



**Mwenda v Teachers Service Commission & 2 others (Judicial Review E001 of 2023)
[2025] KEHC 4104 (KLR) (Judicial Review) (2 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4104 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
JUDICIAL REVIEW
JUDICIAL REVIEW E001 OF 2023**

KW KIARIE, J

APRIL 2, 2025

BETWEEN

PATRICK MUTHURI MWENDA APPLICANT

AND

TEACHERS SERVICE COMMISSION 1ST RESPONDENT

THE DIRECTOR PUBLIC PROSECUTIONS 2ND RESPONDENT

**THE BOARD OF MANAGEMENT MT. KINANGOP GIRLS' SECONDARY
SCHOOL 3RD RESPONDENT**

JUDGMENT

1. The applicant moved the court through a Chamber Summons dated December 4, 2023. The application is based on sections 8(2) and 9 of the [Law Reform Act](#) and Order 53, Rules 1(1), 1(2), 1(4), and 2 of the Civil Procedure Rules. He is seeking the following orders:
 - a. This honourable Court be pleased to certify this application as urgent and admit the same for hearing ex-parte in the first instance. [Spent]
 - b. The applicant be granted leave to apply for a judicial review order of certiorari to remove to his honourable court to quash the decision by the respondents to arrest, charge and institute criminal prosecution against the applicant in Engineer Senior Principal Magistrate's Criminal Case s/o No. 76 of 2021: Republic versus Patrick Muthuri Mwenda. [Spent]
 - c. The leave so granted operates as a stay of any decision of the respondents, either jointly or severally, to proceed with any criminal proceedings against the Applicants herein in the Subordinate Court or any other Court pending the hearing and determination of this matter. [spent]



- d. That leave be granted to the applicants to apply for an order of prohibition directed to the respondents from either jointly or severally commencing, sustaining or proceeding with Engineer Senior Principal Magistrates Criminal Case s/o No. 76 of 2021, Republic versus Patrick Muthuri Mwenda or any other criminal proceedings against the applicant.
 - e. The costs of this application be provided for.
2. The application is premised on the following grounds:
- The decision by the office of the DPP to institute prosecution proceedings is fraught with impropriety, un-procedural, and illegal for the following reasons:
- i. The Office of the DPP has failed to consider that the dispute herein is purely about allegations against a teacher, which should be first dealt with internally and the relevant procedural requirements met before charges are approved.
 - ii. The Teachers Service Commission Code of Regulations Revised 2014 establishes the mechanism for effecting disciplinary action, the discipline procedure and decisions that may be arrived at and prescribes investigations before any action.
 - iii. The decision to charge the applicant is, therefore, a breach of the legitimate expectation of a fair administrative action.
 - iv. The intention to proceed with a prosecution of the applicant without adherence to the procedure necessary in nature is irrational, unlawful, and an abuse of powers;
 - v. The Teachers Service Commission is in breach of the applicant's right to legitimate expectation as when the allegations were made about him, he expected the proper procedure to be applied and any decision arrived at to have been informed by the process.
 - vi. No committee was formed to investigate the allegations; neither was the applicant summoned or given the mandatory 7 days to respond to the allegations.
 - vii. The entirety of the intention by the Office of the Director of Public Prosecutions to institute criminal proceedings against the applicant is irrational, unreasonable and will lead to an absurd result.
 - viii. The Teachers Service Commission has a role of upholding and protecting the rights of the applicant as spelt out in the bill of rights and has, instead of protecting and granting them, sought to and is therefore capriciously prosecuting the applicant in a bid to cover its misdoings.
 - ix. The Office of the DPP intends to improperly use its discretion by electing to prosecute the applicant.
 - x. The Office of the DPP has wrongfully exercised its discretion by electing to prosecute the applicant at the expense of advising the Teachers Service Commission to adhere to the law.
 - xi. The fundamental rights and freedoms of the applicant have been curtailed, and as a consequence, the applicant has been affected.
 - xii. The criminal proceedings against the applicant are intended for a malicious and/or ulterior purpose and are calculated to embarrass, humiliate, vex and eventually force coerce.
3. The 2nd respondent opposed the application on the following grounds:



- a. The applicant did not demonstrate that the decision to charge him was illegal, irrational, malicious or ultra vires.
 - b. That the 1st respondent did not purport to prosecute the applicant.
4. Article 157 (6) of *the Constitution* of Kenya provides as follows:
- (6) The Director of Public Prosecutions shall exercise State powers of prosecution and may—
 - a. institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed;
 - b. take over and continue any criminal proceedings commenced in any court (other than a court martial) that have been instituted or undertaken by another person or authority, with the permission of the person or authority; and
 - c. subject to clause (7) and (8), discontinue at any stage before judgment is delivered any criminal proceedings instituted by the Director of Public Prosecutions or taken over by the Director of Public Prosecutions under paragraph (b).
5. The ODPP holds the exclusive authority to initiate criminal proceedings in the Republic of Kenya, except where *the Constitution* restricts this authority.
6. The applicant did not demonstrate that the criminal case pending in court at Engineer Law Courts was initiated by the Teachers Service Commission. He did not prove that the ODPP's decision to initiate the criminal proceedings in question was flawed, procedurally flawed, or illegal.
7. When a crime is alleged, as in the contested case, the Teachers Service Commission does not have the authority to prosecute or manage it internally. It seems that the applicant has misadvised himself. Granting the orders the applicant seeks would be an affront to justice.
8. The application is dismissed with costs.

DELIVERED AND SIGNED AT NYANDARUA THIS 2ND DAY OF APRIL 2025

KIARIE WAWERU KIARIE

JUDGE.

