



**Wanjiru v Director of Public Prosecutions; Gachiko & 13 others (Interested Parties)
(Constitutional Petition E026 of 2024) [2025] KEHC 7839 (KLR) (30 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7839 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CONSTITUTIONAL PETITION E026 OF 2024**

A MSHILA, J

MAY 30, 2025

IN THE MATTER OF ARTICLES 2 (1) AND (2), 3(1), 10, 19 (1) AND (2), 20(1), 21 (1), 22(1) AND (3), 22 (1) AND (2), 23 (1) AND (3), 24 (1), 25((C), 28, 35(1)(B), 47(1) AND (2), 50(2)(B), (C) AND (J), 73(1), 157(6)(C), 73 (1), 157 (6)(C) AND (11), 159 (1), 165 (3), 258 AND 259 (1) AND (3) OF THE CONSTITUTION OF KENYA, 2010

BETWEEN

JOHN MACHARIA WANJIRU PETITIONER

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS RESPONDENT

AND

PETER MUTHEE GACHIKO INTERESTED PARTY

JAMES KIBOSECK TANKI INTERESTED PARTY

JOSEPH MBUGUA KAMAU INTERESTED PARTY

SIMON MUHUGA GIKONYO INTERESTED PARTY

DAVID CHEPCHING KIPSOI INTERESTED PARTY

STEPHEN LUSENO MATUNDA INTERESTED PARTY

JOHN MWANGI KAMAU INTERESTED PARTY

PAUL NJOGU MURIITHI INTERESTED PARTY

HILLARY KIPCHUMBA INTERESTED PARTY

REDRICK THUKU KAMAU INTERESTED PARTY

JOSEPH MWENDA MBAYA INTERESTED PARTY

BONIFACE OTIENO MTULLA INTERESTED PARTY

ELIKANA NJERU MUGENDI INTERESTED PARTY



JUDGMENT

1. The Petitioner is acting on his own behalf and that of the Interested Parties seeking to defend *the Constitution* and promoting respect for the Rule of law. The Respondent is the Director of the Public Prosecutions, a state and public office established under Articles 157 of *the Constitution*, 2010 and governed by the Director of Public Prosecutions Act (*Act No. 2 of 2013*) Laws of Kenya. The Petitioner has filed the instant Petition dated 31st July, 2024 seeking for the following orders;-
 - a. A declaration be issued that the decision to charge the Petitioner and the Interested Parties with murder contrary to Section 203 as read together with Section 204 of the *Penal Code* is an abuse of the power to charge and a violation of Articles 157 (11) of *the Constitution*.
 - b. An order of certiorari be issued quashing the decision by the Respondent to charge the Petitioner and the Interested Parties with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*.
 - c. A further order be issued quashing the murder charges in Criminal Case No. E019 of 2024; Republic vs Peter Muthee Gachiko & 14 Others.
 - d. A order of prohibition directed to the Respondent prohibiting the Respondent from instituting any future charges against the Petitioner and the Interested Parties in respect of the subject in Criminal Case No.E019 of 2024 Republic vs Peter Muthee Gachiko & 14 Others.
 - e. Costs of the Petition.
 - f. Any other relief as the Honourable Court may deem fit to grant.
2. The Petition is supported by facts on the face of the Petition and the affidavit of the Petitioner dated 31st July 2024 stating the following;-
 - a. In 2023 the Petitioner and the Interested Parties were charged jointly and severally with a myriad of criminal charges at Kahawa Law Court in MCCR/E124/23 Republic vs Peter Muthee & 14 Others. The criminal charges included abduction with intent to murder contrary to Section 258 of the *Penal Code*, conspiracy to commit a felony contrary to Section 393 of the *Penal Code*, subjecting a person to cruel, inhumane and degrading treatment contrary to Section 51 (3) of the *National Intelligence Service Act*, committing cruel, inhumane or degrading treatment contrary to Section 7 (a) of the *Prevention of Torture Act* No.12 of 2017, forgery contrary to Section 345 as read together with 349 of the *Penal Code* and Forgery of Official Documents contrary to Section 351 of the *Penal Code*.
 - b. The Petitioners and the Interested Parties were granted bond/cash bail upon taking plea at the Magistrate’s Court.
 - c. The Respondent moved the Court in HCCR No. E107 of 2023 seeking cancellation of bail/ bond and an ex parte order dated 28th November 2023 was issued cancelling the bail/bond terms pending the hearing and determination of the application.
 - d. The hearing of the case in MCCR/E124/23 Republic vs Peter Muthee Gachiko & 14 Others commenced in May 2024. On 20th June, 2024 the Respondent registered a fresh charge sheet



