



Republic v Director of Public Prosecutions & 2 others; Kinyua (Exparte) (Judicial Review E004 of 2022) [2023] KEHC 659 (KLR) (31 January 2023) (Ruling)

Neutral citation: [2023] KEHC 659 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
JUDICIAL REVIEW E004 OF 2022
RM MWONGO, J
JANUARY 31, 2023**

IN THE MATTER OF AN APPLICATION BY JAMES MUKUNU FOR LEAVE TO APPLY FOR JUDICIAL REVIEW UNDER SECTION 8 & 9 OF THE LAW REFORM ACT, CHAPTER 26 OF THE LAWS OF KENYA, ORDER 53 OF THE CIVIL PROCEDURE RULES

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF AN APPLICATION FOR ORDERS OF CERTIORARI AND PROHIBITION

AND

IN THE MATTER OF THE CRIMINAL PROCEDURE CODE, CAP 75 LAWS OF KENYA

AND

IN THE MATTER OF THE PENAL CODE, CAP 63 LAWS OF KENYA

BETWEEN

REPUBLIC APPLICANT

AND

DIRECTOR OF PUBLIC PROSECUTIONS 1ST RESPONDENT

MURIUKI GITONGA 2ND RESPONDENT

INSPECTOR GENERAL OF POLICE 3RD RESPONDENT

AND

JAMES MUKUNU KINYUA EXPARTE



RULING

Parties' Pleadings

1. The Ex parte applicant has applied by chamber summons pursuant to Order 53 Rule 1(1), (2) and (4) of the [Civil Procedure Rules](#), section 8 and of the [Law Reform Act](#) (Cap 26) for the following orders:
 1. Spent.
 2. This honourable court be pleased to grant leave to the ex parte applicant to apply for an order of *Certiorari* to bring to this court and quash the decision of the 1st, 2nd and 3rd respondents and/or their agents/servants to institute and undertake criminal proceedings, summon and or cause the ex-parte applicant to appear in the criminal court in the intended criminal prosecution pending for plea taking in the Senior Resident Magistrate's Court at Baricho for the alleged offence of Forcible Detainer Contrary to section 91 of the [Penal Code](#).
 3. This honourable court be pleased to grant leave to the applicants to apply for an order of *Certiorari* to bring to this court for purposes of being quashed and to quash the decision of the 1st, 2nd and 3rd respondents to investigate, charge and prosecute as contained in the Charge Sheet and all the proceedings in Senior Resident Magistrate's Court at Baricho, including taking of plea, any appearance, summons, taking of statements or any matter whatsoever related to the said charges.
 4. This honourable court be pleased to grant leave to the applicants to apply for an order of prohibition directing the 1st, 2nd and 3rd respondents and prohibiting them from proceeding with or carrying out any further proceedings, prosecuting charging, summoning, investigating and directing the taking of plea or in any manner dealing with or conducting the intended criminal proceedings against the ex parte applicant in the Senior Resident Magistrate's Court at Baricho or in any other court proceedings based on the same factual and evidentiary basis as in the intended prosecution in the Senior Resident Magistrate's Court at Baricho.
 5. The Leave so granted operate as stay of the intended criminal proceedings by the 1st, 2nd and 3rd respondents.
 6. The Costs of this application be in the cause.
2. The Application is based upon the following grounds:
 1. That the 1st and 2nd respondents have made a decision to charge and prosecute the ex parte applicant in Baricho Criminal Case Number E 979 of 2022 with the offence of Forcible detainer contrary to section 91 of the [Penal Code](#) which commission of offence was allegedly investigated by the 3rd Respondent herein and which Criminal matter is scheduled for plea taking on November 21, 2022 thus this Application risks being rendered academic and nugatory should the said criminal matter proceed.
 2. That the suit property is Plot No Lock-Up 51 Kagio (the portion measuring 37.5-ft x 100 ft) on which the Ex parte Applicant has been and continues to be in physical occupation for the last 14 years and on which property lays his matrimonial home to date and which suit property he has further developed by erecting rental apartments that are near completion.



