



**Republic v Director of Public Prosecutions; Mururu (Exparte Applicant) (Judicial Review Application E123 of 2024) [2025] KEHC 7397 (KLR) (Judicial Review) (26 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7397 (KLR)

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

**JUDICIAL REVIEW APPLICATION E123 OF 2024**

**RE ABURILI, J**

**MAY 26, 2025**

**IN THE MATTER OF: ARTICLES 23,25,27,50,157  
AND 165 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF: SECTIONS 4 & 5 OF THE OFFICE  
OF DIRECTOR OF PUBLIC PROSECUTIONS ACT**

**AND**

**IN THE MATTER OF: ORDER 53 OF THE CIVIL PROCEDURE RULES**

**AND**

**IN THE MATTER OF SECTIONS 8 & 9 OF THE LAW REFORM ACT**

**AND**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW  
ORDERS OF CERTIORARI AND PROHIBITION DIRECTED TO  
THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTION**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... RESPONDENT**

**AND**



JUDGMENT

1. The Notice of Motion dated 1<sup>st</sup> October, 2024 filed by the applicant Howard Mugambi Mururu seeks judicial review orders of Certiorari to remove into this court and quash the decision of the Director of Public Prosecutions (DPP) to charge and prosecute the applicant herein Howard Mugambi Mururu in Milimani CM's Court Criminal Case No. E834 of 2024 with the offences of conspiracy to defraud under Section 317 of the *Penal Code*, obtaining registration of the said land by false pretenses and malicious damage to property. The applicant also prays for judicial review orders of prohibition restraining the DPP from proceeding with the said criminal charges.
2. The application is supported by the statutory statement, verifying affidavit and annexures thereto.
3. The said criminal charges arise from a transaction in which the Applicant allegedly acquired land parcel No. LR 13791/3 situate in Karen, from Mart Properties Limited, a registered company that the exparte applicant alleges was the lawful proprietor of the parcel in question.
4. The Applicant claims that the decision to prosecute him is unlawful, irrational and procedurally unfair and that it violates his rights under Articles 47 and 50 of *the Constitution*. He asserts that the dispute is purely civil in nature and that therefore, any criminal charges are a misuse of the criminal justice system. That he has already filed a civil suit against the complainant in the criminal case, who is the interested party herein and that therefore the criminal proceedings are unwarranted against him.
5. According to the Applicant, he purchased the suit land LR NO. 13791/3/situate within Karen plains from Mart Properties Limited at a consideration of Kshs 24 million, a company that was, at the time, the registered proprietor. He avers that a transfer was duly executed in his favour and that he became the registered owner upon payment of the agreed consideration in full. He annexes to his affidavit, sale agreement, CR 12 dated 21<sup>st</sup> July 2022 for the company that sold to him the land. He contends that the CR12 filed by the interested party was forged as it shows different shareholders of Mart Properties Limited, as being Taiwa Holdings Limited and Dinah Chelal, the latter being the interested party's wife.
6. The applicant claims that the correct CR12 is the one dated 22nd August 2022 indicating the registered owner of the said land was Mart Properties Limited whose directorship is Mariamu Wangechi Nguthiru and Robert Mwirigi Muthuri who both signed the transfer of land form which is annexed to his affidavit.
7. Further, that his registration as the proprietor of the said land at the lands registry remains intact since the complainant has no other document to prove ownership of the said land. That he obtained the title to the land procedurally, paid stamp duty and other applicable government fees over the same hence his title is sacrosanct and cannot be vitiated by wrangles over shareholding of the vendor company.
8. The applicant asserts that he is an innocent purchaser with no prior knowledge of fraud hence the criminal charges against him are misplaced, unjustified, malicious, ill conceived and an affront to the constitutional rights and liberties to the exparte applicant hence they should be stopped.
9. The applicant also claims that on 21<sup>st</sup> December 2022, he filed suit vide ELCC E429 of 2022 against Sammy Komen Mwaita and Taiwa Holdings Limited and 2 others.



