Republic v Chief Magistrates Court, Mombasa & another; Natarajan (Exparte) (Judicial Review Application E039 of 2024) [2025] KEHC 3447 (KLR) (21 March 2025) (Judgment)

Neutral citation: [2025] KEHC 3447 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MOMBASA

JUDICIAL REVIEW APPLICATION E039 OF 2024

J NGAAH, J

MARCH 21, 2025

BETWEEN

REPUBLIC ..... APPLICANT

AND

CHIEF MAGISTRATES COURT, MOMBASA ..... 1ST RESPONDENT

BANKING FRAUD INVESTIGATION UNIT ..... 2ND RESPONDENT

AND

MAURALI NATARAJAN ..... EXPARTE

JUDGMENT

1. The application before court is a motion dated 12 December 2024 in which the applicant seeks the following orders:

> "1. An order of Certiorari to remove into this Honourable Court and quash the proceedings of 2nd December 2024 before the 1st respondent in Chief Magistrates Court at Mombasa in MSA. MISC. APP. NO. 57 OF 2019, Banking Fraud Investigation Unit -vs- Diamond Trust Bank of Kenya Limited and the orders issued pursuant to the said proceedings.
>
> 2. An order of Prohibition to prohibit the 1st respondent from continuing and/or enforcing the proceedings and subsequent orders issued on 2nd December 2024 in MSA. MISC. APP. NO. 57 OF 2019, Banking Fraud Investigation Unit -vs Diamond Trust Bank of Kenya Limited."

2. The applicant has also sought for an order for costs of the application.

The application is expressed to be brought under Order 53 Rule 1, 2 and 4 of the Civil Procedure Rules; sections 11 of the *Fair Administrative Action Act*, 2015; and, articles 22, 23, 47, 50, 165(6) of *the Constitution*. It is based on the statutory statement dated 4 December 2024 and an affidavit verifying the facts relied upon sworn on even date by Murali Natarajan.

3. According to these documents, the applicant is the managing director of Diamond Trust Bank (hereinafter "DTB"), a position he was appointed to on 1 November 2024. He has sworn that on 28 February 2019, the 2nd respondent filed a miscellaneous criminal application in the chief magistrates' court at Mombasa in case no. 57 of 2019; Banking Fraud Investigations Unit -vs- Diamond Trust Bank. In the motion heard ex parte, the 2nd respondent sought what the applicant has described as a "variety of orders" for purposes of investigation.

4. Following this application, the 1st respondent issued ex parte orders on the same date the application was made. The orders were then served upon DTB which is said to have substantially complied with the said orders. Thereafter, DTB filed an application to set aside the orders through a motion dated 9 April 2019. By a ruling rendered by the 1st respondent on 11 July 2019, the ex parte orders were set aside.

5. The 2nd respondent was dissatisfied with the ruling of 11 July 2019, and, therefore, it applied for a revision through a miscellaneous criminal application no. 27 of 2019, in this Honourable Court, at Mombasa. In a ruling rendered on 19 June 2020, the court reinstated the orders of 28 February 2019.

6. By a motion dated 3 July 2024, the 2nd respondent lodged another application in this Honourable Court at Mombasa as miscellaneous criminal application no. 27 of 2019, seeking the order that the court does issue a notice to the managing director Diamond Trust Bank - Moi Avenue Branch, Mombasa to personally attend court to show cause why contempt of court proceedings should not be commenced against him. By his ruling dated 7 October 2024, Andayi, J remitted the file to the magistrates' court for the chief magistrate to hear the application.

7. It is the applicant's position that the file was remitted to the 1st respondent for the specific purposes stated in the ruling of Andayi, J. The file was allocated to Hon. David. O. Odhiambo on 15 October 2014 and summons was issued to the DTB's branch manager to attend court on 2 December 2024.

8. According to Natarajan, the branch manager, one Killian Ngala; Martin Mbithi, who was described as the head of corporate, Coast region, and Peter Koome, the Bank's Head of Security attended Court on 2 December 2024. Peter Koome also filed a replying affidavit on 28 November 2024. Thus, the summons to attend court was honoured.