3. That the *ex parte* applicant has in his possession genuine and authentic ownership documents that demonstrate his rightful, legal and lawful ownership of the suit plot which he has severally provided to the 1st 2nd and 3rd Respondents in explaining how he acquired it which documents the said respondents have intentionally, maliciously, unfairly, unjustly, persistently and continuously elected to overlook and/or ignore.
 4. That the *ex parte* applicant has through his Advocates on record twice written to the 1st respondent seeking a review of the decision to charge which letters despite being urgent and despite being received by his office and further despite having been copied and served upon the 2nd respondent, have failed to elicit any response to date.
 5. That there is an active suit before a court of competent jurisdiction - Baricho Environment and Land Case Number 39 of 2021 seeking to determine the issue of ownership of the suit plot, in which the *ex parte* applicant is a party and has filed a Defence and Counterclaim and in which very case the complainant in the present Criminal case together with her key witness are actually sued (defendants).
 6. That the intended prosecution is clearly against the interest of natural justice, done in utter bad faith, capricious, unfair, malicious, unjust, an abuse of the court process and done for ulterior purpose and meant to intimidate and coerce the applicant into compromising his position and averments in the active civil case.
 7. That the intended prosecution if left to proceed will have a profound effect on the *ex parte* applicant, a Police constable and sole provider for his family who among other negative impacts risks interdiction which harm and damage will be irreparable should the outcome of the ongoing Environmental land case turn out in his favour which is highly likely.
 8. That the *ex parte* applicant therefore stands to suffer irreparably unless this Honourable court intervenes.
 9. That it is just and equitable that the *Ex parte* applicant be heard on priority basis so that his grievances can be remedied without delay.
3. The *ex parte* applicant 14th on November 21, 2022 filed a 21 paragraph verifying affidavit the main averments of which are as follows:
1. That the 1st and 2nd respondents have made a decision to charge and prosecute me in Baricho Criminal Case number E 979 of 2022 with the offence of Forcible Detainer Contrary to Section 91 of the Penal Code which offence was allegedly investigated by the 3rd Respondent herein and which Criminal matter is scheduled for plea taking on November 21, 2022 thus this Application risks being rendered academic and nugatory should the said criminal matter proceed (Annexed and marked J KM 1 is a copy of the Charge sheet).
 2. That the suit property is Plot No. Lock -Up 51 Kagio (the portion measuring 37.5 ft x 100 ft) on which I have been and continue to be in physical occupation for the last 14 years and on which property lays my matrimonial home to date (Annexed and marked J KM 2 (a-b) are photos of my matrimonial home built on the suit property).
 3. That I have also developed the said plot and erected I bedroom rental apartments that are near completion (Annexed and marked J KM 3 (a-b) are photos of the said rental buildings on the suit property).



4. That I have in my possession genuine and authentic ownership documents that demonstrate my rightful, legal and lawful ownership of the suit plot which documents I have severally provided to the 1st, 2nd and 3rd Respondents in explaining how I acquired it but which documents the said Respondents have intentionally, maliciously, unfairly, unjustly, persistently and continuously elected to overlook and/or ignore (Annexed and marked J KM 4 (a - e) are copies of Sale Agreement between myself and Mary Njeri Mwai dated 18/02/2008, minutes dated 13/02/2002 showing how the vendor Mary Njeri Mwai acquired the land from Gladys Wanjiru which acquisition was approved, minutes dated 6/10/2009 which showed the vendor - Mary Mwai (deceased) transferring the land to me which minute was deferred as the vendor was asked to subdivide, receipts for purchase of the said minutes).
5. That I have twice written to the 1st respondent through my Advocates on record seeking a Review of the decision to charge made by his office through the 2nd Respondent (subordinate officer exercising the Constitutional powers of the 1st respondent according to general or special instructions) and supplied my documents of ownership which letters despite being urgent and despite being received by his office and further despite being copied and received by the 2nd respondent have failed to elicit any response to date (Annexed and marked J KM 5 (a-b) are copies of the said letters).
6. That there is an active suit before a court of competent jurisdiction at Baricho being Baricho Environment And Land Case Number 39 of 2021 (MCELC 39 of 2021) seeking to determine the issue of ownership of the suit plot, in which I am a party and have accordingly filed a Defence and Counterclaim and in which very case the complainant in the present/subject Criminal case together with her key witness are actually sued (defendants). (Annexed and marked J KM 6 (a and b) are copies of the Plaintiff and my Statement of Defence and Counterclaim).
7. That the 1st, 2nd, and 3rd defendants are all fully aware of the above stated active/ongoing civil case at Baricho (MCELC 39 of 2021) and the fact that it seeks to determine the issue of ownership of the suit plot which forum I am advised by my advocates on record would be the most appropriate to justly determine the true owner of the suit plot as opposed to the intended criminal proceedings.
8. That I am advised by my advocates on record which advice I verily believe to be true that the 1st, 2nd and 3rd respondents ought to (as a matter of fairness and in the furtherance of the rules of natural justice) also take into account and/or consider my documents evidencing ownership of the suit property as well as my narration of how I acquired it as opposed to ignoring my evidence and side of the story and acting solely on the evidence of the complainant in the intended criminal case.
9. That I am also advised by my advocates on record that the 1st and 2nd respondents in exercising their constitutionally vested and or delegated powers respectively ought to have regard to public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process which they have failed so to do.
10. That the issue in question is ownership of the suit property which question can be determined in a Court of law having competent jurisdiction as in the present scenario where there is an existing Environmental land case Number 3 of 2021 (MCELC 39 of 2021) as opposed to institution and undertaking intended criminal proceedings as against me.



