



REPUBLIC OF KENYA



KENYA LAW
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Kamau & another v Inspector General of Police & 2 others (Criminal Miscellaneous Application E033 of 2023) [2025] KEHC 11269 (KLR) (27 March 2025) (Ruling)

Neutral citation: [2025] KEHC 11269 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CRIMINAL MISCELLANEOUS APPLICATION E033 OF 2023**

**GL NZIOKA, J
MARCH 27, 2025**

BETWEEN

GEOFFREY GITHIRI KAMAU 1ST APPLICANT

WALTER KIARIE NJOROGE 2ND APPLICANT

AND

INSPECTOR GENERAL OF POLICE 1ST RESPONDENT

DIRECTOR OF PUBLIC PROSECUTIONS 2ND RESPONDENT

SENIOR RESIDENT MAGISTRATE'S COURT NAIVASHA .. 3RD RESPONDENT

RULING

1. By a chamber summons application dated 13th September 2023, brought under the provisions of Article(s) 22, 23(f), 25, 47 and 165 (6) & (7) of the Constitution of Kenya 2010, section 8 (1) & (2) of the Magistrate's Court Act (Cap 10) Laws of Kenya, section 8 and 9 of the Law Reform Act (Cap 26) Laws of Kenya, The Fair Administration Action Act (No. 4 of 2015) Laws of Kenya, section 118 of the Criminal Procedure Code (Cap 75) Laws of Kenya, section 57 and the 6th Schedule Part A of the National Police Service Act (Cap 84) Laws of Kenya, Order 53 of the Civil Procedure Rules, and all other enabling provisions of law, the applicants are seeking for the following orders:
 - a. That leave be granted to the applicants to apply for an order of *Certiorari* to remove into this Honourable Court the proceedings of the lower Court and quash the decision of the 1st and 2nd respondents dated the 26th day of October 2021 to have the applicants wrongfully and unlawfully arrested and charged.
 - b. That leave be granted to the applicants to apply for an order of *Certiorari* against the 3rd respondent to quash the proceedings pending in Court including the Charge Sheet on their removal into this Honourable Court.



- c. That leave be granted to the applicants to apply for an Order of Prohibition to forbid the 3rd respondent from continuing with the proceedings in the lower Court.
 - d. That leave be granted to the applicants to apply for an Order of Prohibition to forbid the 1st respondent from arresting the applicants.
 - e. That leave be granted to the applicants to apply for an Order of *Mandamus* to compel the three Police Officers based at Naivasha Police Station namely No. 23179 IP Ali Ibrahim Dalal, No. 119847 PC Phelix Otieno Ouma and No. 111197 PC Kevin Otieno Tembe to record statements on account of wrongful and illegal house search, assault, arrest and torture meted upon the applicants together with the unlawful impounding of motor vehicle registration number KBP 869M Toyota J102G on 20th October 2021.
 - f. That motor vehicle registration number KBP 869M Toyota J102G be released to the 1st applicant forthwith.
 - g. That the cost of this application be provided for.
 - h. That leave so granted does operate as a stay of continuation of proceedings in the lower Court.
2. The application is supported by the grounds thereto and the affidavit of the even date sworn by Geoffrey Githiri Kamau, the 1st applicant on his and behalf of the 2nd applicant, Walter Kiarie Njoroge, and a further supporting affidavit sworn by Geoffrey Githiri Kamau on 11th March 2024.
 3. The deponent averred that, the trial court is biased against them thus prejudicing their right to a fair hearing. That firstly, the trial court allowed the prosecution counsel, Mr. Ndeima, to file pleadings in Chief Magistrate Criminal Case No. 1882 of 2021 and Chief Magistrate Criminal Miscellaneous Case No E043 of 2023 despite the fact that he had recused himself from the matters in May 2022 and May 2023 respectively. Further, Mr. Ndeima has caused the matters to be adjourned severally, and requested the cases be transferred to a different court, thereby causing delays for over sixteen (16) months.
 4. That secondly, the trial court has issued rulings and/or directions against them with no legal basis to their detriment. That the trial court dismissed the applicants' preliminary objection contesting breach of rights and freedoms by the police officers from Naivasha Police Station on the grounds that, the preliminary objection was not grounded on any known law; and that she lacked the jurisdiction to entertain the preliminary objection. That the ruling by the trial Magistrate is in clear disregard of Articles 25(a) and 159(2) of the Constitution of Kenya, 2010, and section 8 (1) & (2) of the Magistrates' Court Act.
 5. Further, the trial court denied them an opportunity to argue and/or highlight the preliminary objection challenging the inadmissibility of the charge sheet under section 134 – 137 of the Criminal Procedure Code.
 6. Furthermore, the trial court ignored their calls to have a ruling challenging conflict of interest and want of prosecution delivered and instead referred the case to the Chief Magistrate for directions.
 7. That in addition, the Hon. Karanja (PM), without explanation, vacated his orders requiring various police officers to attend court to shed light on gross violation of their fundamental rights and freedoms during their arrest.
 8. That thirdly, that the trial court has caused and/or allowed the hearing of the main case to be adjourned on several occasions since 20th October 2021, prejudicing their right to have the case against them heard expeditiously. Furthermore, Hon. Nathan Lutta (CM) recused himself after hearing one witness on



