



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW DIVISION

JR NO. E 1093 OF 2020

REPUBLIC.....APPLICANT

-VERSUS-

THE KIBERA CHIEF MAGISTRATES COURT.....1ST RESPONDENT

THE DIRECTOR OF PUBLIC PROSECUTIONS.....2ND RESPONDENT

THE DIRECTORATE OF CRIMINAL INVESTIGATIONS.....3RD RESPONDENT

THE COUNTY ASSEMBLY OF BUNGOMA.....4TH RESPONDENT

THE CLERK, COUNTY ASSEMBLY OF BUNGOMA.....5TH RESPONDENT

THE COUNTY EXECUTIVE OF BUNGOMA.....6TH RESPONDENT

THE COUNTY SECRETARY & HEAD OF

PUBLIC SERVICE BUNGOMA COUNTY.....7TH RESPONDENT

***ex parte:* FRANCIS SIMIYU TOME**

JUDGMENT

The application before court is the applicant’s motion dated 24 September 2020 filed under Order 53 Rule 3 of the Civil Procedure Rules, 2010 and section 8 and 9 of the Law Reforms Act.

It seeks the following orders:

“1. This Honourable Court be pleased to grant an Order of CERTIORARI to remove into the High Court for purposes of its being quashed the Decision of the 2nd Respondent to charge the Applicant before the 1st Respondent or any other Court relating to the possession of file reference number CS/CONOL. 1/2020 containing the budget Responses of 2020-2021 for public administration and ICT property of Bungoma County Assembly.

2. This Honourable Court be pleased to grant an order of PROHIBITION to prohibit the 2nd Respondent from preferring any charge against the Applicant relating to the possession of file reference number CS/COVOL.1/2020 containing budget responses of 2020-2021 for Public Administration and ICT Committee, property of Bungoma County Assembly.

3. This Honourable Court be pleased to grant an order of MANDAMUS to Compel the 4th to unconditionally reinstate the Applicant to his Employment without the alteration, change and or otherwise limiting the terms of employment in a manner that may impact negatively on the Applicants employment contract, as a result of the Charges leveled against the Applicant in the Criminal case 810 of 2020 before the Chief Magistrates Court at Bungoma.

4. The cost of this Application be borne by the Respondents.

5. Any other Order that is just and equitable.”

The application is based on the statement of facts dated 31 August 2021 and a verifying affidavit sworn by the applicant on even date.

The evidence and the pleadings that comprise the application show that the applicant is a principal clerk in charge of the County Assembly of Bungoma County.

On 14 August 2020 he was charged with the offence of stealing contrary to section 268 (1) as read with section 275 of the Penal Code, cap. 63; he was also charged with the second count of handling stolen goods, contrary to section 322 (2) of the same code. This was in Kibera Chief Magistrates Court Criminal Case NO. 810 of 2020.

The particulars of the two counts read respectively as follows:

“

1. Francis Tome Simiyu; On the 7th day of July 2020 at the county assembly of Bungoma, jointly with others not before court, stole one original spring file reference number CS/CO/VOL. 1/ 2020 containing budget responses of 2020-2021 for public administration and ICT the property of Bungoma County Assembly.

2. Francis Tome Simiyu: on the 6th day of August 2020 at Total Petrol station along Langáta Road in Nairobi, within Nairobi County otherwise than in the course of stealing dishonestly received stolen goods namely one original spring file reference number CS/CO/VOL. 1/2020 containing budget responses of 2020-21 for public administration and ICT, and assorted copies of documents for count Government of Bungoma knowing or having reason to believe them to be stolen goods.

The evidence shows that he was arraigned on 14 August 2020 when he pleaded not guilty to the charges. The case was subsequently transferred to the Chief Magistrates Court at Bungoma.

Soon after the applicant was charged, he was suspended from work; the letter interdicting him was authored by J.O. Mosongo, the clerk of the County Assembly of Bungoma on 18 August 2020.

The applicant urges that the charges against him were trumped up and his suspension from work was equally ill-motivated. To demonstrate the charges were a frame up, the applicant swore that he could not understand why he was charged in Nairobi when the alleged offence was committed in Bungoma.

