

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUSIA**  
**CONSTITUTIONAL PETITION NO. E002 OF 2026**

**OKIYA OMTATAH & ANOTHER.....PETITIONERS**  
**VERSUS**  
**OFFICER COMMANDING STATION (BUSIA) &**  
**9 OTHERS..... RESPONDENTS**  
**AND**  
**INDEPENDENT OVERSIGHT AUTHORITY (IPOA) &**  
**6 OTHERS.....INTERESTED PARTIES**

**RULING**

1. I am tasked with determining a Motion, dated 2<sup>nd</sup> February 2026. The said Motion was brought under certificate of urgency, and placed before me, on 4<sup>th</sup> February 2026. I directed service, and granted prayers 2 and 3 of the Motion, and fixed it for *inter partes* hearing on 9<sup>th</sup> February 2026.
2. Prayer 2 of the Motion was about grant of a *habeas corpus* order, to compel the production of the person, or body, of Ahmed Mohamed Ibrahim, the person alleged to be missing, by the persons named in the petition as the respondents. Prayer 3 is framed as an alternative to the *habeas corpus* prayer, in the event of default in the production of the missing person, the respondents being compelled to file affidavits fully accounting for the arrest of the missing person, disclosing the officers involved, their command structures, the place of detention of the missing person, and his current whereabouts, condition or fate.
3. The grant of prayers 2 and 3 of the Motion meant that a *habeas corpus* order issued, to compel the respondents to produce Ahmed Mohamed Ibrahim or his body before the court, or to show lawful cause for his arrest, detention or continued confinement, and in default of such production, an

order compelling the respondents to account, through an affidavit, for the arrest of the said Ahmed Mohamed Ibrahim, and disclosure of the officers involved in his arrest, and disclosures about his current whereabouts or state.

4. When the matter came up for *inter partes* hearing, on 9<sup>th</sup> February 2026, it transpired that the petitioners had not completed the exercise of service of the papers, and the matter was put off to 16<sup>th</sup> February 2026. On 16<sup>th</sup> February 2026, Mr. Simiyu appeared for some of the respondents, and Ms. Owino for one of the interested parties. It transpired that they needed time to file responses, and the matter was put off to 19<sup>th</sup> February 2026. On 19<sup>th</sup> February 2026, the respondents had filed their responses, and the parties addressed me orally, through their respective Advocates, Mr. Omeri, Mr. Otieno, Mr. Simiyu, Mr. Nyandieka, Ms. Ogweno, Ms. Owino and Ms. Imbosa.
5. The response, on behalf of a section of the respondents, being the police, the national intelligence agency, the Cabinet Secretary responsible for security and the Attorney General, was vide an affidavit, sworn by Symon Chege, a senior police criminal investigation officer, based at Busia, on 18<sup>th</sup> February 2026. The effect of that affidavit is that the respondents did not arrest the missing person, and he was not in their custody. Instead, it is averred that a report of a missing person had been made at the Busia Police Station, by the 2<sup>nd</sup> petitioner. According to the OCS and the said 2<sup>nd</sup> petitioner that person was Ahmed Ibrahim. Their investigations revealed that the person had boarded a bus, at Busia, enroute to Nairobi, but was abducted at Korinda. According to the respondents, the issue was not one of an arrested or detained person, but of a missing person, who was abducted by unknown persons.

6. Attached to that affidavit are several documents. There is an extract from the investigation diary, which indicates a report of a missing person, identified as Ahmed Ibrahim Ali, made by the 2<sup>nd</sup> petitioner, on 26<sup>th</sup> January 2026. The second attachment is a police statement, purportedly recorded by the 2<sup>nd</sup> petitioner, on the disappearance of an Ahmed Ibrahim. The next is a police statement, purportedly recorded from Ngumbi Kayangula Masila, the conductor of the bus, in which the missing person was traveling, before his abduction, according to the police. The said person is merely identified as a Somali man.
7. The other police statement is purported to have been recorded from Ahmed Mohamed, being the clerk at the bus company offices at Busia, who issued the missing person with a bus ticket on 25<sup>th</sup> January 2026, and who allegedly saw him board that bus on 25<sup>th</sup> January 2026. He identifies him simply as Ahmed. There is a copy of a bus ticket, for travel on 25<sup>th</sup> January 2026, issued to Ahmed Ibrahim, issued or booked by Ahmed Noah, for seat 16. There is a passenger manifest, for 25<sup>th</sup> January 2026, where Ahmed Ibrahim was allocated seat number 16.
8. There is a call records log from Safaricom, for a number registered to Ahmed Mohamed. There is also a police witness statement, purportedly recorded from Edin Abdi Sala, with relation to a person identified as Ahmed Ibrahim Ali. There is a signal from STAPOL BUSIA, for circulation to all police stations in Kenya, concerning the report made by the 2<sup>nd</sup> petitioner, about his nephew, Ahmed Ibrahim. There is an investigation diary and a covering report, relating to Ahmed Ibrahim.
9. The *inter partes* hearing of the application was to achieve 3 alternative objectives. The first was the production of Ahmed Mohamed Ibrahim or his body, or an account of where he was lawfully being held. The second objective was

an alternative to the first, so that, in the event the respondents could not produce Ahmed Mohamed Ibrahim or his body or account for his arrest and detention, to file sworn affidavits to account for his arrest. The third objective is an alternative to the second, that the Inspector-General of Police, the Director of Criminal Investigations, the Commander of the Anti-Terrorism Police Unit and the Director General of the National Intelligence Service be summoned to appear in court, to account for the disappearance of Ahmed Mohamed Ibrahim, and to give orders to secure the protection of Ahmed Mohamed Ibrahim.