10. Accordingly, the applicant maintains that having filed the civil suit, the DPP is acting in excess of its jurisdiction as there is no iota of criminal element in the case. That the decision by DPP is unreasonable and prejudicial to the exparte applicant by straining him financially and tarnishing his reputation in the eyes of the public.
11. The interested party, on the other hand, filed a replying affidavit sworn on 25<sup>th</sup> march 2025 contending that he is a Director in Taiwa Holdings Limited, which is one of the shareholders of Mart properties Limited and that fraudulent third parties used the Company to transfer the property to the applicant and that the Applicant was complicit in the fraudulent scheme, given that there is no credible evidence of full payment of purchase price, that there is no official seal of the government on the alleged title to the land issued to the applicant; that the transaction was allegedly completed at a suspiciously low purchase price; and that the transfer occurred under questionable circumstances.
12. That he lodged a complaint with the DCI when the applicant and his co accused persons went to the land in question and harassed and assaulted the caretaker and threatened to kill him by brandishing a gun at the caretaker despite the fact that the interested party was in occupation of the said land and had even availed materials ready for construction.
13. That a result of the complaint, investigations were conducted by the Directorate of Criminal Investigations (DCI), culminating in a decision by the DPP to charge the Applicant with the various offences as per the annexed chargesheet, including conspiracy to defraud.
14. The interested party annexed documents from the Business registration Services (BRS) to demonstrate that there was interference with the company register by third parties who purported to introduce new Articles of Association and new directors twice, into the shareholding of the company and used the fake directorship to transfer the title from Mart Properties Limited to the applicant herein. The interested party states that he learnt of the suspicious activities on the land in November, 2022.
15. That the applicant's fraudulent schemes are further reflected in the manner that he filed these proceedings clandestinely without enjoining the interested party, Mart properties or the applicant's co accused in the criminal proceedings in the hope that the criminal proceedings are prematurely terminated in order for him to continue his criminality; which actions, the interested party urges this court to deter.
16. It is also deposed that the applicant has threatened to use all means available to hold onto the land and its title and that whoever does not toe his line, including the police, this court will, with the use of his relatives in high places and public offices including the president of The Supreme court, be transferred to other jurisdictions. That he keeps dropping names of high public figures holding public offices threatening to force his way into the ownership of the suit property by buying everybody including judges of this Court to shield his fraudulent acquisition of the title to the land.
17. That in the event that the applicant believes that he lawfully and procedurally acquired the title to the land in question, then he should let the due process be followed without any fear as his innocence will be proven.
18. According to the interested party, the criminal case was ready for hearing and that the applicant had been furnished with all witness statements and documentary evidence to be relied on by the prosecution hence there shall be no delay in the prosecution of his criminal case.
19. That the initiation of the criminal charges against the applicant and his accomplices was procedurally done in a lawful manner as shown by the statement of the Investigating Officer annexed. That the applicant was interrogated and he recorded his statement before the charges were preferred against him



hence there was no irrationality hence the integrity of the judicial process should not be abused by terminating the criminal proceedings, noting that the civil proceedings are not a bar to the criminal proceedings.