As far as the question of the file he is alleged to have stolen or handled is concerned, the applicant swore that on or about 1 July 2020, the County Assembly's Committee on Public Administration and Information Communication and Technology (ICT), while interrogating the proposed budget estimates for the Financial Year 2020/21, in the presence of the respective Chief Officers of the County Executive of Bungoma, directed that the said Chief Officers avail information to clarify on issues under consideration by the said Committee.

On or about 7 July 2020, the Chief Officer in the Office of the Bungoma County Secretary submitted to the Office of the Clerk of Bungoma County Assembly, the subject file referenced in the County Assembly's records as CS/CO/VOL. 1/2020. The file contained responses to issues raised by the Committee during its deliberations.

On the same date, the applicant, by virtue of his position, inquired from the Office of the Clerk of the County Assembly of Bungoma, whether or not any document had been availed by the County Executive for the attention of the Committee for Public Administration and ICT. He got a response in the affirmative.

Given the urgency of the matter and considering that both the Clerk of the Bungoma County Assembly and his Deputy were away from office, the applicant signed for the said file for purposes of extracting information for generation of a report to be submitted to the Public Administration and ICT Committee. Indeed, the report was extracted and was jointly signed by the Chairperson of the aforementioned Committee and the applicant.

The same report was forwarded to the County Assembly Fiscal Analyst as well as the Clerk to the Budget and Appropriations Committee in accordance with Standing Order No. 212 (4) of the Bungoma County Assembly Standing Orders.

The applicant retained the subject file at his desk in an office or room he described in the affidavit as 'the common open office space', which he shares with other committee clerks and a section of staff in the County Assembly of Bungoma. In the meantime, nobody ever enquired of its whereabouts or made any complaint about it either at the office or at any police station.

On 13 August 2020, at about 8.30 A.M., the applicant was on duty preparing for proceedings scheduled by the Committee of Public Administration and ICT; the committee was set to hear two public petitions by two human rights activists whom he named as Barasa Kundu Nyukuri and Moses Wanjala Lukoye for possible impeachment and removal from office of the Governor of Bungoma County, Wycliffe Wafula Wangamati. The applicant was summoned to the Office of the Deputy Clerk of the County Assembly of Bungoma where he found the said Deputy Clerk and two men who identified themselves as officers from the Directorate of Criminal Investigations (DCI) based in Nairobi Area. The Deputy Clerk excused himself and left the applicant with the men in his office.

The two men showed the applicant the subject file but which he could not readily identify since, as he swore, he handled numerous files in the course of his duties and he could not remember each of them. He later recalled that it was the file he had signed for. The officers, whom he later came to learn were called Mr. Ezekiel Wanga Masake and Peter Orwa, alleged that the file and documents from the County Government of Bungoma had been stolen and recovered in Nairobi County.

The officers drafted a statement and coerced the applicant to sign it and immediately forced him to enter into a waiting vehicle. They drove him to Bungoma Police Station where he was booked before he was driven to Buruburu Police Station. He was then arraigned at Kibera Chief Magistrates Court the following day, 14 August 2021.

Considering the circumstances under which the applicant was arrested, he was shocked to learn of the charges against him and in particular, the particulars of the offence. According to him, he had never been to Nairobi since April 2020.

He accounted for his time on the material dates and, in particular, on the 6th and 7th days of August 2020, he was on duty at the County Assembly headquarters. He produced the Hansard of the proceedings of the county assembly and the attendance register in proof of this fact.

Again, on the 8th to 10th days of August 2020, he was in Victoria Comfort Inn at Kisumu County, where he was officially engaged with the Liaison Committee of the County Assembly of Bungoma. He exhibited on his affidavit a memo allowing the said committee to sit outside the headquarters of the County Assembly and the attendance register showing that he was in that committee. He was in Bungoma County on the 11th and 12th days of August, 2020. And of course, he was also there on 13 August 2020 when he was arrested.

The applicant swore that although the County Assembly of Bungoma was named as the complainant in the charge sheet, none of the officers of the County Assembly had made any report at any police station of a missing file. As a matter of fact, by his letter dated 27 August 2020, addressed to the applicant's advocates, the Clerk of Bungoma County Assembly categorically denied having reported or authorised any other person to make a report of a lost file or any other report for that matter to any police station.

