



REPUBLIC OF KENYA



Ouyang & 10 others v Anti-Terrorism Police Unit & another (Miscellaneous Criminal Revision E214 of 2025) [2025] KEHC 12031 (KLR) (Crim) (15 August 2025) (Ruling)

Neutral citation: [2025] KEHC 12031 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
MISCELLANEOUS CRIMINAL REVISION E214 OF 2025
AM MUTETI, J
AUGUST 15, 2025

BETWEEN

ZILIANG OUYANG 1ST APPLICANT
SOON FUH SIEW 2ND APPLICANT
LIM WEI SEANG KELVIN 3RD APPLICANT
YUEN WENG KIN 4TH APPLICANT
PRASHIKA RAI 5TH APPLICANT
SAHEED OLAKUNLE ADEGOKE 6TH APPLICANT
PAUL KWAMINA DANTSE 7TH APPLICANT
KYADDONDO MICHAEL 8TH APPLICANT
DANIEL SIBOLLA 9TH APPLICANT
CHELSEA DEON IMBUHIRA 10TH APPLICANT
EDWARD WAFULA SIMIYU 11TH APPLICANT

AND

ANTI-TERRORISM POLICE UNIT 1ST RESPONDENT
REPUBLIC THRU' THE DIRECTOR OF PUBLIC PROSECUTION 2ND
RESPONDENT

(Being an application brought pursuant to Article 165(6 & 7) of the Constitution of Kenya, 2010 for the Revision of the Ruling and Order of the Magistrate's Court at Kabawa issued on 11th August, 2025 in Miscellaneous Criminal Case No. E413 of 2025)



RULING

1. The applicant by way of a Notice of Motion dated 18th day of September moved this court seeking the following orders:
 - i. This application be certified urgent and heard ex-parte for purposes of the grant of prayers number 2 and 3.
 - ii. This Honourable Court be pleased to set reasonable bail/bond terms, pending a formal charge, taking into account the Applicants' presumption of innocence under Article 50(2)(a) of *the Constitution* of Kenya.
 - iii. This Honourable Court be pleased to order and direct that the Applicants herein report to the Investigating Officer once every week to assist the 1st Respondent in the investigations.
 - iv. This Honourable Court be pleased to call for the record and proceedings of the Magistrate Court for the purposes of ascertaining the correctness, legality and propriety of the Order issued on 11th August, 2025 in Kahawa Criminal Miscellaneous Case No E413 of 2025 and to issue any other order or direction that is appropriate to ensure the fair administration of justice.
 - v. An Order be and is hereby issued setting aside the Ruling and Order issued by Kahawa Magistrate's Court on 11th August, 2025 in Kahawa Criminal Miscellaneous Case No E413 of 2025.
 - vi. Costs of this application be provided for.
2. The application is premised on the grounds that this court has supervisory jurisdiction over the Magistrate's courts under Article 165 (6) and (7) of *the Constitution*. The prayers made however seek to have the court admit the applicants to bail.
3. Further, that in exercise of that jurisdiction this court is not bound to hear any of the parties and may proceed to hear and revision application suo moto.
4. The applicants contended that on 11th August 2025 the magistrate's court at Kahawa Law Courts ordered the detention of the applicants until the 21st August 2025 when the learned Honorable magistrate shall mention the matter for purposes of fixing a ruling date for the application made by the respondents seeking the detention of the applicants for 21 days.
5. The applicants argue that that order for detention amounts to pre-trial detention which is contrary to Article 52 of *the Constitution* and this court should intervene and correct the irregularity in the order detaining the applicants.
6. The applicants urged this court to be guided by the decision of the High court in Michael Rotich v Republic [2016] eKLR_that:-

“It is unlawful for the police to seek to have a person who has been arrested to continue to remain in its custody without a formal charge being laid in court. If this trend continues, it would erode all the gains made in the advancement of human rights and fundamental freedoms as provided in the Bill of Rights since *the Constitution* was promulgated in August 2010.”



