BB (Suing as the Father of the Minors, NB, A alias HB and SNB) & another v Shariff (Miscellaneous Criminal Application E018 of 2025) [2026] KEHC 1006 (KLR) (2 February 2026) (Ruling)

Neutral citation: [2026] KEHC 1006 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT BUSIA

MISCELLANEOUS CRIMINAL APPLICATION E018 OF 2025

WM MUSYOKA, J

FEBRUARY 2, 2026

BETWEEN

BB (SUING AS THE FATHER OF THE MINORS, NB, A ALIAS HB AND SNB) ..... 1ST APPLICANT

PHILEMON KITALIA ..... 2ND APPLICANT

AND

HON. LADY JUSTICE MWANAISHA SAIDA SHARIFF & 154 OTHERS ..... RESPONDENT

RULING

1. The matter herein was a Bungoma High Court matter, filed there as Bungoma HC Miscellaneous No. E035 of 2025, which was transferred to the High Court at Busia, because the Judges at Bungoma could not handle it, as they have been named as respondents in it.

2. Although the same is filed as a criminal miscellaneous application, it is not in fact one. The pleadings are not in the nature of a criminal miscellaneous application. They take the form of an information or criminal charge, against the 155 individuals named in the heading, as respondents, and others. The pleading is headed "Information," and under it are listed some 144 counts, against the 155 respondents and others. The charges are brought against a mixture of individuals, most of whom are State officers and officials, some Advocates of the High Court of Kenya, organisations and individuals. The State officers and officials sued are from the Executive, Parliament and Judiciary, and the County Government.

3. Those from the Executive, against whom the charges are brought, include the President of the Republic, the Deputy President, Cabinet Secretaries, heads of State agencies within the Executive, police officers, Chiefs, and others. They include HE Hon. WS Ruto; HE Hon. AK Linturi; the

Cabinet Secretary for Interior Security and National Management Ministry; County Commissioner Bungoma County; Deputy County Commissioners for Webuye East and West; Assistant County Commissioners for Webuye East and West; Chiefs M Barasa, EW Murokoyi of Webuye and Sitikho Locations; the Chiefs of Kituni and Lugulu Locations; Assistant Chiefs PW Matakila and PW Watimah of Matulo and Township Sub-Locations; Senior Village Elder AA Makokha; Village Manager IM Talah; the Inspector General of Police; the National Commissioner of Police; the National Police Service Commission; Republic of Kenya Police Flying; County Commander of Bungoma County Police Officers; OCPD Nairobi; Officers Commanding Webuye and Matisi Police Stations; Officers Commanding the Makhese, Matulo and Lugulu Police Posts; Inspector of Police Joel Ipara; Inspector of Police Sifuna; Inspector of Police Machogu; Senior Sergeant Eric Okumbo; EACC police officers; Commandant Bungoma GK Prison; the Attorney General; the prosecution Bungoma High Court and Webuye Law Courts; State Law Office Webuye Law Courts; the Office of the President; Children's Department Officer; and Public Health Officer Amiri.

4. Those from the Judiciary, against whom the charges are brought, are the Chief Justice, the Deputy Chief Justice, Judges and Magistrates, and other Judiciary officials. The Judges are Justices M Koome, PM Mwilu, AN Ndungu, I Lenaola, W Ouko, H Okwengu, AM Musagha, K. Laibuta, H Omondi, J Mwaura, AA Aroni, RE Ougo, BN Olao, SN Riechi, Samson Ogong'o, EC Cherono, Mogeni and MS Sharrif. The magistrates are Hon. PY Kulecho SRM Webuye, Kasavuli Registrar Supreme Court, MN Munyekenye SPM, and the Deputy Registrar Kakamega ELC. There are also charges against Sussany Oyatsi Director of Judiciary Finance, Mrs Anne Amadi as Secretary to Judicial Service Commission, and the Judiciary Virtual Link.

5. Those from Parliament, against whom charges have been initiated, are Hon. MM Wetangula and Hon. DW Sitati. Those from the County Government are the Governor of Bungoma and members of the Bungoma County Assembly. They are HE Hon. KM Lusaka Governor Bungoma County, Hon. Mwembe MCA Musokhu Ward and Hon. SS Graesser MCA Matulo Ward. The Advocates charged are Mr. I Oira, JW Sichangi, DN Wakoli, SS Wasilwa and Kundu of Situma & Company Advocates, who are all based at and practice from Bungoma. The Chairman of the Law Society of Kenya is also targeted.

