



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CONSTITUTIONAL AND JUDICIAL REVIEW DIVISION**

**MISCELLANEOUS APPLICATION NO. 133 OF 2015**

**IN THE MATTER OF AN APPLICATION BY GRACE**

**WANJIRU NJOGU, THE APPLICANT, FOR**

**JUDICIAL REVIEW ORDERS OF**

**CERTIORARI & PROHIBITION**

**IN THE MATTER OF ORDER 53 OF THE CIVIL**

**PROCEDURE RULES**

**AND**

**IN THE MATTER OF ARTICLE 20, 23, 27, 47, 50 (2), 157, 165**

**(6) & 244 OF THE CONSTITUTION**

**AND**

**IN THE MATTER OF THE NATIONAL POLICE SERVICE ACT**

**IN THE MATTER OF OFFICE OF THE DIRECTOR OF**

**PUBLIC PROSECUTIONS ACT**

**IN THE MATTER OF CRIMINAL CASE NO. 881 OF 2015**

**BETWEEN**

**REPUBLIC –VS- GRACE WANJIKU NJOGU**

**AT SENIOR PRINCIPAL MAGISTRATE COURT**

**AT MAKADARA LAW COURTS**

**BETWEEN**

REPUBLIC.....APPLICANT

VERSUS

THE DIRECTOR OF PUBLIC PROSECUTION.....1<sup>ST</sup> RESPONDENT  
INSPECTOR GENERAL

INSPECTOR GENERAL OF POLICE.....2<sup>ND</sup> RESPONDENT  
THE SENIOR PRINCIPAL MAGISTRATE COURT

MAKADARA.....3<sup>RD</sup> RESPONDENT

AND

ELLEN WAMBUI WACHUA.....INTERESTED PARTY

*EX-PARTE*.....GRACE WANJIRU NJOGU

## JUDGEMENT

### Introduction

1. By a Notice of Motion dated 5<sup>th</sup> May, 2015, the applicant herein, **Grace Wanjiru Njogu**, seeks the following orders:
  1. **Certiorari to remove into this Honourable Court and quash the decision, recommendations and/or directions of the Director of Public Prosecution through the Senior Principal Magistrate Court at Makadara to charge the Applicants in Criminal Case No. 881 of 2015 and the subsequent proceedings arising there from.**
  2. **Prohibition directed at the Director of Public Prosecution and/ or any other officer acting with his authority from proceeding and/or continuing with the conduct and/or prosecution against the Applicant Criminal Case No. 881 of 2015.**
  3. **Prohibition directed at the Senior Principal Magistrate Court and/or any other Judicial from trying and/or carrying on any further proceedings at Makadara prohibiting the said court from proceeding or further proceeding with the hearing and all proceedings against the Applicant on the charges preferred in Criminal Case No. 881 of 2015.**
  4. **That this Honourable court be pleased to give further orders and/or directions as it may deem fit and just to grant.**
  5. **The cost of this application to be borne by the Respondents.**

### Applicant's Case

2. According to the applicant, she was on 11<sup>th</sup> March, 2015, was arrested and booked at Ruai Police Station ostensibly for the offence of forcible detainer and malicious damage to property and her plea for release on Police Bond was turned down as a result of which she spent the night in custody. The following day on 12<sup>th</sup> March, 2015, she was taken to Makadara Law Courts and placed in the cells but was not arraigned in court since the Prosecuting State Counsels stationed at the court upon perusing the file made a finding that the that the dispute was civil in nature which ought to be determined by the Environment and Land Court.

3. The applicant averred that the police returned with her to their station and booked her in the cells and she was arraigned in court on 13<sup>th</sup> March, 2015, far beyond the 24 Hours constitutional mandated time that an arrested person should be arraigned in court. It was therefore the applicant's case that this was a blatant and flagrant infringement of her **fundamental** rights and freedoms enshrined under Articles 27, 28, 40, 47, 49 and 50 of the Constitution of Kenya 2010.

