



REPUBLIC OF KENYA



**Republic v Kodomuk & 3 others (Criminal Revision E009 of 2025)  
[2025] KEHC 12368 (KLR) (2 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12368 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E009 OF 2025  
RN NYAKUNDI, J  
SEPTEMBER 2, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**SIMON KACHAPIN KODOMUK ..... 1<sup>ST</sup> APPLICANT**

**MARY CHEPTUR NGORIAKES ..... 2<sup>ND</sup> APPLICANT**

**MATHEWS PKANAN ARUSIO ..... 3<sup>RD</sup> APPLICANT**

**FRANCIS PKEMOI TIKOL ..... 4<sup>TH</sup> APPLICANT**

**RULING**

1. The four accused persons were charged before the Chief Magistrate’s Court with the following offences:

Count 1:

Mary Cheptur Ngoriakes and Mathew Pkanan Arusio were charged with Conspiracy to commit an economic crime contrary to Section 74A (3) as read with Section 48 of the *Anti-Corruption and Economic Crimes Act*.

Count 2:

Mary Cheptur Ngoriakes and Mathew Pkanan Arusio were charged with fraudulent acquisition of public property contrary to Section 45(1) (a) as read with section 48 of the *Anti-corruption and Economic Crimes Act* 2003.

Count 3:



Simon Kachapin Kodomuk, Mathew Pkanan Arusio and Francis Pkemoi Tikol were charged with conspiracy to commit an economic crime contrary to Section 47A (3) as read with Section 48 of the [\*Anti-Corruption and Economic Crimes Act\*](#).

Count 4:

Simon Kachapin Kodomuk and Mathew Pkanan Arusio were charged with fraudulent acquisition of public property contrary to Section 45(1) (a) as read with section 48 of the [\*Anti-Corruption and Economic Crimes Act\*](#) 2003.

Count 5:

Simon Kachapin Kodomuk was charged with abuse of Office contrary to Section 46 as read with Section 48(1) of the [\*Anti-Corruption and Economic Crimes Act\*](#) No. 3 of 2003.

Count 6:

Simon Kachapin Kodomuk was charged with abuse of Office contrary to Section 46 as read with Section 48(1) of the [\*Anti-Corruption and Economic Crimes Act\*](#) No. 3 of 2003.

Count 7:

Mary Cheptur Ngoriakes was charged with abuse of Office contrary to Section 46 as read with Section 48(1) of the [\*Anti-Corruption and Economic Crimes Act\*](#) No. 3 of 2003.

Count 8:

Mathew Pkanan Arusio was charged with abuse of Office contrary to Section 46 as read with Section 48(1) of the [\*Anti-Corruption and Economic Crimes Act\*](#) No. 3 of 2003.

Count 9:

Simon Kachapin Kodomuk and Mathew Pkanan Arusio were charged with abuse of Office contrary to Section 46 as read with Section 48(1) of the [\*Anti-Corruption and Economic Crimes Act\*](#) No. 3 of 2003.

Count 10:

Simon Kachapin Kodomuk was charged with willful failure to comply with applicable procedures and guidelines relating to management of funds contrary to Section 45(2) (b) as read with Section 48(1) of the [\*Anti-Corruption and Economic Crimes Act\*](#), 2003.

Count 11:

Mary Cheptur Ngoriakes was charged with willful failure to comply with applicable procedures and guidelines relating to management of funds contrary to Section 45(2) (b) as read with Section 48(1) of the [\*Anti-Corruption and Economic Crimes Act\*](#), 2003.

Count 12:

Simon Kachapin Kodomuk was charged with willful failure to comply with the law relating to procurement contrary to Section 45(2) (b) as read with Section 48(1) (a) of the [\*Anti-Corruption and economic Crimes Act\*](#), Cap 65.

Count 13:

Simon Kachapin Kodomuk was charged with making false documents contrary to Section 347 (a) as read with Section 349 of the Penal Code.

Count 14:



Mathew Pkanan Arusio was charged with making false documents contrary to Section 347 (a) as read with Section 349 of the Penal Code.

Count 15:

Simon Kachapin Kodomuk was charged with making false documents contrary to Section 347 (a) as read with Section 349 of the Penal Code.