6. Individuals, who do not appear to hold any position of State authority or have a leadership role of some kind, in the context of these proceedings, are Mr. JL Waswa, Al Saababs of Webuye Chief's office; Hon. WW Wangamati former Governor Bungoma County; PM Wanyonyi alias mtoto wa polisi; Nashoni Mulunda alias ndugu wa Patrick Wabomba; NM Wanyonyi; CB Bikokwa, Abiton Tela; Metrine Mulunda; Diana Wanyonyi; Susan Akwede; Camilous Oriwo; Mrs. C Oriwo; MO Oriwo; BM Wanyonyi; Peter Arumu; JJ Timo; RKW Kanui; TW Njaria; MTW Njaria; B Kijibwa; AT Mama; RA Dolwa; AM Okwaro; HJNM Njoroge; JW Kakai; PK Miniafu; the keen of the late AW Bakari, JK Mahianda, AA Mahianda and FM Kati; DT Wanjala; Renso Wafula; MN Sitati; PW Kamwesser; David Nyongesa; Lilian Wafula; Ruth Wanjala; A Muchai; W Shimenga; SC Nasimiyu; AS Wanyonyi; PM Yusto; former Councillor Nalika; Councillor Nalika's daughter; Patro Enock Wanjala; RC Walubengo; AM Walela; JM Elam; WW Elam; JK Watibini; DJ Walela; JN Walubengo; HN Wawire; SS Khaemba; BB Waswa alias BS Naswa; and VW Murutu alias WE Murutu and MC Sikanga.

7. The organisations charged include the National Environmental Management Authority; the Parliamentary Commission of Kenya; the Judicial Service Commission; the Ethics and Anti-Corruption Commission, EACC; the Commissioner of EACC and the Auditor General of Kenya.

8. When the matter was placed before me, on 24th July 2025, the person, designated in the matter as the 1st applicant, requested for time to serve the respondents, which I allowed. In subsequent appearances, the 1st applicant stated that he had served all the respondents.

9. On 28th July 2025, Mr. Mose appeared, instructed by the Director of Public Prosecutions. He swore an affidavit, on 8th October 2025, in reply to the Information. He avers, in that affidavit, that some of the provisions of the Penal Code, Cap 63, Laws of Kenya, cited by the applicants, in the Information, were non-existent, such as sections 3(2) and 5(1-2). He avers that sections 62 and 63 of the Penal Code, create the offences of compelling another to take an oath, and the defences available for offences under sections 59 and 61 of the Penal Code. He further avers that sections 64 and 65 of the Penal Code provide for offences of being present during the administration of an oath, or engagement in the nature of the oaths contemplated in sections 59, 61 and 62 of the Penal Code, and the offence of unlawful drilling. He also points out that sections 135 and 136 of the Criminal Procedure Code, Cap 75, Laws of Kenya, provide for joinder of counts and joinder of accused persons. He states that the applicants have not disclosed the police stations where they registered their complaints, and the relevant occurrence book numbers issued to them.

10. He argues that no offence has been cited in all the 144 counts in the Information. It is further pointed out that the 144 counts relate to decisions made by the respondents during the course of discharging their mandate. He asserts that no evidence was presented to establish that the Director of Public Prosecutions had failed to act on any matter referred to him by the applicants; nor that the investigative agencies had failed to investigate any information given to them by the said applicants. It is argued that the information is tailored to make it look like this is a criminal matter, while it is, in fact, a complaint against State officers and officials, regarding discharge of their respective duties and mandates. It is argued that the Information was before the wrong forum, as the court is being invited to adjudicate upon matters that are of an administrative nature, rather than of a criminal nature.

11. It is stated that, if the applicants desire to mount a private prosecution, they ought to invoke the relevant provisions, in section 88(1) of the Criminal Procedure Code. It is pointed out that, as the applicants have not moved the court for permission to institute criminal charges against the respondents, as envisaged by that provision, that they were usurping the powers of the Director of Public Prosecutions. It is urged that the Information is fatally defective, and does not disclose any cause of action against the respondents.

12. It was directed, on 12th November 2025, that the matter be canvassed by way of written submissions. The parties have filed their respective written submissions, which I have read, and noted the arguments made.

13. It is not obvious to me what the applicant would like the court to do with the Information that he has placed before me. As stated above, I do not have an application before me. What I have is a charge. When a charge sheet, for that is what the Information before me is, is placed before a trial court, in the absence of the persons charged, the next step should be to require the attendance of the persons proposed to be charged, so that the charges can be read to them, and a plea taken from them, after which a trial is then conducted.

