



**Republic v Directorate of Criminal Investigations & another; Omumani
 (Exparte Applicant) (Judicial Review Application E160 of 2024)
 [2025] KEHC 4307 (KLR) (Judicial Review) (1 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4307 (KLR)

**REPUBLIC OF KENYA
 IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
 JUDICIAL REVIEW**

JUDICIAL REVIEW APPLICATION E160 OF 2024

RE ABURILI, J

APRIL 1, 2025

BETWEEN

REPUBLIC APPLICANT

AND

THE DIRECTORATE OF CRIMINAL INVESTIGATIONS 1ST RESPONDENT

THE DIRECTOR OF PUBLIC PROSECUTIONS 2ND RESPONDENT

AND

BONIFACE FRED OMUMANI EXPARTE APPLICANT

JUDGMENT

1. The ex parte Applicant before this Court is Boniface Fred Omumani. He was granted leave on 13th December 2024 to file the substantive Notice of Motion for judicial review orders. Subsequently, he filed his substantive motion dated 18th December 2024 seeking the following orders;
 - a. That an Order Of Certiorari be directed against the 1st Respondent by themselves, their servant, agents or employees or any officer acting under their authority to bring this Court for purposes of being quashed their decision to institute and or commence criminal proceedings, summon and or cause the Applicant to be summoned, charges or prosecuted in relation to the alleged offence of forgery of a Power of Attorney issued by Frank Ojiambo Wanyama & Mary Abene Ojiambo.
 - b. That an Order of Prohibition be directed against the officers of the 2nd Respondent by themselves, their servants, agents or employees or any officer acting under their authority from



charging of prosecuting the Applicant in relation to the alleged offence of forgery of a Power of Attorney issued by Frank Ojiambo Wanyama & Mary Abene Ojiambo.

- c. That the leave so granted do operate as stay against the institution, commencement, charge and or prosecution of the Applicant on a charge of Forgery of the Power of Attorney.
 - d. That costs of this application be provided for.
2. The application is predicate don the grounds on the face of the Notice of Motion and a supporting affidavit sworn by Boniface Fred Omumani, the exparte applicant.
 3. The Exparte Applicant's case is that the Interested Parties engaged him to find a buyer for their land (Mavoko Town Block 2/3816). He successfully facilitated the sale and paid them Kshs. 600,000/= Kshs. 700,000/= and Kshs. 800,000/= respectively, as part of the proceeds. It is his case that despite acknowledging receipt of the money and the Applicant's role, the Interested Parties later alleged that they never signed any transfer documents and claimed that the Power of Attorney used in the sale was forged. The interested parties then filed suit before the Environment and Land Court at Machakos which case was transferred to Mavoko ELC Court as Case No. 1 of 2023.
 4. The Exparte Applicant in response to these allegations, filed a Defence, attaching a Power of Attorney dated 27th July 2015 and registered at Machakos Lands Registry (P.A No. 1588/2015). This document allegedly granted him authority to source, negotiate, sell and negotiate, sign the Sale Agreement, Transfer, apply for the Consent from the Land Control Board among other transactions. It is also his case that the Interested Parties, however, did not reply to the Defence or deny having executed the said Power of Attorney.
 5. The Applicant highlights that while the civil matter was pending before the Machakos ELC and later transferred to Mavoko ELC Court as Case No. 1 of 2023, they repeatedly sought adjournments, preventing the hearing from proceeding.
 6. The Applicant further alleges that on 3rd December 2024 when the case was scheduled for hearing, officers from the 1st Respondent's Milimani Office stormed his lawyer's office to arrest him on charges of fraud based on the Interested Parties' complaint. He claims that this move was an attempt to weaponize the criminal justice system to intimidate him, given that the Power of Attorney in question was a central issue in the pending civil case.
 7. He further states that accompanied by his lawyer, they went to the DCI offices, where he was issued with summons to return on 16th December 2024. He maintains that these actions by the police are improper and unreasonable, arguing that the validity of the Power of Attorney is a matter best determined by the Environment and Land Court. He also challenges the jurisdiction of the DCI's Nairobi office to investigate a Power of Attorney registered in Machakos, where the civil land suit is ongoing.
 8. The Respondents, through a replying affidavit sworn by CPL. Lucas Juma, contend that they are investigating a genuine forgery complaint lodged by the Interested Parties, Frank Ojiambo Wanyama and Mary Abene Wanyama, lodged on 10th February 2023, through their advocates, Shabaan Associates LLP. The Interested Parties are said to allege that the Applicant forged the Power of Attorney and used it to sell their land (Mavoko Town Block 2/3816) to one Fatuma Yussuf Kurbale.
 9. It is the Respondents' case that the Interested Party had initially intended to sell the land to raise funds for Frank's medical treatment abroad and had engaged the Applicant to find a buyer. They identified one James Waweru Wahuti, who paid Kshs. 600,000/= upfront, with a balance of Kshs. 1,500,000/



