

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KIBERA
PETITION NO. E009 OF 2025

YVONNE NJERI.....1ST
PETITIONER
PETER MUINDI MUNYAO.....2ND
PETITIONER
RUTH MAWEU.....3RD
PETITIONER
REBECCA KANANU MITHIKA.....4TH
PETITIONER

VERSUS

DIRECTOR OF CRIMINAL INVESTIGATIONS.....1ST
RESPONDENT
DIRECTOR OF PUBLIC PROSECUTIONS.....2ND
RESPONDENT

AND

THE CHIEF MAGISTRATE’S COURT AT KIBERA.....1ST
INTERESTED PARTY
SAMMY SANG.....2ND INTERESTED
PARTY

JUDGEMENT.

1. The Petition dated 19th June 2025 is before this Court. The Petitioners invoke the constitutional jurisdiction of this Court to intervene in ongoing criminal proceedings which, they contend, amount to an abuse of process and a violation of their fundamental rights.
2. The Petitioners are administrators of the Estate of Anne Mbula Munyao (Deceased), which estate is the subject of active succession proceedings in Milimani High Court Succession Cause No. E2513 of 2021. Central to the succession cause is the validity and implementation of the Deceased’s Will. The complainant in Kibera Chief Magistrate’s Court Criminal Case No. E534 of 2025, Republic vs Yvonne Njeri and Peter Muindi Munyao, and Criminal

Case No. E600 of 2025, Republic vs Ruth Maweu and Rebecca Kananu Mithika, is an interested party in the said estate and has formally challenged the validity of the Will in the pending succession proceedings.

3. The 1st and 2nd Petitioners have been charged in Criminal Case No. E534 of 2025, while the 3rd and 4th Petitioners face prosecution in Criminal Case No. E600 of 2025. It is common ground that both criminal cases arise from facts directly connected to the disputed will and matters already under consideration in the succession cause.
4. Prior to the institution of the criminal proceedings, the complainant allegedly approached the Petitioners seeking to acquire specific properties of the Deceased, contrary to the express terms of the Will. The Petitioners declined and opted to pursue resolution through the succession court.
5. Following that refusal, the Petitioners were arrested and arraigned. They contend that the prosecutions are not bona fide but are calculated to intimidate, harass, and coerce them into relinquishing their lawful interests in the estate, and to gain leverage in the succession dispute. The Petitioners argue that the decision to arrest and prosecute them was irrational, malicious, and taken without regard to the pending civil process, thereby constituting an abuse of the criminal justice system. They further contend that their rights under Articles 27, 28, 47, and 50 of the Constitution have been violated. In particular, they allege unlawful and unreasonable administrative action, lack of prosecutorial independence contrary to Article 157, and impairment of their non-derogable right to a fair trial under Articles 25 and 50.

6. The Petitioners assert that unless this Court intervenes, they stand to suffer irreparable prejudice, while no corresponding prejudice will be occasioned to the Respondents if the criminal proceedings are stayed.
7. In opposition to the Petition, the 2nd Respondent filed Grounds of Opposition dated 21st July 2025. The Respondent relies principally on the constitutional mandate of the Director of Public Prosecutions under Article 157 of the Constitution.
8. It is contended that pursuant to Article 157(6), the Director of Public Prosecutions is vested with State powers to institute and undertake criminal proceedings against any person before any court, other than a court martial, in respect of any offence alleged to have been committed. Further reliance is placed on Article 157(10), which provides that in the exercise of prosecutorial powers, the Director of Public Prosecutions does not require the consent of any person or authority and is not subject to the direction or control of any person or authority.
9. The 2nd Respondent avers that the decisions to charge the Petitioners in Kibera Chief Magistrate's Court Criminal Case Nos. E534 of 2025 and E600 of 2025 were founded on the sufficiency of evidence and the existence of a realistic prospect of conviction. It is asserted that the prosecutions were instituted with reasonable and probable cause and were not actuated by malice.
10. According to the 2nd Respondent, an independent and objective review of the evidence disclosed incriminating material connecting the Petitioners to the offences charged, thereby justifying the decision to prosecute in fulfilment of the public interest. It is further contended that in applying the evidential test under the National Prosecution Policy, the Respondent assessed

the totality of the evidence, both for and against the suspects, and satisfied itself that the threshold for charging had been met.