14. Am I a trial court, and can I take those steps? The High Court is, for the purposes of criminal matters, a trial court. Under Article 165(3)(a) of *the Constitution*, the High Court has unlimited original jurisdiction in criminal matters. That means that any criminal matter can be originated from the High Court, in terms of such matter being initiated and prosecuted here. To that extent, any criminal offence can be tried at the High Court.

15. Criminal proceedings, including trials, are regulated by the Criminal Procedure Code. Under that law, the bulk of criminal offences are, however, tried by the Magistrate's Court, which is a court subordinate to the High Court. Section 6 of the *Magistrates' Courts Act*, Cap 10, Laws of Kenya, provides that the magistrate's court exercises criminal jurisdiction conferred upon it by the Criminal Procedure Code

and other written laws. Section 4 of the Criminal Procedure Code provides that the offences created and defined in the Penal Code, may be tried by the High Court or by a subordinate court.

16. The offences triable by the subordinate court, in this case the magistrate's court, are listed in the First Schedule to the Criminal Procedure Code. Under that Schedule, all the Penal Code offences are triable by the magistrate's court. Only 2 have not been allocated to the magistrate's court, which are treason and murder. The fact that they are not allocated to any court means that only the High Court can try them, in exercise of the jurisdiction in Article 165(3)(a) of *the Constitution*.

17. For offences created under other statutes, known as non-Penal Code offences, the court to try them, according to section 5 of the Criminal Procedure Code, should be the court stated in the statutory provisions creating the offence. Where there is no mention of the court in the provision, then the offence may be tried by the High Court, or by the subordinate court mentioned in the First Schedule to the Criminal Procedure Code, if the offence is mentioned in that Schedule and assigned to the magistrate's court.

18. From the Information before me, none of the counts are founded on Penal Code offences. In fact, none of the counts are founded on any statute, and do not allege any offence on the part of the respondents.

19. A few of them are grounded on *the Constitution*. Count 1, for example, is founded on various Articles of *the Constitution*. *The Constitution* does not create any criminal offence, and, therefore, no proceedings can be commenced against anyone founded on a provision of *the Constitution*. Count 1 is also alleged to have been committed by 154 of the 155 respondents. Counts 141, 142, 143 and 144 are founded on *the Constitution*, but they do not make any mention of the specific offences that the respondents allegedly committed, and no particulars have been given of the criminal conduct or omission alleged.

20. There are rules on how charges, in criminal matters, are to be framed. It must charge an offence known in law, based on what Article 50 of *the Constitution* requires. The offence must be disclosed, and stated in clear unambiguous language, to enable the accused person to understand the charge that they face, the case that they have to answer to, and to enable them to prepare their defence. See Sigilai & another vs. Republic [2004] 2 KLR 480 (Kimaru, Ag J).

21. A charge has two parts. There is a statement of the offence, under section 89 of the Criminal Procedure Code, and particulars of the offence under section 137 of the Criminal Procedure Code. The statement is an information of the offence charged, containing reference to the section or provision of the law creating the offence, and the section or provision that prescribes the punishment. See Cosma s/o Nyadago vs. Reginam [1955] 22 EACA 450 (Sir Barclay Nihill P, Sir Newnham Worley VP & Briggs JA). The accused must be charged with a known offence, with a known prescribed punishment. See Republic vs. Principal Magistrate's Court at Githunguri and another ex parte Thuo and another [2005] 2 KLR 67 (Nyamu, J) and Karanja and other vs. Republic [2011] 2 EA 164 (Warsame, J). A charge which discloses no known offence would be rejected by the court, and the accused would not be required to plead to it.

22. Regarding the particulars of the offence, there should be a narrative of the essential ingredients or elements of the offence, such as the date when the offence was committed, the place and time, and the circumstances in which it was committed. See Tembere vs. Republic [1990] KLR 353 (Githinji, J). The particulars should be detailed enough, to enable the accused person to understand the case alleged against him and to prepare his defence.

23. The Information or charge before me does not meet any of these requirements, for none of the counts have a statement of the offence committed, and details of the statutes, which create the offence charged, and the provision of the law which prescribes the punishment. Many of them appear to set out details

or particulars, but the said particulars are not preceded by a statement of the offence, contrary to what is required by the law. Particulars of the offence expound on the statement of the offence. The particulars of the offence cannot stand alone, for they would serve no purpose, unless they a beefing up some stated offence. The charge, as framed, cannot stand scrutiny before a court of law. If presented before a trial court, as currently framed, the first order of business, for that trial court, would be to reject it.