before this Honourable Court seeking to charge the Petitioner and the Interested Parties with murder contrary to Section 203 as read with Section 204 of the Penal Code.

- e. The Court directed that the Petitioner and the Interested Parties be taken for mental assessment before plea taking. Pending the mental assessment, the Respondent filed an application seeking to consolidate the charges in the lower court with the murder charge and have them tried by the High Court.
 - f. The Respondent admitted in the said application to consolidate the charges that no fresh evidence shall be adduced in support of the murder charges. The Respondent stated that it shall rely on the same evidence disclosed in the lower court.
 - g. The evidence disclosed in relation to the criminal charges in the lower court does not support the offence of murder.
 - h. The Respondent has admitted that it has no proof of death or a chain of circumstantial evidence that can, prima facie, prove death.
 - i. Proof of death is a condition sine quo non, an essential element and prerequisite requirement in the offence of murder. The Respondent's Guidelines on Decision to Charge, 2019 require the Respondent to satisfy this evidentiary test before arriving at the decision to charge.
 - j. In the circumstances, plea taking is imminent and the Petitioner and the Interested Parties run the risk of being paraded to answer to a trumped up murder charge that has been made in error, in bad faith and contrary to the guiding principles outlined in article 157 (11) of the Constitution.
3. The Respondent has contested the Petition by filing a Replying Affidavit dated 9th December, 2024 and sworn by Michael Kirui, ASP, stating the following:-
- a. That he is the lead investigating officer in Kiambu High Court Criminal Case No. E019/2024.
 - b. On 20th June, 2024 the Respondent charged the Petitioner and the Interested Parties with three counts of murder in respect of three victims namely Zulfiqar Ahment Khan, Mohammed Zaid Dami Kidwai and Nicodemus Mwanja Mwanja in Kiambu High Court Criminal Case No. E019/2024. The decision to charge was informed by circumstantial evidence that the victims were murdered by the Petitioner and the Interested Parties.
 - c. The evidence the Respondent relies upon in the case pending before Kahawa Law Courts being Criminal Case No. E124/2023 is similar to the evidence to be adduced at the murder trial. There is cogent circumstantial evidence pointing to the murder of the three (3) victims by the Petitioner and the Interested Parties. The evidence to be adduced at the murder trial has been built from the evidence before the lower court.
 - d. There is no violation of the Constitution or any statutory provision disclosed by the Petitioner.
 - e. The decision to charge made by the Respondent can only be challenged by way of Judicial Review and not in a Petition.
 - f. The deponent summarized the involvement of the Petitioners and the Interested Parties in the murder of the three victims as follows:-
 - i. On 22nd July, 2022 the victims were trailed from KMA Plaza by the 1st, 3rd, 4th, 5th and 6th Interested Parties to the residence of Zulfiqar Ahmed Khan and Mohammed



Zaid Sami Kidwai at Curve Apartments, Mombasa Road. The victims arrived at the residence around 6.00pm as the trailing team waited outside their residence.