20. The interested party urged this court to dismiss the application herein in the interest of fairness and justice.

### Submissions

21. Both parties' counsel filed written submissions to canvass the application. In his submissions dated 8<sup>th</sup> April 2025, the applicant frames three issues for determination.
- i. Whether the decision to charge the applicant is an abuse of the DPP's prosecution discretion
  - ii. Whether the dispute is civil in nature and therefore not amenable to criminal prosecution
  - iii. Whether the criminal charges violate the applicant's constitutional rights and principles of fair administrative action
22. On the first issue, it was submitted that the DPP must exercise its mandate under Article 157 of *the Constitution* independently but not arbitrarily and that he must be guided by public interest, the interests of administration of Justice and the need to prevent abuse of legal process. The applicant relied on R v DPP & 2 others Ex parte Chamanlal Vrajlal Kmani & 2 others [2015] e KLR where the court is said to have held, *inert alia* that where the court finds that the discretion to prosecute has been abused or used to achieve collateral purposes, it will not hesitate to intervene.
23. On the second issue, it was submitted that the criminal justice should not be invoked in matters which are civil in nature and that courts have frowned upon criminalizing civil disputes. He relied on R v Chief Magistrate, Milimani Chief Magistrate's Commercial Court and another and another Ex parte Patrick Ogola Onyango & Others [2018] e KLR where the court is said to have held that criminal process should not be used to settle scores or to achieve ends that are not criminal in nature. That if a party has a valid civil claim, the right forum is the civil court.
24. It was submitted that the applicant herein lawfully acquired the property and has been in possession of a registered title which is *prima facie* evidence of ownership under section 26(1) of the Land Registration Act hence the proper forum for the interested party to contest the sale is the civil court which he is already a party in HCC No. E429 of 2022.
25. On the third issue, it was submitted on behalf of the applicant that the decision to charge the applicant in the face of civil dispute which is ongoing without proper investigations violates the applicant's right to fair administrative action guaranteed by Article 47 of *the Constitution*. He relied on Githunguri v Republic [1986] KLR 1 where the Court of Appeal is said to have warned against prosecuting people merely to appease third parties or to pursue ulterior motives, where the dispute is civil.
26. That in this case, the prosecution of the applicant is intended to intimidate him and stifle his lawful claim to property which conduct violates Articles 49, 50 and 40 of *the Constitution*. The applicant maintained that he had established that the decision of the ODPP to charge him was irrational, malicious and abuse of the criminal process and his constitutional rights had been violated hence the application dated 1<sup>st</sup> October, 2024 should be allowed with costs.



27. On the part of the interested party, it was submitted, reiterating the depositions in the replying affidavit of Sammy Komen Mwaita and framing three issues for determination namely:
- i. Whether the respondent acted ultra vires and in violation of the applicant's constitutional rights
  - ii. Whether the ex parte applicant is entitled to the reliefs sought
  - iii. And who is to pay costs of the application.
28. On the first issue, and citing Article 157 of *the Constitution*, it was submitted that the DPP did not exceed its mandate when he preferred criminal charges against the applicant and his accomplices. Reliance was placed on the case of James Ondicho Gesami v Attorney General & others Petition No. 376 of 2011 where the court stated, inter alia:
- “... The DPP is at liberty to prefer charges against any party in respect of whom he finds sufficient evidence to prefer charges... In my view, requiring that the petitioner subjects himself to the normal criminal prosecution process mandated by law where he has all the safeguards guaranteed by *the Constitution* does not in any way amount to an attack on his human dignity in violation of his constitutional rights.”
29. It was submitted that the primary test of prosecutorial decisions is whether the material available meets the evidential and public interest threshold as was held in Mohamed Ali Swaleh v Director of Public Prosecutions & another HC Mombasa Pet 2 of 2027 where the court in that matter disallowed an application to stop investigations, and stated that the decision to prosecute depended on evidence collected and that once reasonable suspicion was established, that someone committed the offence, the person ought to be charged in a court of law.
30. Further reliance was placed on Rv AG Ex parte Kipngeno Arap Ngeny HC Civil Application No. 406 of 2001 which case underscores the principle that while the Attorney General had discretion in prosecuting criminal cases, such discretion must be exercised within lawful boundaries, and the courts have a role in ensuring that prosecutions are not commenced without proper factual foundation.
31. It was submitted that no malice, ulterior motive and or illegality had been demonstrated by the applicant to warrant interference with criminal proceedings facing the applicant and that the interested party had demonstrated that a fraud had been committed and that the applicant was very much aware of the communication from the office of Registrar of companies on the said fraud but had failed to disclose to this court the discovery that was made regarding interference with the register, which blatant abuse of legal process can only be redressed by way of criminal proceedings.
32. On allegations that the dispute was civil hence criminal proceedings should not be, mounted to resolve civil disputes, it was submitted relying on section 193 A of the criminal procedure Code which provides that concurrent criminal and civil proceedings are lawful, which section has been applied in several decisions of the Court including Maura Muigana v Stella Consult Limited & 2 others Const. Petition E033 of 202; Amir Lodges Ltd & another v Mohamed Omar Shariff & Another [2022] e KLR. It was therefore submitted that the existence of civil proceedings did not bar the initiation of criminal proceedings against the applicant as long as the latter is objective and the respondent acts within its mandate.
33. On whether the reliefs sought are available to the applicant, it was submitted relying on Paul Ngaga Nyaga v AG & 3 others [2013] e KLR where it was stated that the court can only interrogate and interfere with acts of the constitutional bodies if there is sufficient evidence that the body in question