11. The Respondent maintains that the accuracy, credibility, and sufficiency of the evidence are matters reserved for determination by the trial court, which is constitutionally and institutionally equipped to test such evidence through the criminal trial process. It is argued that several issues raised by the Petitioners amount to defences that ought properly to be canvassed before the trial court. The Respondent further asserts that the Petitioners' constitutional rights, including the presumption of innocence and the right to a fair trial, remain intact and are not extinguished by their arraignment before a competent court.
12. It is the Respondent's case that the Petition seeks to unjustifiably curtail the constitutional mandate of the Director of Public Prosecutions and to circumvent a lawful and foreseeable trial process, without demonstrating any ultra vires conduct or constitutional breach.
13. In conclusion, the 2nd Respondent characterises the Petition as frivolous, vexatious, and an abuse of the court process, contending that it is reactionary, devoid of legal or factual merit, and intended solely to delay the prosecution and derail the criminal justice process.
14. The 2nd Interested Party swore a replying affidavit dated 28th August 2025 opposing the Petition. He depones that it is his understanding that the basis of the Petition is the allegation that the criminal proceedings were commenced maliciously and amount to an abuse of the court process, on account of the existence of pending succession proceedings relating to the

Estate of Anne Mbula Munyao (Deceased). He denies these assertions. He avers that the Petitioners are not beneficiaries of the estate as alleged. He states that he, as the surviving spouse of the Deceased, together with his son, are the lawful beneficiaries of the estate.

15. He further denies having sought any property of the estate from the Petitioners, or having instigated the criminal proceedings following any refusal by them. He maintains that there was no basis for seeking property from the Petitioners, whom he does not recognise as beneficiaries.
16. It is deponed that the criminal proceedings do not arise from the same issues as those before the succession court. According to the 2nd Interested Party, the succession cause concerns the validity of the alleged Will, while the criminal cases relate to the distinct offence of forgery allegedly committed by the Petitioners.
17. The 2nd Interested Party avers that issues of criminality fall squarely within the mandate of the criminal court and are not within the purview of the succession court. He contends that the Petitioners have failed to demonstrate any unlawful or improper exercise of power by the Directorate of Criminal Investigations or the Director of Public Prosecutions.
18. He states that upon the death of his wife, the Petitioners presented him with a document purporting to be her Will. He further avers that shortly after her demise and before burial, there was a reported break-in at his matrimonial home during which items, including the Deceased's laptop, were stolen.
19. It is deponed that the purported Will was subjected to forensic examination by the Directorate of Criminal Investigations and an independent private investigator, both of whom concluded that

the signatures attributed to the Deceased were forged. The investigation reports were annexed to the affidavit. The 2nd Interested Party further avers that following independent investigations, the police recommended charges against the Petitioners, and the Director of Public Prosecutions approved the same on the basis of the evidence gathered.

20. He maintains that the prosecutions were commenced in good faith, without ulterior motive, and solely to bring the Petitioners to account for serious offences, including the alleged forgery of a Will, which he avers is a grave crime under the Penal Code.

21. Finally, the 2nd Interested Party contends that the concurrent existence of civil and criminal proceedings is not prohibited in law, and that the Petitioners will suffer no prejudice if the Petition is dismissed, as they will have the opportunity to defend themselves fully in the criminal trials.

22. Having considered the Petition dated 19th June 2025, the responses thereto, and the rival submissions by the parties, the sole issue that arises for determination is:

(i) Whether the institution and continued prosecution of Kibera Chief Magistrate's Court Criminal Case Nos. E534 of 2025 and E600 of 2025 amount to an abuse of the criminal justice process and a violation of the Petitioners' constitutional rights.