24. Crucially, *the Constitution* of Kenya, promulgated in 2010, has set out, in Article 50, principles relating to fair hearings and trials. Premium is given to, among other things, the principle of legality, which requires that a person should only be tried of a known offence in law. See Karanja and others vs. Republic [2011] 2 EA 164 (Warsame, J) and Society of Kenya vs. Kenya Revenue Authority & another [2017] KEHC 8539 (KLR) (Mativo, J). None of the counts herein point to any known offence in law, to the extent that they do not identify any provisions of the law, being in an Act of Parliament, which create the offence and prescribe the punishment for it, for the offences that the respondents are alleged to have committed. See Republic vs. Principal Magistrate's Court at Githunguri and another ex parte Thuo and another [2005] 2 KLR 67 (Nyamu, J).

25. There are also rules on overloading charges. The charge sheet, that is to say the document containing or carrying the charge or information, should be fairly brief. To make it easy to prosecute, and easy for the accused person to handle the defence. If the counts, in one charge, are too many, it would compromise on the ability of the prosecution to present a credible or coherent case, and the accused person to effectively defend himself. See Kinyanjui vs. Republic [2004] 2 KLR 364 (Kubo J & Kimaru Ag J).

26. I see that some of the respondents face numerous charges. There are 20 counts against a single respondent, Ougo J, for example. The courts have directed that not more than 12 counts can be brought in one charge or information, against one person. See Peter Ochieng vs. Republic [1985] KECA 52 (KLR) (Hancox JA, Platt & Gachuhi Ag JJA). The charge, as framed, would require an extended period of time to prosecute. 144 counts would require up to 10 years for the prosecution to be completed. It would strain public resources, for no good reason, to mount an overloaded charge, which is likely to be dismissed, for the prosecution founded on it would most likely get convoluted and confusing, making it impossible to establish a case against the accused persons, to the required standard.

27. Overload can also be caused by charging too many people in one information. In this case, some 155 individuals are proposed to be charged together, in one charge or information. A prosecution of 155 individuals in one charge would, no doubt, be recipe for an impossible trial. It would require up to 10 years to prosecute the 155 individuals and entities in one information. It would also strain the resources, for 155 accused persons cannot possibly comfortably fit in a standard courtroom. A trial of 155 accused persons, facing a total of 144 counts, would be a herculean undertaking, that would, most certainly, not yield any useful results. The most efficient way, to handle a criminal prosecution, is to charge a few people in one information, on a few counts. That would be more effective, in terms of focus and time management.

28. From what I see, from the counts, it is obvious that the applicants are unhappy about how their court matters, or those that they have an interest in, have been handled by the High Court and the Environment and Land Court, at Bungoma, as well as by the Senior Principal Magistrate's Court at Webuye. All the allegations have something or other to do with the handling of court work.

29. There are various ways of responding to unhappiness with how court work has been handled by judicial officers. Where a party disagrees with the findings or holdings of a court, or is unhappy with the way the court exercises its discretion, the best way out would be by doing what the law provides. There is a right to appeal against decisions of a court. *The Constitution* and the law appreciate that judicial officers

are not all-knowing, nor paragons of perfection, and they may, and in fact, do make mistakes, of law or fact, in their handling of the matters. Hence, the provision for appeals.

30. There are now 3 levels of appeal courts, which are the High Court and courts of equal status, the Court of Appeal and the Supreme Court. At the Court of Appeal and the Supreme Court, the Judges sit in panels, of at least 3 and at most 7. A party, dissatisfied with the decision of 1 judicial officer, at the magistrate's court or at the High Court, gets to be heard by a panel of 3, or 5, or 7 at the Court of Appeal and the Supreme Court. It is always advisable, and useful, to test the decision of the 1 Judge, or judicial officer, at the higher courts, where more than 1 Judge sit to re-examine and re-evaluate the impugned decision.

31. If the allegation is of misconduct, and I see that most of the allegations herein relate to Judges and Magistrates being compromised, incompetent, fraudulent, among others, there would be two possible approaches. Where decisions of a court are tainted by such, the same can still be corrected or remedied on appeal, if it is established that the decisions were wrong or incorrect. Filing appeals is always the best way to address incompetence or bias, as more than 1 Judge would sit over the matter, and correct the mistakes or messes, if at all, made or created by the lower or trial court.