- = pending. However, that upon returning from treatment, they discovered that the Applicant had allegedly used a forged Power of Attorney to sell the land to a different buyer without their consent.
10. The Respondents maintain that they have a legal duty under the *National Police Service Act* to investigate such complaints and that the mere existence of civil proceedings does not bar criminal investigations under Section 193A of the *Criminal Procedure Code*. They argue that their actions have been lawful, reasonable and fair, and that the Applicant has not demonstrated any procedural impropriety or abuse of power on their part.
 11. They further contend that the Applicant's failure to comply with the summons to appear on 16th December 2024 hindered the investigations, which remains incomplete, particularly pending forensic analysis of the allegedly forged Power of Attorney.

Parties' written submissions

12. The substantive Notice of Motion was canvassed by way of both written submissions and oral highlights. The ex parte Applicant filed written submissions dated 14th February 2025 while the Respondents' submissions are dated 12th February 2025.
13. In his submissions, the ex parte Applicant's counsel submits that this Honorable Court has jurisdiction to entertain this Judicial Review application under Section 8 of the *Law Reform Act* and Order 53 of the Civil Procedure Rules. Additionally, that the Court is empowered by Articles 23 & 165(6) of *the Constitution* of Kenya to review the decisions of any administrative authority including the Director of Criminal Investigations and Director of Public Prosecutions to ensure they comply with the law and principles of fairness.
14. According to the Applicant, in order for an Applicant to succeed in an application for Judicial review, the Applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety. Reliance was placed on the case of Republic v Director of Criminal Investigations & 2 others [2023] KEHC 24950 (KLR) where the court discussed the jurisdiction of the judicial review court.
15. The Applicant also submits that the 1st Respondent's attempt to arrest him without following due process that is issuing summons for him to appear before Milimani DCI offices was in violation of Article 47 of *the Constitution*. To support this position, he relies on the case of Dande & 4 others v Inspector General, National Police & 2 others (Civil Appeal 246 of 201 6) where the court is said to have observed that the police cannot arrest someone without following due process and without reasonable grounds for such an action stressing that failure to follow procedure may amount to an abuse of power.
16. It is submitted that the matter should not have been dealt with by criminal investigations unless the civil proceedings had concluded or unless the 1st Respondent had made an independent finding that there was sufficient evidence to warrant criminal action.
17. Further submission was that the Mavoko Environment and Land Court is a court of competent jurisdiction with authority to determine whether or not a power of attorney is fraudulent. It is also urged that the Respondents and the Interested Parties have not adduced any evidence or Letter from the National Land Commission or Ministry of Lands indicating that the Power of Attorney is fraudulent nor have they instituted any judicial review proceedings regarding the same.
18. Reliance was placed on the case of Thuo v Thuo & Another (Environment and Land Appeal E016 of 2021) [2023] KEELC 17255 (KLR) where after the Ministry of Lands revoked a Power of Attorney, prompting a judicial review case (Republic v Jane Nyambura Thuo [2021] eKLR), the Court quashed