- ii. The victims left their residence at around 10.00pm to Westlands, AlChemist Bar and Restaurant and were followed by the 1st, 3rd, 4th, 5th and 6th Interested Parties. When the victims left the Restaurant later in the night they were again trailed by the team of the Interested Parties on their way to their residence which team intercepted, killed the deceased persons and finally disposed of their bodies.
 - iii. Three of the vehicles used to trail the victims were hired by the Petitioner being KDG 836X, Nissan Note, KDH 262S, Suzuki Swift and KDD 632J, Nissan Note from various prosecution witnesses while the other government vehicle GKB 809U was under the control of the 1st Interested Party.
 - iv. Motor vehicles GKB 038J (KCC 139Z), Subaru Forester and GKB 918G (KCG 046I), Subaru Forester were used by the 7th to 13th Interested Parties to dispose of the bodies of the victims at Aberdare National Park.
 - v. The 14th Interested Party coordinated and facilitated the disposal of the bodies at Aberdare National Park.
 - vi. The 2nd Interested Party was the link between the disposal of the bodies team (7th to 13th Interested Parties) and the 14th Interested Parties.
 - g. The Respondent does not require the consent of any person or authority in instituting criminal proceedings. The charges before Kahawa Law Courts and Kiambu High Court are within the legal confines of the law.
 - h. The Petitioner has not demonstrated that his fundamental rights have been breached or denied or that there is a threat of them being infringed, contravened or violated.
4. The parties were directed to file and exchange written submissions which were later highlighted as follows:-

PETITIONER'S SUBMISSIONS.

5. The Respondent intends to have the fresh murder charges run parallel to or be consolidated with the criminal charges at Kahawa Law Courts in MCCR/124/23: Republic vs Peter Muthee Gachiko & 14 Others. The Petitioner is aggrieved that the decision to charge the Petitioner and the Interested Parties with murder is unconstitutional, coming more than two years after the commencement of the criminal charges at Kahawa Law Courts and in absence of the prima facie evidence to support the offence of murder.
6. The Respondent has admitted that it has no proof of death, neither has the Respondent alluded to the existence of a chain of circumstantial evidence that could, prima facie, prove death. Proof of death is a condition sine quo non, a prerequisite requirement to be established prior to registering murder charges. The Respondent's Guidelines on the Decision to Charge, 2019 require the Respondent to satisfy the evidentiary test. There has to be evidence of death of the persons alleged to have been killed before arriving at the decision to charge.
7. The question whether the Petitioner and the Interested Parties with malice aforethought caused the death of the persons alleged to have been killed is a matter reserved to the trial court. At the trial, the fact of death caused by the Petitioner and Interested Parties will be provable either by direct or



- circumstantial evidence notwithstanding that neither the body nor parts of the body have been found. The thrust of the Petitioner’s case is that nothing in the Respondent’s documentary and evidentiary material discloses prima facie evidence of death of persons alleged to have been killed which would form the basis for the decision to charge pursuant to Article 157 (6)(a) and (11) of *the Constitution*.
8. The decision to charge has not been made properly, honestly and in good faith and therefore has the unconstitutional purpose and effect of abuse of power to charge contrary to Article 157 (11) of *the Constitution*.
 9. The Petitioner relied on Sections 107, 112 and 117 of the *Evidence Act*. In a constitutional Petition seeking to question the constitutionality, legality and propriety of the Respondent decision to charge, the burden of proof upon the Petitioner is twofold; firstly, the Petitioner must demonstrate to the court that the decision to charge has been made and secondly that there is reasonable apprehension that the impugned decision has been made in contravention to Article 157(11) of *the Constitution* that requires the Respondent to avoid abuse of the legal process. Once the Petitioner satisfies the Court that the apprehension is genuine, legitimate and deserving of the court’s intervention, the burden of proof that the Respondent has acted in compliance with the principles underlying the decision to charge shifts to the Respondent.
 10. When deciding to charge the Respondent should identify all the elements for each offence. For murder, the necessary elements are a) that the death of the deceased occurred b) that the death occurred through the unlawful act or omission of the accused c) that the accused acted with malice aforethought. Nothing in the Respondent’s inventory, bundle of documents and exhibits supplied to the Petitioners and the Interested Parties disclose prima facie evidence that the first element of murder, proof of death, has been established.
 11. The Petitioner submitted that if it can be shown that the decision to charge has been exercised arbitrarily, that the charges are baseless and lack legal foundation, then the Court will not hesitate to interfere with the decision to charge and terminate the proceedings. The Petitioner relied on Michael Sistu Mwaura & 12 Others vs Ethics and Anti Corruption Commission & 4 Others (2016)eKLR. The Petitioner also relied on Njuguna S Ndung’u v Ethics & Anti-Corruption Commission (EACC) & 3 Others (2018)eKLR, *Republic v Director of Public Prosecution ex parte Kamani Nairobi Judicial Review Application No. 78 of 2015*, Diamond Hasham Lalji & Another vs Attorney General & 4 Others [2018]eKLR and Peter George Anthony D’costa v Attorney General & Another Nairobi Petition No.83/2010.