The applicant learned that Nyukuri Barasa Kundu had been charged with stealing of the same file that the applicant was alleged to have stolen, but according to the particulars of offence in the Kundu's charge sheet, the file was alleged to have been stolen between the dates of 30 July 2020 and 3 August 2020. Yet the applicant is alleged to have stolen the same file on 7 July 2020.

Apart from the 4th and 5th respondents who filed a replying affidavit sworn on their behalf by the 5th respondent on 8 October 2020, the rest of the respondents did not file any response to the applicant's substantive motion. Even then, although the deponent in the 4th and 5th respondents' replying affidavit has sworn that the affidavit is in response to the applicant's motion dated 24 September 2020, it largely responds to the applicant's application dated 29 September 2020 in which the applicant sought for orders to commit some of the respondents for contempt of court. That application was heard and determined on 26 May 2021.

It follows that the facts as deposed by the applicant in his verifying affidavit have not been controverted; thus, the material question that ensues from these state of affairs is whether these uncontroverted facts point to a valid cause for issuance of the orders sought.

In considering this question, I have given due regard to the submissions filed by the applicant and the 4th and 5th respondents. None of the other respondents filed any submissions.

I hasten to agree with the counsel for the 4th and 5th respondents that, to begin with, prayer 3 in the notice of motion cannot be available to the applicant for the simple reason that it is not one of the prayers for which leave was sought or granted. For avoidance of doubt, the prayers in the chamber summons seeking leave were framed as follows:

“

- 1. That the instant application be certified as urgent and fit to be heard ex-parte in the first instance.***
- 2. That this Honourable Court be pleased to grant leave to the ex-parte Applicant to apply for Judicial Review by way of an Order of CERTIORARI to remove into the High Court for purpose of its being quashed the Decision of the 2nd Respondent to charge the Applicant before the 1st Respondent or any other Court relating the stealing and or stealing of original file reference number CS/CO/VOL. 1/2020 containing budget Responses of 2020-2021 for Public administration and ICT property of Bungoma County Assembly.***
- 3. That this Honourable Court be pleased to grant leave to the ex-parte Applicant to apply for Judicial Review by way of an Order of PROHIBITION to prohibit the 2nd Respondent from preferring any charge against the Applicant relating to the possession and or stealing of file reference number CS/CO/VOL. 1/2020 containing budget Responses of 2020-2021 for Public administration and ICT property of Bungoma County Assembly.***
- 4. That upon leave being granted, the same do operate as stay of any decision to arrest, charge, investigate or summon the Applicant in relating to his possession and or stealing of file reference number CS/CO/VOL. 1/2020 containing budget Responses of 2020-2021 for Public administration and ICT property of Bungoma County Assembly pending the hearing and determination of the substantive motion.***
- 5. That upon being granted, the same do operate as stay of interdiction of the ExParte Applicant by the County Assembly of Bungoma, the Bungoma County Assembly Service Board (CASB) and the Clerk of the County Assembly of Bungoma.***

6. ***That such further orders and reliefs that this Honourable Court may deem to just and expedient.***

7. ***That costs of this application be borne by the Respondents.***”

It is clear that there was no prayer for the order for mandamus which the applicant is now seeking in the main motion. Leave for that prayer was not sought for and therefore it could not have been granted. It follows that the debate whether this prayer can be granted is unnecessary; it simply cannot be considered in the main motion. Order 53 Rule 1 (1) and (2) of the Civil Procedure Rules is clear that the prayers sought must be specified; that rule reads as follows:

1. (1) No application for an order of mandamus, prohibition or certiorari shall be made unless leave therefor has been granted in accordance with this rule.

(2) An application for such leave as aforesaid shall be made ex parte to a judge in chambers, and shall be accompanied by a statement setting out the name and description of the applicant, the relief sought, and the grounds on which it is sought, and by affidavits verifying the facts relied on. (Emphasis added).

As far as the rest of the substantive prayers are concerned, I have to turn back to the facts the material of which, in my humble view, are that, the applicant was arrested and charged with certain criminal offences in court at Kibera and later at Bungoma Chief Magistrates’ Court. An interrogation of the circumstances under which the arrest and prosecution were executed are, in themselves, quite telling in unlocking the question of whether the applicant deserves the orders sought.