- the revocation and reinstated the Power of Attorney. According to counsel for the Applicant, Ms. Chepnengo the Land Commission investigating a title ought to reach a determination whether the power of attorney was fraudulent or not and the applicant should seek for judicial review to revoke a power of attorney.
19. In conclusion, the Applicant submits that there is no sufficient evidence supporting the alleged forgery. He also submitted that although the Interested Parties were served, they did not comply with this court's directions. He urges the court to not allow the Interested Parties to treat this court's directions as mere suggestions.
 20. The Respondents in both their written and oral submissions contend that they have not acted outside the law as the police have a duty to detect, investigate and apprehend the offenders. Further, that there are no clear particulars that have been given by the Applicant demonstrating any wrongdoing on their part. It is the Respondents' submission that the police acted on a genuine complaint lodged hence they acted reasonably, fairly and lawfully.
 21. According to the Respondents, the police investigations focuses on verifying whether the complainants, Frank and Mary Wanyama, had indeed authorized the Applicant to transfer their land through the Power of Attorney, as the Applicant claims. However, that the investigation cannot proceed effectively unless the Applicant cooperates with the police to clarify this matter and this cannot be done if this Court issues the orders sought in the application.
 22. The Respondents rely on the cases of Republic v Public Procurement Administrative Review Board & another Ex parte Intertek Testing Services(EA) Pty Limited & Authentix Inc; Accounting Officer, Energy and Petroleum Regulatory Authority & another [2022] KEHC 1135 (KLR) and Municipal Council of Mombasa -Versus- Umoja Consultants Ltd [2002] eKLR where the courts set out the grounds upon which judicial review orders may be issued.
 23. Counsel for the Respondents Mr. Maatwa submitted that the court is being asked to do a merit review whether the actions of the Respondents are within the law.
 24. Reliance is also placed in the case of Republic -Versus- County Government of Kiambu Exparte Robert Gakuru & Another [2016] eKLR where the court observed that certiorari, prohibition, and mandatory orders are discretionary remedies and that the court has broad discretion in deciding whether to grant relief and, if so, in what form. The court also held that it considers the Applicant's conduct and may deny relief if the Applicant's behavior is deemed improper.
 25. The Respondents also urge that it's clear that besides the court considering the procedural propriety of the decision, legality, rationality and proportionality of the decision it should be noted that the grant of the orders is not as of right to the Applicant, the grant of the orders being subject to the discretion of the court. Further, that the existence of a civil dispute cannot prevent the police from investigating and prosecuting a suspect in respect of a related criminal complaint.
 26. It is the Respondents' submission that the investigator summoned the ex parte Applicant who sought more time to attend but ended up filing the application before this court. Mr. Mattwa submitted that the police were in the process of carrying out forensic investigations which are incomplete.
 27. It is also submitted that once investigations are completed, a decision shall be made by the 2nd Respondent on whether there is sufficient evidence to mount criminal proceedings against the Applicant. It is also their case that all through the processes, there is sufficient mechanism inbuilt within the criminal justice system to ensure that the Applicant has been treated fairly, procedurally and that his constitutional rights and freedoms are protected.



28. The Interested Parties did not file and serve their responses and submission by the time the matter was before court for highlighting of submissions. they were however represented by counsel who supported the position taken by the ODPP and were granted leave to participate in the highlighting of submissions by submitting on any points of law raised by the Applicant.
29. In her submissions, Ms. Wangui counsel for the Interested Parties associated herself with the response and submissions by the respondents. She submitted that the pending ELC civil dispute does not bar institution of a criminal case and to support this position, counsel relied on the case of James Mutisya & 5 Others v Alpayo Chimwanga Munala & 2 others[2021] eKLR where the court held that the existence of a civil case does not bar institution or continuation of criminal charges.
30. Counsel also submitted that as the application is merely grounded on existence of a civil suit, the same should be dismissed as it is not grounded on the law.