THE 2ND - 13TH INTERESTED PARTIES’ SUBMISSIONS

12. The 2nd -13th Interested Parties supported the Petition. They alleged the Petition was filed in good faith pursuant to Article 3 (1) of *the Constitution* which places the obligation on the Respondent to respect, uphold and defend *the Constitution*. Articles 22 and 258 of *the Constitution* give power to any citizen to institute proceedings where he/she feels that the fundamental rights and freedoms in the Bill of Rights or *the Constitution* itself are threatened or have been infringed or violated.
13. The Respondent violated *the Constitution* and the Court should intervene because under Article 2(1) of *the Constitution*, *the Constitution* binds every person including the Respondent. By instituting fresh murder charges while proceedings were ongoing at the lower court, the Respondent demonstrated an arbitrary and oppressive exercise of prosecutorial discretion. Article 157(11) of *the Constitution* requires that the power to prosecute be exercised in the interest of justice and in a manner that prevents abuse of the legal process. By seeking to introduce separate charges arising from the same facts, the Respondent is engaging in forum shopping, an act that undermines the integrity of the judicial system.



14. The introduction of fresh murder charges, coupled with a belated attempt to consolidate them with the ongoing charges at the lower court is a deliberate attempt to frustrate and intimidate the 2nd- 13th Interested Parties. The principles of prosecutorial fairness dictates that criminal proceedings must be initiated and conducted in a manner that does not violate the rights of the accused. Instituting multiple charges from the same set of facts without any new evidence or justification is a misuse of prosecutorial powers.
15. The prosecution has admitted that it does not intend to produce new evidence to support the fresh murder charges. This means that the murder charges are not based on fresh facts but are aimed at a malicious attempt to subject the Petitioner and the Interested Parties to hardship and psychological distress. The 2nd – 13th Interested Parties cited the case of Coalition for Reform and Democracy (CORD) & Another v the Republic of Kenya & Another [2015]eKLR.

THE 2ND AND 14TH INTERESTED PARTIES' SUBMISSIONS

16. The 2nd and 14th Interested parties submitted that the institution of fresh murder charge in Criminal Case No.E019 of 2024 while criminal case no. MCRR/E124/2024 remains pending constitutes a gross abuse of prosecutorial discretion, an abuse of the court process and a blatant violation of constitutional rights. The Respondent's actions are oppressive, legally unsound and inconsistent with the principles of fair administration of justice, thereby warranting urgent judicial intervention to protect the rights of the accused persons and uphold the integrity of the judicial system.
17. Article 157 (6)(c) and (11) of *the Constitution* mandates the Respondent to exercise prosecutorial discretion impartially, in the interest of justice and without abuse of legal process. The 2nd and 14th Interested Parties relied on Nairobi Law Monthly Company Ltd vs Kenya Electricity Generating Company & 2 Others [2013]eKLR and Florence Dikir & Another v DPP & Another [2021]eKLR.
18. Parallel prosecutions waste judicial resources, cause unnecessary hardship to the accused and violate their fundamental right to a fair trial. By subjecting the Petitioner and the Interested Parties to multiple criminal cases based on the same facts, the Respondent has misused the court process.

