



**Tadayo v Director of Public Prosecutions (Petition E022 of 2025)  
[2025] KEHC 15972 (KLR) (6 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 15972 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
PETITION E022 OF 2025**

**SM GITHINJI, J**

**NOVEMBER 6, 2025**

**IN THE MATTER OF ARTICLES 20, 21, 22, 23, 47, 48, 50 OF THE CONSTITUTION  
AND IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL  
RIGHTS & FREEDOMS UNDER ARTICLES 47, 48 & 50 OF THE CONSTITUTION**

**AND**

**IN THE MATTER OF CHAPTER FOUR OF THE CONSTITUTION**

**AND**

**IN THE MATTER OF THE ADVOCATES ACT**

**AND**

**IN THE MATTER OF SECTION 53 OF THE ADVOCATES ACT**

**BETWEEN**

**LUGUTU CYPRIAN TADAYO ..... PETITIONER**

**AND**

**THE DIRECTOR OF PUBLIC PROSECUTIONS ..... RESPONDENT**

**RULING**

1. For determination is the Notice of Motion dated 28/8/2025, seeking that:
  1. Spent
  2. Spent
  3. This Honorable court be pleased to issue a conservatory order stopping, barring, restraining the Respondent by himself, his agents, officers or any other person or agency under his directions or acting on his behalf from charging or prosecuting the Petitioner/Applicant in



Meru Chief Magistrate's court or any other court over the execution of a charge instrument over land parcel No. Kiirua/Naari - Maitei/1007 drawn by the firm of Watako Kirui and Company Advocates or any other matter auxiliary and/or incidental thereto pending the hearing and determination of this Petition.

4. Costs of this application be borne by the Respondent.
2. The application is premised on the grounds on the face of it and supported by the affidavit sworn by the Applicant on even date. He averred that he is an Advocate of the High Court of Kenya practicing in the firm of Watako Kirui and Company Advocates, in Meru County, with a current practicing certificate. On 30/4/2024 while in his chambers aforesaid, at the request of KCB Bank Kenya Limited, he prepared a charge instrument over L.R No. Kiirua/Naari /1007. The charge was between KCB Bank Kenya Limited as the chargee, Lydia Gakii as the charger and Kelvin Muthuri Mwiti as the borrower. The charger and the borrowed availed themselves at his chambers and duly executed the charge in his presence, which he then forwarded to the Bank for verification and execution by its attorney. He undertook the security perfection over L.R No. Kiirua/Naari /1007 and forwarded the registered charge documents to the bank who disbursed monies to the borrower. His role in the transaction was purely legal, and before proceeding with the security perfection, he satisfied himself that the certificate of official search, title and identification cards of the charger and the borrower were good. On 25/8/2025, police officers attached to the DCI Meru informed him that they had reached a decision to charge him with fraud and conspiracy to defraud over the subject transaction. The predominant purpose of the decision to charge him is to embarrass and malign him to satisfy the complainant. The complainant has disputed signing the charge instrument, and the borrower, who is the main culprit herein, has never been charged. The Respondent is acting capriciously and arbitrarily, and the anticipated charges shall deal a blow to his career standing and reputation as a forthright advocate. After plea taking, he will be incarcerated pending furnishing of any bail/bond, and this shall unfairly curtail and violate his rights, where the same is totally unnecessary.
3. The Respondent filed grounds of opposition dated 4/7/2025 that:
  1. The Petition/Application is frivolous, misconceived and an abuse of the Court's process.
  2. The Petitioner/Applicant has not demonstrated a prima facie case with a likelihood of success to warrant grant of conservatory and or injunctive orders.
  3. The Petition/Notice of Motion is an attempt to pre-empt lawful prosecution and obtain immunity by the back door.
  4. The Applicant/Petitioner has not demonstrated that the intended prosecution is malicious, an abuse of process, or undertaken without factual foundation.
  5. The right to a fair trial crystallizes at the trial stage, not at the investigation or charging phase.
  6. The Petitioner's/Applicant's assertion of professional work does not immunize him from criminal liability where the evidence discloses participation in a fraudulent scheme.
  7. The Petition seeks to have Petitioner/Applicant accorded preferential treatment over and above other Kenyans which is contrary to Article 27 of *the Constitution*.
  8. The Petition does not disclose any denial, violation, infringement or threat to any of the fundamental rights and freedoms protected by *the Constitution*.



9. The mandate of the respondent is not subject to anyone's control and should not be interfered with and therefore this Court should decline the invitation to curtail Respondent's constitutional mandate.
  10. The Petition is speculative, premised on conjecture and without any real issues for determination to warrant intervention by this honourable court.
  11. The Petition/Application lacks merit and we pray that the same be dismissed in limine.
4. The parties did not file any submissions despite explicit orders to that effect.

### **Analysis and Determination**

5. Having considered the application and the grounds of opposition, the sole issue for determination is whether the orders sought should issue.
6. The gist of the Applicant's case is that the charges he is facing are a result of his performance of his professional obligation as an advocate.
7. I take cognizance of the Applicant's Practising Certificates for the years 2024 and 2025, the security documentation dated 30/4/2024 by KCB Bank extending a banking facility to Kelvin Muthui Mwitii, the Borrower addressed to Watako Kirui & Co. Advocates, the letter of offer dated 16/4/2024, duly executed by the Borrower and the Chargee, the form of acceptance duly executed by the Borrower and the Chargor and the charge dated 7/5/2024 drawn by Watako & Kirui Advocates.
8. Whereas there can be no doubt that the field of investigations of criminal offences is exclusively within the domain of the police and the Respondent, this court has the powers to halt such a process if the intended criminal proceedings are oppressive, an abuse of the court process and amount to a breach of fundamental rights and freedoms.
9. It has further been held that an oppressive or vexatious investigation is contrary to public policy and that, the police in conducting criminal investigations are bound by the law and the decision to investigate a crime (or prosecute in the case of the DPP) must not be unreasonable or made in bad faith, or intended to achieve ulterior motive or used as a tool for personal score-settling or vilification. The court has inherent power to interfere with such investigation or prosecution process. (See *Ndarua v R* [2002] 1 EA 205).
10. The Applicant cannot be vilified for merely discharging his professional duties as an advocate, his involvement having been confined solely to the preparation and attestation of the charge instrument.
11. It is manifest that the Applicant's intended prosecution is not driven by a genuine quest for justice, but by ulterior motives calculated to embarrass him.
12. I find that the Applicant has made out a case for grant of the conservatory orders sought.
13. The upshot from the foregoing is that the application is merited and it is allowed in terms of prayer 3 thereof.
14. Given the ruling, I will give a mention date for parties to see whether they are capable of comprising on the Petition.

Mention 9/12/2025.

**DATED AND DELIVERED AT MERU THIS 6<sup>TH</sup> DAY OF NOVEMBER, 2025**

**S.M. GITHINJI**



## **JUDGE**

Appearances

Mr. Ndegwa holding brief for Miss Njiru for the Applicant.

Ms. Adhi present for ODPP.

