

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO. E615 OF 2025

DR. SHEM ODONGO OCHUODHO
.....**PETITIONER**

VERSUS

DIRECTOR OF PUBLIC PROSECUTION.....1ST

RESPONDENT

THE ATTORNEY GENERAL.....2ND

RESPONDENT

ETHICS AND ANTI-CORRUPTION COMMISSION.....3RD

RESPONDENT

OFFICE OF INSPECTOR GENERAL OF POLICE.....4TH

RESPONDENT

AND

CHIEF MAGISTRATE'S COURT AT

MILIMANI.....INTERESTED PARTY

RULING

1. This ruling disposes of two applications: The petitioner's application dated 19th September 2025 and the 3rd respondent's application dated 3rd October 2025, the first and second applications, respectively.

First application

2. This application seeks stay of proceedings in Anti-Corruption Case No. 3 of 2010 at the Chief Magistrate's Court at Milimani Anti-Corruption Division, pending the hearing and determination of this petition. The application has been brought under articles 22 and 23 as read with article 165 (3) (b) of the Constitution; rules 2 and 24 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (Mutunga Rules) and rules 1, 2, 3 and 9 of the High Court (Practice and Procedure) Rules.

3. The application is premised on the grounds that the 1st and 2nd respondents are conducting selective prosecution against the petitioner in exclusion of other key and relevant persons and is therefore discriminatory and a violation of articles 27, 28, 35, 47 and 50 of the Constitution.

4. The petitioner also claims that there had been inordinate delay and repeated amendments of the chargesheet thus, undermining fair trial. According to the petitioner, the proceedings have been pending since 2010 under various magistrates and prosecutors which has prejudiced him and caused him reputational harm. The selective prosecution excluding other parties amounts to discrimination and unfair administrative action.

5. The petitioner asserts that there is real and urgent need to stay his trial to prevent irreparable violation of his constitutional rights since defence hearing had been scheduled for 25th and 27th November and 1st and 2nd December 2025.
6. The petitioner who is the 1st accused in the case, states that the case relates to allegations on procurement of refinancing a facility from Triple A Capital Limited and Standard Chartered Bank to pay off Kenya Pipeline Company's (KPC) debts to international creditors, which was undertaken during his tenure as the Managing Director of KPC.
7. Although the refinancing was done with the full knowledge, participation and approval of the Ministry of Finance, the Ministry of Energy, the Office of the Attorney General and the Board of Directors of KPC,

officers from those institutions who were involved had not been charged.

8. The petitioner states that the charge sheet has been amended several times since 2010 without adding the other parties who were involved. The chairperson of the Board of KPC who was initially charged was dropped from the case in one of the amendments. The delay in prosecuting the case has impaired his ability to mount an effective defence due to fading memories of witnesses, loss of critical records and constant uncertainty of proceedings.

9. The petitioner states that despite consistently writing to the Inspector General of State Corporations, the EACC, and DPP to review the charges, it has been in vain. The petitioner asserts that he also wrote to KPC on 8th June 2022 requesting for copies of audited reports and

supporting documents relevant to the refinancing transaction without success. This has violated his right to access information for purposes of effective preparation of his defence. The selective prosecution and prolonged process has violated his rights guaranteed under articles 27, 28 and 47 of the Constitution.

10. The petitioner maintains that the petition is not *res judicata* since parties, causes of action and issues are materially different. In JR No. 154 of 2013, the exparte applicants were Triple A Capital Limited, John Gichia Macharia and Janice alias Winjenje, while he was joined in that case as an interested party and had no control over the case not being a principal party.

11. The petitioner argues that the judicial review proceedings were brought under the Law Reform Act

and Order 53 of the Civil Procedure Rules, while this is a constitutional petition brought under article 22. The nature, scope and reliefs sought in the two proceedings are materially distinct.