23. Article 157(6) of the Constitution of Kenya, 2010 vests in the Director of Public Prosecutions the State power to institute and undertake criminal proceedings against any person before any court, other than a court martial, in respect of any offence alleged to have been committed. That power is constitutionally insulated from direction or control by any person or authority. However,

Article 157(11) expressly qualifies that mandate in the following terms:

“In exercising the powers conferred by this Article, the Director of Public Prosecutions shall have regard to the public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process.”

24. The constitutional position, therefore, is not that the prosecutorial discretion is unfettered. It is circumscribed by the duty to act in good faith, in the public interest, and in a manner that does not weaponise the criminal process for collateral or ulterior purposes.

25. The Petitioners contend that the impugned criminal proceedings are intrinsically connected to a pending succession dispute in Milimani High Court Succession Cause No. E2513 of 2021, concerning the Estate of Anne Mbula Munyao (Deceased). The complainant in the criminal cases is an interested party in the estate and has challenged the validity of the Will forming the basis of the succession cause.

26. It is not disputed that the criminal complaints arose against the backdrop of this succession dispute. What is contested is whether the alleged offences of forgery are genuinely distinct criminal acts or whether the criminal process has been invoked to gain leverage in the succession proceedings.

27. The Respondents and the 2nd Interested Party rely heavily on Section 193A of the Criminal Procedure Code, which permits concurrent civil and criminal proceedings. The section provides:

“Notwithstanding the provisions of any other written law, the fact that any matter in issue in any criminal

proceedings is also directly or substantially in issue in any pending civil proceedings shall not be a ground for any stay, prohibition or delay of the criminal proceedings.”

28. While Section 193A recognises concurrent proceedings, it does not provide a licence for abuse. The Court must still interrogate whether the dominant purpose of the prosecution is the enforcement of criminal law or the advancement of private interests in a civil dispute.

29. The Petitioners’ case is that the criminal proceedings were initiated following their refusal to accede to demands relating to estate property, and that the timing and context of the prosecutions demonstrate malice, coercion, and an attempt to prejudice the succession cause.

30. Courts have consistently held that criminal prosecutions must not be used as instruments of pressure in civil disputes. In **Peter Macharia Ruchachu v Director of Public Prosecution & another [2014] eKLR**, Ngaah J stated:

“Upholding criminal justice through a criminal prosecution as opposed to misusing the prosecution as an instrument to bring pressure to bear upon a party to settle a civil dispute is a question that has engaged the minds of learned judges in our courts on numerous occasions...

...the institution of a criminal case for a purpose other than upholding the criminal justice is an abuse of the criminal process and it is upon the courts, whenever such scenario emerges, to rise to the occasion and halt such criminal proceedings...

When I consider totality of the circumstances comprising the background of the dispute between the complainant and the applicant, the manner of the applicant's arrest and finally the charge which was preferred against him, I am persuaded that the prosecution of the applicant was influenced by ulterior motives... It is meant to bring pressure to bear upon the applicant to settle a civil dispute. Such a trial cannot be allowed to proceed."

31. Similarly, the Court of Appeal in **Commissioner of Police & Director of Criminal Investigation Department & another v Kenya Commercial Bank Ltd & 4 others [2013] KECA 182 (KLR)** pronounced itself thus:

"While the law (Section 193A of the Criminal Procedure Code) allows the concurrent litigation of civil and criminal proceedings arising from the same issues, and while it is the prerogative of the police to investigate crime, we reiterate that that power must be exercised responsibly, in accordance with the laws of the land and in good faith...

It is not in the public interest or in the interest of the administration of justice to use criminal justice process as a pawn in civil disputes...

It is unconscionable and a travesty of justice for the police to be involved in the settlement of what is purely a civil dispute being litigated in court...

We have no doubt in our minds that the belated involvement of the police in this purely civil dispute is an abuse of their power."

