

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT THIKA
MISCELLANEOUS CRIMINAL APPLICATION NO. E077 OF
2025

LAWRENCE NJOROGE NGUGI.....1ST
APPLICANT
BONFACE KANURI NJOROGE.....2ND
APPLICANT
PASCHALI MUYA NGUGI.....3RD
APPLICANT
WILFRED KAMAMI MUYA.....4TH
APPLICANT

VERSUS

THE DIRECTOR OF PUBLIC PROSECUTIONS.....1ST
RESPONDENT
DIRECTORATE OF
CRIMINAL INVESTIGATIONS.....2ND
RESPONDENT

AND

SAMUEL MUNTAMBU KARONGE.....INTERESTED
PARTY

R U L I N G

Brief facts

1. The application for determination dated 11th November 2025 seeks for orders of review and dismissal of the charges in Criminal Case No. E4987 of 2024 as consolidated with Criminal Case No. E2028 of 2024 and Criminal Case No. E2247 of 2024 since the current charges are not legally sustainable or tenable by virtue of the court's ruling dated 23rd January 2025 in Milimani Succession Cause No. 2715 of 2001 and the Certificate of Confirmation of Grant in the same

matter. The applicants further seek that the charges against them in the said criminal cases be withdrawn since they are unlawful by virtue of the ruling and certificate. Upon issuance of the said orders, the applicants seek for orders of uplifting of the bail/bond against them and their acquittal with the cash bail deposited in court be refunded to the respective depositors. The applicants further seek for orders of declaration that the interested party who has encroached in LR. No. 1082/13 IR 45040 KIAMBU situated South West within Thika in Kiambu County, belonging to Patrick Ngugi Kamangara amounts to intermeddling with the estate of the deceased which is a criminal offence pursuant to section 45 of the Law of Succession Act and the same is punishable in law, thus the 2nd respondent to investigate and prefer criminal charges against the interested party as dictated by law.

Applicants' Case

2. The applicants state that they have been charged in Criminal Case No. E4987 of 2024 as consolidated with Criminal Case No. E2028 of 2024 and Criminal Case No. 2247 of 2024 at the Chief magistrate's Court at Thika with the offence of malicious damage to a portion of property purportedly belonging to the interested party in relation to land located within parcel LR No. 1082/13 IR 45040 Kiambu situated at South west within Thika in Kiambu County in which suit the interested party is the complainant. The said parcel of land is registered in the name of Patrick Ngugi Kamangara (deceased).

3. The applicants further state that after the burial of the deceased, the family appointed the late Benedict Murigi Ngugi, the first born of the deceased to be the administrator of the deceased's estate and subsequently filed a succession Cause in the year 1992 however Benedict Murigi Ngugi passed on and the family then appointed the 1st applicant to take over and be the administrator of the estate of their late father and a confirmation of grant was issued on 14th May 2018. The applicants aver that the aforesaid suit emanates from an ownership dispute between them and the complainant regarding ownership of a portion of the suit land belonging to the late Patrick Ngugi Kamangara. The applicants further state that vide a ruling dated 23rd January 2025 in Milimani High Court Succession Cause No. 2715 of 2001, the court held that the complainant had no right whatsoever relating to the suit property as against

them since the 1st applicant was the rightful administrator of the suit property by virtue of the certificate of confirmation of grant dated 14th May 2018 hence the claim for malicious damage of property by the interested party in the said case does not hold water since he was a trespasser therein.

4. The applicants further state that they filed a preliminary objection before the Chief magistrate's Court at Thika ELC seeking for the dismissal of the suit as it amounts to *sub judice* since the matter before the Chief Magistrate's Court ELC division is a subject matter in the succession proceedings before the High court at Milimani in Succession Cause No. 2715 of 2001 and the said preliminary objection has a ruling date for 28th November 2025. Despite the

ruling, the respondents have unlawfully been proceeding to prosecute the said criminal cases oblivious to the fact that the interested party was a trespasser to the suit property.

