



Republic & another v Director of Public Prosecution & 3 others; Kambara (Interested Party) (Judicial Review E010 of 2022) [2023] KEHC 20988 (KLR) (28 July 2023) (Ruling)

Neutral citation: [2023] KEHC 20988 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
JUDICIAL REVIEW E010 OF 2022
SC CHIRCHIR, J
JULY 28, 2023**

BETWEEN

REPUBLIC EXPARTE APPLICANT

AND

CHARLES ANYANGA MALALAH APPLICANT

AND

DIRECTOR OF PUBLIC PROSECUTION 1ST RESPONDENT

**COUNTY CRIMINAL INVESTIGATION OFFICER KAKAMEGA ... 2ND
RESPONDENT**

ALI ATHMAN KINGE 3RD RESPONDENT

CHIEF MAGISTRATE'S COURT KAKAMEGA 4TH RESPONDENT

AND

LUKAS JOHN KAMBARA INTERESTED PARTY

RULING

1. By the Notice of Motion dated November 7, 2022, the Applicant Lukes John Kambara seeks to be enjoined in these proceedings as an interested party.
2. The motion is supported by the grounds appearing on the face of it as well as a supporting affidavit sworn on November 7, 2022 by the Applicant.



The Applicant's Case.

3. It is the Applicant's case that he is the complainant in the crime which is under investigation, and which investigation forms the subject matter of this judicial review proceedings.
4. The Applicant has set out the background leading to the investigations and has stated that termination of investigation or intended prosecution would make him suffer loss. He alleges that he lost Ksh 3,900,000. He fears that he may never recover this money if the investigations are terminated
5. That he is best placed to address and advance his interest in these proceedings.
6. That the application is brought in good faith with the aim of bringing more information which will enable the court reach a fair and just determination in this case.

Respondent/Applicant's case

7. The Application is opposed by the Applicant in the judicial review application (The Respondent for purposes of this Ruling) . It is the respondent's case that the applicant herein has no role to pay in these proceedings. That in any event, the judicial review proceedings is not a forum for tendering evidence.
8. The respondent further states that any interest of the applicant is adequately taken care of by the 1st respondents in the main application. Further, it is contended, the applicant has not demonstrated what interest of his has the 1st Respondent failed to take care of.
9. The respondent further states that Judicial Review Application is governed by a completely set of rules which do not give room for interested parties to join.
10. The application was canvassed by way of written submissions

Applicant's Submissions

11. It is the Applicant's submission that he fits the definition of an interested party as defined in the case of *Trust Society of Human Rights Alliance v Mumo Matemo & 65 Others* (2015) KLR.
12. He further submits that he has an identifiable stake in the proceedings. The Applicant then goes on to reiterate, the circumstances that led to the investigation of the respondent herein. That the outcome of the judicial proceedings will directly affect him. The Applicant has relied on a number of past decisions which I have perused.
13. The Respondent did not any file submissions.

Determination

14. I have considered the Application, the replying Affidavit and the Applicant's submissions.
15. A brief background to this matter is necessary.

From the various annexures submitted by the parties, it emerges that the Applicant herein entered into a memorandum of agreement for purchase of land. The land seller was one Burugu Kagucia Jose , and the purchase price was Kshs 4,734,000. The applicant paid a deposit of Kshs 3,900,000. The signature of both parties in the agreement was attested by the Respondent herein in his capacity as an Advocate.

The applicant states that following this agreement, he deposited Kshs 3,900,00 to the Respondent's Bank account.



The applicant has deponed that, he thereafter went to check on the land only to find other people in occupation, and who were claiming ownership. He reported the case to the police and the investigations began.

16. The record shows that following the said investigations some criminal charges were drawn, prompting the respondent to file this Judicial Review application.
17. The pertinent question is whether the Applicant herein is an interested party. The definition of interested party is given in the case of *Trusted Society of Human Rights Alliance v Mumo Matemo & 5 others*. (2015) eKLR, where the court defined an interested party as “One who has a stake in the proceedings though he or she was not party to the cause ab initio .He or she is one who will be affected by the decision of the court when it is made, either way such, person feels that his or her interest will not be well articulated, unless he himself or she herself appears in the proceedings and champion his or her case”.
18. Does the Applicant have an identifiable stake in the proceedings? It is evident from the annexures attached to the Applicant’s replying affidavit and in the judicial Review Application that he was the purchaser of the property; that he had paid Kshs 3,900,000. He is therefore directly affected by the loss of Kshs 3,900,000 which he fears that he may never recover in the event that the proceedings are terminated.
19. The Applicant filed a complaint with the police and as a result of the said complaint, the investigations began. The said investigation is the subject of the Judicial Review proceedings herein and if the Respondent is eventually prosecuted he will be the complainant in such prosecution. If the respondent is seeking termination, the termination in effect, ends the applicants complain. Indeed, it is the Applicant who would be affected by the outcome either way. It is my finding therefore that the applicant has established an identifiable stake in these proceedings.
20. The Applicant is not only required to establish a stake but to also demonstrate that his or her interest will not be well articulated. The respondent has argued that, the Applicant’s interest will be taken care of by the Director of public Prosecution (1st Respondent in the main Application) and the Applicant’s participation is therefore unnecessary. The respondent further argues that a Judicial Review Application is not a forum to tender evidence as the Applicant herein intends to do.
21. What the respondent is seeking to stop, is a criminal investigation which if he fails to stop, will result in criminal prosecution. where as it is true that, the DPP has the sole conduct of criminal prosecution, the recent decisions emanating from the courts indicate that the place of the victim/complainant in criminal prosecution has been elevated. Unlike before, the complainant is taking up an active role in criminal trials. (see the supreme court’s decision in *Joseph ledrix waswa v Republic* (20202) e KLR)
22. Further precedent is replete with decisions showing the admission of complainants in Judicial Review Applications as interested parties. (see for instance *R v Clerk of National Assembly & others* (2020) eKLR and *Justin Kithinji & others v Director of Public Prosecution* (2020) e KLR.
23. The respondent has further argued that Judicial Review is no place to tender evidence. However, all decisions have evidence as the base. The only thing that differ is the mode of presentation of evidence which may differ as per the nature of the case and stage of any given proceedings. In these proceedings the evidence expected from the opponents, like the Applicant herein, is that which is required to show why the criminal investigations and/or prosecution should go on, and it ends there. But that “demonstration” is tendering evidence. It is not true therefore to say that the Judicial proceedings is not a forum for tendering evidence.



24. In conclusion, I am satisfied that the application merited. The same is allowed.

25. . Each party to bear their own costs.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 28TH DAY OF JULY, 2023

S. CHIRCHIR

JUDGE

in the presence of;

Eric- Court Assistant

Ms Mburu holding brief for the Respondent

No appearance by the Applicant.