4. The applicant averred that her mother, **Ann Wanjiku Njogu**, is the legal owner of Plot No. V11112 that is in dispute which she bought the on 21<sup>st</sup> June, 2006 from Embakasi Ranching Company Ltd and that she was granted the Non Membership Certificate of Plot Ownership on 19<sup>th</sup> February, 2011. However after the aforementioned allocation, one **Ellen Wambui Karanja** emerged claiming ownership of the same plot alleging that its authentic Plot Number is E 477. Upon following up with Embakasi Ranching Company Ltd, it was confirmed that **Ellen Wanjiku Karanja** is the owner of Plot No. E 477 which is different from Plot No. V11112.

5. The applicant averred that in the year 2012, her said mother constructed temporary houses on the said plot but were demolished by a group of unknown youths/goons who invaded the plot causing rampant destruction to the property. Accordingly, they reported the incident at Ruai Police Station vide OB/44/45/46/24/04/2012 entered by Police Constable **P. Mithamo** but no legal action was taken thereafter. There was another attack on the said plot by the hired goons/hooligans that was reported on 26<sup>th</sup> December, 2014 at the same station vide OB 18/26/2014 at 11:50 am but once again no action was taken.

6. The applicant disclosed that they later constructed two rooms after the incident but on 6<sup>th</sup> March, 2015, a group of youths invaded the property and again completely demolished the two rooms. Despite making a report of the matter to the same Police Station vide OB/26/06/03/2015 at 12:35 pm in the company of the caretaker **Alex Tonge** who had arrested 3 of the attackers i) **Bernard Muinde**, ii) **Peter Nzioka** and iii) **Morris Wambua**, the said three suspects were later released without any charge inspite of the report and photographic evidence that had been taken by **Police Constable Githika** who assured the applicant that they could rebuild the destroyed houses.

7. It was the applicant's averment that subsequently and to their surprise they learnt that **Ellen Wambui Karanja** had filed a complaint at Ruai Police Station that the applicants illegally encroached on her land. Based on the said complaint, the applicant was arrested on 11<sup>th</sup> March, 2015, ostensibly for the offence of forcible detainer of the said parcel of land and malicious damage to property.

8. The applicant's case was that it was absurd, unfair, and a travesty of justice for the Police to fail to take action on a reported crime of malicious damage to property belonging to the applicant's family but later end up arresting and charging the applicant with the offence forcible detainer and malicious damage on the same land.

9. The applicant averred that they instructed **N.M. Momanyi, Advocate**, but upon perusing the police file and consulting the **D.C.I.O. Kayole Police Division (Mr. Chabari)** and the **O.C.S Ruai Police Station**, the advocate informed the applicant that the applicant's mother and her two brothers were also being sought by the Police to be charged with the same offence. This led the applicants to lodge a complaint against the unlawful actions by the Police Officers involved in the foregoing, to **Independent Police Oversight Authority (IPOA)**, **National Police Service Commission**, and **the Office of the Inspector General** and the **Office of the Director of Public Prosecutions**. However, no investigations were carried out by the Police over the complaint.

10. In the applicant's view, the conduct of the police was preposterous, malicious and extortionate meant to cause the applicant and her family mental anguish and fear with the sole purpose of blackmailing and/or coercing them to relinquish their claim over Plot No. V11112 contrary to their Constitutional right to property.

11. This Court was therefore urged to protect the applicants from being subjected to harassment,

intimidation, mental anguish and suffering and deprivation of their plot by **Ellen Wambui Karanja** in fraudulent collusion with the Police through such abuse of the criminal process. To the applicants, the charges emanate and/or have crystallized from a factual basis which is civil in nature wherefore should be handled in a civil proceeding by the Environmental and Land Court.

12. It was submitted on behalf of the applicant that following the grant of stay herein, the 1<sup>st</sup> and 3<sup>rd</sup> Respondents proceeded with the said criminal case and that the 1<sup>st</sup> Respondent was granted leave to withdraw the charges against the applicant under section 87(a) of the ***Criminal Procedure Code***. An applicant to have the order reversed was however denied on the ground that the trial Court was *functus officio* and had no such jurisdiction.

