

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO. E126 OF 2025

HON. STELLAH ATAMBO.....
PETITIONER

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS.....1ST

RESPONDENT

DIRECTORATE OF CRIMINAL

INVESTIGATIONS.....2ND

RESPONDENT

ETHICS AND ANTI-CORRUPTION

COMMISSION.....3RD

RESPONDENT

THE CHIEF MAGISTRATE’S ANTI-CORRUPTION COURT

NAIROBI4TH RESPONDENT

THE ATTORNEY GENERAL.....5TH

RESPONDENT

AND

**KENYA MAGISTRATES AND
JUDGES ASSOCIATION.....INTERESTED
PARTY**

RULING

Background

1. By way of an Ex Parte Notice of Motion Application dated 12th March 2025 filed as Milimani Chief Magistrate's Misc. Criminal Application E 377 of 2025, the Ethic and Anti-Corruption Commission, the 3rd respondent, sought and was granted search and seizure orders to enter and search the petitioner's home and seize documents, electronic devices, unexplained sums of money, or any other items deemed necessary in the investigations of economic crimes. The 3rd respondent's officers effected the orders on 13th March 2025.

2. Aggrieved, the petitioner filed a petition challenging the manner in which the search and seizure orders were procured, and the manner of execution of those orders terming the process unconstitutional and a violation of several articles of the Constitution, including 2, 28, 29, 31, 40, 47, 50, 157(11) and 160. The petition seeks declaratory orders and Judicial review orders of prohibition, certiorari and mandamus.

3. The petitioner also filed an application for conservatory orders to restrain the respondents from arresting, charging and prosecuting her pending the hearing and determination of the petition. The court granted interim conservatory orders.

The Application

4. The 3rd respondent then filed a Notice of Motion Application dated 17th March 2025 seeking to transfer the petition to the Anti -Corruption Division of the High Court for hearing and determination.

5. The application has been brought under rules 8 and 19 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (Mutunga Rules). The application is supported by an affidavit sworn by Ben Murei.

6. The application is predicated on the grounds that following the establishment of the Anti-Corruption Division on 8th December 2015, Practice directions made on 9th December 2016, and rule 6 of the Gazette Notice 7262 of 2018 published on 20th July 2018 by the Chief Justice, the Anti-Corruption

Division is the proper court to hear and determine this petition.

7. The 3rd respondent asserts that the High Court has previously transferred matters to the Anti - Corruption Division such as *Ethics and Anti-Corruption Commission & another v William Baraka Mtengo & 4 others* [2017] eKLR; *Kenya Universities Staff Union v the University Council of Masinde Muliro University of Science and Technology & 2 others* [2018] KEHC 8534 (KLR); *Ondiek Nyairo v Paul Chepkwony & 2 others* [2017] eKLR, among others.

8. The 3rd respondent states that the petitioner had filed an application to set aside the orders granting search warrants issued by the 4th respondent on the same grounds as raised in this petition and had obtained stay of execution of those orders. The 3rd

respondent therefore intends to request the Anti-Corruption Division to call for the lower court file and determine all the issues with finality. Furthermore, the Ant-Corruption Division has supervisory jurisdiction over special magistrate courts handling anti-corruption and economic crime cases.

Response

9. The petitioner has opposed the application through a replying affidavit. The petitioner states regarding the transfer, that this court has jurisdiction to adjudicate on this petition by virtue of article 165(3) of the Constitution which confers on the court jurisdiction to hear and determine this petition. According to the petition, divisions established within the High Court are purely

administrative in character and do not divest jurisdiction from any judge or station of the Court.

10. The petitioner asserts that Practice Directions do not supplant the constitutional jurisdiction of the High Court. They serve to promote efficient disposal of cases of particular subject matter but do not preclude the Constitutional and Human Rights Division from hearing petitions raising constitutional questions merely because the factual background involves corruption and economic crimes.

11. The petitioner contends that the substratum of the grievances in the petition lie in the protection of constitutional order and vindication of fundamental rights not the trial of corruption or economic crimes *per se*. The petition therefore falls within the constitutional jurisdiction of this Court.

The 3rd respondent has not demonstrated how adjudication of the petition before this court would occasion injustice to any party or violate any principle of law. The petitioner maintains that the application has no merit and should be dismissed.

Submissions

3rd respondent's submissions

12. Mr. Murei, learned counsel for the 3rd respondent, argues that the petition concerns violation of the petitioner's rights in the course of investigations into corruption and economic crimes and should be heard before the Anti-Corruption Division. He relies on the decisions in *Ondiek Nyairo v Paul Chepkwony & 2 others* [2017] eKLR and *Ethics and Anti-Corruption Commission v William Baraka Mtengo* [2017] eKLR.