false and fabricated proceedings claiming that the applicants had requested him to recuse himself on the ground that he was handling another case against the 1st applicant.

9. The applicants aver that, the case against them is bad in law as the charge sheet is defective contrary to section 134 to 137 of the *Criminal Procedure Code*. That there are disparities between the charge sheet and the OB No. 76 of 30th September 2021 as to the identity of the complainant against them. Furthermore, the name on the logbook of the motor vehicle produced in evidence differs from the facts stated in the charge sheet.
10. The deponent further aver that, there is no evidence against them. That the items allegedly stolen from the complainant have never been recovered despite the police conducting an illegally and unprocedurally search in his house and vehicle and detaining his vehicle.
11. That, during their arrest on 20th October 2021, police officers from Naivasha Police Station subjected them to torture, cruel, degrading and inhumane treatment violating their fundamental rights and freedoms. Furthermore, they were kept locked up in police cells for five (5) days while suffering from soft tissue injuries before they were taken to hospital for treatment. Yet, the trial court has refused to assist them in their quest seeking redress against the violation to the fundamental rights and freedoms and is instead being used to suppress their bid to seek redress.
12. The deponent further avers that; the police officers have illegally detained his motor vehicle registration No. KBP 869M at Naivasha Police Station for over 691 days despite the fact that the subject vehicle has already been produced in court as an exhibit. That, the subject vehicle is not stolen property nor is there any evidence that it was used to ferry any stolen items and therefore the continued detention of vehicle is bad in law.
13. Further, the continued detention of the subject vehicle has exposed him to financial loss of income as he cannot commute to his place of business. Further, he has been unable to access various items in the subject vehicle, including his apartment keys, borehole pump, house keys, cheque books, loan agreements, membership registration forms, office keys, the company seal, and land title deeds. Additionally, the car is exposed to wasting away while in police custody.
14. However, the 2nd respondent opposed the application vide grounds of opposition dated 24th January 2024 on the following grounds: -
 - a. That the said motor vehicle registration number KPB 869M Toyota — TAJ102G is an exhibit that the prosecution intends to use at the trial of the Criminal Case number 1882 of 2021.
 - b. That the release of the said motor vehicle will substantially prejudice the prosecution's case before the trial court.
 - c. That the said motor vehicle KBP 869M Toyota-TAJ102G was used to convey the stolen properties forming the basis of count one of the charge sheet of the case pending before the Chief Magistrate's court at Naivasha Law Courts.
 - d. That the said motor vehicle is a vessel used for the commission of the offence of stealing that is count one pending before the Chief Magistrate's court at Naivasha Law courts.
 - e. That the said motor vehicle is subject to forfeiture proceedings should the Applicant be found guilty in the case pending before the trial court.
 - f. That the release of the said motor vehicle will prejudice the said ancillary proceedings mentioned in paragraph 5 above.