One of the persons whom the applicant identified as police officers who arrested him in Bungoma on 13 August 2020 was police constable Peter Orwa. This officer swore an affidavit in Kibera Chief Magistrates Court Miscellaneous Application No. 389 of 2020 in which he apparently sought for more time to undertake investigations against Barasa Kundu Nyukuru, who was named as the respondent in the application, on the alleged loss of the subject file Ref. CS/CO/VOL.1/2020. The affidavit was sworn on 10 August 2020 and, among other depositions, constable Orwa swore as follows:

“

- 1. That, I am a male adult Kenyan of sound mind, police officer based at the County DCI Headquarters-Nairobi County, resident of Nairobi City County and I do swear this affidavit in that capacity.***
- 2. That, the police have been investigating a case of stealing contrary to section 268 as read with section 275 of the Penal Code and handling stolen property contrary to section 322 of the penal code and a complaint booked vide OB/3/8/8/2020.***
- 3. That between 30th July 2020 and 3rd August 2020 the accused person together with others still at large stole an original file reference CS/CO/VOL.1/2020 for the assembly committee on public administration and ICT belonging to Bungoma County Government.***
- 4. The respondent and others still at large gained access to the Bungoma County Government offices and stole assorted documents.***
- 5. That the respondent was arrested in Nairobi along Lang’ata road while in possession of some of the documents.***
- 6. ...***
- 7. That the applicant intends to extend his investigations to Bungoma and Kakamega counties to record statements and trace another accomplice of the respondent.***
- 8. That the applicant seeks to carry out search at the respondent’s home in Bungoma after recording statements from county officials.***
- 9. That investigations are still ongoing and more time is required to explore the call data records of the respondent.”***

It appears that the affidavit was sworn while Barasa Kundu Nyukuru was in the custody of the police. He was eventually charged on 25 August 2020 with the offence of stealing contrary to section 268(1) as read with section 275 of the Penal Code the particulars being that “on the 7th day of July 2020 at the county assembly of Bungoma office in Bungoma south sub-county within Bungoma county, jointly with others not before court, stole one original spring file reference number CS/CO/VOL.1/2020 containing budget responses for public administration and ICT the property of the Bungoma County Assembly.”

Like the applicant, Nyukuru was also charged with the second count of handling stolen goods contrary to section 322(2) of the Penal Code. The particulars in this count were on all fours with those in the charge sheet of the applicant; they were that: on the 6th day of August 2020 at Total Petrol station along Lang’ata Road in Nairobi, within Nairobi County otherwise than in the course of stealing dishonestly received stolen goods namely one original spring file reference number CS/CO/VOL. 1/2020 containing budget responses of 2020-21 for public administration and ICT, and assorted copies of documents for county Government of Bungoma knowing or having reason to believe them to be stolen goods.

The conclusions that might otherwise have been made from constable Orwa’s affidavit and the particulars of offence with respect to the

charge against Nyukuru are first, that the loss of the subject file was reported at a certain police station and a report of the loss duly entered at the station. Secondly, both Nyukuru and the applicant stole the file in question on 7 July 2020 from the offices of the County Assembly of Bungoma. Thirdly, considering that the second count was not presented as an alternative count, both that applicant and Nyukuru were at Total Petrol station on Langata Road on 6 August 2020 and were in possession of the file that was allegedly stolen. Indeed, according to paragraph 5 of Orwa's affidavit, Nyukuri was arrested while in possession of the file.

However, these conclusions do not hold water for several reasons. First, there is no evidence or proof of any report having been made and recorded at any police concerning loss of property belonging to the County Assembly of Bungoma. As noted, the Clerk to the county assembly denied that any such report was made either by himself or any other officer of the County Government of Bungoma. The contention that a report had been booked in respect of the loss of the file and that the police had been investigating its loss before the applicant was arraigned is simply not true, or at the very least, there is no material to support this allegation.

Secondly, according to the affidavit of constable Orwa, Nyukuru and the applicant stole the subject file between 30th July 2020 and 3rd August 2020. This is contrary to what is stated in the charge sheets that the two men stole the file on 7th July 2020.

On the arrest of the applicant and Nyukuru, this is what Orwa stated in the statement he recorded in the course of the investigations:

"I do recall on the 6th day of August 2020, when I was together with C.I. Wanga Masange, we went to total petrol station along langata road where C.I. Wanga was to wait for his family who had travelled to Busia.