### **3<sup>rd</sup> Respondent's Case**

13. In opposition to the application the 3<sup>rd</sup> Respondent filed the following grounds of opposition:

- 1. That the application herein is unmerited and therefore an abuse of the due processes of the court**
- 2. That the application herein is intended to curtail the statutory obligations and duties of the magistrate.**
- 3. That should the applicants be charged they have an opportunity before the trial court to prove and or demonstrate innocence.**
- 4. That the application is premised on explanation that can and ought to be made before the requisitioning officer and this honourable court would be usurping the statutory mandate of the said officer it were to take up that role as proposed by the ex parte applicant.**
- 5. That the ex parte applicant has not demonstrated any prejudice that they will suffer by honouring requisitions that seek their respective attendance made pursuant to the law.**
- 6. That the applications essence seeks this honourable court directs a public officer to exercise or not to exercise his/her statutory discretion in a particular manner hence usurp the said officers authority**
- 7. That the application is premised on a presumptuous notion that ex parte applicant has foreknowledge of what the requisitions officer is looking for in terms of evidence.**
- 8. That the application herein should be dismissed with costs to the respondents.**

14. Apart from the said grounds neither the Respondents nor the interested party filed any replying affidavits though the interested party contented herself with filing of submissions. In so far as the said submissions contained factual matters, the same are worthless since they cannot be the basis upon which the applicant's averments made on oath can be controverted.

### **Determination**

15. I have considered the material presented before the court in the instant application.

16. It is clear that the whole dispute between the parties herein rests on the ownership of the suit parcel of land.

**17. Majanja, J** in Petition No. 461 of 2012 – **Francis Kirima M'ikunyua & Others vs. Director of Public Prosecutions**, when dealing with situations where there exist criminal and civil proceedings arising from the same facts pronounced himself as follows:

**“It is very clear that the criminal process and the resultant court proceedings are being used to settle what is otherwise civil dispute which has been the subject of several court cases and indeed decisions. It is clear to me that the contending parties wish to use the criminal process to score points against each side in order to assert the rights of ownership. The use of the criminal process in this manner is not uncommon within this jurisdiction to find that intractable land disputes mutate into criminal matters. It is not difficult to see why. In criminal cases the State’s coercive power is brought to bear upon the individual and where we have an inefficient system to settle civil claims, a person who can tie his opponent in the criminal justice system and ultimately secure a conviction will no doubt have an advantage over his opponent.”**

18. In Kuria & 3 Others vs. Attorney General [2002] 2 KLR 69, the High Court held:

**“The Court has power and indeed the duty to prohibit the continuation of the criminal prosecution if extraneous matters divorced from the goals of justice guide their instigation. It is a duty of the court to ensure that its process does not degenerate into tools for personal score-settling or vilification on issues not pertaining to that which the system was even formed to perform...A stay (by an order of prohibition) should be granted where compelling an accused to stand trial would violate the fundamental principles of justice which underlie the society’s senses of fair play and decency and/or where the proceedings are oppressive or vexatious...The machinery of criminal justice is not to be allowed to become a pawn in personal civil feuds and individual vendetta. It is through this mandate of the court to guard its process from being abused or misused or manipulated for ulterior motives that the power of judicial review is invariably invoked so as to zealously guard its (the Court’s) independence and impartiality (as per section 77(1) of the Kenya Constitution in relation to criminal proceedings and section 79(9) for the civil process). The invocation of the law, by whichever party in unsuitable circumstances or for the wrong ends must be stopped, as in these instances, the goals for their utilisation is far from that which the courts indeed the entire system is constitutionally mandated to administer... In the instant case, criminal prosecution is alleged to be tainted with ulterior motives, namely the bear pressure on the applicants in order to settle the civil dispute”.**

19. The Court went further to hold that:

**“It would be a travesty to justice, a sad day for justice should the procedures or the processes of court be allowed to be manipulated, abused and/or misused, all in the name that the court simply has no say in the matter because the decision to so utilise the procedures has already been made. It has never been argued that because a decision has already been made to charge the accused persons, the court should simply as it were fold its arms and stare at the squabbling litigants/ disputants parade themselves before every dispute resolution framework one after another at every available opportunity until the determination of the one of them because there is nothing, in terms of decisions to prohibit...The fact that it has not been argued before however does not mean that the law stops dead at its tracks. An order of prohibition looks to the future and not to the past; it is concerned with the happenings of future events and little, if any, of past events...So long as the orders by way of judicial review remain the only legally practicable remedies for the control of administrative decisions, and in view of the changing concepts of good governance which demand transparency by any body of persons having legal authority to determine questions affecting the rights of subjects under the obligation for such a body to act judicially, the limits of judicial review shall continue extending so as to meet the changing conditions and demands affecting administrative decisions...In this instance, where the prosecution is an abuse of the process of court, as is alleged in this case, there is no greater duty for the court than to ensure that it maintains its integrity of the system of administration of justice and ensure that justice is not only done but is seen to be done by staying and/or prohibiting prosecutions brought to bear for ulterior and extraneous considerations. It has to be understood that the pursuit of justice is the duty of the court as well as its processes and therefore the use of court procedures for**

