

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MURANG'A
CONSTITUTIONAL PETITION NO. E006 OF 2025

RAJIV SABISIA.....APPLICANT/PETITIONER **SHEM**

VERSUS

GOVERNOR IRUNGU KANG'ATA.....1st
RESPONDENT

COUNTY GOVERNMENT OF MURANG'A.....2ND
RESPONDENT

MEDICAL SUPERINTENDENT MURANG'A LEVEL 5
HOSPITAL.....3RD
RESPONDENT

PETITE MUKAMI NG'A NGA.....5TH
RESPONDENT

AND

THE HON. ATTORNEY GENERAL.....1ST INTERESTED PARTY

ASSISTANT CHIEF KIHARU SUB LOCATION.....2ND
INTERESTED PARTY

RULING

1. The applicant, *Rajiv Shem Sabisia*, approached this court by way of a Notice of Motion dated 16th September, 2025, seeking the following orders:
 - i. Spent;
 - ii. That this honourable court be pleased to issue an order staying the proceedings in Chief Magistrate's court civil case no. E034 of 2025 and Miscellaneous Criminal

Application no. E018 of 2025, pending the hearing and determination of this constitutional petition;

- iii. Spent;
- iv. That an order directing the respondents to produce and disclose the post-mortem report, or in the alternative, to facilitate the immediate conduct of a post mortem examination by a qualified government pathologist in the presence of the petitioner or his appointed representative, to establish the cause of death of the deceased;
- v. That an order directing that a DNA test be conducted on the remains of the deceased to establish biological kinship between the petitioner and the deceased;
- vi. That an order authorizing a qualified government pathologist or any other expert appointed by the court and parties, to extract and analyse DNA samples from the deceased body and the petitioner;
- vii. That the costs of the post mortem, DNA test, including sample extraction, laboratory analysis and expert reporting be borne by the respondent, in light of their control over the remains and refusal to disclose relevant post mortem documentation;
- viii. That the results of the DNA results be filed in court under seal, and made available to the parties for the purpose of determining legal standing, inheritance rights or any other relief sought in the main petition;
- ix. That the declaration that the petitioner as the biological next of kin of the deceased, is entitled to the custody and burial of the deceased's body in accordance with Article 28 of the Constitution;

- x. That an order compelling the respondents to release and/or produce the body of the deceased to the petitioner for purposes of conducting a dignified burial;
 - xi. That an award of general damages in the sum of Kshs. Four million (4,000,000), for the emotional distress, anguish and violation of the petitioner's constitutional rights under Articles 28, 35 and 48 and exemplary damages of Kenya shillings seven hundred thousand (Kshs.700,000) for oppressive, intentional and arbitrary conduct by the respondents in detaining the body for over seven (7) months;
 - xii. That the cost of the petition be borne by the respondents;
 - xiii. That any other relief that this court may deem just and appropriate in the circumstances.
2. The application is anchored on the grounds stated on its face, and on the depositions made in the supporting affidavit sworn by the applicant, Rajiv Shem Sabisia, on 16th September, 2025.
 3. In brief, the applicant avers that he was the lawful guardian and sole caregiver of the deceased, having provided her with medical care, shelter, clothing, and general support until her demise. He further avers that during the lifetime of the deceased, no person came forward to claim kinship with her and, to the best of his knowledge, all her immediate family members are deceased.
 4. The applicant states that upon the death of the deceased, he personally proceeded to Murang'a County Mortuary to register the body; and that on or about 15th January 2025, he reported the death at Murang'a Police Station under OB No. 31/15/01/25 and formally requested that a post-mortem

examination be conducted, with the knowledge of the respondents.

5. The applicant contends that the respondents failed to avail the post-mortem report or facilitate a proper burial, and that he has reason to believe that the deceased may have been interred without his knowledge or involvement.
6. The applicant further depones that he is currently involved in proceedings before the Chief Magistrate's Court, namely Civil Case No. E034 of 2025 and Miscellaneous Criminal Application No. E018 of 2025, which he states are in the process of being withdrawn. He asserts that the subject matter of those proceedings is substantially intertwined with the constitutional issues raised in the present petition, including alleged violations of Articles 28, 35, 44, and 47 of the Constitution.
7. It is the applicant's further contention that the continued prosecution of the said proceedings is likely to prejudice his rights, undermine the supremacy of the Constitution, and render the present petition nugatory. He adds that, at the time of swearing the affidavit, none of the said matters had been heard or determined, nor had any substantive ruling been delivered.
8. The application was unopposed as neither the respondents nor interested parties filed their response to the application.
9. When the matter came up before this court, the applicant alleged that he had served the respondents on 18th September, 2025, and subsequently filed an affidavit of service. He also indicated that he would be relying on his supporting affidavit.
10. I would however like to state at this juncture, that I am not convinced that the applicant effected proper service of the

application and the petition to the respondents and the interested parties.

