.
  9. On 16-09-2025, the petitioners filed a supplementary affidavit without the leave of the court which the 1<sup>st</sup> respondent asked be to expunged from the records because it was filed without the leave of the court. The petitioners replied to this request by stating that the supplementary affidavit was filed out



of necessity to answer to new issues raised in the 1<sup>st</sup> respondent's further affidavit. I decline to buy the justification that the supplementary affidavit was filed out of necessity.

10. A supplementary or further affidavit that is filed without leave of the court is amenable to be struck out. I do not see anything new in the 1<sup>st</sup> respondent's further affidavit and even if there was, the petitioners were in breach of requirement in respect of filing of further or supplementary documents. In this regard the petitioner's supplementary affidavit dated 10-07-2025 and filed on 16-09-2025 is hereby expunged from the court's record.
11. The application herein was disposed of by way of written submissions. I have read the submissions of the petitioners dated 4-09-2025 and those of the 1<sup>st</sup> respondent dated 8-08-2025. From the submissions, I take position that the only issues for determination are whether the application dated 27<sup>th</sup> April 2025 is sub judice the application dated 12-03-2025 in the first petition and if so whether the same should be struck out.
12. The sub judice rule posits that, the court should not proceed with hearing of a matter where another matter between the same parties or parties litigating under the same title and involving the same subject matter is pending before another court of competent jurisdiction. Section 6 of the *akn ke act 1924 3 Civil Procedure Act* where the rule is enshrined provides as follows;

'No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.'
13. It is not denied that the 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> petitioners in this matter are the petitioners in the first petition. It is also not denied that the respondents and 1<sup>st</sup> and 2<sup>nd</sup> interested parties in this petition are respondents in the first petition while the 3<sup>rd</sup> interested party is the only interested party in the first petition.
14. The prayers in the application dated 27-04-2025 are in my view the same as the prayers in the application dated 14-03-2025 in the first petition. Both applications seek to obtain similar outcome which is stay of proceedings of the Milimani Chief Magistrate's Court anti-corruption case number E012 of 2024. Change of wording and re-arrangement of the prayers does not change the fact that the applicants in both applications desire to stay the said proceedings.
15. It is also notable that the petitioner came to this court after they failed to secure orders of stay of the proceedings in the first petition. They misled this court to believe that the issues being tried in Chief Magistrate's Court case was based on investigations which had already been declared illegal and unlawful. The petitioners failed to disclose to this court that they had filed a similar application in the first petition and denied orders. Actually, their application did not mention existence of the first petition. In my view, this is an abuse of the court process and a shameless act of forum shopping which should be discouraged in order to safeguard meaningful dispensation of justice.
16. The petitioners argue that the grounds in the two applications are different hence the rule of sub judice cannot apply. That is a lame argument because the point of consideration is and should not be the grounds under which the applications are based. The court is more concerned with the outcome of the applications and the effect of the orders it shall grant in context of the applicable law. Where the reliefs sought are similar, it would not matter how the parties frame their grounds or change words in their pleadings.



17. The petitioners have argued that granting of the application will translate to locking the 1<sup>st</sup> to 5<sup>th</sup> and 9<sup>th</sup> petitioners who are not parties in the first petition out of the seat of justice. Nothing stopped the said petitioners from joining the first petition. It is not lost to this court that the acts which are the subject of the matter before the Magistrate’s Court cuts across all the petitioners as they constitute the same chain of events. It was more prudent for the petitioners who are not parties in the first petition to join the others instead of filing this petition. Mere addition of parties does not make this petition distinct from the first petition. In *Republic v Paul Kihara Kariuki, Attorney General & 2 others Ex-Parte Law Society of Kenya* (2020) KEHC 10142 (KLR), it was held that;

‘The mere addition of a party or parties does not alter the pith and substance of the suit. The Black’s Law Dictionary defines *lis pendens*, as a Latin expression which simply refers to a “pending suit or action.” The Oxford Dictionary of Law defines the expression in similar terms. In the context of Section 6 of the *akn ke act 1924 3 Civil Procedure Act* which encapsulates the principles that underpin the rule, it simply means that no court ought to proceed with the trial of any suit or proceedings in which the matter in issue is also directly and substantially in issue in a previous instituted suit or proceeding; and or the previously instituted suit or proceedings is between the same parties; and or the suit or proceeding is pending in the same or any other court having jurisdiction to grant the reliefs claimed.’

18. In view of the above, I do not hesitate to hold that the application dated 27<sup>th</sup> April 2025 is sub judice the application dated 14-03-2025 in Milimani constitutional petition number E209 of 2024 and this court does not possess the requisite jurisdiction to continue with the said application until such a time the court presiding over the first petition shall dispose it.

19. The next issue is whether the application dated 27<sup>th</sup> April 2025 should be struck out. I hold the position that the sub judice rule does not make it mandatory for the court to strike out the latter suit when it is established that the same is sub judice. What the law provides is that the court shall not proceed with the latter suit. I interpret that to mean that the latter suit should be stayed until the former one is disposed of. Honourable Justice Edward M. Muriithi held in *Charles Onchari Ogoti v Safaricom Limited & another* (2020) KEHC 8849 (KLR) that;

‘I would readily agree that an objection in the nature of sub judice is a point of law which may be taken as Preliminary Objection or argued by its very nature in limine because its effect, if successful, is to stay further proceedings in the suit.’

20. The petitioners have told me that they have filed a notice of withdraw of the first petition but as rightly submitted by the 1<sup>st</sup> respondent, until the court accepts and endorses the withdraw, the petition remains alive and subject of the court. There is no order showing that the matter was formally marked as withdrawn. The petitioners have not told me even in their submissions whether the court in the first petition allowed the withdrawal. In the circumstances, this court takes the position that the first petition is still alive and holds that the application and indeed the entire petition should not proceed until the first petition is determined one way or the other.

21. Having said the above and going by the antecedents of the petitioners and having found that filing of this petition and application dated 27<sup>th</sup> April 2025 was an abuse of the court process and noting that the petitioners have expressed desire to terminate the first petition, I am not prepared to stay this petition for indefinite period. This court must remain in control of matters filed before it.

22. Based on the above, I make the following orders;



- a. The application dated 27<sup>th</sup> April 2024 and the entire petition is stayed for a maximum period of three months pending hearing and disposal of Milimani High Court constitutional petition number E209 of 2024.
- b. This matter shall be mentioned on a date to be fixed after this ruling by which time the petitioners should have made their decision on how to proceed with this petition failure to which the same shall stand struck out for being an abuse of the court process.
- c. The costs of the application dated 10<sup>th</sup> July 2025 are awarded to the 1<sup>st</sup> respondent to be met by the petitioners.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS 14<sup>TH</sup> DAY OF NOVEMBER 2025.**

**B.M. MUSYOKI**

**JUDGE OF THE HIGH COURT.**

Ruling delivered in presence of Mr. Njoroge for the petitioners, Miss Wairimu for the 1<sup>st</sup> respondent, Miss Momanyi and Miss Keli for the 2<sup>nd</sup> respondent.