12. The judicial review proceedings sought to prohibit commencement of the criminal case on grounds relating to the Attorney General's discretion and alleged conflict of interest, while this petition concerns continuing violation of constitutional rights under articles 27, 35, 47 and 50 of the Constitution arising from, among others, inordinate delay of over 15 years of the criminal case; the violations have occurred long after the conclusion of the High Court and Court of Appeal cases in 2014 and 2017, respectively.

13. The petitioner relies on the decision in *John Florence Maritime Services Limited & another v Cabinet*

Secretary Transport & Infrastructure & 3 others [2021]

KEHC 39 (KLR) to argue that the matter is not *res judicata*.

14. The petitioner also relies on the decisions in *Stanley Munga Githunguri v Republic* [1986] KEHC 44 (KLR); *Trusted Society of Human Rights Alliance v Attorney General & 2 others*; *Matemu (Interested Party)*; *Kenya Human Rights Commission & another (Amicus Curiae)* [2012] KEHC 2480 (KLR) and *Wambora v Speaker of the County of Assembly of Embu & 3 others* [2014] KEHC 7498 (KLR) to urge that the application is merited.

15. The petitioner again relies on the decision in *Trusted Society of Human Rights Alliance v Attorney General & 2 others*; *Matemu (Interested Party)*; *Kenya Human Rights Commission & another (Amicus Curiae)*

(supra) on the threshold for a constitutional petition and identifies continuing violations of his rights as justiciable.

16. In urging for conservatory orders the petitioner cites article 23(3) of the Constitution, rule 23 of the Mutunga Rules and the decisions in *Centre for Rights Education and Awareness (CREAW) & 7 others v Attorney General* [2011] eKLR; *Republic v Director of Public Prosecutions & 2 others Ex-parte Praxidis Namoni Saisi* [2016] KEHC 5698 (KLR) and *Kuria & 3 others v Attorney General* [2002] KEHC 1215 (KLR) for the position that he has demonstrated a *prima facie* case raising substantial constitutional questions. He again relies on *Martin Nyaga Wambora v Speaker of the County Assembly of Embu & 3 others* [2014] eKLR.

3rd respondent's case

17. The 3rd respondent has opposed the application through a replying affidavit and a further affidavit. The 3rd respondent asserts that investigations were conducted on alleged corruption and economic crimes at KPC over the contract to borrow 2 billion shillings from Trippel A, Capital Ltd following allegations that the manner in which the contract was awarded by KPC was marred by gross irregularities and the decision to borrow Kshs. 2 billion was not approved by KPC's Board.

18. According to the 3rd respondent, investigation established that the Board rejected some proposals and directed KPC management to obtain proposals from other banks in line with Procurement Regulations. The Board Committee found another proposal acceptable and recommended that KPC management seeks necessary approvals from the Ministry of Finance

through the Ministry of Energy to borrow Kshs. 2 billion from Triple A Capital repayable in 12 months.

19. The Minister for Finance approved the borrowing subject to a three-year repayment period. During the same month, KPC Management invited medium-term funding proposals for US\$40 million from five other banks, including SCBKL and Triple A Capital. It was later established that KPC had varied some of the terms in the approval and the PS, Energy stopped the signing of the contract and sought clarification from KPC over several issues in the matter.

20. According to the 3rd respondent, National Treasury's approval was subject to KPC submitting the loan agreement for final review but which was not done. Investigations revealed that the Managing Director of KPC and the Board Chairman authorized payments even

before Triple A Capital had made payments to the creditors. Investigations also revealed that KPC incurred losses in terms of additional interest charges contrary to the approved terms. The DPP approved recommendations to prosecute leading the impugned prosecution against the petitioner and others.

21. The petitioner and other accused persons denied the charges; the prosecution called eighteen (18) witnesses and upon close of the prosecution case, on 13th December 2024, the court found that the prosecution had established a *prima facie* case and put the accused persons on their defence.