Analysis and Determination

31. I have considered the Applicant's Notice of Motion, the grounds, the statement of facts and affidavit in support. I have also considered the Respondents' response and the submissions by all parties on record, supported by respective statutory and judicial pronouncements.
32. The issue for determination is whether the application has merit and what orders this court should make.
33. It is important to mention that the applicant's challenge came at a time when the DCI had received a complaint from the interested parties to investigate alleged forgery of a Power of Attorney which was allegedly used to transact and transfer the land belonging to the Interested Parties, to other third parties by the applicant. The applicant does not deny using the Power of Attorney to carry out the transactions, He claims that the Power of Attorney was not forged. He also claims that there is a pending land case where the interested parties are challenging that Power of Attorney hence the respondents should not interfere. Instead, they should let the Land Court determine whether the Power of Attorney was forged or not, before the respondents can investigate.
34. The National Police Service and the Office of Director of Public prosecutions (ODPP) have constitutional and statutory mandates and powers to respectively investigate and prosecute crimes. However, these powers have to be exercised within the limits of the law and *the Constitution*, as has been judicially noticed and pronounced. A key consideration is whether these institutions act lawfully and fairly in specific cases. Thus, the criminal justice process includes safeguards to ensure fair trials, as outlined in Article 50 of *the Constitution*.
35. In the instant case, the Applicant has not yet been arrested or charged, but if arrested, he is entitled to the constitutional guarantees and protections under Article 49. If charged, his rights under Article 50(2) will automatically crystallize, with the prosecution bearing the burden to prove its case against him and allowing him a fair opportunity to defend himself in court. He will at all times remain innocent until proved guilty.
36. From the pleadings, the Applicant was summoned and notified by the 1st Respondent that there was a complaint of forgery of a Power of Attorney made by Frank Ojiambo Wanyama and Mary Abene Ojiambo the uncle and aunt of the Applicant and that the two complainants had reasons to believe that he had some information which could assist with investigations. The summons were received by the Applicant on 3rd December 2024 at 18.34hrs and he was required to appear before the 1st respondent's officer Lucas Juma at the DCI headquarters on 16th December 2024 at 0900hrs.



37. I have read the complainants' report as booked by the police. The complaint is that of forgery of a Power of Attorney. It is therefore upon the police to investigate that complaint by recording statements of witnesses and also notifying the Applicant who the complainants claim may have relevant information to give his side of the story, for the police to make a decision whether to prefer any charges or not in consultation with the 2nd Respondent, and in view of the pending land case before the ELC at Mavoko.
38. Over time, Courts have held the view, which view is no doubt correct, that they ought not to usurp the constitutional mandate of the Respondents to investigate crimes and initiate criminal proceedings respectively, provided the same is done in a justifiable manner. This position was adopted in the case of Michael Monari & Another v Commissioner of Police & 3 Others, Misc. Application No. 68 of 2011. The 1st Respondent being an independent institution established under *the Constitution*, the Court can only interfere with or interrogate their actions where there is threatened or actual violation of rights and freedoms guaranteed by *the Constitution* or contravention of *the Constitution*.
39. In Paul Ng'ang'a Nyaga v Attorney General & 3 Others [2013] eKLR, it was held that:
- “... this court can only interfere with and interrogate the acts of other constitutional bodies if there is sufficient evidence that they have acted in contravention of *the Constitution*.”
40. Further, in Leonard Otieno v Airtel Kenya Limited [2018] eKLR, the Court further rendered itself as follows:
- “It is a fundamental principle of law that a litigant bears the burden (or onus) of proof in respect of the propositions he asserts to prove his claim. Decisions on violation of constitutional rights should not and must not be made in a factual vacuum. To attempt to do so would trivialize *the Constitution* and inevitably result in ill-considered opinions. The presentation of clear evidence in support of violation of constitutional rights is not a mere technicality; rather, it is essential to a proper consideration of constitutional issues.”
41. The Applicant alleges violation of his constitutional right as envisaged under Article 47 of *the Constitution* 2010 which provides for Fair Administrative Action. It is his case that the 1st Respondent attempted to arrest him without following due process, that is, that issuing summons for him to appear before Milimani DCI offices was in violation of Article 47.
42. I note from the court record that the Applicant acknowledged receipt of the summons to appear issued by an officer of the 1st Respondent on the same date he claims that the 1st Respondent attempted to arrest him. No evidence has been adduced before this court of the Applicant's arrest and if anything, he clearly states that together with his counsel, they visited Milimani DCI Offices to establish the nature of allegations levelled against him, which is a clear indication that he was never arrested or at all.
43. The 1st and 2nd Respondents, the National Police Service through the directorate of criminal investigations and its officers draw their authority to investigate from Article 245 of *the Constitution* and Section 35 of the *National Police Service Act*. Under Sections 24 and 35 of the *National Police Service Act*, 2013, the functions of the police include undertaking investigations, apprehending offenders as well as detecting and preventing crime. In the exercise of its powers of investigation and arrest, the Respondents are functionally independent and can only take directions to investigate from the 2nd Respondent.
44. The above position is amplified by the Court of Appeal's decision in Lalchand Fulchand Shah v Investments & Mortgages Bank Limited & 5 others [2018] eKLR citing the Supreme Court of India