acted in contravention of *the Constitution*. Further reliance was placed on R v *Bimenyimana (IP) Elmi & another Exparte applicants JR E040 of 2023*.

34. It was submitted that in this case, no evidence of violation of *the Constitution* had been availed and neither was any form of illegality or abuse of process established. Reliance was placed on the two cases of Peter Ngunjiri Maina v DPP & 2 Others [2017] eKLR and Sisi v & others v Republic [2016] eKLR which cases identified various scenarios that would require interrogation and warrant judicial review of the discretion of the DPP. It was submitted that in this case, the respondent acted meticulously, fairly and adhered to all procedural fairness before electing to charge the applicant with the relevant offences.
35. It was also submitted that matters of merit in the evidence to be adduced are better canvassed before the trial court and not through judicial review which is concerned with process and not merit. Reliance was placed on Michael Monari & another v Commissioner of Police Misc Appl 68 of 2011 and Francis Mbugua v the Commissioner of Police & 2 others Pet. 79 of 2012.
36. On costs, the interested party urged the court to award him costs in view of the fact that the application is an abuse of court process and to compensate the interested party for the trouble taken defending or prosecuting the case. He relied on R v Rosemary Wairimu Munene Exparte applicant &

#### DIVISION - Analysis and Determination

37. Having considered the respective parties' positions in this matter, the following issues arise for determination:
  - i. Whether the decision to prosecute the Applicant is amenable to judicial review;
  - ii. Whether the dispute is purely civil in nature, and thus unsuited for criminal prosecution;
  - iii. Whether the Applicant has demonstrated illegality, irrationality, or procedural impropriety, abuse of criminal process and or bad faith in the decision to prosecute him;
  - iv. Whether the reliefs sought be granted.
38. On whether the decision to prosecute the Applicant is amenable to judicial review, it is important to appreciate that the mandate of the DPP under Article 157(6) of *the Constitution* includes the power to institute and undertake criminal proceedings against any person before any court. This power is, however, subject to Article 157(11) which requires that the DPP exercises discretion in a manner that promotes public interest, the interests of justice, and prevention of abuse of legal process.
39. In Republic v Attorney General & Another Ex-Parte Kipng'eno Arap Ng'eny [2001] eKLR, a ruling rendered before the 2010 Constitution when the Attorney general was the Chief Prosecutor, the High Court addressed the issue of whether judicial review could be used to halt criminal proceedings. The court emphasized that the Attorney General, while having discretion in prosecuting criminal cases, must exercise this discretion within lawful boundaries and not arbitrarily. The court noted that if a criminal prosecution is commenced without a proper factual foundation, it may be suspect for ulterior motives or improper purposes.
40. Thus, while the Director of Public Prosecutions (DPP) holds the constitutional mandate to institute and undertake criminal proceedings as per Article 157(6) of *the Constitution*, this power is not absolute. The courts have the authority to intervene where it is demonstrated that the prosecution constitutes an abuse of the legal process, is based on improper motives, or violates constitutional principles.
41. In the cases cited below, which are the post 2010 decisions, the courts have discussed this issue and the circumstances under which they can interfere with the decision to prosecute by the DPP.