11. That the intended prosecution is therefore clearly against the interests of natural justice, done in utter bad faith, capricious, unfair, malicious, unjust, an abuse of the court process and done for ulterior purpose.
 12. That the intended prosecution if left to proceed will have a profound effect on my career and only source of livelihood since as a Police constable I risk getting interdicted which harm and damage will be irreparable should the outcome of the ongoing Environmental land case turn out in my favour which is highly likely.
 13. That I am advised by my advocates on record, which advice I reasonably believe to be true that this honourable court has inherent powers to issue the Orders sought so as to avail justice to me and save me from the unjust, unfair and unreasonable decision of the 1st, 2nd and 3rd Respondents to investigate, charge and prosecute me in Baricho Criminal Case No E 979 of 2022.
 14. That this Application should therefore be heard and determined expeditiously.
4. The 1st & 2nd respondent's on November 21, 2022 filed a 44 paragraph replying affidavit through the 2nd respondent and deposed as follows:
- i. That I am the Assistant Director of Public Prosecutions and the Head of Kirinyaga County and conversant with the facts of the matter, hence competent to swear this affidavit for the 1st and 2nd respondents.
 - ii. That the 1st respondent's Kirinyaga County Office is dedicated to discharge it's constitutional and statutory mandate diligently, effectively and efficiently. The same is demonstrable even in the context of this matter.
 - iii. That the 1st respondent's mandate to decide to charge and conduct criminal prosecutions pursuant to articles 157(4) (6) & (10) of the Constitution as read with sections 4 & 5 of the Office of the Director of Public Prosecutions Act.
 - iv. That the ex parte applicant herein is simply challenging the investigations and decision to charge him in Baricho Criminal Case No. E979 of 2022. He doesn't want to subject to criminal justice process.
 - v. That the 1st respondent's decision to charge and institute Baricho Criminal Case No. E979 of 2022 was in accordance with to Article 157 (6) of the Constitution, section 5 of the Office of the Director of Public Prosecutions Act and the Guidelines on Decision to Charge upon considering the prosecution file statements and exhibits (Copies of the prosecution and suspect(s) statements and exhibits are hereto and marked as GM — 1(a) to (i)).
 - vi. That in context of this matter Baricho Criminal Case No. E979 of 2022; Baricho Criminal Case No. 395 of 2021 and Baricho Criminal Case No. 183 of 2022 are significant and historically interrelated.
 - vii. That on the June 10, 2018 the 3rd respondent's officer recorded in the Occurrence Book that Gladys Wanjiru sold her Plot N0./LU51 (herein suit land) to Jane Wacera Mwai but illegal occupiers refused to vacate.
 - viii. That upon conducting investigations, the charges of forcible detainer contrary to section 91 of the penal Code were preferred against Jane Kagio Muthi in Baricho Criminal Case No. 395 of 2021.