decision in *State of Maharashtra & Others v Arun Gulab & Others*, Criminal Appeal No. 590 of 2007, where the Court stated:

“The power of quashing criminal proceedings has to be exercised very sparingly and with circumspection and that too in the rarest of rare cases and the Court cannot be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of allegations made in the F.I.R./Complaint, unless the allegations are so patently absurd and inherently improbable so that no prudent person can ever reach such a conclusion. The extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction to the Court to act according to its whims or caprice. However, the Court, under its inherent powers, can neither intervene at an uncalled for stage nor can it soft-pedal the course of justice at a crucial stage of investigation/proceedings. The provisions of Articles 226, 227 of *the Constitution* of India and Section 482 of the Code of Criminal Procedure, 1973 (hereinafter called as “Cr.P.C.”) are a device to advance justice and not to frustrate it. The power of judicial review is discretionary; however, it must be exercised to prevent the miscarriage of justice and for correcting some grave errors and to ensure that esteem of administration of justice remains clean and pure. However, there are no limits of power of the Court, but the more the power, the more due care and caution is to be exercised in invoking these powers.”

45. In *Bernard Mwikya Mulinge v Director of Public Prosecutions & 3 others* [2019] eKLR, the High Court, Odunga J (as he then was) expressed itself as follows: -

“As has been held time and time again, the Court ought not to usurp the Constitutional mandate of the Director of Public Prosecutions (DPP) to investigate and undertake prosecution in the exercise of the discretion conferred upon that once under Article 157 of *the Constitution*. The mere fact therefore that the intended or ongoing criminal proceedings are in all likelihood bound to fail, is not ipso facto a ground for halting those proceedings by way of judicial review since judicial review proceedings are not concerned with the merits but with the decision making process. An applicant who alleges that he or she has a good defence in the criminal process ought to ventilate that defence before the trial court and ought not to invoke the same to seek the halting of criminal proceedings undertaken bona fides since judicial review court is not the correct forum where the defences available in a criminal case ought to be minutely examined and a determination made thereon...”

46. The Court in *Kipoki Oreu Tasur v Inspector General of Police & 5 Others* [2014] eKLR stated that:

“The criminal justice system is a critical pillar of our society. It is underpinned by *the Constitution*, and its proper functioning is at the core of the rule of law and administration of justice. It is imperative, in order to strengthen the rule of law and good order in society, that it be allowed to function as it should, with no interference from any quarter, or restraint from the superior Courts, except in the clearest of circumstances in which violation of the fundamental rights of individuals facing trial is demonstrated...”

47. In *Republic v Commissioner of Police and Another ex parte Michael Monari & Another* [2012] eKLR the Court held that:

“... 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...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....”