- g. That issues raised by the applicant as to the correctness of the charge sheet or otherwise, is a matter that the trial court has competent jurisdiction to address appropriately when the same is brought to its attention.
 - h. That the control of trial and how the same should be conducted, is a matter that the trial court can handle appropriately.
 - i. That on the question of the prosecution counsel Mr. Alex Ndiema's recusal and subsequent handling of the matter, nothing on the record shows that the said learned counsel handled the matter that is to say proceeding with the matter.
 - j. That there is no reasonable grounds raised to warrant the proceedings before the Senior Principal Magistrate's court Criminal Case number 1882 of 2021 being interfered by this Honourable court.
 - k. That no right of the applicant is likely to be injured by the proceedings before the trial court in Criminal Case number 1882 of 2021
 - l. That the proceedings before the trial court should be left to proceed on merit.
 - m. That the motor vehicle in question is lawfully detained as an exhibit to be used before court.
 - n. That there is no provision in law that requires exhibits to be listed on the charge sheet in particular on the particulars of the charge sheet.
 - o. That the application is purely misconceived and devoid of merit and ought to be dismissed forthwith.
15. The application was disposed of by filing of written submissions. The applicant in brief submissions dated 27th March 2024, argued that the High Court has jurisdiction to hear and determine applications for redress of violation of fundamental rights and freedoms under Article 165 of the *Constitution* and has authority to uphold and enforce the bill of rights under Article 22 of the *Constitution*. They relied on the case of *Cyrus Shakhbalanga Jirongo v Soy Developers Limited & 9 others* [2021] eKLR where the Supreme Court of Kenya held that, under article 165(3)(d)(ii) as read with article 157(11) of the *Constitution* of Kenya, the High Court has a constitutional mandate to curtail a prosecution of an accused person without interfering with the DPP's powers.
16. However the 2nd respondent vide submissions dated 18th April 2024, argued that the application before the court is seeking the release of the 1st applicant's motor vehicle yet a similar application was rejected by the trial court. That although the decision of the trial court is appealable, the applicants chose not appeal against it but instead filed the present application.
17. That the application is not properly before the court and is an abuse of the court process. The 2nd respondent relied on section 364(5) of the *Criminal Procedure Code* (Cap 75) Laws of Kenya which provides that, an application for revision shall not be entertained where a party fails to appeal from the finding, sentence or order.
18. That further, the subject vehicle has not yet been produced as an exhibit but was marked for identification, and if released, it will greatly prejudice the prosecution's case.
19. That, the application is not properly drafted as it has mixed issues, making it difficult to ascertain whether the applicants are seeking release of the motor vehicle or redress for breach of their fundamental right.



20. Furthermore, the applicants have not specified the specific constitutional rights that have been violated in the trial court. That in any case, the issue of adjournment falls in the purview of the trial court which is vested with discretion on whether to allow or reject any request for adjournment.
21. Having considered the application in the light of the materials placed before the court I note that, the applicants are seeking for equitable remedies. Such remedies will be granted if you move the courts in two ways; either under the Fair Administrative Action Act where you don't need leave of the court, or under the Law Reform Act and Order 53 of the Civil Procedure Rules, which requires an applicant to seek for leave from the court.
22. I note that the manner in which the application is framed is a mixed bag citing both statutes. Consequently this court has difficulty in determining whether the applicants are moving the court under the Fair Administrative Action Act or under the Law Reform Act and Order 53 of the Civil Procedure Rules, 2010. Furthermore, it is not clear whether the applicants want to enforce their rights under the Constitution of Kenya.
23. Even if the court were to find that the application is properly before it, the application seeks to stop the trial court from hearing the case, against them and/or detention of the subject vehicle. However, the Magistrate Court has ruled that the subject vehicle cannot be released as it is an exhibit in an ongoing case. Thus if this Court were to interfere with that matter, then the prosecution case will be prejudiced and justice will not be served.
24. This court holds the view that it is prudent to allow the trial court to fully determine the matter and if the applicants are dissatisfied with the decision, they can, at that point approach the High Court for redress. Furthermore, the fact that the subject vehicle detained is not a sustainable argument to warrant release of the subject vehicle as it is to be produced as an exhibit in the trial court. Releasing it prematurely will amount to interference with the criminal justice system.
25. It is the finding of this court that based on the prayers herein, the court has not been properly moved. Further based on the substance of the application, it is unlikely that this court can interfere with a matter that is going on in the Magistrate's court.
26. Be that as it were, if the applicants feel that their constitutional rights have been violated, they should approach the court through a constitutional petition, and if they are of the opinion that the decision to charge them is unlawful they should file a judicial review application.
27. Further, it will be prudent if the applicants wait for the conclusion of the suit at the trial court as if they are acquitted, none of the issues herein will arise
28. In the circumstances, the orders sought for in the application are not granted. The matter in the trial court to proceed.
29. It is so ordered.

DATED, DELIVERED AND SIGNED THIS 27TH DAY OF MARCH 2025.

GRACE L. NZIOKA

JUDGE

In the presence of:

The 1st applicant H/B for the 2nd applicant present virtually

Ms. Chepkonga for the 2nd respondent



Ms. Hannah: court assistant

