



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Babayao & 12 others (Anti-Corruption and Economic Crimes
Case 22 of 2019) [2026] KEMC 47 (KLR) (27 February 2026) (Ruling)**

Neutral citation: [2026] KEMC 47 (KLR)

**REPUBLIC OF KENYA
IN THE CHIEF MAGISTRATE'S COURT (MILIMANI LAW COURTS)
ANTI-CORRUPTION AND ECONOMIC CRIMES CASE 22 OF 2019
CN ONDIEKI, SPM
FEBRUARY 27, 2026**

BETWEEN

REPUBLIC PROSECUTOR

AND

FERDINAND NDUNGU WAITITU BABAYAO 1ST ACCUSED

SUSAN WANGARI NDUNGU 2ND ACCUSED

LUKA MWANGI WAHINYA 3RD ACCUSED

CHARLES CHEGE MBUTHIA 4TH ACCUSED

BETH WANGECHI MBURU 5TH ACCUSED

ZACHARIA NJENGA MBUGUA 6TH ACCUSED

JOYCE NGINA MUSYOKA 7TH ACCUSED

SIMON KABOCHO KANG'ETHE 8TH ACCUSED

ANSELM GACHUKIA WANJIKU 9TH ACCUSED

SAMUEL MUIGAI MUGO 10TH ACCUSED

TESTIMONY ENTERPRISES LIMITED 11TH ACCUSED

SAIKA TWO ESTATE DEVELOPERS LIMITED 12TH ACCUSED

BIENVENUE DELTA HOTEL 13TH ACCUSED



RULING

Part I: The Applicants' Case

1. Vide a Notice of Motion dated 10th December 2025 and filed on 11th December 2025, the 6th, 7th, 8th, 9th and 10th Accused Persons (hereinafter collectively referred as to “the Applicants”) sought orders of this Court that:
 - i. this Court do order the release to the Applicants of their respective personal employment files, which were produced as Original Exhibits in Milimani Chief Magistrate’s Court Anti-Corruption Case No. ACCR/22/2019.
 - ii. the release and delivery of the files be effected within fourteen (14) days of the order.
 - iii. the Applicants be granted liberty to remove the exhibits from Court custody by their legal representatives or authorized agents.
2. The Application is predicated on the grounds set out on the face of the Motion and facts deposed in both the Supporting Affidavit of even date and further Affidavit dated 16th January 2026.
3. On the face of the Motion, it is averred the Applicants were charged as the 6th - 10th Accused Persons in Milimani MCAC Number 22 of 2019 but they were discharged from all criminal charges on 14th October 2022, following the Judgment of the High Court delivered in Petition No. E003 of 2022. It is averred that therefore, all criminal proceedings relating to them have been conclusively determined and no further proceedings are pending. It is averred that the Applicants’ personal employment files were produced as original Exhibits during the trial and that the employment files constitute the Applicants personal records, and are urgently required for human resource compliance and personal record keeping. It is averred that the continued retention of the files serves no judicial, prosecutorial, or investigative purpose, and is causing the Applicants ongoing professional and personal inconvenience.
4. In the supporting affidavit sworn by the 4th applicant on behalf of all Applicants, the grounds above have been rehashed. A copy of the said High Court Order has been exhibited as AGW-1.
5. In the Further Affidavit sworn on 16th January 2026, it is deposed that the pending appeals referred to in the Replying Affidavit concern only the convicted co-accused to which the Applicants are not parties.
6. In their submissions dated 16th January 2026 and filed on even date, the Applicants reiterated the substance of the Application, and placed reliance upon sections 121 and 177 of the Criminal Procedure Code (CPC) and how they have been construed in *Kariuki v Republic* [2025] KEHC 14561 (KLR).