32. In the present matter, the alleged forgery of the Will is not a peripheral issue. It is the central question before the succession

court. The criminal process has been invoked while the civil court is seized of the validity of the same document, raising a real risk of parallel determinations and undue influence on the succession proceedings.

33. While forgery is undoubtedly a criminal offence, the Court must examine whether the criminal prosecution is being pursued independently and in good faith, or whether it is being deployed tactically to tilt the balance in a live succession dispute.

34. On the totality of the material before Court, the sequencing of events, the identity of the complainant, and the close nexus between the criminal charges and the succession cause point to a prosecution whose predominant objective is collateral to the enforcement of criminal law.

35. The constitutional rights implicated include the Petitioners' right to fair administrative action under Article 47 and the right to a fair trial under Articles 25 and 50. A prosecution tainted by malice or ulterior motive undermines the integrity of the criminal justice system and violates these guarantees. The High Court in **Kuria & 3 Others v Attorney General [2002] 2 KLR 69** articulated the applicable principle in the following terms:

"The Court has power and indeed the duty to prohibit the continuation of the criminal prosecution if extraneous matters divorced from the goals of justice guide their instigation..."

A stay... should be granted where compelling an accused to stand trial would violate the fundamental principles of justice..."

The machinery of criminal justice is not to be allowed to become a pawn in personal civil feuds and individual vendetta...

The invocation of the law, by whichever party in unsuitable circumstances or for the wrong ends must be stopped..."

36. Guided by the foregoing jurisprudence, this Court is satisfied that the institution and continuation of **Kibera Chief Magistrate's Court Criminal Case Nos. E534 of 2025 and E600 of 2025** amount to an abuse of the prosecutorial power under Article 157 and a misuse of the criminal process to advance a contested succession claim. In the circumstances, the continued prosecution of the Petitioners would undermine the administration of justice and violate their constitutional rights. The intervention of this Court is therefore warranted.

37. In the result, and for the reasons set out in the foregoing analysis, this Court makes the following orders:

- I. A declaration is hereby issued that the institution and continued prosecution of Kibera Chief Magistrate's Court Criminal Case No. E534 of 2025, Republic vs Yvonne Njeri and Peter Muindi Munyao, and Criminal Case No. E600 of 2025, Republic v Ruth Maweu and Rebecca Kananu Mithika, constitute an abuse of the criminal justice process and are inconsistent with Articles 27, 28, 47, and 50 of the Constitution of Kenya, 2010.
- II. A declaration is hereby issued that the decision by the Director of Public Prosecutions to charge and prosecute the Petitioners in the said criminal cases was made in contravention of Article 157(11) of the Constitution, for failure to prevent and avoid abuse of the legal process.

- III. An order of prohibition is hereby issued restraining the Director of Public Prosecutions, the Directorate of Criminal Investigations, and all persons acting under their authority from continuing with or further prosecuting Kibera Chief Magistrate's Court Criminal Case No. E534 of 2025 and Criminal Case No. E600 of 2025.
- IV. An order of stay is hereby issued staying all proceedings in Kibera Chief Magistrate's Court Criminal Case No. E534 of 2025 and Criminal Case No. E600 of 2025, in consequence of the orders issued herein.
- V. An order is hereby issued restraining the Respondents from arresting, charging, or in any other manner subjecting the Petitioners to criminal proceedings founded on the same facts and subject matter that are directly in issue in Milimani High Court Succession Cause No. E2513 of 2021, unless new and independent evidence is lawfully obtained and subjected to constitutional and statutory safeguards.
- VI. Costs of the Petition are awarded to the Petitioners.

Orders accordingly.

Judgement dated and delivered virtually this 3rd day of February 2026

D. KAVEDZA
JUDGE

In the presence of:

Mr. Ehesa for the Petitioners

Mr. Mutuma for the Respondents

Ms. Nekoye h/b for Ochile for the 2nd Interested party

Maureen Court Assistant.

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