

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUSIA**  
**MISCELLANEOUS CRIMINAL APPLICATION NO. E034 OF 2025**

**MARIKO            MUSTAFA            WASIKE.....**  
**APPLICANT**

**VERSUS**

**JOSEPH KAITA..... RESPONDENT**

**RULING**

1. The application, for determination, is the chamber summons, dated 4<sup>th</sup> July 2025. It seeks leave to institute private prosecution against the respondent, Joseph Kaita.
2. The background is that the applicant had been invited to the office of the Chief of Ratema Sub-Location, within North Teso, Busia. He honoured those summonses, and appeared there on 23<sup>rd</sup> June 2025. The Chief, the respondent herein, physically assaulted him. The applicant sought medical treatment, and reported to the police, vide OB/09/23/6/2025, at 16:30 hours.
3. He complains that he is unable to get justice. The hospital, where he was treated, is unwilling to have the P3 form signed. He accuses the respondent of interfering with the process, by using his administrative position. It is on that account that he seeks leave to initiate a private prosecution against the respondent.
4. He has attached a copy of the draft criminal charge against the respondent, a copy of the summons by the respondent to attend to his office, and a copy of the OB particulars given to him by the police.

5. The matter was placed before me, on 9<sup>th</sup> September 2025, under Certificate of Urgency. I directed that the chamber summons be served, for hearing *inter partes*, on 22<sup>nd</sup> September 2025.
6. On 22<sup>nd</sup> September 2025, an Advocate for the respondent, appeared. The applicant indicated that the Office of the Director of Public Prosecutions (ODPP) had been served. The matter was put off to 9<sup>th</sup> October 2025. On that date all the parties had Advocates in the attendance. Directions were given, for filing of responses by the respondent and the ODPP. On 10<sup>th</sup> November 2025, it was directed that the matter be canvassed by way of written submissions. There were subsequent mentions on 1<sup>st</sup> December 2025 and 10<sup>th</sup> December 2025. The respondent and the ODPP did not file any responses, and the matter was filed for ruling.
7. There are no statutory provisions on to how leave to initiate prosecution is to be sought and obtained. In *Kimani vs. Kahara* [1983] eKLR (Simpson & Sachdeva JJ), it was said that leave ought to be sought when the proposed accused persons appear before the Magistrate's Court, for plea taking, upon summons being issued to them. That suggested that the proper place for seeking leave would be at the Magistrate's Court, where the trial ought to take place.
8. However, that was under the retired. Under the current Constitution, primacy is given to substantive justice, and technicalities of procedure are to be eschewed. A party can, therefore, approach the court, by whatever means.
9. The High Court is granted unlimited original jurisdiction in criminal matters, by Article 165(3) of the Constitution. It can handle anything that is within the mandate of the Magistrate's Court. In any event, the Magistrate's Court exists to assist the High Court discharge its mandate.

Consequently, leave to initiate private prosecutions, can be granted by the High Court.

10. The respondent and the ODPP have not responded, to the application for leave. The application, dated 4<sup>th</sup> July 2025, is unopposed. I hereby grant it. The charges shall be laid at the Magistrate's Court, at Malaba, where summons to attend, by the respondent, shall also be obtained. This file shall be closed hereafter. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED AND SIGNED, IN  
CHAMBERS, AT BUSIA, ON THIS 10<sup>TH</sup> DAY OF FEBRUARY  
2026.**

**WM MUSYOKA  
JUDGE**

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

**Mr. Joseph Kaita, the respondent, in person.**

**Advocates**

**Mr. Onanda, instructed by the Office of the Director of Public Prosecutions, for the Republic.**