Count 16:

Simon Kachapin Kodomuk was charged with making false documents contrary to Section 347 (a) as read with Section 349 of the Penal Code.

Count 17:

Simon Kachapin Kodomuk was charged with making false documents contrary to Section 347 (a) as read with Section 349 of the Penal Code.

Count 18:

Mathew Pkanan Arusio was charged with making false documents contrary to Section 347 (a) as read with Section 349 of the Penal Code.

Count 19:

Simon Kachapin Kodomuk was charged with making false documents contrary to Section 347 (a) as read with Section 349 of the Penal Code.

Count 20:

Francis Pkemoi Tikol was charged with making false documents contrary to Section 347 (a) as read with Section 349 of the Penal Code.

Count 21:

Simon Kachapin Kodomuk was charged with making false documents contrary to Section 347 (a) as read with Section 349 of the Penal Code.

Count 22:

Mathew Pkanan Arusio was charged with making false documents contrary to Section 347 (a) as read with Section 349 of the Penal Code.

Count 23:

Mathew Pkanan Arusio was charged with making false documents contrary to Section 347 (a) as read with Section 349 of the Penal Code.

Count 24:

Simon Kachapin Kodomuk was charged with making false documents contrary to Section 347 (a) as read with Section 349 of the Penal Code.

Count 25:

Simon Kachapin Kodomuk, Mathew Pkanan Arusio and Francis Pkemoi Tikol were charged with making false documents contrary to Section 347 (a) as read with Section 349 of the Penal Code.

Count 26:



Simon Kachapin Kodomuk, Mathew Pkanan Arusio and Francis Pkemoi Tikol were charged with making false documents contrary to Section 347 (a) as read with Section 349 of the Penal Code.

Count 27:

Simon Kachapin Kodomuk, Mathew Pkanan Arusio and Francis Pkemoi Tikol were charged with false accounting by a Public Officer contrary to Section 331 of the Penal Code, Cap 63.

Count 25:

Simon Kachapin Kodomuk and Mathew Pkanan Arusio were charged with false accounting by a Public Officer contrary to Section 331 of the Penal Code.

Count 26:

Simon Kachapin Kodomuk, Mathew Pkanan Arusio and Francis Pkemoi Tikol were charged with issuing a bad cheque contrary to Section 314(A) of the Penal Code, Cap 63.

2. The trial commenced in earnestly before the Chief Magistrate at Eldoret until the 16<sup>th</sup> July 2025 when the following orders were issued by the Court:
  - a. The Court frames an issue for the Presiding Judge High Court Eldoret to give guidance on whether this Court has locus and otherwise jurisdiction to hear and determine the charges herein.
  - b. Upon the Presiding Judge directions, this Court will then proceed to determine issues (b) and (c) should this Court be found to have jurisdiction to hear and determine the charges.
  - c. Matter be mentioned on 20/3/2025 before this Court for directions and virtual Court option is available. Accused's bond extended.
  - d. File be placed before Hon. Deputy Registrar within next 24 hours.

## Decision

3. The applicable law in answering the questions raised by the learned Chief Magistrate falls within the purview of Article 165 (6) (7) of *the Constitution* as construed with section 362 and 364 of the Criminal Procedure Code and in addition the Magistrate Courts Act.
4. First and foremost, the Criminal Procedure Code of Kenya outlines several provisions for the place of trial, generally requiring trials to occur in the district where the offense was committed (Section 67) or where the consequences of the offense occurred (Section 72). It also allows for trials at the place of connected offenses (Section 73) or where the offense's location is uncertain (Section 74), with the High Court making decisions in cases of doubt (Section 76).
5. Here are the key sections from the Criminal Procedure Code (Cap. 75) regarding the place of trial:

General Rule for Trial Location

Offense committed in a District (Section 67):

An accused person is to be sent to the district where the offense was committed for inquiry and trial.

Trial at place where act done or consequence ensues (Section 72):



The trial can take place in the district where the offense was committed or where the consequence of the offense occurred.

Specific scenarios

Connected offenses (Section 73):

If an offense is connected with another offense, the trial may take place in the district where the first offense was committed, even if the second offense occurred in another district.