RESPONDENT'S SUBMISSIONS

19. The Respondent averred that the decision to charge the Petitioner and the Interested Parties with the offence of murder was made pursuant to Article 157 (6) and (11) of *the Constitution* and the Office of the Director of Public Prosecution *Act No. 2 of 2019*. The Respondent also relied on Section 24 of the *National Police Service Act* which mandates the Police to investigate any complaint brought to their attention in order to determine whether a criminal offence has been committed and the outcomes can either exonerate or incriminate the subjects to any inquiry.
20. The decision to charge the Petitioner and the Interested Parties with murder was made in public interest and the Petitioner has not demonstrated which of his rights have been infringed or threatened by the Respondent. Once the Respondent has exercised its constitutional prerogative to charge, the same cannot be interrupted unless the Respondent is manifestly seen to be abusing its powers. The Petitioner needs to establish the mental element that would justify the quashing and barring of the Respondent's decision to charge. The Respondent relied on Fredrick Masaghwe Mukasa v Director of Public Prosecution & 3 Others [2016]eKLR and Republic v PC Okello Pondo in Malindi Criminal Case No.28 of 2011.
21. The Petitioner has not shown any statutory limitation with regards to prosecuting the offence of murder. The Petitioner only stated that the charges of murder were preferred after two years but did



not plead that there are no witnesses or documentary evidence as a result of the lapse of time. The investigations in the matter were partly delayed owing to attempts by some of the Interested Parties and their sympathizers to scuttle investigations and cover up their tracks to pervert the ends of justice.

22. All the evidence has been availed to the Petitioner and he will have the opportunity to challenge the same as presented against him at trial. The Petitioner will have the opportunity to challenge the evidence at trial as opposed to inviting the court at this early stage to descend into the arena of the trial court and determine matters of evidence. It is not the duty of the Court in this instance to go into the merits or veracity of the evidence. The court only has to consider the process rather than the merits or demerits of the intended prosecution. The Respondent relied on *Republic v Commissioner of Police & Another ex parte Michael Monari & Another* [2012]eKLR and *George Joshua Okungu & Another vs The Chief Magistrates Court, Nairobi & Another* [2014]eKLR.
23. The Respondent submitted that it can charge the Petitioner and the Interested Parties with murder even without proof of death provided that there is circumstantial evidence to point to the offence. The Respondent placed reliance on *Abanga alias Onyango v Republic* Criminal Appeal No. 32 of 1990 and *Ahamad Abolfahi & Another vs Republic* [2018]eKLR.

ISSUE FOR DETERMINATION

24. Parties have pointed to circuitous and repetitive issues and having read the Petition, pleadings and the submissions, the only issue that arises and has been framed for determination is whether it was proper for the Respondent to prefer fresh murder charges based on the same set of facts related to ongoing criminal proceedings before the lower court.

ANALYSIS

25. Article 157 of *the Constitution* provides;-

“(10) The Director of Public Prosecutions shall not require the consent of any person or authority for the commencement of criminal proceedings and in the exercise of his or her powers or functions, shall not be under the direction or control of any person or authority.

(11) In exercising the powers conferred by this Article, the Director of Public Prosecutions shall have regard to the public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process.”

26. The import of the above provision is that the Respondent is guaranteed independence in its decision to charge but there is a caveat under Article 157 (11) that the Respondent should have regard to the public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process. This means that the powers of the Respondent are not unlimited and absolute. This court can therefore interfere with the Respondent’s decision to prosecute under strictly circumscribed circumstances contemplated under Article 157 (11) of *the Constitution* or any other law.
27. In *Republic v Director of Public Prosecution & 2 others Ex parte Francis Njakwe Maina & another* [2015] eKLR, it was observed that the Court ought not to usurp the constitutional mandate of the Director of Public Prosecutions to undertake prosecution in exercise of the discretion conferred upon that office. The court however noted that if an Applicant demonstrates that the criminal proceedings constitute an abuse of process, the Court will not hesitate in putting a halt to such proceedings.



28. In Francis Anyango Juma v The Director of Public Prosecutions and another [2012] eKLR, the Court stated:-

“The intention under *the Constitution*, was to enable the Director of Public Prosecutions to carry out his constitutional mandate without interference from any party. This court cannot direct or interfere with the exercise by the DPP of his power under *the Constitution* or direct him on the way he should conduct his constitutional mandate, unless there was clear evidence of violation of a party’s rights under *the Constitution* or violation of *the Constitution* itself.”