22. The 3rd respondent maintains that this application is an afterthought and is intended to delay the criminal trial; the petitioner has not also established the threshold for granting conservatory orders and the

petitioner is guilty of *latches*. The petitioner's rights will be guaranteed and protected at the trial court.

23. The 3rd respondent again states that the petition is *res judicata* because the issues raised were litigated and conclusively determined by the High Court and Court of Appeal in the decisions in JR Case No. 154 of 2013 (formerly Misc. Application No. 645 of 2010) and Civil Appeal No. 313 of 2014.

24. The 3rd respondent relies on the decisions in *Wilson Kaberia Nkunja v the Magistrate and Judges Vetting Board and others* [2016] eKLR and *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others* [2014] eKLR for the position that the petitioner has not established a *prima facie* case with a probability of success.

25. The 3rd respondent further asserts that the Court of Appeal decision directed the trial court to proceed with the trial of the petitioner and the other accused persons after setting aside the High Court decision.
26. It is the 3rd respondent's position that the argument that defence witnesses passed away can be cured by section 33 of the Evidence Act. And the issue can be raised with the trial court. Reliance is placed on *Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others* [2014] eKLR and *Saisi & 7 others v Director of Public Prosecutions & 2 others* [2023] KESC 6 (KLR).
27. The 3rd respondent argues that the request for information was first made on 8th June 2022 despite the petitioner having been charged in 2010, a further indication that it was an afterthought.

The second application

28. This application seeks an order transferring the petition to the Anti-Corruption Division for hearing and determination. The 3rd respondent asserts that the petition alleges infringement of constitutional rights in the course of investigations and prosecution over corruption and economic crimes and Ant Corruption Division is the proper court to hear the petition by virtue of the Practice Directions issued by the Chief Justice on 9th December 2016 and Gazette Notice Number 7262 of 2018.

29. The 3rd respondent maintains that the High Court has previously transferred matters to that Division and cited decisions in *Ethics and Anti-Corruption Commission & Another v William Baraka Mtengo & 4*

others [2017] eKLR; *Kenya Universities Staff Union v University of Masinde Muliro University of Science and Technology & 2 others* [2018] eKLR and; *Ondiek Nyairo v Paul Chepkwony & 2 others* [2017] eKLR.

30. The 3rd respondent maintains that transferring the matter will aid efficient and timely disposal of the petition and relies on the decision in *Ethics and Anti-Corruption Commission & Another v William Baraka Mtengo & 4 others* (supra).

31. According to the 3rd respondent, the Practice directions make it mandatory for Petitions and Judicial Review applications on claims of infringement or the threatened infringement of constitutional rights relating to corruption and economic crimes matters to be heard by the Anti-Corruption Division. The 3rd respondent argues that pursuant to the decision in *Jovet (Kenya)*

Limited v Bavaria NV [2025] KESC 27 (KLR), Anti-Corruption Division can determine constitutional questions.

Petitioners' response

32. The petitioner has opposed the application asserting that this court has jurisdiction to hear and the determine the petition under article 165 (3) (b) of the Constitution. According to the petitioner, the petition raises issues of violation of articles 27, 28, 47 and 50 of the Constitution arising from prosecution that has persisted for over 15 years, during which period, key witnesses have died, and co-accused persons also passed on.

33. The petitioner contends that the decisions cited by the 3rd respondent are distinguishable and inapplicable

since none of those decisions involved a situation where the forum to which the transfer was sought was itself the subject of constitutional scrutiny and no interim orders were being sought. The application is intended to defeat the conservatory orders sought so as to continue with a trial whose fairness and legality are under constitutional challenge.

34. The petitioner maintains that he has consistently complained about the selective nature of his prosecution without reasonable justification which offends articles 27 and 157(11) of the Constitution; that the conduct of the prosecution constitutes an abuse of the process and that this court has both power and duty to prohibit continuation of criminal proceedings that are oppressive, discriminatory or actuated by bad faith. The application is an attempt to insulate the respondents' acts from constitutional scrutiny.