- ix. That on September 13, 2021 the prosecution counsel withdrew the case under section 87 (a) of the CPC on the grounds that evidence was insufficient (on ownership of the suit land).
- x. That on September 29, 2021, the complainant lodged a complaint against the prosecution counsel.
- xi. That on 13/01/2022 1st and 2nd respondents decided to charge the ex parte applicant and another person (the accused whose case was withdrawn earlier) under Baricho Criminal Case No. 183 of 2022.
- xii. That to this end, there was only a single thread of investigations tracing its genesis to the complaint recorded in the occurrence book on 10/06/2018 on the suit land.
- xiii. That the complaint was lodged to the 3rd respondent much earlier before any civil suit over the suit land was instituted.
- xiv. That the Baricho Criminal Case No. E979 of 2022 and Baricho Criminal Case No. 183 of 2022 shall be consolidated subject to the trial court's concurrence since they relate to offences arising from similar transactions tracing their complaint made to police on 10/06/2021.
- xv. That the ex parte applicant's overriding argument and purpose herein is that he shouldn't be prosecuted because if that he purchases the suit land, he stay there and that if charged, he would be interdicted.
- xvi. That the ex parte applicant simply wants to be elevated above the law because he serves in the national police service (fear of interdiction) even where there is reasonable suspicion to arrest (or summon) him and sufficient evidence to be charge him for forcible detainer.
- xvii. That after avoiding court to take plea, the ex parte applicant wrote two letters to the respondent seeking review of the charging decision in very quick succession.
- xviii. That the ex parte applicant has not presented an arguable case on how the 1st and 2nd respondents breached article 157(11) of the Constitution to be granted the equitable and constitutional orders sought herein.
- xix. That it is untrue that Baricho Criminal Case No. E979 of 2022 was instituted in bad faith, unfairly, capriciously, unjustly and in abuse of legal process since –
 - a. The complaint to the three interrelated criminal cases referred herein was made earlier on 10/06/2021. The ex parte applicant's civil suit instituted on or about 08/09/2021/10/09/2021. There was no malice on the respondents.
 - b. Section 191A of the Criminal Procedure Code allows both criminal and civil cases run concurrently even on matters involving similar subject/dispute.
 - c. The orders sought herein amount to elevating the ex parte applicant above the law. The other person occupying illegally the suit land is facing trials in Baricho Criminal Case No. 183 of 2022.
 - d. The history, context and interrelation of the three criminal cases herein disclose no ill motive, illegality and unconstitutionality on the part of the respondents.
- xx. That the ex parte applicant's pleadings have not disclosed any arguable point that the 1st and 2nd respondent's actions breached his rights, legal process, were against public interest or amounted to abuse of court process or were unjust, capricious and unfair.



- xxi. That it is also trite law that the leave (if) granted cannot operate as stay where the administrative decision is complete and enforced. In this context –
 - a. The 1st respondent has already made the decision to charge. There charge sheet has been registered.
 - b. The criminal case is pending -Baricho Criminal Case No. E979 of 2022. There is active court case. The trial court has already issued orders for plea on 21/11/2022.
 - c. The Baricho Criminal Case No. E979 of 2022 is not pending judgment. There is no urgency to stay it.
 - d. This judicial review can be determined before the criminal case comes up for judgment to avert any harm, if any.
 - xxii. That the ex parte applicant would not suffer any prejudice or unfairness if this Honourable Court declines to issue the orders sought as both parties will be heard in the criminal and civil cases, and the courts will make their independent decisions based on evidence and the law.
5. The 3rd respondent on November 21, 2022 filed a 26 paragraph replying affidavit and deponed as follows:
1. That I am one of the Investigation Officers in the Baricho Criminal Case No. E979 of 2022 and conversant with the facts of the matter, hence competent to swear this affidavit on behalf of the 3rd respondent.
 2. That I have read and been explained the ex parte applicant’s judicial review application dated 11/11/2022.
 3. That I wish to state that all the information and statements sworn by the deponent of the 1st and 2nd respondents’ replying based on information and documents in the police (or prosecution) file is true and correct as per the sources disclosed therein.
 4. That I also wish to state that the 1st and 2nd replying affidavit’s annexures are true and authentic documents and I rely all of them as annexed in the said affidavit without attaching them again herein.
 5. That I have gone through each of 1st and 2nd replying affidavit’s annexures, which all are from the police (or prosecution) file that I am also relying to state under oath herein.
 6. That I am aware that on 10/06/2018 a complaint was recorded on the Occurrence Book from Gladys Wanjiru sold her Plot No./LU51 (herein suit land) to Jane Wacera Mwai. But persons dwelling on the land illegally had refused to vacate.
 7. That upon conducting investigations, the charges of forcible detainer contrary to section 91 of the Penal Code against Jane Kagio Muthi in Baricho Criminal Case No. 395 of 2021.
 8. That on 13/09/2021, the prosecution counsel in the conduct of the matter withdrew the case under section 87(a) of the Criminal Procedure Code.
 9. That I am prepared and executed the charge sheet that reinstated the earlier withdrawn case but now under a different court case Baricho Criminal Case No. 183 of 2022.
 10. That I am aware that there were more interventions and investigations arising from the 1st and 3rd respondent interagency collaborations - as extrapolated by the deponent in 1st and 2nd



replying affidavit - that resulted to decision to charge the ex parte applicant in Baricho Criminal Case No. E979 of 2022.