29. Similarly in Mwangi v *Director of Public Prosecutions & another; JNM (Interested Party) (Petition E118 of 2023)* [2024] KEHC 7282 (KLR) it was aptly stated;-

“In this country, courts have maintained that the DPP’s discretion to charge will only be interfered with where there is evidence of abuse, malice and all the negative instances that blur exercise of that discretion.”

30. In the instant Petition the Petitioner and the Interested Parties contend that the fresh murder charges are improper because the Respondent does not have new evidence to support the new charge. More importantly, the Respondent intends to use the same set of facts and witnesses as those sought to be adduced at the lower court which will not prove a key element of murder being the proof of death. The Interested Parties allege that the escalation of charges to murder amounts to intimidation and harassment by the Respondent. The fresh murder charges are a contravention of their constitutional rights. The Respondent on the other hand contended that the fresh murder charges were based on proper legal principles and the law.

31. This courts notes that nobody is immune to prosecution based on a proper decision to charge by the Respondent. A person suspected of committing a crime should not be let scot free but his criminal liability or otherwise must be determined by a Court of law in a judicial process. In Republic v Commissioner of Police & Another Ex p Michael Monari & Another [2012] eKLR the Court stated as follows:

“The police have a duty to investigate on any complaint once a complaint is made. Indeed, the police would be failing in their constitutional mandate to detect and prevent crime. The police only need to establish reasonable suspicion before preferring charges. The rest is left to the trial court. The predominant reason for the institution of the criminal case cannot therefore be said to have been the vindication of the criminal justice. As long as the prosecution and those charged with the responsibility of making the decision to charge act in a reasonable manner, the High Court would be reluctant to intervene.”

32. Investigation is a continuous process in the course of the trial and nothing stops the prosecution from bringing fresh charges if new circumstances arise in an ongoing criminal proceeding. Same set of facts and same witnesses can be used to prove the new circumstances and any attendant fresh charges that may arise. In Cape Holdings Limited v Attorney General & Another [2012] eKLR, the Court stated that:

“My understanding of the law is that the responsibility to investigate, determine the credibility of the complaint and prosecution is solely left for the police under the direction and control of the Director of Public Prosecution. The predominant factor being that they must act in accordance with the law and so long as they do not exceed the limits, then a court



should not prohibit the prosecution of an individual. The investigation of a criminal offence or complaint cannot be easily prohibited or stopped unless there is credible and reasonable evidence to show the same is mounted for ulterior purposes or objectives.”