35. The petitioner maintains that the Anti-Corruption Division is a specialized court designed primarily to handle the trial and management of corruption and economic crime cases initiated by the 3rd respondent and the Director of Public Prosecution. These are the institutions under scrutiny and transferring the matter would compromise the appearance of impartiality and defeat the purpose of independent constitutional oversight. The petition is before the right court for the interest of justice and constitutional accountability where alleged violations should be examined.

36. The petitioner cites article 165(3) (b) and (d) of the Constitution for the position that this court has jurisdiction to hear and determine the petition since the matter relates to contravention of rights and fundamental freedoms. He relies on the decision in

Elasto Kinaro & another v County Government of Nyamira & 2 others [2017] KEHC 8554 (KLR).

37. The petitioner asserts that transferring the matter would cause grave prejudice, offend the interest of justice and render the petition and application an academic exercise since conservatory orders are necessary to preserve the integrity of the judicial process and to prevent the continuation of violations that have persisted over a decade. The petitioner relies on *Muslims for Human Rights (MUHURI) & 2 others v Attorney General & 2 others* [2011] KEHC 4291 (KLR) and *Centre for Rights Education and Awareness (CREAW) & 7 others v Attorney General* (supra).

38. It is the petitioner's position that the application for transfer is not made in good faith; is intended to defeat the conservatory orders sought, perpetuate a

discriminatory prosecution and allow an impugned process to continue unchecked.

39. The 1st, 2nd and 4th respondents supported the application for transfer of the matter to the Anti-Corruption Division.

Determinations

40. I have considered the two applications and arguments by parties. The court will determine the applications in the order they were filed.

First application

41. This application seeks conservatory orders to stay proceedings in Anti-Corruption Case No. 3 of 2010, pending the hearing and determination of the petition.

The petitioner argues that there is a real risk of violating his rights and fundamental freedoms if the criminal case proceeds while the petition remains to be heard. The respondents maintain that there is no threat to violate the petitioner's rights; that the petitioner is guilty of *laches* and that the matter is in any case, *res judicata* since a similar matter was determined in Civil Appeal No. 313 of 2014, an appeal from Judicial Review Application No. 154 of 2013.

42. The main issue for consideration in this application, is whether the court should grant the conservatory orders sought to stay criminal proceedings before the trial court. In determining the issue, the court is not required at this stage, to make a definite and conclusive finding of fact or law, as doing so would prejudice the hearing of the main petition.

43. In this respect, Musinga J, (as he then was) stated in *Centre for Rights Education and Awareness (CREAW) & 7 others* [2011] eKLR; [2011] KEHC 4297 (KLR), that when considering an application for conservatory orders, the court should not delve into a detailed analysis of facts and the law. At this stage, a party seeking a conservatory order is only required to demonstrate that he has a *prima facie* case with a likelihood of success, and that unless the court grants the conservatory order, there is real danger that he will suffer prejudice as a result of the violation or threatened violation of the rights or the Constitution.

44. In *Centre for Human Rights and Democracy & others v The Judges and Magistrates Vetting Board & others* - Petition No. 11 of 2012, it was held that:

[W]here a legal wrong or a legal injury is caused to a person or to a determinate class of persons by

reason of violation of any constitutional or legal right or any burden is imposed in the contravention of any constitutional or legal provision, or without the authority of the law or any such legal wrong or injury is threatened, the High Court has powers to grant appropriate reliefs so that the aggrieved party is not rendered, helpless or hapless in the eyes of the wrong visited or about to be visited upon him or her. This is meant to give an interim protection in order not to expose others to preventable perils or risks by inaction or omission.

45. In *Judicial Service Commission v Speaker of the National Assembly & Another* [2013] eKLR, the Court again stated:

Conservatory orders...are not ordinary civil law remedies but are remedies provided for under the Constitution, the Supreme law of the land. They are not remedies between one individual as against

another but are meant to keep the subject matter of the dispute in situ. Therefore, such remedies are remedies in rem as opposed to remedies in personam. In other words, they are remedies in respect of a particular state of affairs as opposed to injunctive orders which may only attach to a particular person.