Uncertain place of offense (Section 74):

When the place of an offense is uncertain, the trial may proceed in any district where it can be proved the offense was committed, or where the consequence of the offense took place.

Offense committed on a journey (Section 75):

If an offense occurs during a journey, the trial can be held in the district where the journey began or ended, or at any place through which the accused person passed.

High court to decide in cases of doubt (Section 76):

1. Whenever a doubt arises as to the court by which an offence should be tried, the court entertaining the doubt may report the circumstances of the High Court, and the High Court shall decide by which court the offence shall be inquired into or tried.
2. Any such decision of the High Court shall be final and conclusive, except that it shall be open to an accused person to show that no court in Kenya has jurisdiction in the case.

Transfer of case where offence committed outside jurisdiction (Section 78):

1. If upon the hearing of a complaint it appears that the cause of complaint arose outside the limits of the jurisdiction of the court before which the complaint has been brought, the court may, on being satisfied that it has no jurisdiction, direct the case to be transferred to the court having jurisdiction where the cause of complaint arose.
2. If the accused person is in custody and the court directing the transfer thinks it expedient that custody should be continued, or, if he is not in custody, that he should be placed in custody, the court shall direct the offender to be taken by a police officer before the court having jurisdiction where the cause of complaint arose, and shall give a warrant for the purpose to the officer, and shall deliver to him the complaint and recognizances, if any, taken by the court, to be delivered to the court before whom the accused person is to be taken; and the complaint and recognizances, if any, shall be treated to all intents and purposes as if they had been taken by the last-mentioned court.
3. If the accused person is not continued or placed in custody, the court shall inform him it has directed the transfer of the case, and thereupon the provisions of subsection (2) respecting the transmission and validity of the documents in the case shall apply.

Power of High Court to change venue (Section 81)

1. Whenever it is made to appear to the High Court –
  - a. That a fair and impartial trial cannot be had in any criminal court subordinate thereto;  
or



- b. That some question of law of unusual difficulty is likely to arise; or
  - c. That a view of the place in or near which any offence has been committed may be required for the satisfactory trial of the offence; or
  - d. That an order under this section will tend to the general convenience of the parties or witnesses; or
  - e. That such an order is expedient for the ends of justice or is required by any provision of this Code,  
It may order -
    - i. That an offence be tried by a court not empowered under the preceding sections of this Part but in other aspects competent to try the offence;
    - ii. That a particular criminal case or class of cases be transferred from a criminal court subordinate to its authority to any other criminal court of equal or superior jurisdiction;
    - iii. That an accused person be committed for trial to itself
2. The High Court may act on the report of the Lower Court, or on the application of a party interested, or on its own initiative.
6. The necessity for transfer of a criminal case from one Magistrate's Court to another may arise purely on grounds of jurisdiction or in meeting the ends of justice. In construing the provisions of these sections by the High Court cases which are triable in more than one County, should not be transferred unnecessarily from one county to another. A Magistrate Court presided over by either Senior Resident, Principal Magistrate, Senior Principal Magistrate or for that matter the Chief Magistrate should act under these sections primarily with reference to the accused or public convenience, but where compelling and substantial circumstances dictate that other forum can be invoked for the proceedings to be undertaken and a final decision on the merits made by the trial court. Ordinarily the proper County for the enquiry into this kind of issues emerging in this case would be the County in which the witnesses could with the least inconvenience be able to attend the adjudicatory forum to address the issues in dispute as filed by the State.
7. The other grounds of transfer of cases from one court into another revolves around the allegations in the interest of justice, that the session Judge or Magistrate is personally interested in the case, in that he is connected with one or the other party to the case by relationship, friendship etc. and is therefore likely to be partial or he/she has already formed an opinion on the subject matter of the trial.
8. In the instant case, there is no dispute on personam and subject matter jurisdiction of the Chief Magistrate. This is what parliament expressly enacted with regard to hearing and determination of cases arising out of the *Anti-Corruption and Economic Crimes Act* Cap 65 of the Laws of Kenya in terms of Section 4 of the Statute:
- 1. Notwithstanding anything contained in the Criminal Procedure Code (Cap. 75), or in any other law for the time being in force, the offences specified in this Act shall be tried by special Magistrates only.
  - 2. Every offence specified in this Act shall be tried by the special Magistrate for the area within which it was committed, or, as the case may be, by the special Magistrate appointed for the



case, or where there are more special Magistrates than one for such area, by one of them as may be specified in this behalf of the Chief Justice.