48. The above decisions reiterate the Respondents’ duty to conduct investigations into complaints and subsequently, if there is enough evidence, to charge the person accused of the offence. It is this court’s humble opinion that the 1st respondent in summoning the Applicant was acting within its mandate as provided under *the Constitution* and the law.
49. In his application, the Applicant also claims that the pending civil suit at the Environment and Land Court at Mavoko Law Courts precludes the institution of criminal investigations on the same subject matter. He argues that the 1st Respondent’s actions amount to usurping the jurisdiction of the Environment and Land Court.
50. However, Section 193A of the *Criminal Procedure Code* expressly provides that the existence of civil proceedings does not bar the institution or continuation of criminal proceedings based on the same facts. This court in the case of *Oloo v Director of Public Prosecutions* [2022] KEHC 14841 (KLR) observed as follows:

“Under section 193A of the *Criminal Procedure Code*, a civil suit is not a bar to criminal proceedings. In *James Mutisya & 5 others v Alphayo Chimwanga Munala & 2 others* [2021] eKLR it was held that:

“Firstly, that the fact that there exist civil proceedings emanating from the same subject matter is not a bar to institution and continuation of criminal proceedings. This is the dictate of section 193 A of the *Criminal Procedure Code* (Cap 75) Laws of Kenya it provides thus:

“Notwithstanding the provisions of any other written law the fact that any matter in issue in any criminal proceedings is also directly and substantially in issue in any pending civil proceedings shall not be a ground for any stay, prohibition or delay of the criminal proceedings...”

As rightly submitted by the claimants, criminal and civil proceedings can run concurrently. We agree with the Holding of the court in the case of *Alfred Lumiti Lusiba v Pethad Pank Shantilal & 2 others*[2010] eKLR that:

“...The conclusion that one can draw from section 193 A of the Civil Procedure Code together with the decisions of the learned Judges in the aforementioned cases is that both civil and criminal jurisdiction can run parallel to each other and that neither can stand in the way of the other unless either of them is being employed to perpetuate ulterior motives or generally to abuse the due process of the court in whatever manner..”

“We could not agree more with the holding of the court in the *Alfred Lumiti Lasiba* case above. These are civil proceedings governed by civil procedure rules and also different evidential and legal standards. On the other hand, Criminal Case No. 2066/18 is governed by the *Criminal Procedure Code* with a different set of evidential standard and outcome. While the central component of both cases is guarantorship, the legal burden of proof is totality different in both cases. It cannot this be said that these proceedings a sub-judice the criminal proceedings. We thus do not find merit in the notice of preliminary objection and the application dated January 23, 2020.”

Further in the case of *Alfred Lumiti Lusiba v Pethad Pank Shantilal & 2 others* [2010] eKLR, the court held that:



“The law is clear that the pendency of a civil suit is not a bar to criminal proceedings; it acknowledges the fact that the trial of the tortfeasor in a criminal prosecution need not be affected by the pending civil action against him. It is implied, therefore, that a civil suit cannot be stayed because of the prosecution of the tortfeasor for the obvious reason that the cause of action is neither rooted in the prosecution of the tortfeasor nor in his subsequent conviction... The conclusion that one can draw from section 193A of the Criminal Procedure Code together with the decisions of the learned judges in aforementioned cases is that both civil and criminal jurisdictions can run parallel to each other and that neither can stand in the way of the other unless either of them is being employed to perpetuate ulterior motives or generally to abuse of the process of the court in whatever manner. The upshot of this discussion is that the learned magistrate misdirected herself on law by staying the civil case against the respondents on the ground that the case was based on a judgment which was a subject of an appeal that was pending for determination. I find merit in the appellant’s appeal and I hereby allow it. The appellant will also have the costs of the appeal.”