46. The above position was reinforced by the Supreme Court in *Gitirau Peter Munya v Dickson Mwenda Kithinji and 2 others* [2014] eKLR, stating:

Conservatory orders bear a more decided public law connotation: for these are orders to facilitate ordered functioning within public agencies, as well as to uphold adjudicatory authority of the Court, in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private-party issues as the “prospects of

irreparable harm” occurring during the pendency of a case; or “high probability of success’ in the applicant’s case for orders of stay. Conservatory orders consequently, should be granted on the inherent merit of the case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes.

(See also *Board of Management of Uhuru Secondary School v City County Director of Education and 2 Others* [2015])

47. In considering whether or not to grant conservatory order, the court should also take into account the principle of proportionality. As Ojwang, AJ (as he then was) observed in *Suleiman v Amboseli Resort Limited* [2004] 2 KLR 589, in responding to prayers, the court should always opt for the lower rather than the higher risk of injustice.

48. The first issue for determination is whether the petitioner has established a prima facie case for purposes of granting conservatory orders. It has been stated that a *prima facie* case is not one that must succeed at the hearing of the main case; it is also not a case which is frivolous. In other words, a party has to demonstrate that his case discloses or raises an arguable issue and, in this case, an arguable constitutional issue.

49. In this petition, the issues the petitioner intends to argue at the hearing, include whether his rights will be violated if the trial in the criminal case continues; whether the delay in prosecuting the case is prejudicial to the petitioner's rights and whether the death of co accused persons or withdrawal of charges against some of the co accused persons will affect the petitioner's

right to fair trial and violate or threatens to violate his fundamental rights and freedoms in the Bill of Rights and whether it will render the trial discriminatory for targeting him only while other necessary parties are left out.

50. Although the petitioner has pointed out the rights and fundamental freedoms in the Bill of Rights he claims have either been denied, violated; infringed or are even threatened, thereby falling within the ambit of article 23(1) as read with article 165(3) of the Constitution, the petitioner has not contended that the trial court will not consider some of his claims during the trial.

51. The petitioner has not, at this stage, also demonstrated that the trial court or the respondents are responsible for the delay in prosecuting the criminal

case or that the trial is indeed discriminatory as to violate the rights protected under the Constitution.

52. As the court observed in *Peter Kyalo v Alfred Mutua & 6 others* [2018] eKLR, a party seeking an order for a declaration that the Constitution has been contravened, or is threatened with contravention is not necessarily undeserving of conservatory orders under article 23(2) (c) of the Constitution as long as he brings himself within the ambit of the provisions of article 23(1) of the Constitution.

53. It is indeed, true that the issues raised by the petitioner in this petition fall within the purview of article 23 of the Constitution, but the petitioner must demonstrate that if conservatory orders are not granted, he will suffer prejudice and that his rights will be violated and he will not have a remedy thereafter.

54. The petitioner has sought conservatory relief which is an order in rem, meant to advance the obligation of every person to respect, uphold and defend the Constitution as required by article 3(1) of the Constitution. The respondents have argued that the 3rd respondent acted within the law and conservatory orders will delay the conclusion of the trial since the petitioner has already been put on his defence and should therefore be allowed to proceed.

55. The DPP recommended the petitioners' prosecution which has been going on for several years. The DPP called 18 witnesses and closed its case and in December 2024, the petitioner was put on his defence. He was due to testify on 25th and 27th November and 1st and 2nd December 2025. The petitioner has not demonstrated at this stage that the respondents are

not discharging their lawful mandate as required by law to persuade this court to intervene. This is because conservatory orders are granted to preserve the substratum of a case where it is demonstrated that the Constitution, the law or rights and fundamental freedoms are violated, or threatened.

