



REPUBLIC OF KENYA



KENYA LAW
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**Kimani v Attorney General & 4 others (Civil Case E016 of 2025)
[2025] KEHC 11440 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11440 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL CASE E016 OF 2025
DO CHEPKWONY, J
JULY 31, 2025**

BETWEEN

STEPHEN MWANGI KIMANI APPLICANT

AND

HON ATTORNEY GENERAL 1ST RESPONDENT

DIRECTOR OF PUBLIC PROSECUTION 2ND RESPONDENT

ETHICS AND ANTICORRUPTION COMMISSION 3RD RESPONDENT

NATIONAL POLICE SERVICE 4TH RESPONDENT

CHIEF MAGISTRATE'S COURT MILIMANI LAW COURT .. 5TH RESPONDENT

RULING

1. The Applicant filed the Notice of Motion application alongside a Complaint, both dated 28th April, 2025 seeking:-
 - a. Spent.
 - b. That this Honourable Court be pleased to issue an injunction order restraining and barring the 2nd, 3rd and 4th Respondents from arresting and prosecuting Governor of Kiambu County namely Paul Kimani alias Wamatangi.
 - c. That this Honourable Court be pleased to issue an injunction barring his Deputy Governor from being sworn in as Governor of Kiambu County neither taking over his leadership without justice pending the hearing and determination of present Petition.
 - d. That this Honourable Court be pleased to issue conservatory orders restraining and barring the 3rd and 4th Respondents from investigating neither arresting my Governor Paul Kimani Wamatangi pending the hearing and determination of the Petition.



- e. That this Honourable Court be pleased to issue stay interim orders restraining and barring the 5th Respondent namely Chief Magistrate's Court for anti-corruption Milimani from the case proceeding Case No.MCACMISC/ E550/2025 pending the hearing and determination of this Petition.
 - f. That the costs of this application be provided for.
2. In response, the 1st and 5th Respondents filed Grounds of Opposition dated 21st May, 2025 while the 3rd Respondent filed Notice of Preliminary Objection dated 19th May, 2025. The Notice of Preliminary Objection is on the following grounds:-
- a. That the procedure through which the Petition has been brought is unknown in law.
 - b. That the Petitioner has no locus standi to institute the Plaint herein as he does not have any right to relief in respect of or arising out of any of the alleged actions undertaken by the 3rd Respondent with respect to the investigations touching on the Governor of Kiambu County.
 - c. That the 3rd Respondent is mandated to investigate corruption and economic crimes and cannot be stopped from exercising its lawful mandate.
 - d. That whereas the Plaint seeks a permanent injunction halting the alleged unconstitutional actions of the 3rd Respondent, the Plaint does not disclose any such alleged constitutional violations not identified any constitutional provisions alleged to have been infringed or threatened to be infringed as required by the case of Anarita Kirimi.
 - e. That the application and suit are incompetent, fatally defective, bad in law and an abuse of the court process thus ought to be dismissed, forthwith even suo muto.
3. On 22nd May, 2025, the court directed that the said Notice of Preliminary Objection be canvassed first since it has the effect of disposing off the entire suit if it is successful as was decided in the case of Pius Kamau Kinuthia –vs- David Mueithi Kanyi & Another (Environment & Land Case No.E007 of 2023) [2024] KEELC 1625 (KLR) which held that:-

“A Preliminary Objection rests on the proposition that when raised, its fundamental accomplishment will have a bearing on disposing of a matter because it raises pure points of law. It also underscores the need for prudent management of time as a court resource by summarily flagging out a frail and hopeless suit that if admitted to full trial, will be a wash of judicial time and will not serve the interest of justice. One will not be required to look elsewhere to find an answer as to whether a Preliminary Objection is sustainable or not, but to look at the pleading and discover that the suit is a non-starter.”

4. On what a 'Preliminary Objection' entails, the court in the case of Mukisa Biscuits Manufacturing Ltd –vs- West End Distributors [1969] EA 696 had the following to say:-

“----a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by a contract giving rise to the suit to refer the dispute to arbitration”.