42. In *Republic v Director of Public Prosecutions & 2 Others; Ayoo (Exparte Applicant) (Judicial Review Miscellaneous Application E045 of 2022)* [2023] KEHC 23733 (KLR), the High Court emphasized that judicial review could be invoked to halt criminal proceedings if they are initiated for ulterior motives or constitute an abuse of the court process. The court held that the mere fact that a decision has been made to charge does not preclude judicial review if the prosecution is tainted with irregularities or improper purposes.
43. In *Njuguna S. Ndung'u v Ethics & Anti-Corruption Commission (EACC) & 3 Others* (Court of Appeal, 20 Dec 2018), the Court of Appeal reiterated that courts should not interfere with the DPP's discretion unless it is shown that the prosecution is an abuse of the court process or is being carried out in breach of constitutional rights. The court noted that a good defense in a criminal case is not, by itself, a ground for halting the proceedings. However, if the prosecution is being used to settle civil disputes or is based on improper motives, judicial review may be appropriate.
44. In *Jirongo v Soy Developers Ltd & 9 Others* (Petition 38 of 2019) [2021] KESC 32 (KLR), the Supreme Court held that while the DPP has the constitutional mandate to prosecute, this power must be exercised with regard to public interest, the interests of justice, and the need to prevent abuse of the legal process. The court emphasized that the judiciary has a role in ensuring that the DPP's discretion is not exercised arbitrarily or for improper purposes.
45. In *Saisi & 7 Others v Director of Public Prosecutions & 2 Others* (Petition 39 & 40 of 2019 (Consolidated)) [2023] KESC 6 (KLR), the Supreme Court reiterated that the DPP's discretion is not absolute and that courts may intervene where there is an abuse of the process. The court emphasized that the DPP must have regard to public interest and the interests of justice in exercising prosecutorial powers.
46. From the above precedents, the following principles emerge regarding judicial review of prosecution decisions:
  - i. Abuse of Process: Courts may intervene if the prosecution is initiated for ulterior motives, such as settling personal scores or advancing civil claims.
  - ii. Lack of Evidential Basis: If the prosecution is based on frivolous or insufficient evidence, it may be deemed an abuse of the court process.
  - iii. Violation of Constitutional Rights: Prosecutions that infringe upon constitutional rights, such as the right to a fair trial, may be subject to judicial review.
  - iv. Public Interest and Justice: The DPP must consider public interest and the interests of justice in deciding whether to prosecute
  - v. Courts do not interfere with prosecutorial discretion unless it is shown to be arbitrary, malicious, or made in bad faith.
47. From the above exposition, it is clear that the decision to prosecute the Applicant is amenable to judicial review, provided the applicant establishes certain parameters as stated above. as to whether the applicant has demonstrated that this court should quash the decision by DPP to prosecute him and to prohibit such prosecution over the allegations that he obtained title through conspiracy to defraud, the succeeding issues and analysis will determine.
48. Onto the issue of whether the dispute is purely of a civil nature and therefore unsuitable for criminal prosecution of the applicant herein, the applicant seeks to challenge the ongoing criminal proceedings, contending that the dispute is purely civil in nature and, therefore, unsuitable for criminal prosecution.