32. The other option is to seek to have the judicial officer subjected to disciplinary measures, if there is evidence that he or she was not faithful to their oath of office. For such cases, the way to go would be to raise the matter with the Judicial Service Commission. See Karani vs. Judicial Service Commission [2022] KESC 37 (KLR) (Ibrahim, Wanjala, Ndungu, Lenaola & Ouko, JJA). That route entails disciplinary steps being taken against the judicial officers concerned, but it does not lead to a review of the decisions of the court, for the Judicial Service Commission is not an appellate body. It only addresses misconduct; it cannot review the impugned decisions.

33. The other thing is that Judges and Magistrates have or enjoy judicial immunity, by dint of Article 160(5) of *the Constitution*. This is intended to insulate them against harassment, arising from the matters that they handle. No civil suits can be brought against them, neither can criminal charges arise, over how they have conducted cases. That, of course, does not stop their prosecution, where there is concrete evidence, sustainable in a criminal case, at a criminal court, of them having committed offences, in the course of handling cases. Such offences could include receiving bribes, to influence outcomes of the cases.

34. See Bellevue Development Company Ltd vs. Gikonyo & 3 others; Kenya Commercial Bank & 3 others (Interested Parties) [2018] KECA 330 (KLR)(Waki, Kiage & M'Inoti), Edgar Kagoni Matsigulu & 4 others vs. Director of Public Prosecutions & another; Law Society of Kenya & another (Interested Parties) [2019] KEHC 1460 (KLR)(Nyakundi, J), Bellevue Development Company Ltd vs. Gikonyo & 3 others [2020] KESC 43 (KLR)(Maraga, Mwilu, Ibrahim, Wanjala & Lenaola, SCJJ) and Karani vs. Judicial Service Commission [2022] KESC 37 (KLR) (Ibrahim, Wanjala, Ndungu, Lenaola & Ouko, JJA), with regard to what I have discussed above.

35. I note that the counts, against the Judges and Magistrates, based at Bungoma and Webuye, relate to court work, about how those judicial officers handled their judicial work, or discharged their judicial mandates, with respect to cases involving the applicants. The counts, against the Judges of the Supreme Court, have something to do with how they have handled matters at the Supreme Court, inclusive of a past presidential petition. For the counts, in this cohort, Judges and Magistrates have or enjoy judicial immunity, and, even if the charges, before me, were to be found to be properly framed, they would still not stand in court, on that account.

36. While talking about judicial immunity, let me mention presidential immunity, which is provided for under Article 143 of *the Constitution*. I note that one of the persons, proposed to be charged, is the

President of the Republic. I see that there are 3 counts against the President, relating to having "snakes" in his government and Kenya Kwanza, and "purchasing" members of the opposition. Firstly, I have not seen material which demonstrates that these are criminal offences. Secondly, a sitting President cannot be prosecuted, for criminal offences while in office, whether committed prior to or during term, and, where a prosecution must be mounted, because it cannot wait for the President to serve out his term, if it is serious enough to warrant that, there must be other processes first, such as impeachment, before criminal prosecution.

37. See Republic vs. Chief Justice of Kenya & 6 others [2010] KEHC 4115 (KLR) (Apondi, Dulu & Warsame, JJ), Zulfikar Ali Hassanally & another vs. Westco Kenya Limited & 3 others [2015] KEHC 4925 (KLR) (Onyancha, J), Katiba Institute vs. President of Republic of Kenya & 2 others; Judicial Service Commission & 3 others (Interested Parties) [2020] KEHC 9226 (KLR) (Dulu, Wakiaga & Musyoka, JJ), Attorney-General & 2 others vs. Ndii & 79 others; Dixon & 7 others (Amicus Curiae) [2022] KESC 8 (KLR) (Koome, Mwilu, Ibrahim, Wanjala, Ndungu, Lenaola & Ouko, SCJJ) and Chepsiror vs. Ruto & another [2025] KEHC 2051 (KLR) (Nyakundi, J), with regard to the issues discussed in the foregoing paragraph.

38. The allegations made against Members of Parliament, in the Information, are of a political nature. No criminal offences are disclosed. Political issues are best addressed, or prosecuted, in the political arena or at political fora, and not in court, through criminal prosecution.

39. There is a witness statement, executed by the 1st applicant, in support of the charges. I note that it only has allegations on Shariff J, about her cause lists, court sittings, virtual links, virtual hearings, e-filing and dismissal of suits. The allegations, made in this statement, do not support a case for any kind of criminal prosecution against Shariff J. To the extent that it says nothing about the other respondents, I do not see the basis upon which they were made respondents, in the matter, in the first place. There can be no basis upon which they can be prosecuted on a witness statement that does not mention them. I also wonder at whether the 144 charges, against the 155 respondents or accused persons, could be established or proven through the testimony or evidence of only 1 witness, founded on that 1 witness statement. The standard of proof, in criminal matters, is very high, beyond reasonable doubt, and, most certainly, cannot be met on the testimony of a single witness.