"...while at the petrol station together with my colleague C.I. Wanga Masake, a young man came out of a car Reg KBU where we had parked near the mini supermarket at the petrol station carrying a heavy black bag from the boot of the said car to the rear seat of the car.

"The said black bag that was being carried by the said young man was so heavy and raised suspicion that caught our attention. We intercepted the young man who came to introduce himself as Dennis Wasike. The said Wasike was with two other men whom when we intercepted Dennis and still talking to him, they ran away. When asking the contents of the bag, the young man Dennis Wasike refused to open the same and said that the said bag belonged to one Barasa Nyukuri Kungu. We took Dennis Wasike to our offices at DCI Nairobi area upon introducing ourselves.

"At the offices of the DCI Nairobi area, the said black bag was opened in the presence of the young man Denis Wasike. Upon opening the same, we found out that it contained the documents not related to him (Denis Wasike) and told us that the same belonged to one Barasa Kungu Nyukuri, and the County Governments of Bungoma, Trans Nzoia, Vihiga, Kakamega and Busia counties respectively.

"...Inside the said bag we also recovered an original file reference CS/CO/VOL.I/2020 containing budget response of Bungoma County, Public Administration and ICT.

"...we followed Barasa Nyukuri to westlands where his mobile network was but we were not able to trace him since he had switched off his phone. On the 7th day of August 2020 in the morning Barasa Nyukuri escaped by taking a flight from JKIA to Kisumu then to Bungoma. He was arrested upon arrival at Bungoma.

"upon interviewing Barasa, he disclosed to us that the said documents was (sic) given to him by Francis Tome plus original file and the assorted documents...we arrested Francis Tome Simiyu for the offence of stealing of the original file...we confirmed that he had signed for the same file."

There is no proof that one Dennis Wasike was arrested at a petrol station on the 6 August 2020 or that he recorded any statement as alleged. No evidence was provided that he was booked in any police station and neither was there any inventory shown to have been taken of what was found in his possession at the time of the arrest.

It does not stand to logic that the alleged stolen file was reported to have been booked as a stolen property at unknown police station on 8 August 2020 yet it was found in possession of one Dennis Wasike on 6 August 2020 and the person who is alleged to have stolen it was arrested on 7 August 2020. The allegation that Nyukuri was arrested on 7 August 2020 is even compounded further by Orwa's evidence on oath that:

"

4. That the respondent was arrested in Nairobi along Lang'ata road while in possession of some of the documents."

This deposition contradicts Orwa's own assertion that the Nyukuri was arrested in Bungoma on 7 August 2021. To quote him:

"On the 7th day of August 2020 in the morning Barasa Nyukuri escaped by taking a flight from JKIA to Kisumu then to Bungoma. He was arrested upon arrival at Bungoma."

This statement also contradicts Orwa's statement that it was one Dennis Wasike and not Nyukuri who was found in possession of the file.

Considering these contradictions, and in the absence of any evidence to the contrary, there is nothing to suggest that either the applicant or Nyukuri or both of them were in Nairobi on 6 August 2020 and that they were found in possession of the file in issue.

One other thing is that the applicant admitted having signed for the file and which he got access to by virtue of the functions attached to his office in the County Assembly. This fact was noted by Orwa who admitted that indeed the applicant had signed for the file. It is therefore intriguing that the applicant could be charged for having stolen a file that he had duly signed for and which he was entitled to access by virtue of the functions of his office.

Apart from the contradictions in the police officer's affidavit, statement and the charges against the applicant, the applicant's evidence that at all times material to the charge he was either in Bungoma or Kisumu was not discounted.

Against this background, I am satisfied that the charges against the applicant were made in bad faith. They smack of irrationality, illegality and procedural impropriety. These grounds of judicial review have been satisfactorily explained in Council of Civil Service Unions versus Minister for the Civil Service (1985) A.C. 374,410 where Lord Diplock said of them as follows:

"My Lords, I see no reason why simply because a decision-making power is derived from a common law and not a statutory source, it should for that reason only be immune from judicial review. Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call "illegality," the second "irrationality" and the third "procedural impropriety." That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of "proportionality" which is recognised in the administrative law of several of our fellow members of the European Economic Community; but to dispose of the instant case the three already well-established heads that I have mentioned will suffice.

By "illegality" as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.