7. According to the applicants the continued detention is a violation of the presumption of innocence under Article 50 (2) of *the Constitution* thus this court should be minded to intervene and have the applicants released on reasonable bail terms.
8. The applicants submitted through counsel that they are willing to report to the investigators once every week and that in respect of the foreigners they would be willing to deposit their passports and undertake to remain within the jurisdiction during the period that investigations shall be underway.
9. Further, the applicants indicated the willingness to deposit the sum of Kshs. 100,000 each as cash bail as a further demonstration of their intention to submit to the authority of this court and to allow investigations to continue while they remain at liberty.
10. At the hearing of the application, counsel for the respondents conceded that the court order directing that the matter be mentioned on 21st August 2025 for purposes of fixing a ruling date is an irregular order.
11. The court is inclined to agree with the prosecution counsel that it is irregular and improper for a court to detain a person pending the fixing of a ruling date on an application for pre-charged detention. It is the view of this court that such a detention is illegal and arbitrary. The question that arises in the present circumstances is, what is supposed to happen between the 11th August 2025 and 21st August when the court shall give a date for a ruling?
12. It should be noted that Under Article 49 (1) (h) of *the Constitution*, an arrested person has the right to be produced before a court of law within 24 hours of his arrest and to be released on bond or bail on reasonable conditions pending a charge or trial unless there are compelling reasons not to be released.
13. A plain reading of the Constitutional provision leaves no doubt that upon the arraignment of an arrested person a court must decide whether or not to release the person on bond and where the court decides to order the continued detention of the person the prosecution must provide compelling reasons for such a detention.
14. The court cannot therefore defer a matter to a later date in order for the court to return and fix a ruling date on the application for the continued detention of the arrested persons.
15. The presumption of innocence requires that an arrested person be subjected to the due process by informing that person the reason for his or her arrest or continued detention. It is not enough for the police to state that they are investigating suspected crimes. The investigator must be able to demonstrate the crime under investigation and provide a reasonable basis for the arrest.
16. Ideally, any arrest should be preceded by an investigation.
17. Taking into account the averments contained in the applicant's supporting affidavit and counsel's submission before this court, this court is persuaded that the order made on 11th of August 2025 is irregular, improper and incorrect to the extent that the court did not deliver a ruling immediately on the request for further detention of the applicants.
18. In *Danson Mgunya & Another v Republic* 2010 eKLR the learned Honorable Justice Ibrahim Mohammed (as he then was) held that liberty is precious and that the liberty of an individual should not be curtailed lightly.
19. It follows that before the police decide to arrest anyone they ought to have a probable cause for that arrest and that they ought to have undertaken preliminary investigations that would be adequate for the investigating authority to decide whether or not to prefer any criminal charges and in line with the



decision in Michael Rotich v Republic 2016 eKLR the police should resist the temptation to hold any person without sufficient terms.

20. The prosecution counsel indicate to this court that the applicants have been investigated for possible charges of money laundering but one wonders why no charges were preferred when the applicants were arraigned before court and that the miscellaneous application that was presented to court leading to the detention indicates at paragraph 7 and 8 of the grounds that the alleged offences were believed to be committed through electronic equipment and documents recovered from the applicants meaning therefore that the police have already seized the equipment that they require for purposes of investigation.
21. This court has not been told why the physical presence of the applicants is necessary for purposes of continuing with the investigations. The upshot of the above is that this court finds that the order detaining the applicants is irregular, incorrect and or improper and revises the same as hereunder:
 - a. Each of the applicants shall be released on a cash bail of Kshs.100,000 each
 - b. That the applicants shall report to the investigating officer every Monday starting on 18th August 2025 between the hours of 8:30am and 4:30p.m for purposes of interrogation and or investigations.
 - c. The reporting orders shall lapse at the end of 90 days from today.
 - d. That all applicants shall deposit their passports with the court and the same shall not be released until such time that the investigations shall be completed.
 - e. None of the applicants shall leave the jurisdiction of this court without the leave of court.
 - f. In the event that any of the applicants shall desire to travel out of the jurisdiction of this court, such an applicant shall be at liberty to apply for the release of the passport on such conditions as the court may determine.
 - g. The matter shall be mentioned on 17th November 2025 for further orders.
22. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 15TH DAY OF AUGUST 2025.

A. M. MUTETI

JUDGE

In the presence of:

Court Assistant: Kiptoo

Rene for the Applicant

Ms Ogega for the Respondent

Applicant

