

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CRIMINAL MISCELLANEOUS APPLICATION NO.E021 OF 2025

CHINAEMEREM PARDON NWAIKEPETITIONER/APPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

1. This matter is for mention for parties to confirm status of the **Notice of Motion** application dated 4th February, 2025 and take further directions. There is no appearance by the Applicant and or his counsel. There is even no representation to explain their absence.
2. However, upon listening to counsel for the Respondent, **M/S Murrui**, who is in attendance, it is established that the Applicant was repatriated upon completion of his sentence as there was no order to stay the repatriation.
3. Vide a Notice of Motion application dated 4th February, 2025, the Applicant sought for orders that:-

a) Spent.

- b) That this Honourable Court do exercise its revisionary powers and call for and examine the record of the Senior Principal Magistrates Court at Kahawa in Criminal Case No.E006 of 2025 for purposes of satisfying itself and pronouncing itself as to the correctness, legality and propriety of the proceedings and the orders issued on 24th January, 2025.*
- c) That this Honourable Court do exercise its discretion in revision of the ruling/Order by the Hon. Principal Magistrates. (Hon. G. Kiage) made on the 24th January 2025 in Criminal Case No.E006 of 2025 at Kahawa Law Courts and issue an order for stay restraining the Immigration Office from repatriating the Applicant pending the hearing and determination of this application.*
- d) That the Honourable Court do exercise its discretion and grant the Applicant reasonable bail/bond terms pending the hearing and determination of this Revision application.*
- e) That this Honourable Court do exercise its discretion in revision of the ruling/Order by the Hon. Principal Magistrates. (Hon. G. Kiage) made on the 24th January 2025 in Criminal Case No.E006 of 2025 at Kahawa Law Courts and set aside the said order of repatriating the Applicant back to Nigeria.*
- f) That this Honourable Court be pleased to grant the*

Applicant sufficient time to regularise his stay if Kenya.

g) That the Honourable Court be at liberty to issue further directions in this matter as it deems fit and necessary.

h) That costs of this application be provided for.

4. The matter came up before this Court under Certificate of Urgency on 13th February, 2025 and the Applicant was directed to serve the Respondent to enable them respond within three (3) days of service, and for them to attend this Court for interparties hearing on 13th February, 2025. When the matter came up for interparties hearing, the Respondent's counsel confirmed having been duly served with the application and directions on interparties hearing.
5. However, counsel for the Respondent sought for more time to file a response on the grounds that they had been unable to file their response for the reason that **CIP Ambrose of Trafficking and Organised Crimes Unit** at the DCI Headquarter was away, hence to be able to file a response since they had no particulars or information on the Applicant's prayers. Counsel for the Respondent (ODPP) sought for leave that the interparties hearing be adjourned and the parties be directed to dispose of the application by way of submissions within limited period due to its urgency. This proposal was not

opposed by counsel for the Applicant, **Mr. Owang**, save for seeking release of the Applicant as per Prayer No.3 of the application for the reason that the Applicant was legally in the County, was not a flight risk and was ready to abide by any court orders and or condition. Counsel for the Applicant also sought for the release of the Applicant's belongings which included his passport.

6. This was opposed by the Respondent's counsel on the ground that the Applicant had already been convicted for being believed to be illegally in Kenya and orders for his repatriation issued. According to counsel for the Respondent, the orders issued are not meant to punish the Applicant but are meant to assist him regularise his status in the country. Counsel also submitted that the Applicant, by himself, had admitted to have been illegally in Kenya, hence his conviction and orders for his repatriation. It is the Respondent counsel's submission that the Applicant cannot seek to remain in this country illegally unless he seeks asylum from the relevant agency.
7. Upon considering submissions by both counsel for the parties herein, this Court found that it is unable to make any decision and directions without the original record of proceedings from the trial Court so as to confirm or dismiss either counsel's submissions and or prayer.