40. I understand that this is a proposed private prosecution. I wonder about who would conduct the prosecution. The 1st applicant has signed the witness statement. I wonder whether he will double up as the prosecutor and the witness in his own cause, given that the charge or Information is drawn by himself, and not by an Advocate or some other person for him or on his behalf. What would be the practicality of him acting, at once, as prosecutor and witness.

41. Conduct of criminal prosecutions is vested in the Director of Public Prosecutions, under *the Constitution*, at Article 157. Any other person can only initiate a criminal prosecution privately, and only in exceptional circumstances. A private prosecution would only be permitted by the court in circumstances where the Director of Public Prosecutions has failed to prosecute. The journey to a criminal prosecution starts with the police, before it is escalated to the Director of Public Prosecutions, upon completion of investigations. I see no evidence, in the material before me, that the alleged crimes were ever reported to the police, who then failed to investigate, and to the Director of Public Prosecutions, who then failed to prosecute. A citizen is not entitled to take over the constitutional duties of the Director of Public Prosecutions without a demonstrated just cause.

42. A private prosecution would only be permitted by the court, where it is demonstrated, in the first place, that the allegations against the individuals, sought to be prosecuted, amount to criminal offences. None

of what I see here is close to a prosecutable offence, and no court in Kenya would permit prosecution, in the circumstances.

43. A criminal prosecution is a highly technical enterprise. It is not comparable to conduct of a civil matter. See Kenyatta National Hospital Board vs. Kenya Commercial Bank Limited & another [2019] KEHC 7065 (KLR) (Kasango, J) and Leshami vs. Mwarabu [2024] KEHC 9537 (KLR) (Dulu, J). The legal burden of proof, in criminal matters, lies with the prosecution throughout; it never shifts to the accused person. See Nyanjui vs. Republic [2023] KECA 1122 (KLR) (Makhandia, Kantai & Gachoka, JJA) and Gitonga vs. Director of Public Prosecutions [2024] KEHC 6268 (KLR) (Cherere, J). The standard of proof is extremely high; the prosecution must prove its case beyond reasonable doubt. See Ngodi vs. Republic [2023] KEHC 22935 (KLR) (Njuguna, J) and Paul vs. Director of Public Prosecution [2023] KEHC 23612 (KLR) (Cherere, J).

44. Therefore, criminal prosecutions are not to be mounted willy-nilly, for the sake of it, to avoid wastage of resources, of all involved, including the State. It is usually a daunting uphill task for a private prosecutor. The Director of Public Prosecutions is only able to hark it because that office has access to considerable State resources, both in finances and workforce; and the back-up of the police service, to gather the evidence required for a successful prosecution. A criminal prosecution, founded on 144 counts, against 155 accused persons, would be very technical and extremely complex.

45. The procedure, for initiating a private prosecution, is set out in section 88 of the Criminal Procedure Code. According to that provision, the permission to conduct a prosecution is given by a magistrate. The practice is that the permission is sought at arraignment, when the person charged is presented for plea-taking. The permission is granted before the charges are read. It happens, as a matter of course, where the prosecution is mounted by the Director of Public Prosecutions, without any formal request being made. However, where the prosecution is by a person other than the Director of Public Prosecutions, or an officer specifically authorised by the Director of Public Prosecutions, a formal request for permission ought to be made, for the private prosecutor to conduct the prosecution. In Kimani vs. Kahara [1983] eKLR (Simpson, Sachdeva, JJ), it was indicated that the permission should be sought after the accused person has been called out, and before the charges are read to him.

46. In Kimani vs. Kahara [1983] eKLR (Simpson, Sachdeva, JJ), the court discussed the principles for consideration. It was indicated that the magistrate should question the applicant, to ascertain whether a report had been made to the police, or the authorities responsible for investigations and prosecution, and what the outcome of that report was. If no report had been made, the court may adjourn the matter, to enable the making of the report. It would be critical that a private prosecution would only proceed where such a report had been made, and there was indication that the prosecutorial authorities were not keen on prosecuting, and the decision, not to prosecute, was made without reasonable justification.