3. When trying any case, a special Magistrate may also try any offence, other than an offence specified in this Act, with which the accused may, under the Criminal Procedure Code (Cap. 75), be charged at the same trial.
4. Notwithstanding anything contained in the Criminal Procedure Code (Cap. 75), a special Magistrate shall, as far as practicable, hold the trial of an offence on a day-to-day basis until completion.
9. This issue of jurisdiction of Courts though settled by *the Constitution* and enabling statutes, is still being litigated over and over again by the accused persons in the criminal trials or by plaintiffs and defendants in the realm of civil law. For purpose of this reference from the Chief Magistrate, I find it necessary to delve deeper into this question of jurisdiction. So how does the law conceive, appreciate and define the elements of jurisdiction which essentially flows from Article 50 (1) of *the Constitution*? Jurisdiction is defined in Halsbury's Laws of England (4<sup>th</sup> Ed.) Vol. 9 as; "...the authority which a Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for decision." Black's Law Dictionary, 9<sup>th</sup> Edition, defines jurisdiction as the Court's power to entertain, hear and determine a dispute before it. In Words and phrases Legally Defined Vol. 3, John Beecroft Saunders defines jurisdiction as follows: By jurisdiction is meant the authority which a Court has to decide matters that are litigated before it or t take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the Court is constituted, and may be extended or restricted by like means. If no restriction or limit is imposed, the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular Court has cognizance or as t the area over which the jurisdiction shall extend, or it may partake both these characteristics .... Where a Court takes upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given."
10. The structure of the law on jurisdiction has been properly articulated in the following authorities which remain to the pacesetters on these issues: In the matter of Interim Independent Electoral Commission (2011) eKLR and in Samuel Kamau Macharia & Another vs. Kenya Commercial Bank Limited & Others (2012) eKLR.
11. In the instant case there is absolutely no evidence that the Chief Magistrate Hon. Mikoyan is not a gazetted Judicial Officer under Section 4 of the *Anti-Corruption and Economic Crimes Act*. It is also necessary to mention that as a senior ranking Judicial Officer he also has by dint of the law personam and subject matter jurisdiction. The bone of contention is on the canon of the local area where the alleged offence was committed. It is about geographical and territorial contestation by the accused persons. Whether this matter is tried at Eldoret or at the local area in West Pokot, the system of law applicable remains the same. It is also of significance that I have had the privilege of crisscrossing Uasin Gishu, West Pokot and Turkana Counties as a circuit Judge for Lodwar High Court. From the record the accused persons were arraigned in court on 24<sup>th</sup> September 2024 and to the best of my knowledge West Pokot County had no Judicial Officer duly appointed by the Chief Justice in consonant with Section 4 of the enabling statute.
12. The echoes of the orders as framed by the learned Chief Magistrate is underpinned on the concerns which were raised as to whether Eldoret Chief Magistrate's Court presided over by Hon. Mikoyan is an appropriate forum to hear and determine the initiated indictment by the State through the Directorate of Public Prosecution under Article 157 (6) & (7) of *the Constitution* as against the accused persons.



The pleas of Forum Conveniens and Forum Non Conveniens ultimately are applications involving a possible stay of proceedings. The power of a Superior Court to stay proceedings is brought and in part found in the nature of the Court itself. In our jurisdiction where such interlocutory application does merit under sufficient cause being shown, there may be a necessity to stay the proceedings of the Subordinate Court. The necessity of it among other principles would be the issue of jurisdiction. A fundamental characteristic of the law that has developed over time in this area is the recognition that the Plaintiffs to a civil suit or in our case the Director of Public Prosecution in commencing a criminal trial against the accused person at Eldoret Law Courts may have been motivated by factors of unfairness, insincerity, dishonesty or bad faith and ultimately it is not for the public interest to meet the ends of justice. The possibility in this application that the Director of Public Prosecution may have brought and filed these criminal proceedings against the accused persons on any of the above grounds or to frustrate the right to a fair trial under Article 50 of *the Constitution* has not been demonstrated from the skeleton submissions before the session Chief Magistrate. The standard and burden of proof lies with the Applicants or the Accused persons in this case to satisfy the Court that the continuance of the criminal case will work an injustice because it would be oppressive, or vexatious to them or will be an abuse of the process of court in some other way.