other purposes amounts to abuse of its procedures, which is diametrically opposite the duty of the court. It therefore matters not whether the decision has been made or not, what matters is the objective for which the court procedures are being utilised. Because the nature of the judicial proceedings are concerned with the manner and not the merits of any decision-making process, which process affects the rights of citizens, it is apt for circumstances such as this where the prosecution and/or continued prosecution besmirches the judicial process with irregularities and ulterior motives. Where such a point is reached that the process is an abuse, it matters not whether it has commenced or whether there was acquiescence by all the parties. The duty of the court in such instances is to purge itself of such proceedings. Thus where the court cannot order that the prosecution be not commenced, because already it has, it can still order that the continued implementation of that decision be stayed...There is nothing which can stop the Court from prohibiting further hearings and/or prosecution of a criminal case, where the decision to charge and/or admit the charges as they were have already been made...However, it does not mean that a civil suit and a criminal case cannot co-exist at any one particular time. This is because the section envisages the re-prosecution of a criminal case substantially dealt with either in fact or law, a case in which issues have been laid to rest. There is no mention in the section that the simultaneous existence of a civil and criminal cases is constituting double jeopardy. The courts have, however stated that the power to issue an order of prohibition to stop a criminal prosecution does not endow a court to say that no criminal prosecution should be instituted or continued side by side with a civil suit based on the same or related facts, or to say that a person should never be prosecuted in criminal proceedings when he has a civil suit against him relating to matters in the criminal proceedings....”

20. It is therefore clear that this Court has the power and indeed the duty to bring to a halt criminal proceedings where the same are being brought for ulterior motives or for achievement of some collateral purposes notwithstanding the constitutional and legal powers conferred upon the DPP and the police. In Joram Mwenda Guantai vs. The Chief Magistrate, Nairobi Civil Appeal No. 228 of 2003 [2007] 2 EA 170, the Court of Appeal held:

“It is trite that an Order of Prohibition is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. It lies, not only in excess of jurisdiction or absence of it but also for a departure from the rules of natural justice. It does not, however, lie to correct the course, practice or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings...Equally so, the High Court has inherent jurisdiction to grant an order of prohibition to a person charged before a subordinate court and considers himself to be a victim of oppression. If the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious, the Judge has the power to intervene and the High Court has the an inherent power and the duty to secure fair treatment for all persons who are brought before the court or to a subordinate court and to prevent an abuse of the process of the court.”

21. In Meixner & Another vs. Attorney General [2005] 2 KLR 189, the same Court expressed itself as hereunder:

“The Attorney General has charged the appellants with the offence of murder in the exercise of his discretion under section 26(3)(a) of the Constitution. The Attorney General is not subject to the control of any other person or authority in exercising that discretion (section 26(8) of the Constitution). Indeed, the High Court cannot interfere with the exercise of the discretion if the Attorney General, in exercising his discretion if acting lawfully. The High Court can, however, interfere with the exercise of the discretion if the Attorney General, in prosecuting the appellants, is contravening their fundamental rights and freedoms enshrined in the Constitution particularly the right to the protection by law enshrined in section 77 of the Constitution... Judicial review is concerned with the decision making process and not with the merits of the decision itself. Judicial review deals with the legality of the decisions of

bodies or persons whose decisions are susceptible to judicial review. A decision can be upset through certiorari on a matter of law if on the face of it, it is made without jurisdiction or in consequence of an error of law. Prohibition restrains abuse or excess of power.”