11. The applicant effected service upon the respondents and the interested parties via email and WhatsApp messaging, and subsequently filed affidavits of service to that effect. The email addresses used, as reflected in the affidavit of service sworn by Alice Kanini Wachira, a court process server, as well as that filed by the applicant, include murangachospital@gmail.com, ag@ag.go.ke, hrhealth22@gmail.com, info@ag.go.ke and info@muranga.go.ke.
12. However, it is not clear from the affidavits of service which specific respondents or interested parties are associated with the said email addresses, it is also not clear whether these constitute their last known or officially designated email addresses for purposes of service.
13. For instance, the owner or usage of the email address hrhealth22@gmail.com remains unclear. In the absence of any response from the respondents and interested parties, the Court is not able to ascertain whether all the respondents and interested parties indeed received the documents served upon them, particularly given that the applicant has not demonstrated that the email addresses used belong to, or are actively used by, the intended recipients.
14. Furthermore, neither the applicant nor the process server annexed to their affidavits of service any electronic mail delivery receipts confirming successful delivery of the emails, as required under Order 5 Rule 22B of the Civil Procedure Rules.
15. **Order 5 rule 22B of the Civil Procedure rules** stipulates as follows:

“(1) Summons sent by Electronic Mail Service shall be sent to the defendant's last confirmed and used E-mail address.

(2) Service shall be deemed to have been effected when the Sender receives a delivery receipt.

(3) Summons shall be deemed served on the day which it is sent; if it is sent within the official business hours on a business day in the jurisdiction sent, or and if it is sent outside of the business hours and on a day that is not a business day it shall be considered to have been served on the business day subsequent.

(4) An officer of the court who is duly authorized to effect service shall file an Affidavit of Service attaching the Electronic Mail Service delivery receipt confirming service.”

16. The court in **Law Society of Kenya & 3 others v Inspector General of Police & 4 others (Constitutional Petition E009 of 2025) [2025] KEHC 236 (KLR)**; stated as follows:

“Rule 22B provides as follows.....My reading of the rule is that the last confirmed and used email address refers to a situation where parties have been in communication through email prior to filing of the suit so that service will be effected to the last email address used in such communication. The last used email address is deemed to be the confirmed email address. However, where there has not been communication between the parties, like in this case, there cannot be the last confirmed and used email address as required by the rule. That should not mean a party cannot be served by email as long as the party serving demonstrates that the email address used belongs to the party

served, or the party served can be found through the email used. A strict reading of the rule would make it impossible to serve a respondent thus, defeat justice. Where the email address is doubtful, the rules provide for other modes of service which can be resorted to. Service by email should not be attempted unless the party serving is pretty sure that the email being used belongs to the party being served.”

17. Other than service through email, the applicant also allegedly served the 1st respondent and 2nd interested party, via a mobile enabled messaging application, in this case, a WhatsApp message. This is as per the annexures attached to the applicant’s affidavit of service.
18. **Order 5 Rule 22C (1)** provides that summons may be effected through mobile-enabled messaging applications to a defendant’s last known and used telephone number. In the present case, the applicant has not adduced any evidence to satisfy this Court that the telephone numbers used to transmit the application and the petition to the 1st respondent and the 2nd interested party indeed belong to them. No material has been placed before the Court to establish that the said numbers are owned by, or are in use by, the respective parties.
19. In **Oyunge Barnabus & 3 others (Suing as Administrators of the estate of Mathayo Ratemo Mayaka (deceased)) versus Charles Oteki Rioba [2021] KEHC 7890 (KLR)** the court stated as follows:

“...in WhatsApp messaging platform I believe the mode of confirming delivery is different. It is common knowledge, that delivery in most cases is confirmed by double ticks which turn blue

immediately the recipient views the message sent. The Respondents have attached a document showing a screenshot message sent to the number that the Applicant has acknowledged to be his that shows two blue ticks signifying that the documents were indeed delivered to the aforesaid number belonging to Applicant.....I agree with counsel for the Respondent that, all that the Respondents needed to establish was delivery and that the number used belonged to the Applicant. It did not matter how and from whom he obtained the number as long as the number used belonged to the Applicant."

20. Given that the applicant has not demonstrated that the telephone numbers used to transmit the application and the petition indeed belong to the 1st respondent and the 2nd interested party, I am not persuaded that proper service was effected upon them.
21. In light of the foregoing, I am not satisfied that there was proper service of the petition and the application upon the respondents and the interested parties. Considering the weighty issues raised therein, this court is not in a position to proceed with the determination of the application without first affording the respondents and the interested parties an opportunity to respond to the allegations made by the applicant.
22. Consequently, I decline to determine the application dated 16th September 2025 on its merits at this stage. Instead, ***I grant the applicant a final opportunity to effect proper service of both the petition and the application upon all the respondents and interested parties within fourteen (14) days from the date of this ruling. Where possible, the applicant is directed to effect personal***

service of the said documents upon the respondents and interested parties.

23. *Thereafter, the matter shall be mentioned within thirty (30) days from the date of this ruling to confirm compliance and to give further directions.*

24. *Murang'a file to be transmitted back to Murang'a High Court.*

Dated, Signed and delivered virtually at this 30th day of April, 2026.

**HON. T. W. OUYA
JUDGE**

In the presence of:

Petitioner Rajiv Shem in person

No appearance for the Respondent