51. I reiterate that the Respondents have a statutory duty under the National Police Service Act to investigate criminal complaints, and the Director of Public Prosecutions (DPP) has the mandate to determine whether to prosecute based on the evidence gathered. The mere existence of a civil dispute does not deprive the Respondents of their lawful mandate. To determine otherwise, as invited by the applicant, would set a dangerous precedent that flies in the face of the law. In other words, this court cannot determine that because there is a pending civil case, then criminal investigations mounted would amount to usurping powers or jurisdiction of the Court.
52. It is trite that in criminal cases, the burden of proof rests on the prosecution, and the standard of proof is that of beyond reasonable doubt, unlike in civil cases where, whereas the burden of proof lies on the person who alleges, the standard of proof required is on a balance of probabilities. Further, even if a person accused of committing an offence is tried and acquitted of criminal charges, a civil court can still make a finding that on a balance of probabilities, the defendant is liable.
53. The high threshold in criminal cases ensures that no one is convicted unless there is near certainty of guilt. Conversely in civil cases the burden is lower, requiring the plaintiff to prove their case on a balance of probabilities. This means that the outcome of a civil case might not necessarily dictate the outcome of related criminal investigations.
54. What this means is that although the civil/ Land Court may resolve the issue of the Power of Attorney based on the balance of probabilities, the criminal investigation requires a higher evidentiary threshold and if the 1st Respondent’s investigation lacks sufficient forensic or documentary evidence to meet the criminal standard, the Applicant’s fears may be mitigated. However, until that threshold is tested, dismissing the investigations as lacking foundation would be premature.
55. The Applicant has also argued that the 1st Respondent’s attempt to arrest him without issuing proper summons violated his right to fair administrative action under Article 47 of the Constitution. He relies on the case of *Dande & 4 Others v Inspector General, National Police & 2 Others* (Civil Appeal 246 of 2016), where the court emphasized that due process must be followed in any arrest or investigation.
56. The Respondents, however, contend that they summoned the Applicant to the DCI offices and this was obviously an opportunity for him to respond to the allegations or complaint raised by the interested parties/ complainants. The Respondents also maintain that the investigations are still ongoing and that the Applicant’s failure to cooperate has hindered the process of investigations.



57. Judicial review remedies are discretionary and may be denied even where grounds for their issuance exist if the Applicant's conduct is improper or if granting the orders would hinder the proper administration of justice.

58. This court in the case of Republic v Nairobi City County & another Ex parte Hema Virendra Kashyap [2016] KEHC 1089 (KLR) observed as follows;

“In Republic v Judicial Service Commission Exparte Pareno [2004] 1 KLR 203-209, the court was categorical and I agree that:

“Judicial Review orders are discretionary and are not guaranteed and hence a court may refuse to grant them even where the requisite grounds exist since the court has to weigh one thing against the other and see whether or not the remedy is the most efficacious in the circumstances obtaining and since the discretion of the court is a judicial one, it must be exercised on the evidence of sound legal principles....”

Although this court is alive to the fact that Judicial Review remedies are now anchored in *the Constitution* at Article 47 and the provisions of the *Fair Administrative Action Act*, 2015, the court has not been shown how and what specific the provisions of *the Constitution* and of the *Fair Administrative Action Act* have been breached in charging the ex parte applicant.”

59. In this case, the Applicant has not demonstrated that the ongoing investigations are driven by malice, bad faith, or ulterior motives. On the contrary, the Respondents have shown that they are acting on a genuine complaint lodged by the Interested Parties and are conducting the investigations lawfully.

60. In the end, I find and hold that there is no evidence that the Respondents acted illegally, unprocedurally or irrationally or beyond their constitutional or statutory mandate when they summoned the applicant. I am satisfied that the respondents acted within their mandate and followed due process by summoning the Applicant to interrogate him over the alleged forgery and in any event, the applicant remains innocent until proven guilty therefore he is under no duty to record a statement or to incriminate himself.

61. Therefore, the Applicant having failed to demonstrate that the Respondents' actions are illegal, irrational, or procedurally improper, or that the intended investigations are motivated by ulterior motive, I find the Notice of motion dated 18th December, 2024 to be devoid of merit. It is hereby dismissed with no orders as to costs.

62. The file is closed. Orders accordingly.

DATED, SIGNED, AND DELIVERED VIRTUALLY AT NAIROBI THIS 1ST DAY OF APRIL 2025

R.E. ABURILI

JUDGE