22. Whereas the mere fact that the facts of the case constitute both criminal and civil liability does not warrant the halting of the criminal case, in Republic vs. Chief Magistrate’s Court at Mombasa Ex Parte Ganijee & Another [2002] 2 KLR 703, it was held:

“It is not the purpose of a criminal investigation or a criminal charge or prosecution to help individuals in the advancement of frustrations of their civil cases. That is an abuse of the process of the court. No matter how serious the criminal charges may be, they should not be allowed to stand if their predominant purpose is to further some other ulterior purpose. The sole purpose of criminal proceedings is not for the advancement and championing of a civil cause of one or both parties in a civil dispute, but it is to be impartially exercised in the interest of the general public interest. When a prosecution is not impartial or when it is being used to further a civil case, the court must put a halt to the criminal process. No one is allowed to use the machinery of justice to cause injustice and no one is allowed to use criminal proceedings to interfere with a fair civil trial. If a criminal prosecution is an abuse of the process of the court, oppressive or vexatious, prohibition and/or certiorari will issue and go forth...When a remedy is elsewhere provided and available to person to enforce an order of a civil court in his favour, there is no valid reason why he should be permitted to invoke the assistance of the criminal law for the purpose of enforcement. For in a criminal case a person is put in jeopardy and his personal liberty is involved. If the object of the appellant is to overawe the respondent by brandishing at him the sword of punishment thereunder, such an object is unworthy to say the least and cannot be countenanced by the court... In this matter the interested party is more actuated by a desire to punish the applicant or to oppress him into acceding to his demands by brandishing the sword of punishment under the criminal law, than in any genuine desire to punish on behalf of the public a crime committed. The predominant purpose is to further that ulterior motive and that is when the High Court steps in...”

23. It was similarly held by the Court of Appeal in Commissioner of Police and Director of Criminal Investigations Department vs. Kenya Commercial Bank and Others Nairobi Civil Appeal No. 56 of 2012 [2013]eKLR that:

“While the law (section 193A of the Criminal Procedure Code) allows the concurrent litigation of civil and criminal proceedings arising from the same issues, and while it is the prerogative of the police to investigate crime, we reiterate that the power must be exercised responsibly, in accordance with the laws of the land and in good faith. What is it that the company was not able to do to prove its claim against the bank in the previous and present civil cases that must be done through the institution of criminal proceedings? It is not in the public interest or in the interest of administration of justice to use criminal justice process as a pawn in civil disputes. It is unconscionable and travesty of justice for the police to be involved in the settlement of what is purely dispute litigated in court. This is case more suitable for determination in the civil court where it has been since 1992, than in a criminal court. Indeed, the civil process has its own mechanisms of obtaining the information now being sought through the challenged criminal investigations”

24. The role of police in criminal process was recognised in Republic vs. Commissioner of Police and Another ex parte Michael Monari & Another [2012] eKLR where it was held:

“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 decisions to charge act in a reasonable manner, the High Court would be reluctant to intervene”.

25. However, it was similarly appreciated in **R vs. Attorney General exp Kipngeno Arap Ngeny High Court Civil Application No. 406 of 2001** that:

**“A criminal prosecution which is commenced in the absence of proper factual foundation or basis is always suspect for ulterior motive or improper purpose. Before instituting criminal proceedings, there must be in existence material evidence on which the prosecution can say with certainty that they have a prosecutable case. A prudent and cautious prosecutor must be able to demonstrate that he has a reasonable and probable cause for mounting a criminal prosecution otherwise the prosecution will be malicious and actionable”.**

26. In this case the factual averments made by the applicant have not been disputed. The applicant avers that following a claim by the interested party of interests in the suit land, the applicant and her family had suffered a spate of attacks and despite reporting the same to the police and even apprehending the culprits, the police have not taken action and have instead released the said culprit’s without charging them. However, when the interested party complained prompt action was taken against the applicant. Since these averments are not controverted the same must be deemed to be true. In my view the selective application of criminal process reeks of abuse of power. As was held in **Keroche Industries Limited vs. Kenya Revenue Authority & 5 Others Nairobi HCMA No. 743 of 2006 [2007] 2 KLR 240** while citing **Reg vs. Secretary of State for the Environment Ex Parte Nottinghamshire County Council [1986] AC:**

