



**Gabre v National Police Service & 2 others; Republic (Interested Party) (Judicial Review Application E139 of 2025) [2025] KEHC 7278 (KLR) (Judicial Review) (26 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7278 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
JUDICIAL REVIEW APPLICATION E139 OF 2025  
RE ABURILI, J  
MAY 26, 2025**

**BETWEEN**

**JUMA YAYO GABRE ..... APPLICANT**

**AND**

**NATIONAL POLICE SERVICE ..... 1<sup>ST</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**INSPECTOR-GENERAL OF THE NATIONAL POLICE SERVICE .... 3<sup>RD</sup>  
RESPONDENT**

**AND**

**REPUBLIC ..... INTERESTED PARTY**

**RULING**

1. The application by way of chamber summons dated 22/5/2025 is not certified urgent. On whether leave to apply for Judicial Review orders of Declaration, mandamus and prohibition should issue, I observe that the applicant claims that the Respondents intend to arrest him in connection with the pending case pending before the Environment and Land Court relating to property LR No. 15400/497 (Grant No. I.R. 112111/2), as shown by the pleadings in Milimani CM ELC E341/2025.
2. Albert the applicant also claims that he does not know and that he has not been informed or given the reasons why the police want to arrest him in connection with the civil case pending in court, the annexed pleadings in the civil land case speak for themselves. They show that the applicant is the defendant in the said civil suit and the plaintiff is Patson Patrick Kariuki Njagi, who has sued the applicant herein for trespass, forcible entry and or conversion and destruction of property on the aforesaid land.



3. That being the reason, the applicant cannot claim that he does not know why the police want to arrest him yet at the same time he knows that the threatened arrest is in connection with the land issue and the pending civil suit.
4. The leave sought is discretionary and this court must be satisfied that an arguable prima facie case is disclosed before leave can issue under Order 53 of the Civil Procedure Rules.
5. This Court cannot, except where there is prima facie evidence of malice, bad faith, illegality or procedural impropriety, attempt to stop the National Police Service from receiving and acting upon complaints of complainants as it is their statutory and constitutional mandate to receive complaints and investigate to establish whether any offence has been committed before submitting their file to the ODPP for advice and directions on whether the suspect should be charged in court. The fact that there is a civil matter pending in court does not preclude the police from investigating where a complaint is lodged.
6. I reiterate that the existence of a civil dispute does not ipso facto give a reason for halting criminal investigations. The purpose of criminal proceedings is not to help individuals settle civil scores but to maintain law and order. Section 193A of the *Criminal Procedure Code* stipulates that:
 

193A. Concurrent criminal and civil proceedings

Notwithstanding the provisions of any other written law, the fact that any matter in issue in any criminal proceedings is also directly or substantially in issue in any pending civil proceedings shall not be a ground for any stay, prohibition or delay of the criminal proceedings.
7. On the other hand, the police are entitled to investigate complaints lodged even if a parallel civil case exists. Therefore, except in very exceptional circumstances such as clear abuse of process, malice and absence of prima facie criminal element in the complaint, criminal investigations or even criminal proceedings cannot be stopped.
8. Article 245(4) (a) of the *Constitution* provides for the independence of the police in carrying out investigations and unless it is established at this stage that the criminal process is being used for ulterior purposes, to achieve improper motives or to subvert the civil process, the court shall not interfere.
9. Once an applicant invokes Order 53 of the *Civil procedure Rules* seeking leave to apply for judicial review orders, then the application is subjected to the process of eliminating at an early stage any applications for judicial review which are either frivolous, vexatious or hopeless, to ensure that the Applicant is only allowed to proceed to substantive hearing if the court is satisfied that there is a case fit for further consideration.
10. This process is intended to prevent the time of the court being wasted entertaining trivial complaints or administrative error; and to remove the uncertainty in which public officers and authorities might be left as to whether they could safely proceed with administrative action while proceedings for judicial review of it were actually pending even though misconceived. This reason for leave was discussed in the case of *Republic v County Council of Kwale & another ex parte Kondo & 57 others*, Mombasa HCMCA No. 384 of 1996.
11. Therefore, although in judicial review, the threshold for obtaining leave to commence is low and obtaining leave is not in itself evidence of a strong case, in order to obtain leave to commence judicial review proceedings, an applicant must show that he has an arguable case.
12. In the instant case, and from the analysis that I have given above on why the applicant is before this court, this court is not satisfied that the application meets the threshold of an arguable prima facie case,



for leave to apply to be granted. I decline to grant the leave sought and dismiss the application dated 22/5/2025 with no orders as to costs.

13. Ruling to be uploaded.

14. This file is closed.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 26<sup>TH</sup> DAY OF MAY, 2025**

**R.E. ABURILI**

**JUDGE**