13. Mr. Murei submits that the decisions relied upon by the petitioner were cases where courts declined to transfer cases on grounds of access to justice which is not an issue here. The Practice Directions were issued pursuant to the High Court (Organization and Administration) Act 2015 and Judicial Service Act and, for that reason, they should be given force.

14. Learned counsel argues that constitutional issues can be litigated irrespective of court divisions where they arise. He relies on the decisions in *Jovet (Kenya) Limited v Bavaria NV* [2025] KESC 27 (KLR) and *Fortis Tower Management Ltd & Another v Trendmark Computers Ltd* [2018] eKLR and urges the court to allow the application.

Petitioner's submissions

15. Mr. Shadrack Wambui, learned counsel for the petitioner, relies on the decision in *Geoffrey K Sang v Director of Public Prosecutions & 4 others* [2020] eKLR for the argument that where Rules and Practice Directions make reference to the word “shall” do not necessarily mean that all matters must be heard in the Anti-Corruption Division. This is because the High Court is a creature of the Constitution under article 165 and pursuant to article 165(3), the court has jurisdiction to determine the issue of violations of rights and fundamental freedoms.

16. Learned counsel argues that while it is true that a constitutional issue can be determined by any court or division, that does not mean this court will be acting illegally and violating the law by

allowing this petition. Counsel relies on the decisions in *Jovet (Kenya) Limited v Bavaria NV* (supra) and *Christopher Orina Kenyariri t/a Kenyariri & Associates Advocates v Salama Beach Hotel Ltd & 3 others* (supra).

17. Mr. Shadrack Wambui asserts that the decisions the 3rd respondent has relied on are from courts of concurrent jurisdiction and therefore not binding on this court. Learned counsel maintains that this court has jurisdiction to hear and determine this petition and urges the court to dismiss the application with costs.

Determination

18. I have considered the application, the response and arguments by counsel for the parties.

This 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 intended prosecution over corruption and economic crimes, Anti-Corruption Division is the proper court to hear the petition by virtue of Practice Directions issued by the Chief Justice. According to the 3rd respondent, the High Court has previously transferred such matters to that Division.

19. The petitioner has opposed the application, arguing that this court has jurisdiction to hear and determine the petition by virtue of article 165 (3) (b) of the Constitution. The petitioner maintains that the petition raises issues of violation of rights and fundamental freedoms arising from the investigations and intended prosecution thus, this

court has jurisdiction to determine the issues raised in the petition. According to the petitioner, the petition is before the proper court since the issues raised relate to contravention of rights and fundamental freedoms.

20. I have considered arguments by parties over this application. The application seeks to transfer this 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 over alleged corruption and economic crimes.

21. The Anti-Corruption Division is a division of the High Court just like this Division. It is not a different court in terms of jurisdiction. As a division of the High Court, it exercises jurisdiction conferred by article 165(3) of the Constitution. The

establishment of divisions within the High Court, 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.

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

23. The petition was filed in this Division under article 22 to challenge what the petitioner perceives to be violations or threat to violate the Constitution and her 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 being Divisions of the same High Court, exercise the same jurisdiction in terms of article 165(3) of the Constitution. In that regard, to transfer a case from one Division to another is a matter of discretion which has to be exercised judiciously since both Divisions exercise the same jurisdiction and no issue of lack of jurisdiction arises.

24. In *Elasto Kinaro & another v County Government of Nyamira & 2 others* [2017] eKLR, the court emphasized the fact that divisions of the High Court exercise the same jurisdiction, observing:

[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.

25. The above 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.

26. As this court stated in *Dr. Shem Odongo Ochuodho v Director of Public Prosecution and 3 others* (Petition No. E615 of 2025), 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 the Anti-Corruption 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.

27. The petition was filed in this court to challenge perceived violations of the Constitution, the law and rights and fundamental freedoms and directions were issued on filing of responses and submissions to fast track the petition for hearing. Whether a matter would be heard and determined in any court 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 is not, on its own, a guarantee for quick disposal of the matter.

28. This petition having been filed to challenge the respondents' actions on grounds that their conduct constitutes an abuse of the process and violates

rights and fundamental freedoms guaranteed in the Bill of Rights, this court being a High Court. has jurisdiction to hear and determine the issues raised in the petition.

29. The 3rd respondent's concerns regarding how quickly the petition will be determined in this court *vis a vis* if the petition was transferred to the Anti-Corruption Division, is not a basis for transferring this petition from this Division. Such a cause will only delay the hearing and determination of the petition since it will have to wait for its turn to be heard in the new court.

30. In the circumstances, this court finds no merit in the application. Consequently, and for the above reasons, the application is declined and dismissed. Costs shall be in the cause.

**Dated and signed at Nairobi this 4th Day of
February 2026**

E C MWITA

JUDGE

**Delivered and countersigned this 5th Day of
February 2026**

L N MUGAMBI

JUDGE