9. He has sworn further that all the three officers of the bank were familiar with the matters before the 1st respondent and that they provided explanations in compliance with the Order of 7 October 2024 by Honourable Andayi, J.

10. That notwithstanding, the learned magistrate concluded that the bank appeared to be withholding certain information from the court and ordered it to provide an email that was apparently sought within seven days.

11. Natarajan is aggrieved that the 1st respondent has summoned him to address or answer to issues that took place long before he joined the bank. He has been advised by his advocates on record, which information he verily believes to be true, that the summons requiring him to personally attend court on 10 December 2024, to personally address the magistrate on issues which he is not aware of and that are not within his knowledge is entirely improper and is arbitrary, capricious and in excess of the 1st respondent's jurisdiction.

12. Further, he has not been informed of any specific charge he is required to address personally and in his personal capacity considering that he was not at the bank at the time when the events, material to this application, occurred. Again, he is not the custodian of the bank's documents and, as such, the summons ordering him to personally attend court on 10 December 2024 is purely aimed at causing him embarrassment.

13. Natarajan contends that that the actions of the respondents are illegal, irregular, void and an abuse of the court process. He believes them to be solely aimed at achieving an ulterior purpose while flouting the provisions of the law and violating his rights. This is demonstrated by the court proceedings of 2 December 2024.

14. Police constable Robert Nderitu swore a replying affidavit on behalf of the 2nd respondent opposing the application. He has sworn that he is a police officer and conversant with the applicants' dispute.

15. According to him, the 2nd respondent's office received a report from one Nuru Ali Islam Jeizan. The report is said to have been a form of complaint through a letter dated 22 June 2018. The complaint was to the effect that two company bank accounts nos. 020092XXXX and account 020092XXXX at DTB had been fraudulently manipulated. The company in issue was Anwar Mohamed Bayusuf Limited.

16. The gist of the complaint was that DTB had initiated fraudulent activities that involved creation of imaginary loans, repayment defaults and attachment and sale, by public auction, of the properties belonging to Anwar Mohamed Bayusuf Limited. This information had come to the attention of the complainant in her capacity as a director of the company.

17. According to the complaint, DTB had made unauthorized overdraft transactions and manipulated the company accounts, leading to significant financial losses. To be precise, the fraudulent activities were as follows:

    a) The bank misrepresented to the company directors that the bank facilities offered to the company were non-performing and that the company had defaulted in repayment of the loans.

    b) The bank deliberately failed to make deductions towards the loan repayments by the company for the facilities offered on the due dates causing additional amounts to be deducted as penalties.

    c) The bank, through coercion and deceit, caused the company directors to sign and accept an offer seeking to restructure the facilities yet none of the facilities purportedly restructured by the bank were in default at the time the restructuring was done.

    d) The bank made or procured to be made internal transfers on Account No.020092XXXX (which account was dormant and had a nil balance) without the instructions or orders of the company directors creating an imaginary overdraft on the said account.

    e) The bank included an unauthorized overdraft of Kshs.59,300,000/= among the outstanding facilities and unlawfully recovered the said amount from the company and thereby unjustly enriched itself.

    f) The bank made several unauthorized internal transfers and reversals between Accounts No. 020092XXXX and 020092XXXX which amounted to fraudulent accounting or manipulation of accounts, misrepresenting the true financial position of the company.

    g) The bank unlawfully deducted money from the company's account as interest on account of old facilities.

h) The bank unlawfully moved the company's mony from one account to the other without the company's authority with the aim of creating a default on the outstanding instalments.

18. After the complaint was made, investigations commenced and a statement was recorded from Nuru Ali Islam Jeizan on 13 November 2018. It was necessary, in the course of the investigations, to verify the transactions on the two bank accounts and, therefore, the investigators sought court orders at the chief magistrates' court at Mombasa in miscellaneous application no. 57 of 2019 (Banking Fraud Investigations Unit Mombasa vs Diamond Trust Bank) for purposes of obtaining statements of accounts, letters of offer for facilities, transaction slips or cheques relating to the two accounts and the account holder details.