5. The applicants state that the interested party led a team of people who invaded their land and started fencing and erecting temporary structures in the land and subdividing the said parcel of land. The applicants further state that they issued a demand letter to the interested party to vacate their land but he failed to respond forcing the 1st applicant to file an application dated 18th April 2023 before the High Court Milimani seeking for the eviction orders against the interested party and that he

be penalized for intermeddling with the estate of the deceased.

6. The applicants aver that the interested party sought to be declared the lawful owner of a portion of the said parcel of land measuring 1.9 acres of the mother title LR. No. 1082/13 IR 45040 Kiambu situated at South West within Thika and he was seeking for the revocation or annulment of confirmed grant issued on 14th May 2018 however the High court at Milimani delivered a ruling dated 23rd January 2025 stating that the interested party had no legal right to claim ownership of the said property and his encroachment therefore amounts to intermeddling with the estate of the deceased. The interested party then engaged the police who arrested the applicants and charged them with trumped up charges in the said criminal cases. The interested party alleged that they damaged his property and he immediately caused the applicants arrests. The applicants thus request for review and dismissal of the charges in

the criminal cases since the charges therein are not sustainable or tenable. Furthermore, the continued prosecution of the applicants in the said criminal cases amounts to blatant and glaring abuse of the court.

7. Parties disposed of the application by way of written submissions.

The Applicants' Submissions

8. The applicants submit that the interested party has no locus standi to lodge the criminal cases against them following the High Court's ruling dated 23rd January 2025 in Milimani Succession Cause No. 2715 of 2001 as he is a stranger to the suit property for he trespassed on the said property which is a criminal offence. The applicants assert that the interested party has no legal claim whatsoever over any portion of LR. No. 1082/13 IR 45040. The applicants further submit that despite the High Court's ruling dated 23rd January 2025, the interested party has stayed put and refused to vacate the suit property in blatant violation of their rights as beneficiaries of the estate.

9. The applicants argue that the interested party is using the lower court to file multiple criminal cases against the beneficiaries of the estate of the late Patrick Ngugi Kamangara and he is hell bent to use the criminal justice system to ensure that he arrests and charges the entire Kamangara family while refusing to obey the High Court's order as directed on 23rd January 2025. The applicants rely on the cases of **Republic vs Nairobi City County ex parte David Peter Ndambuki [2015] KEHC 2255; Econet Wireless Kenya Ltd vs Minister for Information & Communication of Kenya & Another [2005] 1 KLR 828; Refrigerator & Kitchen Utensils Ltd vs Gulabchand Popatlal Shah & Others Civil Application No. Nai 39 of 1990; Central Bank of Kenya & Another vs Ratilal**

Automobiles Limited & Others Civil Application No. Nai 247 of 2006 and **Awadh vs Marumbu (No.2) No. 53 of 2004 [2004] KLR 458** and submit that in order to uphold the rule of law, prevent anarchy and for effective and efficient administration of justice, a court ruling that has not been set aside must be obeyed by all persons. It is irrefutable that the court ruling delivered on 23rd January 2025 in Milimani Succession Cause No. 2715 of 2001 has not been appealed against, stayed, set aside or challenged in any way before a court of competent jurisdiction thus the continued prosecution of the applicants by the respondents on the guise of a compliant by the interested party alleging that they maliciously damaged his property located on the suit property where he was adjudged to be a trespasser cannot be sustained.

10. Relying on the case of **Republic vs Law Society of Kenya Disciplinary Tribunal & Another ex parte Muema Kitulu (2018) eKLR**, the applicants argue that the decision to arrest and charge the applicants was laced with illegality, irrationality and procedural impropriety and the continued prosecution of the matter before the lower court amounts to the continuation or perpetuation of such illegality. The applicants further submit that although the ODPP has powers to prosecute criminal offences and requires no consent from any person or authority for

commencement of criminal proceedings, such powers ought to be exercised in the interest of justice and the

ODPP has a duty to safeguard its office from abuse and to ensure that the entire criminal justice is not subjected to abuse.

