



**Kiarie v Director of Public Prosecutions (Constitutional Petition E006 of 2025)  
[2026] KEHC 3243 (KLR) (Anti-Corruption and Economic Crimes) (11 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3243 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
ANTI-CORRUPTION AND ECONOMIC CRIMES  
CONSTITUTIONAL PETITION E006 OF 2025**

**BM MUSYOKI, J**

**MARCH 11, 2026**

**BETWEEN**

**SAMUEL MUGO KIARIE ..... PETITIONER**

**AND**

**THE DIRECTOR OF PUBLIC PROSECUTIONS ..... RESPONDENT**

**RULING**

1. The parties appeared before me this morning for directions in respect of the petitioner's application dated 4<sup>th</sup> March 2026 which has the following prayers;
  1. This application be certified as urgent and be heard ex parte in the first instance owing to the imminent threat of arrest and arraignment of the petitioner.
  2. Pending inter partes hearing of this application, this Honourable Court be pleased to grant a temporary conservatory order suspending and/or staying the intended arrest, arraignment, charging and prosecution of the petitioner in respect of the alleged bribery incident, as publicly announced on 4<sup>th</sup> March 2026.
  3. Pending the hearing and determination of this application inter partes, this Honourable Court be pleased to issue a conservatory order restraining the respondent, its agents, servants or any person acting under their authority from arresting, arraigning, charging, prosecuting or in any manner proceeding with criminal proceedings against the petitioner arising from the alleged bribery incident.
  3. Pending the hearing and determination of the substantive petition, this Honourable Court be pleased to issue a conservatory order staying and/or suspending the decision of the respondent



to arraign and charge the petitioner in relation to the bribery allegations contained in the press statement dated 4<sup>th</sup> March 2026.

3. The costs of this application be in the cause.
2. The respondent had not filed any response to the application as Mr. Maatwa indicated that they had not been served with the application. The petitioner's advocates insisted that they had served the application and in order to deal with what the petitioner maintained was urgent, I directed the parties to appear for oral hearing of prayer 2 at 11.30 am which they did.
3. The petitioner has in support of the application sworn an affidavit dated 4<sup>th</sup> March 2026 in which he avers that he is a prosecuting counsel working with the respondent and currently stationed at Milimani law courts. He has deponed that the respondent has announced through the media that the Director of Public Prosecution had approved charges of receiving bribe against him which offence was allegedly committed in 2023 when he was stationed at Makadara law courts.
4. The petitioner states that he suffers from an eye condition known as keratoconus as a result of which he has been certified as a person living with disability and has exhibited a copy of a certificate to that effect. Due to this condition, he has been allowed to adjust his working time to two or three days a week which he alleges that has led to him being perceived as less useful within the respondent's offices. He claims that the delay in investigations for three years since the complaint was lodged and the sudden revival of the same is malicious and an attempt to get him out office and that he is being targeted due to his condition.
5. Mr. Stanley Kinyanjui, Mr. Shadrack Wambui and Mr. Danson Omari for the petitioner submitted that the petitioner deserved the conservatory orders as prayed because he is in danger of being arrested and arraigned for an offence he allegedly committed in 2023. They urge the court to consider that since the time the offence is alleged to have been committed, the petitioner has continued to work at the respondent's offices without any summons, warnings or invitation to defend himself. They have added that the decision to charge the petitioner was a backdoor attempt to orchestrate his dismissal or interdiction. This according to the counsel is an affront to the petitioner's right to a fair trial.
6. On whether the petitioner is likely to suffer irreparable loss, the counsel submit that the violation of his rights cannot be wished away simply because there exists a remedy for damages. They urge that the petition will be rendered nugatory if the applicant is arraigned and charged as that would mean that he amends his petition to have the Magistrate court stopped from prosecuting him as he will be in the hands and mercy of the Magistrate's court. They add that granting the orders will serve public interest as the court will have upheld the rights of people living with disability.
7. The counsel have further submitted that this court has powers to arrest cases of injustice and the petitioner's case is such a case since the respondent is seeking to use criminal justice system to get rid of the petitioner. In their opinion, the respondent can wait for determination of the petition then proceed to prosecute the petitioner in the event he does not succeed.
8. Mr. Maatwa in opposing the application has urged the court to find that the application does not meet the threshold for conservatory orders. He submits that the orders are not a matter of right but are in the discretion of the court. He adds that it was not the respondent who initiated the complaint but members of the public upon which the Ethics and Anti-Corruption Commission (hereinafter referred to as EACC) moved in to investigate, which investigations were bound to take long because they involved subjecting exhibits to forensic examination.
9. Mr. Maatwa has added that the applicant was invited by the EACC for interview where he gave his side of the story which was taken into account before the EACC made recommendations to the



respondent. For this reason, he has argued that granting of the application would be condemning the EACC without giving it opportunity to be heard.