19. The court allowed the application on 28 February 2019 and orders were granted allowing the 2nd respondent's investigators to obtain statement of accounts, letters of offer for facilities, transaction slips or cheques relating to the two accounts, account holder details and other information that was necessary in the investigations. The order, together with the application, were served on the bank on 1 March 2019.

20. On 9 April 2019, DTB filed an application in the same miscellaneous case 57 of 2019 seeking to vary or set aside the orders issued on 28 February 2019. The application was allowed on 11 July 2019. However, on 23 July 2019, through a miscellaneous application no. 27 of 2019, filed in this Honourable Court, the 2nd respondent sought to have ruling reviewed. The Court (Njoki, J) allowed the application and reinstated the orders issued on 28 February 2019.

21. On 12 October 2020, the 2nd respondent wrote to DTB requesting the same documents which we had previously been requested for. In its letter, the 2nd respondent exhibited a copy of the ruling reinstating the orders.

22. The bank did not respond to the 2nd respondent's letters and, therefore, further investigations into the complaint stalled. It is then that the 2nd respondent filed an application in the criminal revision file 27 of 2019 seeking DTB's managing director, to show cause why contempt proceedings should not commence against him for failure to comply with the court orders.

23. In a ruling delivered on 7 October 2024, Andayi, J. directed that a notice to show cause does issue against the managing director, and the matter be determined by the magistrates' court from where the orders in issue emanated.

24. The matter was then placed before the chief magistrate who assigned Hon D. Odhiambo to handle it. The learned magistrate in turn scheduled the matter for 2 December 2024. The summons was issued for the bank's Moi Avenue branch manager to attend court.

25. On 2 December 2024, three bank officials from DTB appeared in court but could not explain why the bank had not furnished the documents sought by the 2nd respondent. Consequently, the trial magistrate directed the Chief Executive Officer of DTB to appear before court on 10 December 2024 and address court as to why there has been noncompliance of court orders.

26. The 2nd respondent has been advised by its counsel on record, which advice police constable Robert Nderitu verily believes to be true, that the applicant is the custodian of all the bank records and, therefore, has access to all documentation. The date he joined the bank is immaterial since he assumed to have handing over reports. Again, the applicant has access to all the information and documents relating to all transactions of the bank including records entered before he joined the bank.

27. Constable Nderitu has sworn that it is necessary that the investigations be concluded considering that the complaint was made way back in the year 2018.

28. I have considered the submissions filed in support of and in opposition to the application. As usual, in applications such as the instant one, the point of entry for a judicial review court to intervene and check the powers of subordinate courts or tribunals or such other bodies whose powers are subject to judicial review is the grounds upon which the application is made.

29. Order 53 Rule 1(2) of the Civil Procedure Rules states in mandatory terms that the statement accompanying the application must contain, among other things, the grounds upon which the application is made. It reads as follows:

> (2) 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).

30. And Order 53 Rule 4(1) states unambiguously that no grounds should be relied upon except those specified in the statement accompanying the application for leave.

31. The grounds to which reference has been made were enunciated in Council of Civil Service Unions versus Minister for the Civil Service (1985) A.C. 374,410 where Lord Diplock set out the three heads which he described as "the grounds upon which administrative action is subject to control by judicial review". He set out these grounds as illegality, irrationality and procedural impropriety. In discussing susceptibility of administrative actions to judicial review and, in the process defining these grounds, the learned judge stated 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."

32. These grounds of illegality, irrationality and procedural impropriety are ordinarily regarded as the traditional grounds for judicial review. The court will intervene and may grant the remedy for judicial review if any of them is proved to exist. But as Lord Diplock suggested, the list is by no means exhaustive. The learned judge hastened to say that further development of this area of law may yield further grounds on a case by case basis. It is in this spirit, the learned judge suggested, that the principle of proportionality as a further ground for judicial review has been developed.

