



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW

MISCELLANEOUS APPLICATION NO. 661 OF 2017

**IN THE MATTER OF AN APPLICATION BY JOASH OCHIENG FOR LEAVE TO APPLY
FOR AN ORDER OF PROHIBITION**

AND

**IN THE MATTER OF THE OFFICE OF THE DIRECTORATE OF CRIMINAL
INVESTIGATIONS.**

AND

IN THE MATTER OF GALOT INDUSTRIES LIMITED

BETWEEN

JOASH OCHIENG.....APPLICANT

VERSUS

THE DIRECTORATE OF CRIMINAL

INVESTIGATIONS RESPONDENT

RULING

1. The exparte applicant Joash Ochieng seeks from this court leave to institute Judicial Review proceedings, against the Director of Criminal Investigations, prohibit the Directorate of Criminal Investigations.
2. The application was not opposed.
3. The orders sought in the chamber summons application do not stipulate the date when the decision to charge the applicant was made and neither do the orders sought state the purpose for which prohibition is sought. The application simply states:

“That the court be pleased to grant leave to apply for Judicial Review seeking prohibitory orders against the Directorate of Criminal Investigations.”

4. In the oral submissions by counsel for the applicant, Mr Washe sought for stay of investigations but there is no prayer for stay on the face of the application.

5. In addition, leave to apply for prohibition is sought and from the many exhibits attached, the applicant is complaining that there is a civil suit pending before Machakos Environment and Land Court case No. 26/2014 wherein his client has filed a defence and counterclaim. There is a claim that the title in issue has not been determined by Environment and Land Court to be genuine hence the investigations against the applicant are illegal.

6. That may be so. However, there is no prayer for leave to apply for Judicial Review order of certiorari to quash the decision taken by Director of Criminal Investigations to investigate the applicant on allegations by Galot Industries Ltd that the applicant forcefully occupied LR No. 12867/511. Prohibition cannot be used to quash a decision already taken.

7. In the relief sought, the applicant seeks the respondent to be prohibited from investigating, arresting, arraigning, preferring any criminal charges, and or prosecuting the applicant in any criminal court of law in relation to the occupation and or ownership of LR 12867/511 or any portion thereof until the final determination of Machakos HC ELC 26/2016. However, there is no prayer for prohibition on the body of the Chamber summons.

8. Furthermore, the Directorate of Criminal Investigations has no prosecutorial powers which powers are vested in the Director of Public prosecutions, who is not even made a party to these proceedings.

9. In addition, the Directorate of Criminal Investigations has powers under Section 24 of the National Police Service Act to investigate crimes and therefore no prohibition can issue unless it is demonstrated that the decision taken is illegal, unprocedural and or made in bad faith and for collateral purposes and not for vindication of criminal justice system.

10. Having examined the application as presented, I am unable to find any material placed before me to warrant grant of leave to apply for Judicial Review orders of prohibition exclusively.

11. Leave to apply is not automatic. The applicant must satisfy the court that they deserve the orders sought and that they have a prima facie arguable case, without the court delving into the depths of the intended substantive motion.

12. In this case, I am not satisfied that prohibition if sought would quash the decision which has already been taken by the Directorate of Criminal Investigations to investigate the applicant and which investigative powers are not only statutory but also constitutional.

13. In the premises, I find the application wanting in merit and I proceed to dismiss it with no orders as to costs.

Dated, signed and delivered in open court at Nairobi this 11th day of December 2017.

R.E. ABURILI

JUDGE

In the presence of:

Miss Sakami h/b for Mr Wandugi for the Respondent

N/A for the Applicant

CA: George