In the same case Sir Charles Newbold, P. stated:-

“a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued in the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of preliminary objections does nothing but unnecessarily increase costs and on occasion, confuse the issue, and this improper practice should stop”.

5. The Supreme Court also made the following observation with regard to a Preliminary Objection in the case of Independent Electoral & Boundaries Commission –vs- Jane Cheperenger & 2 Others[2015]eKLR:-

“The true Preliminary Objection serves two purposes of merit; firstly, it serves as a shield for the originator of the Objection against profligate deployment of time and other resources. And secondly, it serves the public cause of sparing scarce judicial time, so it may be committed only to deserving cases of dispute settlement. It is distinctly improper for a party to resort to the Preliminary Objection as a sword, for winning a case otherwise destined to be resolved judicially, and on the merits”.

6. In this particular case, the Preliminary Objection raised is on account of the nature of the case that has been filed herein. According to the 3rd Respondent, the Plaintiff does not have locus standi to file the present suit as he does not have any right to relief arising out of any alleged actions of the 3rd party, which has he mandate to investigate corruption and economic crimes. It is also argued that the Applicant has not disclosed any constitutional violations against him or the law. The Applicant contends that he has a constitutional right to present the suit before this court in person as a resident and voter of Kiambu County and the court has original jurisdiction in Civil and Criminal matters.
7. Clearly, from these arguments, the point of contention is on locus standi of the Applicant in this case. In the case of Law Society of Kenya –vs- Commissioner of Lands & Others, Nakuru High Court Civil Case No.464 of 2000, the Court held as follows:-

“Locus Standi signifies a right to be heard, A person must have sufficiency of interest to sustain his standing to sue in Court of Law”. Further, in the case of Alfred Njau and Others -Vs- City Council of Nairobi [1982] KAR 229, the Court also held that:-

“The term Locus Standi means a right to appear in Court and conversely to say that a person has no Locus Standi means that he has no right to appear or be heard in such and such proceedings”.

8. It is trite law that parties presenting a case must have locus standi to gain audience of the court. This was the position in the cases of Sphikas & Another –vs- Kaluma & 2 Others and Chief Magistrate W.F. Andayi Milimani Nairobi Chief Magistrate Court & 2 Others (Interested Parties) (Criminal Revision E062 of 2021) [2022] KEHC 12669 (KLR) (Crim) (25 July 2022) (Ruling) which held as follows:-

“Locus standi goes to the root of the case and jurisdiction of the court since a court cannot hear a party who does not have audience and such case would be void abinitio.”



9. A careful reading of the pleadings in the instant suit clearly revealed that the Applicant is not the Governor of Kiambu County as the said Governor is well known to be Paul Kimani alias Wamatangi. It is also clear that the claim herein pertains the same Paul Kimani alias Wamatangi who the Applicant alleges has been harassed by the 3rd and 4th Respondents for political reasons on account of fighting corruption. In this Court's view, the alleged accusations and action by the 3rd and 4th Respondents are against Governor Wamatangi in person hence he is the proper party who ought to have filed the suit herein. It is his liberty and reputation which are threatened by the said actions.
10. As a resident and voter within Kiambu County, he has not demonstrated how the Respondents have violated any of his constitutional rights or how the harassment and or investigations against the person of Governor Wamatangi have directly or indirectly affected his person.
11. For these reasons, this Court finds that indeed the Applicant has not satisfied this court on how he stands to suffer any violations on his constitutional rights by the 3rd and 4th Respondents for any actions by them against the Governor of Kiambu County and this lacks the locus standi to initiate these proceedings, which is a pure point of law.
12. In the ultimate, the Notice of Preliminary Objection dated 19th May, 2025 has merit as the suit is void ab intio and is hereby struck out with costs to the Respondents..

It is so ordered.

RULING DATED AND SIGNED AT KIAMBU THIS 27TH DAY OFJULY....., 2025.

D. O. CHEPKWONY

JUDGE

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 31ST DAY OF JULY 2025.

FRANCIS RAYOLA OLEL

JUDGE