Part II: The Respondent's Case

7. The Application is opposed vide a Replying Affidavit sworn on 18th December 2025 by Ms. Faith Mwila, a Principal Prosecution Counsel at the ODPP.
8. In the said Replying Affidavit, it is deposed that the files are not personal property of the Applicants but rather the personnel records which belong to the County Government of Kiambu, being the employer and custodian of the files from whom the files were obtained. Further, it is deposed that there is a pending appeal in the High Court and the said exhibits are in the lawful custody of the High Court and release thereof at this stage will prejudice the appeal.



9. In their submissions dated 23rd January 2026 and filed on even date, the Respondent rehashed the substance of their response and raised questions of jurisdiction of this Court in light of the pending appeal; locus standi of the Applicants to apply for release of the files to themselves; and the likely prejudice if the files are released before the pending appeal is determined.

Part III: Questions For Determination

10. Gathering from the Application and the response plus the rival written submissions, four (4) questions have commended themselves for determination as follows:
- i. Viewed through the lens of the doctrine of forum non conveniens, whether this Court is the most convenient forum to hear and determine this Application, in light of the appeal pending at the ACEC Division of the High Court sitting at Milimani.
 - ii. Whether this Court is clothed with jurisdiction to do order the release to the Applicants of their respective personal employment files, which were produced as Original Exhibits in Milimani Chief Magistrate's Court Anti-Corruption Case No. ACCR/22/2019.
 - iii. Whether the Applicants have locus standi to seek an order of release to the Applicants' employment files, which were produced as Original Exhibits in Milimani Chief Magistrate's Court Anti-Corruption Case No. ACCR/22/2019.
 - iv. Whether the Applicants have made a case for grant of the Prayers sought.

Part IV: Analysis And Determination

i. Viewed through the lens of the doctrine of forum non conveniens, whether this Court is the most convenient forum to hear and determine this Application, in light of the appeal pending at the ACEC Division of the High Court sitting at Milimani

11. This Court is cognizant of the appeal pending determination at the ACEC Division of the High Court at Milimani. A Court of law should not operate from a blind spot or suppositions. In this connection, granted the fact that this Court is not privy to both the factual and evidential scope underpinning the appeal and consequently incapable of determining whether the subject files fall within the said scope of the appeal, and in order to protect the integrity of the said appeal and avoid any conceivable judicial embarrassment, and out of abundance of caution, this Court is of the judicial view that the nature of this Application commends itself for determination by the same High Court Judge handling the said appeal since the said Judge is the most suited to rule out possibility of necessity or relevancy of the subject files, in the said appeal.
12. It follows that this Court finds and so concludes that this Application has failed the test of forum non conveniens and for this reason, this Court is found not to be the convenient forum to hear and determine this Application, in light of the appeal pending at the ACEC Division of the High Court at Milimani. For avoidance of doubt, this finding should not be confused or mixed up with the question of want of jurisdiction.
13. Having been rendered moot, it further follows that this Court cannot properly so proceed to determine the subsequent questions namely: (ii) Whether this Court is clothed with jurisdiction to do order the release to the Applicants of their respective personal employment files, which were produced as Original Exhibits in Milimani Chief Magistrate's Court Anti-Corruption Case No. ACCR/22/2019; (iii) Whether the Applicants have locus standi to seek an order of release to the Applicants' employment



files, which were produced as Original Exhibits in Milimani Chief Magistrate's Court Anti-Corruption Case No. ACCR/22/2019; and (iv) Whether the Application merits grant.

Part V: Disposition

14. On basis of the foregoing principal reason, the Application is thus struck out. The Applicants are at liberty to lodge the dispute at the appropriate forum.
15. It is directed that each party will bear their own costs.
16. This file is marked as closed.

VIRTUALLY DELIVERED, SIGNED AND DATED AT THE MILIMANI ANTI-CORRUPTION COURT THIS 27TH DAY OF FEBRUARY 2026

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C.N. ONDIEKI

SENIOR PRINCIPAL MAGISTRATE

In the presence of:

The Respondent

Advocate for the Applicants: Mr. Owuor

Advocate for the Respondent: Ms. Mwila

Court Assistant: Ms. Mutave