11. The applicants refer to the decision in **Omar Kahindi, Elisha Kahindi, Martin Gona, Patrick Katana and Samuel Ngolo (Malindi)** (no citation given) and submit that the arrest of the four members of the Kamangara family and subsequent charges with the offence of malicious damage to property in the criminal cases was unlawful, arbitrary and malicious. The applicants further submit that they have been subjected to untold pain and suffering as members of the same family considering the 1st and 3rd applicants are brothers and the only surviving sons of the late Patrick Ngugi Kamangara and they are currently of advanced age of 78 and 80 years old.
12. The applicants refer to the cases of **Francis Karioko Muruatetu & Others vs The Attorney General Constitutional Petition No. 15 and 16 of 2016** and **Shilenje vs The Republic (1980) KLR 132** and submit that their right to a fair trial has been infringed and it is only fair that if the criminal cases in the lower court are stayed and they are discharged from the ongoing criminal cases.

The 1st Respondent's Submissions

13. The 1st respondent submits that a decision to charge the applicants was already and is currently active in court and hence orders

sought for stay of proceedings, review and dismissal of charges are overtaken by events. The 1st respondent further submits that it is not enough to merely state that the rights of the applicants have been violated and infringed without specifically stating the nature of violations of such rights.

14. The 1st respondent submits that the applicants have been charged with offences known to law and the prosecution has sufficient evidence to sustain the respective charges, thus the issues meant to vindicate the applicants should be canvassed in the criminal court and fairly determined. The 1st respondent further submits that it acted within its respective mandates under the relevant establishing legislation and in the circumstances, it cannot be said that the actions of the respondent was in breach of the mandate vested upon them. Accordingly, the applicants have not demonstrated that it acted without or in excess of the power conferred upon it by the law or have infringed violated, contravened or in any manner failed to comply or respect and observe the provisions of the Constitution or any other provisions of the law.
15. The 1st respondent submits that the applicants have failed to demonstrate that its actions are tainted with illegality, irrationality or procedural impropriety to warrant the intervention by the court. Further the applicants have not demonstrated any issues for the court to determine and

the applicants' presumption of innocence and their fundamental rights and freedoms are guaranteed and jealously guarded by the constitution and do not vanish by their prosecution before a competent court of law.

16. The 1st respondent argues that **Section 193A of the Criminal Procedure Code** does not bar criminal proceedings running concurrently with pending civil cases and the same cannot be used as a ground for stay, prohibition or delay of the criminal proceedings.

The Law

Whether the application has merit

17. The High Court's power of revision is set out in **Article 165 (6) and (7)** which provides:-

(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but over a superior court.

(7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.

18. Section 362 of the Criminal Procedure Code
provides:-

The High Court may call and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of any such subordinate court.

19. Section 364(1) of the Criminal Procedure Code
provides:-

In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders or which otherwise comes to his knowledge, the High Court may”-

(a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by section 354, 357 and 358, and may enhance sentence;

(b) In the case of any other order other than an order of acquittal alter or reverse the order.

(2) No order under this section shall be made to the prejudice of an accused person unless he has had

an opportunity of being heard either personally or by an advocate in his own defence.

20. The revisionary jurisdiction of the High Court was discussed by Odunga J in a persuasive decision of **Joseph Nduvi Mbuvi vs Republic [2019] eKLR:-**

“In my considered view, the object of the revisional jurisdiction of the High Court is to enable the high Court in appropriate cases,

whether during the pendency of the proceedings in the subordinate court or at the conclusion of the proceedings to correct manifest irregularities or illegalities and give appropriate directions on the manner in which the trial, if still ongoing, should be proceeded with. In other words, the High Court’s revisionary jurisdiction includes ensuring that where the proceeding in the lower court has been legally derailed, necessary directions are given to bring the same back on track so that the trial proceeds towards its intended destination without hitches. Not only is the jurisdiction exercisable where the subordinate court has made a finding, sentence or order but goes on to state that it is also exercisable to determine the regularity of any proceedings of any such subordinate court as well.”