33. It follows that since they form the foundation upon which the application for judicial review is based, these grounds must be stated in precise, clear and unambiguous terms in the statement accompanying the application for leave. While reiterating the importance of stating grounds for judicial review in concise and precise terms, Michael Fordham in his book, Judicial Review Handbook, at Paragraph 34.1 states as follows:

> " The need to identify and express accurately the possible grounds for judicial review is not simply a matter of analytical nicety. It is one of practical necessity. The provisions of the new order require the accurate identification of (a) potentially applicable grounds and (b) the time at which they arose. Given the frequent presence of multiple targets, the elusive nature of certain grounds, their disarming interrelationship, and the understandable fear of missed opportunity, it is easy to see why public lawyers may feel tempted to 'throw everything' including grounds which are dangerously close to the inconceivable. This approach is unlikely to endear them to the court."

34. The 'new order' referred to in this passage is Order 53 of the Rules of the Supreme Court of England whose provisions are more or less in pari materia with our own Order 53 of the Civil Procedure Rules, 2010. Thus, courts are hesitant to entertain applications where grounds have not been identified and accurately stated. Stating the grounds in precise terms is not, as it were, a matter of analytical nicety but it is a practical necessity. It follows that where the grounds are not stated, the application is fatally defective as, strictly speaking, it has no foundation upon which it is built.

35. Turning back to the applicant's statutory statement, it would appear that his application is based on the grounds of illegality and procedural impropriety. In order to establish whether these grounds or any of them has been proved to exist, it is necessary to consider and analyse the circumstances or facts out of which the impugned decision arose and weigh the subordinate court's proceedings and the decision against what these grounds have been defined to entail. In other words, the court has to consider whether the 1st respondent's impugned actions are tainted on the judicial review grounds of illegality and procedural impropriety.

36. To begin with, as far as they are necessary to the determination of the instant application, the facts are simply these:

(1) A complaint on manipulation or fraudulent transactions by DTB on bank accounts held in that bank by Anwar Mohamed Bayusuf Limited was made to the Banking Fraud Investigation Unit of the Central Bank of Kenya. The complaint was lodged by a director of the Anwar Mohamed Bayusuf Limited.

(2) the Banking Fraud Investigation Unit commenced investigations into the complaint and, to that end, obtained an order from the court to investigate the accounts. The order was obtained in miscellaneous criminal application no. 57 of 2019 on 28 February 2019 in which the Banking Fraud Investigation Unit was named as the applicant and DTB as the respondent. In its pertinent part, the order read as follows:

> " It is hereby ordered
>
> 1. That No. 89822 P.C Nickson Kiunga be allowed to access, investigate, obtain information and carry away account opening documents for the following account numbers:
>
> a) 020092XXXX
>
> b) 020092XXXX
>
> 2. That the respondent;
>
> i. Do supply statements of the above account numbers from the time of their opening to date
>
> ii. Do supply any letters ·of offer for any facility(s) give!)- under the above account numbers.
>
> iii. Any transaction slips or cheque(s) used for the above account number from the time of opening to date.
>
> iv. Any other document(s) or information relevant to this case which will help in the investigation."

(3) By an application dated 9 April 2019, DTB successfully applied, in the same application in which the orders were obtained, to "vary, review or set aside" the orders 28 February 2019. In a ruling delivered by Hon. C.A. Ogweno on 11 July 2019, the court set aside the orders.

(4) The matter then escalated to this Honourable Court by way of a review application. The application was initiated by Ms. Alice Mbaeh Mamadi, the learned prosecution counsel from the office of the Director of Public Prosecutions. The application was by way of a letter dated 22 July 2019 and was filed under sections 362, 364,365,366 and 367 of the *Criminal Procedure Code*, cap. 75. The application was registered as High Court Criminal Revision no. 27 of 2019 and sought to have the magistrate's orders made on 11 July 2019 set aside.