49. It is not in dispute that a civil suit was filed by the applicant before the Environment and Land Court, being ELC E429 OF 2022 against the persons that he believes are interfering with his right to the suit title to his property, the subject of the criminal proceedings.
50. However, Section 193A of the *Criminal Procedure Code* provides that:
- 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.
51. This provision permits the concurrent existence of civil and criminal proceedings arising from the same set of facts. However, it does not preclude judicial intervention where the criminal process is being misused to achieve collateral objectives. In *Kuria & 3 Others v Attorney General* [2002] 2 KLR 69, the Court held that a prosecution that is commenced in the absence of proper factual foundation or for extraneous purposes is oppressive and vexatious and that the Court ought to guard against the criminal process being used as a tool for settling civil disputes.
52. Similarly, in *Commissioner of Police & Director of Criminal Investigations Department v Kenya Commercial Bank & Others* [2013] eKLR, the Court emphasized that while the law (section 193A of the *Criminal Procedure Code*) allows the concurrent litigation of civil and criminal proceedings arising from the same issues, and while it is the prerogative of the police to investigate crime, the power must be exercised responsibly, in accordance with the laws of the land and in good faith.
53. These decisions underscore the principle that the mere existence of a civil dispute does not preclude criminal proceedings. However, where the criminal process is employed for purposes extraneous to the pursuit of justice, it may be deemed an abuse of process.
54. In this case, it is not disputed that the Applicant has a registered title. However, the circumstances under which that title was acquired are in dispute. The complainants allege fraud, and the DCI conducted extensive investigations revealing that individuals fraudulently altered the Companies Registry, unlawfully inserting themselves as directors of Mart Properties Limited where the interested party herein is a director in a shareholding company, Taiwa Holdings. Accordingly, the interested party has sufficient interest in this matter as joined. The suit property was then allegedly transferred to the ex parte Applicant through forged documents.
55. There is material evidence of a trail of alleged fraud, supported by documentation and witness statements filed in these proceedings and as to whether they make the applicant culpable, can only be determined by the criminal court, where the burden of proof lies on the prosecution to establish the guilt of the accused persons and the standard is beyond reasonable doubt.
56. In the said investigations, which this court cannot say are frivolous or vexatious on the face of it, the ex parte Applicant is directly implicated as the beneficiary of the alleged fraud and was charged jointly with two other individuals for various offences as per the charge sheet annexed to his affidavit.
57. Surprisingly, neither of the co-accused nor the DCI who investigated the case have been joined in these proceedings, a fact the Court finds material. Additionally, the applicant omitted to join the company which he claims transferred the land to him and those he accuses of having perpetuated fraud to deny him his lawful legitimate title. In other words, he did not even find it necessary to join to these proceedings, the complainants in the criminal case or those he has sued in the ELC Case. It is quite telling that joinder of the interested party herein only occurred after the Court directed that the



complainant be heard, a factor which reinforces the inference that the application was filed with an intent to evade scrutiny.

58. Further, it is of concern that the ex parte applicant chose not to enjoin either the Directorate of Criminal Investigations (DCI) or the trial court currently seized of the criminal matter in which the applicant stands accused of conspiracy to defraud the complainant. These parties are not peripheral to the issues raised in the application; rather, they are central actors whose actions and decisions are directly implicated.
59. By omitting them from these proceedings, the applicant not only undermines the principles of fair hearing and procedural justice but also deprives the Court of a complete and balanced view of the dispute.
60. It is trite law that parties whose rights or obligations are likely to be affected by an order of the court must be afforded an opportunity to be heard. The failure to enjoin such necessary parties renders the application fatally defective and amounts to an abuse of the court process. This is so, because, the application appears to be a collateral attack on ongoing criminal proceedings without affording the trial court or investigative authority an opportunity to respond to the allegations or defend their processes.
61. It is for that reason that Order 53 Rule 3. (2) of the Civil Procedure Rules postulates that if the impugned proceedings sought to be quashed are before court, the trial court must be served with the substantive notice of motion. The rule reads as follows:

The notice shall be served on all persons directly affected, and where it relates to any proceedings in or before a court, and the object is either to compel the court or an officer thereof to do any action in relation to the proceedings or to quash them or any order made therein, the notice of motion shall be served on the presiding officer of the court and on all parties to the proceedings.