10. There was no compliance with order 2, but there was partial compliance with order 3, as granted on 3<sup>rd</sup> February 2026. Order 2 was not complied with, for Ahmed Mohamed Ibrahim was not produced, neither was his body, nor was an account given of his arrest and detention. Order 3 was partially complied with, to the extent that a sworn affidavit was filed, but there was no account of the arrest of Ahmed Mohamed Ibrahim, and disclosures of the officers involved, nor of the whereabouts of the said Ahmed Mohamed Ibrahim. The position, taken by the respondents, was that they did not arrest Ahmed Mohamed Ibrahim, he was not in their custody, and they could not, in the circumstances, account for his whereabouts.

11. In view of what I have discussed, in paragraphs 9 and 10 hereabove, what I am now required to do, is to consider whether I should grant the orders sought in prayer 4 of the application, with respect to summoning the Inspector-General of Police, the Director of Criminal Investigations, the Commander of the Anti-Terrorism Police Unit and the Director General of the National Intelligence Service, to account for the whereabouts of Ahmed Mohamed Ibrahim.

12. Should I grant prayer 4 of the application, and order summonses to issue to those officers?
13. One thing that bothers me about the papers filed by the petitioners is that they have no annexures. All I have are narratives, in the affidavits of the 2 petitioners and of Ngombi K. Masila. They refer to a person they identify as Ahmed Mohamed Ibrahim, but they have attached no documents to establish that such a person exists or existed. The issue is about disappearance of a human being. Such is a serious matter. Secondly, grave accusations are made that he was arrested and disappeared by the respondents. Those are serious allegations to make against public officers, some of whom hold constitutional offices. Before the respondents are called to account, the petitioners would have an obligation to establish the existence and real identity of Ahmed Mohamed Ibrahim, beyond what they have averred in their affidavits.
14. Ahmed Mohamed Ibrahim is depicted to be an adult. He must have had credentials of one kind or other. A certificate of birth, or a national identity card, or driving licence, or a passport, or a trading licence, or some other form of identification. Identification is critical, in all cases involving human beings, indeed even relating to property. Identity is at the core. It would not be enough to allege that this or that person was arrested or was disappeared, without providing documentary material to identify the person or to establish that such a person exists or existed, before orders can be made to require accounts to be rendered on his whereabouts. It would be a leap in the dark, to require accounts being rendered relating to an individual whose proper identity and existence is yet to be established or proved.
15. People do share the same names. The name Ahmed Mohamed Ibrahim could be attributed to several individuals,

whether resident in Busia or elsewhere. Proper identification, through documents or documentation, would separate or differentiate the persons sharing names, and bring clarity, with respect to the particular or specific person to whom the process or proceedings underway relate. For the instant case, it would bring clarity with respect to which particular Ahmed Mohamed Ibrahim that these proceedings relate to, and in respect of whom the respondents are to be summoned to render an account on. The law abhors uncertainty, for uncertainty breeds speculation and conjecture. The law treasures precision, and proper identification of individuals or of the subject-matter of a court process is one such treasure. It is about being exact on who the process is about.

16. The respondents have been more diligent. They have annexed documents to support whatever they allege in their affidavit. One of the documents, in those annexures, is an extract from the OB or investigation diary. It depicts that the 2<sup>nd</sup> petitioner reported the disappearance of his nephew, an Ahmed Ibrahim Ali. That name, Ahmed Ibrahim Ali, also appears in the police statement of Edin Abdi Sala, said to be a business partner of the person that the 2<sup>nd</sup> petitioner reported as disappeared. So, who disappeared or was disappeared, was it Ahmed Mohamed Ibrahim or Ahmed Ibrahim Ali? Who did the 2<sup>nd</sup> petitioner report to the police as missing, Ahmed Mohamed Ibrahim or Ahmed Ibrahim Ali? Are these 2, one and the same person? The petitioners did not reply to the affidavit by the respondents; hence no clarity was brought on the matter.

17. It would be premature to consider grant of prayer 4 of the Motion, before the credentials or identification papers of Ahmed Mohamed Ibrahim are presented. I shall not consider grant of that prayer for now. The petitioners shall do the needful. The matter shall be mentioned on 11<sup>th</sup> March 2026.

18. I note that some of the parties, such as the 7<sup>th</sup> respondent and the 6<sup>th</sup> interested party, have expressed surprise as to why they were joined as parties. Such parties are not obliged to remain in the proceedings, if the material on record, does not in any way make any allegations against them, for they would have nothing to answer for. They would be within their rights not to participate, if they have no useful contribution to make.

19. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS,  
AT BUSIA, ON THIS 27<sup>TH</sup> DAY OF FEBRUARY 2026.**

**W. MUSYOKA  
JUDGE**

**Mr. Arthur Etyang, Court Assistant.**

**Advocates**

**Mr. Omer and Mr. Otieno, instructed by Omeri & Associates,  
Advocates for the petitioners.**

**Mr. Simiyu, instructed by the Attorney-General, for the 1<sup>st</sup>,  
2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 10<sup>th</sup> respondents.**

**Mr. Ondieki, Advocate for the 7<sup>th</sup> respondent.**

**Ms. Ogweno and Mr. Onanda, instructed by the Director of  
Public Prosecutions, for the 8<sup>th</sup> respondent.**

**Ms. Owino, Advocate for the 1<sup>st</sup> interested party.**

**Ms. Imbosa, Advocate for the 6<sup>th</sup> interested party.**