**“A power which is abused should be treated as a power which has not been lawfully exercised...A public authority must not be allowed by the court to get away with illogical, immoral or an act with conspicuous unfairness as has happened in this matter, and in so acting abuse its powers. In this connection Lord Scarman put the need for the courts intervention beyond doubt in the *ex-parte Preston* where he stated the principle of intervention in these terms: “I must make clear my view that the principle of fairness has an important place in the law of judicial review: and that in an appropriate case, it is a ground upon which the court can intervene to quash a decision made by a public officer or authority in purported exercise of a power conferred by law.” The same principle was affirmed by the same Judge in the House of Lords in *Reg vs. Inland Revenue Commissioners, ex-parte National Federation of Self Employed and Small Business Ltd [1982] AC 617* that a claim for judicial review may arise where the Commissioners have failed to discharge their statutory duty to an individual or have abused their powers or acted outside them and also that unfairness in the purported exercise of a power can be such that it is an abuse or excess of power. In other words it is unimportant whether the unfairness is analytically within or beyond the power conferred by law: on either view, judicial review must reach it. Lord Templeman reached the same decision in the same case in those helpful words: “Judicial review is available where a decision making authority exceeds its powers, commits an error of law commits a breach of natural justice reaches a decision which no reasonable tribunal could have reached or abuses its powers.” Abuse of power includes the use of power for a collateral purpose, as set out in *ex-parte Preston*, reneging without adequate justification on an otherwise lawful decision, on a lawful promise or practice adopted towards a limited number of individuals. I further find as in the case of *R (Bibi) vs. Newham London Borough Council [2001] EWCA 607, [2002] WLR 237*, that failure to consider a legitimate expectation is a failure to consider a relevant consideration and this would in turn call for the courts intervention in assuming jurisdiction and giving the necessary relief.”**

27. It is therefore my view that in the instant application the respondents have not demonstrated that they have a reasonable and probable cause for mounting a criminal prosecution thus rendering the prosecution malicious and actionable. To the contrary it has been shown that the Respondents are intent at keeping the applicants at bay in their quest to protect their interests in the suit property while rendering assistance to the interested party, who in the applicants’ view is the aggressor. As was held in **Githunguri vs.**

**Republic (1985) KLR 91:**

**“A prosecution is not to be made good by what it turns up. It is good or bad when it starts.”**

28. It is however disclosed by the applicant in the submissions that the criminal charges against the applicant were withdrawn under section 87(a) of the *Criminal Procedure Code*.

29. It follows that the orders sought herein cannot be granted in the manner sought. However section 11 of the *Fair Administrative Action Act, 2015* provides as follows:

***(1) In proceedings for judicial review under section 8 (1), the court may grant any order that is just and equitable, including an order***

***(a) declaring the rights of the parties in respect of any matter to which the administrative action relates;***

***(b) restraining the administrator from acting or continuing to act in breach of duty imposed upon the administrator under any written law or from acting or continuing to act in any manner that is prejudicial to the legal rights of an applicant;***

***(c) directing the administrator to give reasons for the administrative action or decision taken by the administrator;***

***(d) prohibiting the administrator from acting in a particular manner;***

***(e) setting aside the administrative action or decision and remitting the matter for reconsideration by the administrator, with or without directions;***

***(f) compelling the performance by an administrator of a public duty owed in law and in respect of which the applicant has a legally enforceable right;***

***(g) prohibiting the administrator from acting in a particular manner;***

***(h) setting aside the administrative action and remitting the matter for reconsideration by the administrator, with or without directions;***

***(i) granting a temporary interdict or other temporary relief; or***

***(j) for the award of costs or other pecuniary compensation in appropriate cases.***

30. This Court is therefore empowered to fashion appropriate remedies.

**Order**

31. In the premises, the order which commends itself to me and which I hereby grant is an order of prohibition directed at the 1<sup>st</sup> Respondent prohibiting him from instituting any further proceedings against the ex parte applicant herein arising from the same cause of action as that which informed the institution of criminal charges against the ex parte applicant in Makadara Criminal Case No. 881 of 2015.

32. As the charges against the applicant had been withdrawn and as the reliefs granted herein are not the exact reliefs sought there will be no order as to costs.

33. Orders accordingly.

**Dated at Nairobi this 24<sup>th</sup> day of March, 2017**

**G V ODUNGA**

**JUDGE**

**Delivered in the presence of:**

***Mr Ilako for the interested party***

***CA Mwangi***