11. That I know that upon taking plea on 21/11/2022 the two cases Baricho Criminal Case No. E979 of 2022 and Baricho Criminal Case No. 183 of 2022 shall be consolidated since the offences arise from the same transaction.
12. That I have been advised by the state counsels on record, which the advice I verily believe to be true and sound that that this honourable court cannot grant the orders sought since the ex parte applicant has not –
 - a. Disclosed any arguable case to be granted leave to file substantive judicial review application.
 - b. Demonstrated any prejudice, irreparable harm, unfairness or that this case would be rendered nugatory if stay is not granted.

Issue for Determination

6. I have set out the parties' pleadings in detail here above in an endeavour to ensure that the full picture of the parties' cases is restated.
7. The only issue that arises is whether in the circumstances, leave should be granted to the applicants to commence judicial review proceedings.

Analysis and Determination

8. Order 53 Rule 1 of the [Civil Procedure Rules 2010](#), obliges an applicant in such an application to seek leave before he can file the substantive application. Here, the Ex parte Applicant has duly sought leave to apply for an order of *Certiorari*.
9. In submissions, the applicant asserts that the plot which is the subject of the application Plot No. Lock Up 51 Kagio measures 50x100 and that the portion sold to him and which he occupies and has developed is only 37.5x100. He annexed documents JMK 2a and 2b to show his matrimonial home on it; and Annexes JKM 3 to show incomplete apartments he has built on the plot. He alleges that he has been in physical possession for the last fourteen years and has his matrimonial home on the plot. Yet, that this plot is now the subject of criminal charges in Case No E979 of 2022 Baricho. It is in respect of this case that this court gave temporary stay of plea taking pending this ruling.
10. In JMK Annex 6(a) and (b) the applicant has shown that there is a civil suit in Baricho ELC No 39 of 2021 which concerns the ownership of the said suit property wherein the applicant is sued as the 3rd defendant. The suit seeks a declaration that Jane Kagio Muthi is the sole owner of the said property.
11. The applicant has also shown in Annex JKM 5a() a letter to the DPP In which he notified the DPP that he was a respondent in the ELC case. Accordingly, the applicant feels that there is no basis for the criminal charges for forceful detainer whilst the civil proceedings continue. He feels that the criminal matter against him is malicious and intended to harass him, so to speak. He attached as JKM 4 (a-c) documents showing the minutes of transactions of the Kagio Town Planning Works and Housing Committee showing the movement of the plot's ownership, and argues that if the respondents had considered these documents in their investigations they should not have filed the criminal charges. As a result, the applicant apprehends imminent harm and prejudice is being occasioned to him by the respondents' actions.



