

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**JUDICIAL REVIEW DIVISION**

**JUDICIAL REVIEW MISC. APPLICATION NO. E027 OF 2026**

**FESTUS ARASA OMWAMBA.....1<sup>ST</sup>**  
**APPLICANT**

**VERSUS**

**CHIEF MAGISTRATE, KAHAWA LAW COURTS.....1<sup>ST</sup>**  
**RESPONDENT**

**DIRECTOR OF CRIMINAL INVESTIGATIONS.....2<sup>ND</sup> RESPONDENT**  
**OFFICE OF THE DIRECTOR OF PUBLIC**

**PROSECUTIONS.....3<sup>RD</sup> RESPONDENT**

**NATIONAL POLICE SERVICE.....4<sup>TH</sup> RESPONDENT**

**RULING**

1. The Chamber Summons dated 27/2/2026 seeks leave of court to challenge proceedings, orders and decision of the Respondents in a criminal case at Kahawa Law Courts in Cr. E015/2026 made on 26/2/2026 detaining and remanding the exparte applicant Festus Arasa Omwamba, in custody despite the subsisting anticipatory bail orders issued vide HCCR Misc No. E110/2025. The applicant seeks to have those proceedings/orders/decision quashed by this court by an order of certiorari.
2. Additionally, the applicant seeks leave of court to apply for prohibition prohibiting the Chief Magistrate’s Court at Kahawa from proceeding with Criminal Case No. E015/2026 in a manner inconsistent with the

anticipatory bail orders issued by the High Court and in violation of the applicants' constitutional rights.

3. The applicant also seeks have to apply for mandamus to compel the Respondents jointly and severally to comply with and give full effect to the anticipatory bail orders issued on 3<sup>rd</sup> June, 2025 in HCCR Misc Case No. E110/2025.
4. And finally, that the leave if granted do operate as stay of the aforesaid impugned criminal proceedings before Kahawa Law Courts and the remand or continue detention of the exparte applicant pending the hearing and determination of this application *interpartes* and the substantive Judicial Review application.
5. **The application is hereby certified urgent.**
6. The application is supported by grounds, statutory statement and verifying affidavit sworn by Festus Arasa Omwamba on 27/2/2026 and the annexures thereto which include an order granting the applicant Bail of Kshs.100,000 during pendency of investigations into the case involving alleged Trafficking in person by the applicant. The order was made on 3/6/2025 by M. Muigai J in HCCR Misc Appl No. E110/2025. He also annexed a charge sheet among other documents.
7. This application is made exparte in the first instance and this court has certified it as urgent. I then called on the advocate for the applicant, Mr. Bonventure Otieno to appear in court and he has appeared virtually and

argued the application *ex parte*, with the court seeking clarification on whether this is the right court to entertain the application.

8. Having perused the application as a whole and the accompanying documents and upon hearing counsel for the applicant, the question is whether the intended substantive motion is *prima facie* arguable.
9. From the onset, it is apparent that the applicant's issue is that the Respondents caused him to be taken into custody and be remanded, which orders remanding him are inconsistent with the anticipatory bail order of 3/6/2025 hence is in violation of his right to bail which right had accrued to him and was still subsisting when he was placed in custody and remanded.
10. The anticipatory bail order was made on 3/6/2025 by the Criminal Division of the High Court. That being the case, and as that order has neither been set aside nor lapsed, whether that order is or has been violated by the Respondents by placing the applicant into custody, as alleged, it is only the court which issued anticipatory bail that has the power and jurisdiction to make a determination on violation of its orders.
11. The applicant is not permitted to hop into a different forum of the same court to seek to have the anticipatory bail order to be obeyed to the letter. On that ground alone, I find that the application for leave is not *prima facie* arguable and that to grant leave to the applicant will be a waste of

judicial time as the substantive motion if allowed to be filed and argued, is unlikely to be successful but merely academic.

12. Although the applicant's Counsel has urged this court to grant a stay of proceedings in the criminal case at Kahawa Chief Magistrate's Court in CMC Cr. E015/2026 and stay of the continued remand or detention of the applicant, even as he concedes that these proceedings may have been filed in a wrong forum, out of much pressure, I am not persuaded that I should co-sit with a colleague Judge of concurrent jurisdiction to venture into her jurisdiction and grant orders which she would exercise discretion over, quite competently, and decide, upon hearing the applicant, whether *ex parte* or *inter partes*.

13. To do so, in my view, would be to enter into the arena of another court's exercise of jurisdiction and discretion. I decline to do so; out of respect for the rule of law and due process.

14. In the end, having found the intended substantive motion not *prima facie* arguable for being filed in a wrong forum, I dismiss the chamber summons dated 27/2/2026, in its entirety with no orders as to costs.

15. This file is closed.

16. I so order.

**Dated, Signed & Delivered virtually at Nairobi this 27<sup>th</sup> Day of February, 2026**

**R.E. ABURILI  
JUDGE**

ORIGINAL