(5) The application for revision was successful because by a ruling delivered by this Honourable Court (Njoki, J.) on 19 June 2020, the orders granted on 28 February 2019 were reinstated. The court further ordered that the applicant, Banking Fraud Investigation Unit, was at liberty to continue with its investigations from where it had reached.

(6) By an application dated 3 July 2024 in which the Republic is named as the applicant while DTB was named as the respondent, the Director of Public Prosecutions sought in the main an order that:

> " 2. That this Honourable Court do issue notice to the managing director Diamond Trust Bank - Moi Avenue Branch, Mombasa to personally attend court to show cause why contempt of court proceedings should not be commenced against him." The application was filed in this Honourable Court's criminal revision no. 27 of 2019 in which, as noted, the orders of 28 February 2019 were reinstated.

(7) In his ruling of 7 October 2024, Andayi, J. referred the matter to the magistrate's court in which the orders the Bank's officer is alleged to have been in contempt of were issued. The learned judge ruled, inter alia, that:

> " 25. On the issue of which court needs to receive that explanation from the respondent, I agree with the submission by the learned counsel for the respondent following the decision in re ZJA & TA (Minors) (2020) eKLR of which I am persuaded, that the proper court to determine the issue of contempt of court is the magistrates court from which the original orders were issued. Therefore, the case should be remitted to the magistrates court from where the orders emanated to determine whether or not contempt of court has been committed by the respondent.
>
> 26. Consequently, I am satisfied that it is desirable and it is hereby ordered that the respondent's manager Mombasa branch, should appear before the magistrate court, Mombasa to show cause why contempt of court should not be commenced against him.
>
> 27. This file is remitted to the Magistrates Court Mombasa to be placed before the Chief Magistrate Criminal Division on 15/10/2024 to assign a magistrate to handle the case from the point of issuance of the said notice to show cause and appearance of the said manager onwards.
>
> 28. Orders accordingly."

37. These facts are not in dispute. It is also not in dispute that following the order from Andayi, J. the chief magistrate allocated the matter to a magistrate to proceed as directed by the judge. As a matter of fact, in his affidavit, Natarajan has sworn that:

> " 9. That the file was remitted to the Chief Magistrate, Criminal Division on 15th October 2024 and he allocated the matter to Hon. David. O. Odhiambo and Summons were issued to the Branch Manager to attend on 2nd December 2024."

38. Once the file was allocated to Hon. Odhiambo, the learned magistrate was entitled to proceed and "determine whether or not contempt of court has been committed by the respondent", as directed by Andayi, J.

39. No doubt, in determining this issue, the learned magistrate would need to be satisfied whether the order of 28 February 2019 had been complied and, in that regard, whether the documents sought from the respondent in that order have been availed. The court record of the proceedings before Hon. Odhiambo on 2 December 2024 appear to me to be along those lines. Part of those proceedings were recorded as follows:

> " Later at 11.05 a.m.
>
> Mr. Shah: -
>
> The Branch Manager js in attendance.
>
> Mr. Killian Ngala: -
>
> I am the Branch Manager of DTB Moi Avenue Branch. The account was domiciled at out branch. All matters attending to loans are processed at a different department.
>
> Mr. Martin Mbithi
>
> I am the head of Corporate Coast Region. The company Annar Mohamed Bayusuf Ltd. was a corporate and borrowed from the bank. We have substituted the account opening documents, letter of offer, of 09/12/2011 and 06/06/2021 in HCCC No. 13/2013. We can get documents in one week.
>
> Mr. Nvakweba: -
>
> We are not here because of be Civil Case. We need to know the person who authorized for internal transfer between the accounts between January, 2009 and December 2011 and all the documents related to the transfers. Copy of the email for mmbithi(@.dtbank.com of 10/10/2013 at 1.30 p.m. sent to Omeria & Associates.
>
> Mr. Mbithi:-
>
> We have not been able to retrieve the email due to age. We can get it from the receiver. I am not able to get the email due to time posted. About the transfer, the client would come to the bank to instruct the bank verbally to conduct the transaction. The system would swap automatically and the bank does not need the customer instructions.
>
> Mr. Shah: -
>
> We are not hiding anything. The instructions were verbal. Its Mbithi and Koome who have (sic) the information. The documents being requested for do not exists(sic).
>
> Mr. Nvakweba: -
>
> We need the email address and the person who authorized the transfer.
>
> Prosecution counsel: -
>
> I suggest the respondent be given 24 hours to provide the email for the receiver.
>
> Court:
>
> The bank herein seems to be hiding certain information from the court or may be did a transaction that cannot be justifiable. In the circumstances I hereby give the respondent 7 days to provide the email requested and further information on the transfer. In order to conclusively settle the issue, I hereby issue summons to the CEO Mural Natarajan.