10. He has also told the court that the petitioner was also invited by the respondent to give his side of the story and in reaching the decision to charge, the Director of Public Prosecutions was simply exercising his constitutional mandate and it is the EACC who is meant to arrest the petitioner and not the ODPP.
11. Mr. Maatwa added that there is no time limitation for investigations or instituting of criminal proceedings. He submits further that the argument that the charges are meant to facilitate termination of the petitioner's employment is speculative and even if it were to happen, the petitioner has redress in the Employment and Labour Relations Court. Finally, he urged the court to note that the petitioner has neither given particulars of malice nor specified the rights and how they have been violated.
12. This being a ruling on prayer 2 only, I must be cautious in my analysis so that I do not compromise or embarrass the hearing of the other prayers especially prayer 4. I have considered the application, the supporting affidavit and the submissions of the counsel for the parties. I must admit that I am restricted by the scanty and limited facts and evidence since the larger part of what has been presented to me is statements from the bar and it is obvious that the petitioner has in his supporting affidavit not disclosed all useful information.
13. It is not disputed that the petitioner has been under investigations by the EACC for the offence of receiving bribe which is alleged to have been committed in 2023 when he was serving at Makadara law courts. The complainants are said to have come from members of the public and the petitioner has not stated that he was discharged or exonerated from culpability. The press release which forms the basis of this petition shows that the Director of Public Prosecutions evaluated evidence which was presented to him by the EACC and all that he did was to approve the charges. The evidence which was presented to the respondent has not been exhibited before this court. I cannot in the current circumstances act in a manner that would stop the respondent and its director from discharging their constitutional duties.
14. The petitioner has argued that it is in public interest that the orders be granted and in support of that line of submissions, he has cited his condition as a factor for consideration. With respect, I do not think that pleading the petitioner's condition in this matter is helpful. So far, no evidence has been shown that the approval of the charges was influenced by a desire to get rid of the petitioner as an employee or bias against him on account of his condition. There is also no proof so far that the respondent violated the petitioner's constitutional rights.
15. The respondent did not initiate or receive the complaints from the public neither did it initiate or carry out investigations. Investigations were carried out by an independent constitutional body which has not been joined in these proceedings and over which the respondent has no statutory, institutional or constitutional control and whose input and participation in this matter is, in my view important.
16. Courts of law should be cautious in making orders whose effect would operate as obstacles to the operations and performance of other public bodies especially where these bodies are constitutionally independent unless public interest demands that the courts intervenes or there is a clear and manifest threat to violation of the rights of the concerned persons. I think public interest in this matter will be served more in the members of the public knowing that the complaints they made in 2023 were not thrown into the dustbin and have resulted to positive progress.
17. The petitioner submits that the arraignment will place him at the mercy of the Magistrate's court. The Magistrate's courts are statutorily and constitutionally competent and empowered to handle any issues of constitutional rights which the petitioner may see fit to raise. This court cannot muzzle the Magistrate's court in matters which have not even been placed before it.



18. The upshot of the above is that I see no merits for granting prayer 2 of the application. Let all the facts, information and evidence be filed first to enable the court make an informed decision on whether or not to grant the conservatory orders. I also exercise my powers under Rule 7(2) of *The Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules and direct that the EACC shall be allowed to participate in this petition. I consequently proceed to make the following directions.

1. Prayer 2 of the notice of motion dated 4<sup>th</sup> March 2026 is declined.
2. The Ethic and Anti-Corruption Commission is hereby joined as an interested party in this petition.
3. The petitioner shall serve the Ethic and Anti-Corruption Commission with this petition within two days and in any event not later than close of business on 13-03-2026.
4. The interested party and the respondent shall file and serve their responses to the application within seven days of service.
5. I will mention this matter on 23-03-2026 for further directions.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 11<sup>TH</sup> DAY OF MARCH 2026.**

**B.M. MUSYOKI**

**JUDGE OF THE HIGH COURT.**

Ruling delivered in presence Mr. Stanley Kinyanjui, Mr. Shadrack Wambui and Mr. Danstan Omari for the petitioner and Mr. Maatwa for the respondent.