47. The instant matter should have been filed at the magistrate's court, going by section 88 of the Criminal Procedure Code. That is the court enabled, under that provision, to grant permission for the mounting of a private prosecution. Of course, the High Court does have unlimited original jurisdiction over criminal matters, under Article 165(3)(a) of *the Constitution*, but where there is an express statutory provision guiding what should happen, then that should be complied with first, before recourse to the High Court. The High Court should only be involved in exceptional circumstances.

48. Where there are genuine complaints about judicial officers, concerning how they have handled matters, or concerning integrity around their conduct, with respect to their work, Article 252(1) of *the Constitution* gives the Judicial Service Commission power to carry out investigations into such conduct. The Third Schedule to the *Judicial Service Act*, Cap 8A, Laws of Kenya, prescribes a procedure

for the making and handling of such complaints. That is the process through which the applicants should have channelled their complaints against the judicial officers. See Karani vs. Judicial Service Commission [2022] KESC 37 (KLR) (Ibrahim, Wanjala, Ndungu, Lenaola & Ouko, JJA).

49. Resorting to court action directly, before exhausting that process, offends the doctrine of exhaustion. See Speaker of the National Assembly vs. Karume [1992] KECA 42 (Kwach, Cockar & Muli, JJA),), Geoffrey Muthinja & Another vs. Samuel Muguna Henry & 1756 others [2015] eKLR [2015] KECA 304 (KLR) (Waki, Nambuye & Kiage, JJA), William Odhiambo Ramogi & 3 others vs. Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties) [2020] eKLR (Achode, J. Ngugi, Nyamweya, Ogola & Mrima, JJ and NGOS Coordination Board vs. EG & 4 others: Katiba Institute (Amicus Curiae)[2023] KESC 17 (KLR)(Mwilu, DCJ&VP, Ibrahim, Wanjala, Ndungu & Ouko, SCJJ).

50. I note that the Judicial Service Commission, and some of its officers, including its Chair and Secretary, are respondents herein, and proposed accused persons. The sense I get, from the paperwork before me, which does not have evidence of any complaints to the Judicial Service Commission, is that the applicants feel that action has not been taken against the judicial officers they have complained about, by the Judicial Service Commission, and all the other agencies named in the proceedings, such as the police, the Ethics and Anti-Corruption Commission, the Director of Public Prosecutions, the Attorney General, among others, who are themselves respondents herein, and who are also named as accused persons. I doubt that there could be collusion amongst all these 155 persons and entities to subvert justice, and prejudice the applicants. It could be a pointer that the case, by the applicants, is probably not strong enough, either in substance, or in the manner of the framing, for these agencies to take any steps against the judicial officers concerned.

51. One striking thing is that the allegations are against Judges, who are serving or previously served at Bungoma, at the High Court and the Environment and Land Court, as well as magistrates who are currently serving at the Webuye law courts. Again, I would doubt whether there could be a conspiracy against the applicants, by successive Judges and Magistrates at the Bungoma and Webuye law courts, so much so that there are integrity issues about any Judge or Magistrate, who ever touches any of the matters involving the applicants.

52. Targeting judicial officers, who have and are handling their cases, would not advance the applicants' cause. The strength or weakness of a case is dependent on how the same is prepared and presented. It essentially depends on its merits. All cases are won or lost long before they are even filed in court, for everything depends on the facts and circumstances of each case. A good case, in substance, would always succeed, so long as it is well prepared and presented. A weak case, substantively, would certainly or always be lost, however well it is drafted and presented. Waging a war on all judicial officers, who, in one way or other, handle their cases, would not help the applicants, because of the judicial immunity, that I have talked about above. Salvation, for the applicants, lies with appealing against the decisions made in those cases, and, perhaps, also in looking at the way they, the applicants themselves, frame and prepare their cases, and present them in court. Courts do not grant orders simply or merely because they have been prayed for, a case must be made out, based on facts and the law.

53. It is also concerning that, other than judicial officers, the applicants appear to be at war with the political and administrative leadership within Bungoma County. 2 of the respondents are and were Governors of Bungoma County. 1 is a Member of the National Assembly. 1 is the Speaker of the National Assembly, who happens to hail from Bungoma County. There are several Members of the County Assembly. The Bungoma County Commissioner, and his Deputies, and Assistants, have also been sued, together with some Chiefs and their Assistants. The police leadership, within Bungoma County, has also been brought in, including individual police officers. I note too that other State

agencies within Bungoma County have also been sued, such as the prisons, the children's office, the prosecution office, the State Law Office, among others.