13. The concept of the convenient forum more specifically on criminal litigation rising out of *Anti-Corruption and Economic Crimes Act* is never a matter for the named specific devolved unit but it transcends the entire public who on fair disclosure have a legitimate expectation on the proper use of their taxes. It is also not to be lost by this Court that some of the suspects under the radar of Ethics and Anti-Corruption Commission are influential State Officers within the County in which they have been appointed to serve, and therefore the likelihood of a fair trial maybe in jeopardy. That is the very reason that the convenient forum to be preferred and considered must constitute certain relevant considerations. The jurisdiction on the forum of convenience is discretionary and there is no question that in deciding whether or not the trial would be held in the local area where the offence was committed particular attention must be given to a greater number of matters and not fundamentally convenience of the accused persons. In my view, the actors to the prosecution of cases under the *Anti-Corruption and Economic Crimes Act* must have regard to what is the substance of the matter that has to be decided. What is the substance of this case? It is very well to comply with the constitutional imperative on fair trial rights as fashioned under Article 50 of *the Constitution*, the letter of the operative statute and the Criminal Procedure Code. But above all one ought to have regard to the true spirit of the provisions of Section 4 of (ACECA). The plea on the forum conveniens as agitated by the Applicants does not mean that the forum in Eldoret is one in which it is wholly incompetent to deal with the question. One of the key proper tests is whether the ends of justice would be met without violating the Bill of Rights and right to a fair hearing so loudly and expressly stated in our Constitution.
14. As I said earlier elsewhere in this ruling, the burden of proof rests on the Applicants or Accused persons to show that the other forum is clearly or distinctly more appropriate than Eldoret Law Courts. It will be the duty of the Director of Public Prosecutions working in collaboration with the Anti-Corruption Commission to mitigate factors that include availability of witnesses, convenience and expenses incurred to meet the threshold of the trial being commenced and concluded within a reasonable time. Regard must also be had that the concept of local area or district has now been flattened by the adoption of Virtual Courts. In formulating the components of virtual courts under the Blueprint - Social Transformation through Access to Justice by the Chief Justice there is now Mahakama Popote throughout the Republic capable of being used by litigants of all levels with less limitation.
15. The question which lingered in my mind as I internalized the reference made by the Chief Magistrate of this Court is about the two doctrines or concepts to wit; that Eldoret Magistrate's Court is a forum



non-competens to try the 29 counts particularized in the charge sheet as against the accused persons and the same should be replaced with the Forum Conveniens in West Pokot County described as the local area where the offences were committed. Therefore, is the forum more convenient and preferable for serving the ends of justice? In my true appreciation of the issues raised in this application the notion of the ends of justice runs through for the jurisdiction of the learned Chief Magistrate at Eldoret has not been invoked irregularly.

16. For all the foregoing reasons, the Applicants/Accused persons motion to dismiss Eldoret Chief Magistrate's Court as a Forum Non Conveniens lacks merit in its entirety and the session Chief Magistrate Hon. D. Mikoyan is properly seized of personam and subject matter jurisdiction to hear and determine issues in the information of the charges preferred by the Director of Public Prosecution. The motion is lost and the Chief Magistrate shall expedite the trial of the accused persons to meet the threshold of Article 50 2 (e) of *the Constitution*.
17. In obiter, the objective of this reference from the trial court was to have the matter dealt expeditiously but unfortunately the flow of this case docket was not appropriately brought to the attention of this court hence the delay in rendering the decision. The inconvenience caused to the parties is regrettable due to the administrative mix up of case sequencing.

Orders accordingly.

**DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 2<sup>ND</sup> DAY OF SEPTEMBER, 2025**

.....

**R. NYAKUNDI**

**JUDGE**