56. The petitioner has been undergoing trial since 2010. The prosecution was initially stopped by the High Court but the Court of Appeal allowed it to proceed and the respondents have raised the defence of *res judicata* against the petition. The respondents have also argued that the petitioner only filed this petition and application and sought conservatory orders after he was put on his defence.

57. In the circumstances of this petition, from the facts disclosed in the petition and the responses and reading

the decision of the Court of Appeal, it is the view of this court, that considering the issues raised in the pleadings, the stage the trial has reached, and without attempting to make any definitive findings over the petition, the petitioner has not demonstrated good reasons for granting conservatory orders. In short, it cannot be said that based on the issues raised in the petition, the petitioner has demonstrated prima facie case for purposes of granting conservatory orders.

58. On whether there is real danger that prejudice will be suffered as a result of violation or threatened violation of the Constitution; the law and rights and fundamental freedoms if conservatory orders are not granted, the court while dealing with what amounts to real danger, in *Martin Nyaga Wambora v Speaker of The County of Assembly of Embu & 3 Others* [2014] eKLR, stated that:

The danger must be imminent and evident, true and actual and not fictitious; so much so that it deserves immediate remedial attention or redress by the court. Thus, an allegedly threatened violation that is remote and unlikely will not attract the court's attention.

59. In this application, the court is to determine whether there is real danger such that by the time the petition is determined, some of the issues raised will have been rendered superfluous by the impugned trial. The petitioner argues that the delay of the trial is prejudicial; that he sought documents which had not been given and that some of the people who should have been charged were left out. Some of these issues can be raised before the trial court such as the issue of documents since the trial court can direct that they be supplied.

60. Taking into account the nature of the competing claims in this petition against the background of the public cause, the court has to focus on the public interest and good governance which favours compliance with the Constitution and the law. The petitioner has not demonstrated that the respondents are acting outside the Constitution and the law. There is no demonstration that if the impugned trial proceeds the violations will be beyond redemption.

61. In the circumstances, therefore, all factors considered and without deciding with finality the issues raised in this petition, the court is of the view, and finds, that it is in the public interest and the interest of justice not to grant the conservatory orders at this stage.

Second Application

62. The second application seeks an order transferring this petition to the Anti-Corruption Division for hearing and final determination. The 3rd respondent argues that since the petition alleges infringement of constitutional rights in the course of investigations and prosecution over corruption and economic crimes, Anti-Corruption Division is the proper court to hear the petition by virtue of the Practice Directions issued by the Chief Justice on 9th December 2016 and Gazette Notice Number 7262 of 2018. According to the 3rd respondent, the High Court has previously transferred such matters to that Division. The 1st and 2nd respondents supported the application.

63. The petitioner opposes the application, arguing that this court has jurisdiction to hear and determine the petition under article 165 (3) (b) of the Constitution. The petitioner maintains that the petition raises issues of violation of articles of the Constitution arising from the prosecution that has persisted for over 15 years, during which key witnesses have died, and co-accused persons passed on.

64. The petitioner asserts that the decisions the 3rd respondent has cited are distinguishable and inapplicable as they did not involve a situation where the forum to which the transfer was sought was itself the subject of constitutional scrutiny and the selective nature of the prosecution in violation of articles 27 and 157(11) of the Constitution. He maintains that the

application is an attempt to insulate the respondents' acts from constitutional scrutiny.

65. The petitioner urges that Anti-Corruption Division is a specialized court intended to handle trial and management of corruption and economic crime cases initiated by the 3rd respondent and the Director of Public Prosecution, institutions that are under scrutiny. Transferring the petition would compromise the appearance of impartiality and defeat the purpose of independent constitutional oversight.

66. The petitioner urges that the petition is before the proper court where for the interest of justice and constitutional accountability the alleged violations should be examined. The petitioner takes the view, that under article 165(3) (b)(d) of the Constitution, this court has jurisdiction to hear and determine the petition since

the matter relates to contravention of rights and fundamental freedoms.

