

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KIBERA
MISC. CRIMINAL APPLICATION NO. E191 OF 2025

MARY WAITHERA GIKONYO.....APPLICANT

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS.....1ST
RESPONDENT

DIRECTOR OF CRIMINAL INVESTIGATIONS.....2ND
RESPONDENT

HON. ATTORNEY GENERAL.....3RD
RESPONDENT

CHIEF MAGISTRATE'S COURT KIBERA.....4TH
RESPONDENT

IGNATIUS MURAGE THUNGUTHA.....5TH
RESPONDENT

RULING.

1. The Applicant moved this Honourable Court under Articles 22, 23, 27, 28, 40, 47, 49 and 50 of the Constitution, Sections 6 and 7 of the Civil Procedure Act, and all other enabling provisions of the law. She sought orders staying and quashing all criminal proceedings and investigations connected to Civil Appeal No. E058 of 2024, Originating Summons No. E008 of 2024, and CMCC Misc. No. E582 of 2024, pending final determination or further orders of the Court.
2. In support of the application, the Applicant relied on her supporting affidavit sworn on 24 October 2025. She deposed that the impugned criminal proceedings arose from disputes that were already the subject of pending civil litigation touching on

matrimonial and property rights. She confirmed that the 5th Respondent was a common party in the said civil matters.

3. It was alleged that, notwithstanding subsisting High Court processes, the 5th Respondent lodged a complaint with the Directorate of Criminal Investigations, leading to the Applicant's arrest on 13 October 2025 without summons, her overnight detention under inhumane conditions, and her subsequent arraignment on 14 October 2025 on matters already pending before superior courts.
4. The Applicant contended that the prosecution was sub judice under section 6 of the Civil Procedure Act and amounted to an abuse of the criminal justice process. She further asserted that her rights to fair administrative action, dignity, security of the person, and fair trial under Articles 47, 28, 29, and 50 of the Constitution had been violated. She averred that she suffered from hypertension and stress-related illness and that the continued proceedings had subjected her to psychological, physical, and financial distress.
5. She maintained that the balance of convenience and public interest favoured the protection of her constitutional rights and the integrity of the pending civil proceedings, and urged the Court to grant conservatory orders to avert irreparable harm.
6. Upon considering the pleadings on record, and the applicable it was incumbent upon the applicant to demonstrate that his rights have been violated been the institution of the charge by the DPP. The mandate of the Director of Public Prosecutions is derived from Article 157(6)(a) of the Constitution which provides thus:

“to institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed.” Further, Article 157(10) expressly states that the DPP “shall not require the consent of any person or authority... and shall not be under the direction or control of any person or authority.”

7. Equally, section 193A of the Criminal Procedure Code provides that,

“the fact that any matter in issue in any criminal proceedings is also directly or substantially in issue in any pending civil proceedings shall not be a ground for any stay, prohibition or delay of the criminal proceedings.”

8. The Applicant failed to demonstrate that the impugned criminal proceedings were instituted with malice, for an ulterior motive, or for purposes other than the proper enforcement of the criminal law. No material was placed before the Court to show abuse of prosecutorial power or violation of constitutional safeguards.

9. The Court was not satisfied that the Applicant’s rights under Articles 28, 29, 47, or 50 of the Constitution had been violated or were under any real threat. No prejudice was demonstrated to arise from the continuation of the criminal process.

In the result, the Application is devoid of merit and is accordingly dismissed.

**Ruling dated and delivered virtually this 25th day of
November 2025**

**D. KAVEDZA
JUDGE**

ORIGINAL