By "irrationality" I mean what can by now be succinctly referred to as "Wednesbury unreasonableness" (Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation [1948] 1 K.B. 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system. To justify the court's exercise of this role, resort I think is today no longer needed to Viscount Radcliffe's ingenious explanation in Edwards v. Bairstow [1956] A.C. 14 of irrationality as a ground for a court's reversal of a decision by ascribing it to an inferred though unidentifiable mistake of law by the decision-maker. "Irrationality" by now can stand upon its own feet as an accepted ground on which a decision may be attacked by judicial review.

I have described the third head as "procedural impropriety" rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice. But the instant case is not concerned with the proceedings of an administrative tribunal at all."

These grounds are not necessarily exclusive; they do overlap at times and the applicant's case is one such instance where they overlap and, for this reason, they are conveniently dealt with together. In other words, there are elements of illegality, irrationality and procedural impropriety in the impugned decision to arrest and prosecute the applicant.

For instance, upon analysis of the facts, it is obvious that there was no factual basis upon which the applicant could be charged with the offences stipulated in the charge sheet. The offence of stealing or handling could only be sustained if the facts pointed to those offences. But they do not. So the decision to charge in the absence of the facts necessary to support the charge is, on the one hand, illegal and on the other hand, procedurally improper. It is also irrational or unreasonable in the Wednesbury sense because it defies logic; no person or tribunal, looking at the same facts with an objective mind could possibly reach the same decision.

Despite the flaws in the decision to charge and prosecute the applicant, the latter was charged afresh, on the same facts, when his case was transferred from Kibera Chief Magistrates Court to Bungoma Chief Magistrates Court. Even more baffling is the fact that at the time the applicant was charged afresh on 25 September 2020, this Honourable Court had issued stay orders staying the arraignment and prosecution of the applicant on the same facts, irrespective of the court that he could possibly be charged in this country. The stay order was made on 9 September 2020 and it was in the following terms:

"4. THAT leave herein granted shall operate as stay on any decision to arrest, charge, investigate or summon the Applicant in relating to this possession and or stealing of file reference number CS/CO/VOLI. / 2020 containing budget Responses of 2020-2021 for Public Administration and ICT of Bungoma County Assembly pending the hearing and determination of the substantive motion.

5. THAT upon being granted, the same do operate as stay of interdiction of the Ex-parte Applicant by the County Assembly of Bungoma, the Bungoma County Assembly Service Board (CASB) and the Clerk of the County Assembly of Bungoma.

6. THAT without prejudice to the generality of the foregoing, pending hearing and determination of the substantive application, the leave herein granted shall operate as stay of the proceedings in Criminal Case Number 810 of 2020, Kibera, or in any manner arresting, detaining, charging, prosecuting or in any manner instituting criminal charges against the applicant in any court in Kenya premised on the facts particularized in the same charge the subject of the said criminal case.”

The decision to charge the applicant afresh in the Chief Magistrates in Bungoma on 25 September 2021 was evidently in breach of the order made by this Honourable Court on 9th September 2020 and, on this ground alone, the arraignment and prosecution of the applicant cannot be sustained, at least for flouting the orders of this Honourable Court. The decision to charge the applicant afresh is blemished by the same deficiencies of illegality, irrationality and procedural impropriety.

I am therefore satisfied that the applicant has made out a case for grant of the orders of certiorari and prohibition. Accordingly, the application is allowed in terms of prayers 1 and 2 of the Notice of Motion; in particular:

1. An Order of certiorari be and is hereby issued removing into this Honourable Court purposes of it being quashed the decision of the 2nd Respondent to charge the Applicant before the 1st respondent or any other Court relating to the possession of file reference number CS/CO/OL. 1/2020 containing the budget responses of 2020-2021 for public administration and ICT, the property of Bungoma County Assembly. The impugned decision is hereby quashed.

2. An order of prohibition is hereby issued prohibiting the 2nd respondent from preferring any charge or charges against the applicant relating to the possession of file reference number CS/CO/ VOL.1/2020 containing budget responses of 2020-2021 for Public Administration and ICT Committee, the property of Bungoma County Assembly.

3. Applicant will have costs of the suit.

SIGNED, DATED AND DELIVERED VIA VIDEO LINK ON 21ST JANUARY 2022.

NGAAH JAIRUS

JUDGE