67. The petitioner takes the further view, that the application for transfer has not been made in good faith; is intended to defeat the conservatory orders sought, perpetuate a discriminatory prosecution and allow an impugned process to continue unchecked.

68. I have considered arguments by parties on this application. The application seeks transfer of the petition to the Anti-Corruption Division for hearing and final determination. The reason for seeking transfer is that the prosecution relates to investigations and prosecution of alleged corruption and economic crimes.

69. Anti-Corruption Division is not a different court in terms of jurisdiction since, just like this Division, it is a

division of the High Court, exercising jurisdiction conferred by article 165(3) of the Constitution. The establishment of the divisions is an administrative act and any jurisdiction the Divisions exercise is administratively assigned and does not take away the original jurisdiction of the High Court.

70. During the hearing of the application, counsel for the 3rd respondent, admitted that this court has jurisdiction to hear the petition. The was, however, that the Anti-corruption Division Court would hear the petition much faster than this court.

71. The petition was filed in this Division under article 22 challenging what the petitioner perceives to be violations or threat to violate the Constitution and rights and fundamental freedoms. In that respect, article 23(1) read with article 165 confers on the High Court

jurisdiction to hear the petition. This Division and Anti-corruption Division are Divisions of the same High Court and exercise the same jurisdiction. In that regard, to transfer a case from one Division to the other is a matter of discretion which has to be exercised judiciously since both Divisions exercise the same jurisdiction and there is no issue of lack of jurisdiction.

72. In *Elasto Kinaro & another v County Government of Nyamira & 2 others* (supra), the court emphasized the fact that divisions of the High Court exercise the same jurisdiction stating:

[D]ivisions of the High Court are administrative in nature and do not necessarily dictate as to the jurisdictional confines of the sitting judge. The divisions are administrative walls, the common denominator being that first and foremost, they are

substantively High Courts in the hierarchical structure in the judicial system. And we have one High Court. It would therefore follow that every High Court judge is seized with equal jurisdiction and all High court judges are at par to handle matters dealing with interpretation of the Constitution and violations of the Bill of Rights by dint of Article 23(1) as read with Article 165 of the Constitution. Any High Court judge has jurisdiction to interpret the Constitution and handle any matter touching on the Constitution.

73. This position is supported by the decision of the Supreme Court in *Jovet (Kenya) Limited v Bavaria NV* (supra) that each Division was established to address novel issues within its specific area of administration. However, the establishment of these Divisions did not, in any way, diminish their mandate or oust their original

High Court jurisdiction as conferred by article 165 of the Constitution, including the determination of constitutional questions.

74. The argument that the Anti-Corruption Division would hear and determine the petition much faster than this Division is not, on its own, good reason for transferring this petition to that Division or any other division. Matters are not transferred from one court (Division) to another because of convenience. There must be justifiable reason, in this case, justifiable legal reason for doing so.

75. This petition was filed in this court and directions were issued on filing of responses and submissions as a way of fast tracking the matter for hearing. Whether a matter would be determined fast or not is dependent on many factors, including how quickly parties comply with

directions issued by the court. The mere fact of transferring a matter from one court to another will not on its own guarantee quick disposal of the matter.

76. This petition has been filed to challenge the petitioner's prosecution on grounds that the conduct of the prosecution constitutes an abuse of the process and violates the rights guaranteed in the Bill of Rights. This court being a High Court has jurisdiction to hear and determine the issues raised in the petition.

77. The respondents' concerns regarding how quickly the petition will be determined in this court *vis a vis* if the petition was transferred to the other Division is not a basis for transferring the petition from this Division. Such a cause will only delay the hearing and determination of the matter since it will have to queue up just like any other matter for its turn to be heard.

78. In the circumstances, having considered the two applications and arguments by parties, the conclusion I come to, is that both applications have no merit. They are dismissed with no order as to costs.

**Dated and delivered at Nairobi this 16th Day of
December 2025**

E C MWITA

JUDGE