12. That is the basis upon which the applicant seeks to bring up to this court and quash the decision of the 1st, 2nd and 3rd respondents and/or their agents/servants to institute and undertake criminal proceedings, summon and or cause the ex-parte applicant to appear in the criminal court in the intended criminal prosecution in the Senior Resident Magistrate’s Court at Baricho.
13. The applicant relied on the cases: *R v AG & another ex parte Kipngeno Arap Ngeny* [2001]eKLR; where the court held that the grant of leave is a recognition that the applicants have a case which merits further examination by the court, and that the Court has judicial discretion to stay criminal proceedings in appropriate cases; *R v DPP Ex Parte Edward Samuel Ngugi* [2020]eKLR; where the court held that where criminal proceedings against the applicant have not been completed they are amenable to stay; *Escol Kibiwott Kosgei & 2 others v DPP* [2018]eKLR; which examines the power of the DPP in prosecuting a matter and confirms that the exercise of his discretion cannot be controlled by any third party, but that such discretion must be exercised judiciously, which is a matter the court can determine
14. On their part, the respondents submit that the ex parte applicant herein is simply challenging the investigations and decision to charge him in Baricho Criminal Case No. E979 of 2022 which he does not want to subject to the criminal justice process.
15. The respondents submit that on the June 10, 2018 the 3rd respondent’s officer recorded in the Occurrence Book that Gladys Wanjiru sold her Plot N0./LU51 (herein suit land) to Jane Wacera Mwai but illegal occupiers refused to vacate; that the ex parte applicant’s overriding argument and purpose herein is that he shouldn’t be prosecuted because if that he purchases the suit land, he stays there and that if charged, he would be interdicted.
16. Further the respondents aver that the ex parte applicant simply wants to be elevated above the law because he serves in the national police service and is afraid of interdiction even where there is reasonable suspicion to arrest (or summon) him and sufficient evidence to be charge him for forcible detainer.
17. The respondent avers that the ex parte applicant has not presented an arguable case on how the 1st and 2nd respondents breached article 157 (11) of the Constitution to be granted the equitable and constitutional orders sought here in.
18. The respondents cited the following authorities in which it was found that the applicant had not placed sufficient material before the court to warrant leave and that such leave should operate as a stay: *R V Nairobi City County Assembly Service Board Es Parte Paiuline Sarah Akuku* [2022] eKLR; *R V DPP & 2 others exparte Jayesh Umedlal Shanghavi and Victoria Commercial Bank Ltd (Interested Party)* [2022] eKLR;
19. I have considered the authorities cited by the parties.
20. Considering the evidence adduced, oral submissions and upon a cursory perusal of the evidentiary documents availed before court and without delving into the arguments by the ex-parte applicants it is clear that this case is sufficiently meritorious to justify leave. It cannot be said to be frivolous or vexatious.
21. In the case of *Felix Kiprono Matagei v Attorney General; Law Society of Kenya (Amicus Curiae)* [2021] eKLR the court stated as follows;

“The court upon hearing an application for leave will determine whether there exists an arguable case and will proceed to dismiss the case where an arguable case has not been established. It is undeniable that leave has been established in law and practice as a necessity



for smooth administration of justice. The necessity of rules of procedure in judicial review proceedings is to ensure the court process is not abused by busybodies filing frivolous suits thus impeding instead of enhancing access to justice.”

22. As to whether the said leave should operate as a stay of Baricho Criminal Case No. E979 of 2022, the applicable principle is that the grant of such leave is discretionary. However, the court should exercise such discretion judiciously.
23. In this respect, Order 53 Rule 1(4) of the [Civil Procedure Rules](#) provides as follows in this respect:

“The grant of leave under this rule to apply for an order of prohibition or an order of certiorari shall, if the judge so directs, operate as a stay of the proceedings in question until the determination of the application, or until the judge orders otherwise.”
24. In [Taib A. Taib v The Minister for Local Government & others](#) Mombasa HCMISCA. No. 158 of 2006 the court held that:

“... The purpose of a stay order in judicial review proceedings is to prevent the decision maker from continuing with the decision making process if the decision has not been made or to suspend the validity and implementation of the decision that has been made and it is not limited to judicial or quasi-judicial proceedings as it encompasses the administrative decision making process being undertaken by a public body such as a local authority or minister and the implementation of the decision of such a body if it has been taken. It is however not appropriate to compel a public body to act....”
25. Having carefully considered the application herein and the parties representations, I am of the view that the applicant has made out a case sufficient to show that he has been in possession of the suit property which is the subject of the criminal proceedings.
26. It is not the object of the proceedings at this stage to delve into the merits of the substantive judicial review application, which is yet to be analysed. All that the court is expected to determine at this stage is whether the applicant has made out a case to justify the grant of leave to apply for certiorari, to bring up the respondents’ decision and for such leave to apply as a stay of the lower court criminal proceedings in Baricho Criminal Case No. E979 of 2022.
27. I am satisfied that the applicant has made out such a case. Accordingly, leave is so granted as prayed and such leave shall operate as a stay of the lower court proceedings pending determination of the petition.
28. Orders accordingly.

DATED AT KERUGOYA THIS 31ST DAY OF JANUARY, 2023

R. MWONGO

JUDGE

Delivered in the presence of:

- 1. Otuke for the Applicant**
- 2. Mamba for Respondent**
- 3. Murage Court Assistant**