54. Regarding Members of Parliament and Members of the County Assembly, any complaints against them are addressed through Article 104 of *the Constitution*, which provides for recall of members of parliament. Regarding civil servants, there is the Commission on Administrative Justice, which is provided for under Article 59(4) of *the Constitution*. The law, which establishes and governs that Commission, is the *Commission on Administrative Justice Act*, Cap 7J, Laws of Kenya. The key mandate of that Commission is tackling maladministration in the public sector, by investigating complaints of delays in delivery of services and justice, abuse of power, unfair treatment, manifest injustice and discourtesy.

55. I note too that the Advocates, who have been targeted, in the charges, were involved in some of the matters that the applicants were or are engaged in at the Bungoma and Webuye law courts, acting for the parties suing or sued by the applicants. Parties have a right to engage an Advocate, of their own choice, to represent them in civil and criminal matters. They cannot be begrudged for appearing in those matters, given that they were instructed to appear in them, and they cannot be stopped from discharging the duties for which they were briefed. Advocates are appointed to speak out in court, on behalf of their clients, they can do no wrong when they so speak out. Whether Advocates speak out of turn, or are irrelevant, in their speeches or submissions, in court, is a matter within the power or purview of the court before whom they appear, for each Judge or Magistrate is the presiding officer of the court, and should be in charge of what happens in court.

56. The Law Society of Kenya is the umbrella body for all Advocates in Kenya. Any complaints, regarding conduct or misconduct by Advocates, ought to be channelled through their organisation. The Law Society of Kenya ought not be begrudged, for advising that any such complaints are to be channelled through, and handled within the framework of the *Advocates Act*, Cap 16, Laws of Kenya. No action can be taken against an Advocate, by the Law Society of Kenya, unless a case is made out against such an Advocate. The mere filing of a complaint, against an Advocate, is not sufficient basis for disciplinary action to be taken against the Advocate, a case must be made out first, and it is made out based on concrete evidence presented, and not generalised allegations.

57. Complaints, relating to the conduct or misconduct of an Advocate, ought to be addressed to the Advocates Complaints Commission, by virtue of section 53 of the *Advocates Act*, and the Disciplinary Tribunal of the Law Society of Kenya, by virtue of section 60 of the *Advocates Act*, for investigation, adjudication and determination.

58. The general picture that I get, from the Information, is that the applicants appear to have issues with everybody at Bungoma, who holds authority of one kind or other, and that fight appears to have been extended to the national level. It could be that the applicants do, in fact, have a case of some sort, against these individuals, entities and offices. However, such case cannot, possibly, be made out, where the complaint runs into 144 counts, against 155 persons, entities and offices. An all-out war, without adequate arsenal and appropriate strategy, would be a lost cause, even before it is launched. The applicants have not demonstrated that they have the appropriate material to mount the charges herein, and, even if there were material, the same cannot be presented in a case where they have sued everyone and whole world.

59. The Information contains, apparently, a mixture of different claims, which range from civil to criminal, to constitutional. It is an incidence of multiplicity of claims, where all the 3 classes of streams of litigation - civil, criminal and constitutional - are bundled together, in a criminal pleading. That is hardly the way to go. Each claim must be handled separately, through the legal channels dedicated for

it. The applicants should differentiate the various claims, and institute them in the specific courts and tribunals, dedicated to them by the law. See Mumba & 7 others vs. Munyao & 148 others [2019] KESC 83 (KLR) (Mwilu DCJ&VP, Ojwang, Wanjala, Ndungu & Lenaola, SCJJ) and Nicholus vs. Attorney General & 7 others; National Environmental Complaints Committee & 5 others (Interested Parties) [2023] KESC 113 (KLR) (Mwilu DCJ&VP, Wanjala, Njoki, Lenaola & Ouko, SCJJ).

60. I believe that I have said enough, to demonstrate that the Information, which has been placed before me, cannot be acted upon, for the reasons that I have given above. Consequently, I shall dismiss the Information. There is inadequate material, in the Information, to require the summoning of the respondents, to take plea, founded on it. This file shall, hereafter, be closed. If the applicants feel that I have exercised discretion wrongly, or capriciously, in dismissing the Information, they would be within their constitutional rights to move the Court of Appeal, appropriately, so that they can benefit from the opinion of an expanded, a more experienced, a more senior and a more sober bench. Ordered and directed accordingly.

DELIVERED, DATED AND SIGNED IN OPEN COURT, AT BUSIA, ON THIS 2ND DAY OF FEBRUARY 2026.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Ms. Azenga Alenga, Legal Researcher

Mr. BB, the 1st applicant, in person.

Advocates

Mr. Mose, instructed by the Director of Public Prosecutions, for the Republic.