Mention on 10.12. 2024."

40. Contrary to the Natarajan's deposition that "the magistrate on his own volition and without any application by the 2nd respondent issued the following orders...", the record of the proceedings shows that the order was a culmination of the interrogation of the question of whether a particular document, which I understand to be an email, was available and if not, why it could not be produced.

41. Considering that the proceedings before the magistrates' court have not been concluded, all I can say for now is that if the document in contention is amongst the documents that the respondent is enjoined to produce in compliance with the order of 28 February 2019, the question of whether it has been produced or not is relevant to the determination of the question of whether there is contempt of that particular order. I have no doubt in my mind that in considering the question whether DTB is in contempt of court, the learned magistrate is entitled to consider the question of who, amongst the officers of DTB would be held culpable. Needless to state, a company being a juristic person cannot be jailed, assuming the court was to find the company guilty and the only appropriate sentence is a jail term.

42. The rest of the applicant's complaints appear to me to be more about the order of 28 February 2019 than with the proceedings of 2 December 2024. In particular, he has sworn in his affidavit as follows:

> " 13. That the 1st Respondent has summoned me to address or answer issues that took place long before I had joined the Bank. Annexed hereto and marked as "MN9" are certified copies of the typed proceedings from 15th October 2024 till 2nd December 2024 MSA MISC CR. APP. NO. 57 OF 2019 Banking Fraud Investigations Unit -vs Diamond Trust Bank.
>
> 14. That I am advised by my Advocates on record, which information I verily believe to be true, that the Summons requiring me to personally attend court on 10th December 2024, to personally address the Magistrate on issues which I am not aware of and that are not within my knowledge is entirely improper and is arbitrary, capricious and in excess of the jurisdiction that was being exercised by the 1st Respondent.
>
> 15. That I am further advised by my Advocates on record that I have not been informed of which specific charge I am to address personally and in my personal capacity especially since I was not at the Bank at the material time when the material events occurred."

43. The question before the magistrates' court is not so much about whether the applicant is being asked to answer to issues that arose before he joined the bank and which, according to the applicant, he is not aware of, or whether there is any specific charge to which he can respond in his personal capacity. The question is whether the order of 28 February 2019 has been complied with. Subject to the determination which the learned magistrate will reach, the answer to this question may not have anything to do with when the applicant joined the bank.

44. I would suppose that if the applicant had any qualms with the order of 28 February 2019, he would have challenged it through any of the means available to him in law for challenging such orders.

45. For the foregoing reasons I do not find any factual or legal basis for the applicant's application. Aforitori, this court having ordered the magistrates' court to proceed and make the appropriate determination in application no. 57 of 2019, it cannot turn around and either quash or prohibit

the same proceedings unless it can be demonstrated that those proceedings are being conducted in a manner that is outrightly unlawful or are vitiated on any of the grounds of judicial review.

46. I am not satisfied that any of those grounds have been proved in this application. Accordingly, the application is hereby dismissed with costs. It is so ordered.

SIGNED, DATED AND DELIVERED ON 21 MARCH 2025

NGAAH JAIRUS

JUDGE