8. The court then proceeded to adjourn the interparties hearing with directions that the Deputy Registrar of this court calls for and avails the original record of proceedings in **Kahawa Criminal Case No.E006 of 2023** and parties directed to canvass the application by way of written submissions upon the Respondent filing and serving their response. The parties were granted limited timelines to comply with the directions on filing of response and written submissions.
9. The matter was then fixed for highlighting of submissions on 3rd March, 2025. On this day, counsel for the Applicant informed the court that they had not received any response from the **Office of the Director of Public Prosecution** but had learnt that the Applicant had been repatriated to Nigeria and he did not understand under what circumstances the repatriation occurred. He sought for directions on whether there was another order for the Applicant's repatriation.
10. In response, **M/S Ndeda**, counsel holding brief for **Mr. Gacharia**, who was counsel in conduct of the matter sought that the matter be deferred to another date so that **Mr. Gacharia** would address any questions and or issues arising therein. This was not opposed by the Applicant's counsel save to seek that

the order that led to the Applicant's repatriation be presented to court and served upon them. The court then adjourned the matter to 18th March, 2025 and issued directions in-line with the Applicant's counsel's request.

11. Since then, there has been no attendance by the Applicant and or his counsel, hence no position on the application has been confirmed. Today, counsel for the Respondent/State has submitted to confirm that the Applicant was repatriated after completing his sentence as there had been no order to stay the repatriation of the Applicant. She then urged that the pending application has been overtaken by events and the same should be marked as spent and file closed.

12. Having heard counsel for the Respondent in her request to have the pending application herein as spent and file be closed, I have perused and read through the court records. Indeed it is confirmed that the Applicant was confirmed as having been repatriated by his own counsel on 18th March, 2025 when the matter came up for mention for parties to confirm filing of a copy of order to repatriate the Applicant.

13. In this Court's view, a perusal of the court record confirms that there was no order issued to stay the repatriation of the Applicant since the court was

reluctant to grant the same without the original record of proceedings to enable all the stakeholders involved read through to confirm the submission and or presentation by all the parties. It is also worth noting that the Respondent's counsel indicated that the Applicant had been convicted on his own plea of the offence, hence the conviction and sentence and or conditions to be complied with.

14. As on the court record, it is confirmed that the Applicant did not raise any evidence to confirm that he, the Applicant was legally in Kenya. All that has been availed to court are copies of **charge sheet before the trial court, marked "DO-1", court orders marked "DO-2", copy of certified proceedings marked "DO-3". Copy of Tenancy Agreement marked "DO-4" and copies of Medical Report and Treatment Notes form Bingwa Afya Maternity and Dialysis Centre marked "DO-5".** The Court proceedings confirm that on 24th January, 2025, he pleaded **"Guilty"** to the charge of being unlawfully present in Kenya without a valid Visa contrary to the **Citizenship and Immigration Act No.12 of 2011** and was convicted and sentenced to a fine of Kshs.50,000/= and in default serve thirty (30) days imprisonment. Further, it was ordered that he be repatriated back to Nigeria upon payment of such fine and serving the sentence so ordered. This was after he confirmed in mitigation that he had been looking for funds

to travel back home to renew his Visa, which is indeed a confirmation that he was in Kenya without a Visa (without permission).

15. From the above analysis of the record, this Court agrees with the Respondent's counsel, **M/S Murrui** that the Applicant was repatriated after completing sentence. The Applicant's sentence was passed on 24th January, 2024, hence, the thirty(30) days sentence, in the event he did not pay the fine ordered by the court, was to lapse by 25th February, 2025. Therefore, the Court, not having been prompted and or jogged by counsel for the parties and more so the Applicant's counsel, proceeded to give directions against the subject matter herein, which was then rendered nugatory.

16. In that case, the **Notice of Motion** application dated 5th February, 2025 is found to have been overtaken by events, and is thus spent. This file is therefore marked as closed.

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU
THIS 28TH DAY OF JANUARY, 2026.**

**D. O. CHEPKWONY
JUDGE**