Mulaa v Republic (Criminal Revision E007 of 2025) [2026] KEHC 597 (KLR) (Anti-Corruption and Economic Crimes) (30 January 2026) (Ruling)

Neutral citation: [2026] KEHC 597 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

ANTI-CORRUPTION AND ECONOMIC CRIMES

CRIMINAL REVISION E007 OF 2025

BM MUSYOKI, J

JANUARY 30, 2026

BETWEEN

PROF. FRANCIS JACKIM MULAA .... APPLICANT

AND

REPUBLIC .... RESPONDENT

(Being application for revision of the ruling and orders of Honourable I. Barasa PM, dated 30-07-2025 in Milimani Chief Magistrates anti-corruption case number E046 of 2025)

RULING

1. By a notice of motion dated 4th August 2025, the applicant has approached this court praying that this court calls for the records of the lower court file in Milimani Chief Magistrate's Court Anti-Corruption case number E046 of 2025 and determine the legality of the said court's orders issued on 30th July 2025. The other substantive prayer was seeking for stay of further proceedings in the lower court matter which this court declined on 5th August 2025. There were other prayers which are now spent and the prayer that remains for determination is the one seeking revision of the orders of the lower court dated 30-07-2025.

2. When the applicant was arraigned in the lower court for plea on 24-07-2025, he raised an objection to the jurisdiction of the said court to hear and determine the case. He argued that the court was not clothed with jurisdiction pursuant to Section 4(2) of the *Anti-corruption and Economic Crimes Act* (hereinafter referred to as 'ACECA') because the offence is alleged to have been committed in Garissa which region has a Magistrate duly gazetted to handle anti-corruption cases.

3. The respondent argued that, the court had the requisite jurisdiction since the applicant was a resident of Nairobi and this being an anti-corruption case, the Nairobi station was the proper and appropriate place for hearing and determination. The respondent argued further that the power to transfer a

criminal matter rested with the High Court pursuant to Section 81 of the Criminal Procedure Code. The respondent added that, since the applicant was a resident of Busia County and was working in Nairobi County, Nairobi was a central place and most convenient for the trial. The respondent has argued that some of the witnesses were employed outside Garissa and they would prefer to testify in Nairobi.

4. In dismissing the preliminary objection, the trial court cited the case of Onesmus Muthomi Njuki & 19 Others v Director of Public Prosecution [2021] KEHC 3009 (KLR). She stated that in the said case, the court held that the lower court could assume jurisdiction for crimes committed out of its geographical jurisdiction as long as there was justification. She went on to state that the ODPP was justified in filing the charges in that court since the applicant was a resident and worked in Nairobi.

5. I have read the submissions of the applicant dated 4th November 2025 and those of the respondent dated 17th November 2025. I have also considered the authorities cited by the parties. In my view, I am called upon to evaluate whether the order of the trial Magistrate was attended by illegality. If indeed the court lacked jurisdiction, then the orders emanating from the ruling would be improper and amenable to revision. It has been held in several judicial authorities that jurisdiction is everything and a court which assumes jurisdiction which it does not possess acts in vain as any orders emanating therefrom are null and void ab initio.

6. A court can only exercise jurisdiction that is conferred upon it by a statute or *the Constitution*. A court cannot assume jurisdiction over a matter by implication or on the basis of the circumstances of the case. The Court of Appeal held in Joel Kenduiywo v District Criminal Investigation Officer Nandi & 4 others [2019] KECA 76 (KLR) that;

> Jurisdiction is everything. A court of law cannot confer jurisdiction upon itself where that jurisdiction has been ousted by *the Constitution* or by statute.'

Section 4(2) of the ACECA provides that;

> Every offence specified in this Act shall be tried by the special Magistrate for the area within which it was committed, or, as the case may be, by the special Magistrate appointed for the case, or where there are more special Magistrates than one for such area, by one of them as may be specified in this behalf by the Chief Justice.'

7. It cannot be right that a trial would be conducted on convenience of witnesses or either of the parties oblivious of a clear provision of the law. Even where the respondent has an option or discretion of choosing between more than one court, in my view, the choice must stem from or be dictated by the law. It has been admitted that the offence in this matter was committed in Garissa and in my view, unless there are compelling and convincing reasons, the charge should have been filed in Garissa.

8. The respondent's explanation that the applicant lives in Busia and works in Nairobi and that the witnesses prefer being heard in Nairobi lacks basis in law. The place of trial of a criminal case does not depend on where the accused person or witnesses live or where it is convenient for them. Even if convenience of witnesses or either of the parties were to be relevant factors of consideration, they cannot override clear provisions of the law.

9. Having said the above, I do not find justification in Honourable Magistrate's finding that the reason given by the respondent justified filing of the charge in Nairobi. I also agree with the applicant that the trial court cited the authority of Onesmus out of context. The portion of the ruling in the cited case which the Honourable Magistrate made reference to stated that 'for record purposes it must be stated that the matter could as well be tried in Nairobi but there must be justification for that court to assume

jurisdiction, which was not the case in the matter before the court.' It is obvious that this statement by the court which was not the ultimate holding does not give the respondent the leeway to file an anti-corruption charge in any court of its choice contrary to the clear provisions of Section 4(2) of ACECA.

10. If the Honourable Magistrate had taken time to objectively read the whole ruling in the said case, she would have noticed that the Honourable Judge actually ended up transferring the matter to Embu which was the nearest court with the local the territorial jurisdiction over where the offence was committed having taken into account that one of the accused persons was then the Governor of Tharaka Nithi County. In doing so, Honourable Justice J. Wakiaga held that;

> It is not open to the Director of Public Prosecution to unilaterally decide the place of trial. In addition to the direction given under ACECA, the Criminal Procedure Code also provides statutory guidance under section72 which states that the trial should ordinarily be by a court within the local limits of whose jurisdiction the thing has been done or the consequence has ensued.'

11. In conclusion, it is my finding that the Honourable Magistrate was wrong in assuming jurisdiction to try the matter contrary to clear provisions of Section 4(2) of ACECA. In the circumstances, I make the following orders;

    a. The ruling and orders of the Honourable I. Barasa PM dated 30-07-2025 are hereby set aside and/or quashed.

    b. The Milimani Chief Magistrate's Anti-Corruption case number E046 of 2025 is ordered transferred to the Chief Magistrate's Court at Garissa for hearing and disposal.

    c. The applicant shall appear before the Chief Magistrate in Garissa on 20-02-2026 for further directions and orders.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 30TH DAY OF JANUARY 2026.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

Ruling delivered in presence of Mr. Omuyoma for the applicant and Mr. Mong'are for the respondent.