33. The Petitioners and the Interested Parties have placed nothing before this Court that suggests that the Respondent, in exercising his discretion to prefer fresh murder charges against them in this matter, acted under the control of any person or body, or that it acted in a manner that was not consistent with the public interest or the interests of the administration of justice. Further the Petitioners and the Interested Parties have not demonstrated that the actions of the Respondent to prefer fresh murder charges amounts to an abuse of the legal process.
34. The Petitioners and the Interested Parties have not established malice, abuse of office or ill motive in recommending the fresh murder charges. The Respondent stated that it properly executed its mandate within the confines of the law. The Respondent indicated that it has circumstantial evidence that points to the guilt of the Petitioner and Interested Parties in respect of the murder charges. The Replying Affidavit dated 9th December, 2024 and sworn by the lead investigating officer sufficiently shows the nexus between the alleged murder charges and Petitioner and the Interested Parties. The propriety and sufficiency of the circumstantial evidence is for the trial Court to determine at trial.
35. Further in accordance with the decision in *Anarita Karimi Njeru vs R (1979) IKLR* the Petitioner must prove in the pleadings with precision that indeed a particular provision of *the Constitution* has been violated and the nature of the violation. Unfortunately, neither the Petitioner nor the Interested Parties attempted to satisfy this threshold.
36. On the Respondents’ prayer for consolidation of Kahawa Law Courts Criminal Case No. E124/2023 with Criminal Case No. E019 of 2024; *Republic vs Peter Muthee Gachiko & 14 Other* this application was vehemently opposed by the Petitioner and Interested Parties. Although this Court has wide discretionary powers to consolidate the cases, this Court is not persuaded that the two cases should be consolidated and heard together as the ingredients of the criminal charges in the lower court are so different, distinct and separate and would not support those for the offence of murder. The application is therefore defeated.
37. This Court has a duty to ensure that the trial before it proceeds fairly and efficiently to all the parties involved, including the witnesses, the victim’s families and the public. The court notes that the same witnesses will be called for both the proceedings at the lower court and the instant fresh murder charge proceedings. These witnesses will be constrained to give repetitive testimonies and get grilled multiple times in cross examination by the defence counsel. This may disincentivize the witnesses or compromise their optimal participation in the proceedings. Related difficulties may be faced by the Petitioners and the Interested Parties. There is also the danger of the courts giving conflicting decisions if parallel proceedings are allowed in both this court and the lower court.
38. The court reiterates that is alive to the fact that the Respondent is an independent office and not subject to the control or direction of any person but once a matter is before the court, the conduct of the proceedings falls within the jurisdiction of the court, to be exercised in accordance with *the Constitution* and the law. Consequently, the Court directs that the Respondent to discontinue the lower court criminal proceedings under Section 82(1) or 87A of the *Criminal Procedure Code*.
39. In *Evans Odhiambo Kidero v Director of Public Prosecutions [2020] eKLR* the Court aptly observed;-

“ As I see it, it is the responsibility of the court to ensure that the trial before it proceeds fairly and efficiently, with a view to ensuring the fair administration of justice, not just for an



accused person, but in the interests of the public which has an interest in proper prosecution of offenders and, where culpability is established, conviction of the offenders.”

40. The upshot is that the Petitioner has not satisfied the threshold for this Court to interfere with the decision of the Respondent to charge. The Petition is therefore disallowed.
41. All is not lost, this Court reiterates that there is the danger of the courts giving conflicting decisions if parallel proceedings are allowed in both this court and the lower court therefore the Respondent is hereby directed to discontinue the lower court criminal proceedings by either entering a Nolle Prosequi or invoking the provisions under Section 87A of the *Criminal Procedure Code* to enable expedient, efficient and fair administration of justice. The Nolle Prosequi or the discharge of the Petitioner and the Interested Parties shall not operate as a bar to subsequent proceedings against them on account of the same facts. Dependant on the outcome of the murder charge proceedings, the Respondent will be at liberty to institute fresh proceedings at the lower court for the dropped charges.

FINDINGS & DETERMINATION

42. For the forgoing reasons this Court makes the following findings and determinations;
- a. This Court finds the Petition to be devoid of merit and it is hereby dismissed.
 - b. The Respondents application seeking to consolidate the charges in the lower court with the murder charge and have them tried by the High Court be and is hereby disallowed.
 - c. There shall be a Twenty- One (21) day stay of the proceedings in Kahawa Law Courts MCCR/124/23 Republic vs Peter Muthee Gachiko & 14 Others
 - d. The Respondent is directed to either enter a Nolle-Prosequi or invoke the provisions of Section 87A of the *Criminal Procedure Code* in Kahawa Law Courts in MCCR/124/23 Republic vs Peter Muthee Gachiko & 14 Others within Twenty -One (21) days hereof;
 - e. Mention on 23/06/2025 for compliance.
 - f. So as not to discourage litigants from instituting such proceedings there shall be no order as to costs.

Orders Accordingly

DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 30TH DAY OF MAY, 2025.

A. MSHILA

JUDGE

In the presence of;

Sanja – Court Assistant

Ogolla -for the Petitioner

Isoe h/b for Dunstan Omari – for 1st Interested Party

Isoe, Wavinya and Mwale – for 2nd to 13th Interested Parties

Wandugi - for 14th Interested Party

Macharia h/b for Onunga, Gacharia, Mulama and Amwayi - for the Respondent