21. The applicants are facing criminal charges of malicious damage to property contrary to Section 339 of the Penal

Code in Thika CM Court Criminal Case No. E4987 of 2024 as consolidated with Criminal Case No. E2028 of 2024 and Criminal Case No. E2247 of 2024 for the offence of malicious damage to property contrary to Section 339(1) of the Penal Code. The particulars are that the applicants damaged a perimeter fence which is the property of the Interested Party herein. The record shows that the suit involves fencing poles and barbed wire erected by the interested party on a portion of land parcel LR. No. 1082/13 IR Kiambu situated at South West within Thika. The said land is registered in the name of Patrick Ngugi Kamangara who is deceased and is the father of the 1st and 3rd applicants. There is a live Succession case at Nairobi

High Court Succession Cause No. 2715 of 2001 which has dealt with the distribution of the estate of Patrick Ngugi Kamangara and issued a Certificate of Confirmation of Grant dated 14th May 2018 which includes the suit parcel. The Interested Party filed an application dated 6th October 2023 seeking to be enjoined in the proceedings as an Interested Party. He also sought orders for revocation of grant confirmed on 14th May 2018 and that he be declared the lawful owner of the suit land parcel having purchased the same from the 3rd applicant. He also sought for orders that the portion be transmitted to him. The High Court dismissed the said application on 23rd January 2025 finding that there was no direct connection between the interested party and the deceased in way of inheritance. The Interested Party failed to prove that he

was a creditor to the estate. The court further found that since the transaction was between the Interested party and the 3rd applicant, it was prudent for the interested party to await the outcome of the Succession Cause and then lay his claim against the 3rd applicant. From the said rulings of the High Court Milimani, it is clear that the Interested Party ought not to be on the suit land for he has no legal interest in the said estate. Furthermore, the interested party caused the applicants to be arrested knowing very well that he is neither a beneficiary nor a creditor in the estate of the applicants' deceased's estate. The rulings from the High Court Milimani have not been challenged on appeal by the Interested Party or set aside by any court of law. The court declared that the said land parcel belongs to the beneficiaries of the estate of the late Patrick Ngugi Kamaranga as per the Certificate of Confirmation of Grant dated

14th May 2018. It is disturbing to see the police trying to overturn the succession court findings by arresting and charging the four beneficiaries with criminal offences that have no basis in law. The Interested Party must follow legal channels if he was not satisfied with the rulings of the Succession Court.

22. I have considered the facts of this application and the prayers sought herein. I am of the considered view that the orders sought ought to have been presented in judicial review proceedings which would finally resolve the stalemate facing the applicants whereby unlawful

decision to charge them has been made in view of an existing Succession Cause. The respondent herein who is on the offensive by going against court decisions and subjecting the applicants to criminal proceedings, did not file a response in this case for the reason that he is aware of the court rulings that the applicants have presented in their defence but which the 2nd respondent has chosen to ignore. As for the Interest Party, he must fight for his rights at the Court of Appeal if he was not satisfied with the rulings in the Succession Court at Milimani High Court instead of using the 2nd respondent to harass the applicants.

23. As for the 1st respondent, it is unfortunate that their response to this application also disregards the fact that the existing dispute between the applicants and the interested party cannot be resolved through criminal proceedings. The existing proceedings could only achieve the aim of harassing the rightful heirs of the estate of the late Patrick Ngugi Kamangara.
24. As for the applicants, they ought to have filed judicial review proceedings to have the criminal charges quashed instead of approaching the court through a miscellaneous application.
25. I find this application misconceived and incompetent in that the orders sought cannot be granted herein. The application dated 11th November 2025 is hereby struck out with no orders as to costs.

26. It is hereby so ordered.

***RULING DELIVERED VIRTUALLY, DATED AND SIGNED
AT THIKA THIS 24TH DAY OF APRIL 2026.***

**F. MUCHEMI
JUDGE**