62. It follows that if the orders sought were to be granted, they would directly affect the court seized of the criminal proceedings as well as the ex parte applicant's co accused persons as contained in the charge sheet presented in this Court, yet that court and the co accused as well as the DCI who carried out investigations leading to the decision to charge have not been given opportunity to participate in these proceedings and be heard. DPP does not operate in a vacuum. Under Section 35 of the *National Police Service Act* and Section 28 of the ODPP Act, the Directorate of Criminal Investigations (DCI) is mandated to investigate offences and forward their findings to the DPP, who evaluates the sufficiency of evidence before instituting charges.
63. It is not the duty of this court to cox the applicant to comply with the provisions of Order 53 Rule 3 (2) of the Civil Procedure Rules as reproduced above which are in black and white. Order 53 Rule 3(2) is couched in such terms that the requirement to serve all persons who are directly affected by the proceedings or the ensuing orders is mandatory. That being the case, failure to serve that category of persons may render the application fatal.
64. Courts have consistently discouraged the use of judicial review to undermine criminal trials except in the clearest of cases involving jurisdictional overreach or abuse of process, see *Republic v Chief Magistrate's Court at Mombasa Ex Parte Ganijee & Another* [2002] 2 KLR 703.
65. Moreover, the ex parte Applicant has failed to annex the pleadings or documents from the alleged civil ELC case that he filed against third parties. There is no evidence of a plaint, verifying affidavit, defence or any court order. It would have been material for this court to be furnished with those pleadings



- to appreciate how they are framed and how, according to the *ex parte* applicant, the civil suit will adequately resolve the issues which are subject of the criminal proceedings hinged on fraud.
66. This court also notes that the applicant claims that he fully paid the consideration for the purchase of the land in issue. Notably, the *ex parte* Applicant has not provided any proof of purchase price paid for the suit land, to the vendor, Mart properties Limited, an affidavit from the directors of the seller company affirming the transaction; or any statement or affidavit from the advocate who allegedly received the purchase price from the *ex parte* applicant, as stakeholder and or transferred or remitted the said funds to the seller.
  67. In land transactions of this magnitude, one would expect formal documentation of not only sale agreements, but also money remittances to the seller and correspondence on how the transaction progressed until registration or transfer. The absence of such evidence leaves glaring gaps in the *ex parte* Applicant's case.
  68. In this case, the alleged lack of payment, the allegedly suspiciously low consideration, and the alleged use of a fraudulent vehicle company whose records are alleged to have been interfered with as per the filed statement by the Assistant Registrar of Companies, with the evidence suggesting the Applicant is the beneficiary of a fraudulent scheme involving the alleged illegal alteration of company and land records, I find no convincing evidence of bad faith or ulterior motives on the part of the DPP. In fact, there are strong public interest considerations in allowing the trial to proceed, as the case raises serious questions that may not be fully answered through civil proceedings alone.
  69. In my view, from the material placed before this court, it cannot be said that there is no legal basis for the prosecution of the applicant. There is also no evidence that due process was not followed or that the prosecution is in violation of the applicant's constitutional rights.
  70. Therefore, although the applicant claims that it is a property ownership issue, which should be resolved through the civil court now that he did file a case before the ELC, there is no evidence to suggest that the criminal proceedings were initiated with malice, ulterior or improper motive and not the purposes of the proper administration of justice. The mere fact that the parties are engaged in civil litigation does not, in itself, render the criminal proceedings inappropriate.
  71. There is also no evidence of abuse of court process or unfair prosecution and neither has the applicant adduced evidence to show that the decision to charge him was actuated by malice, based on non-existent evidence, or aimed at achieving an ulterior motive.
  72. In the absence of such evidence, and given the investigative findings pointing to a possible conspiracy, the court cannot interfere with the constitutional mandate of the ODPP merely because the Applicant believes he has a valid title and civil claim against the interested party and his affiliates.
  73. Therefore, onto whether the reliefs sought are available to the applicant, and while reiterating my earlier findings above, I find that the applicant has not met the threshold for quashing criminal charges facing him, I am not persuaded that he has done so. As stated in *Republic v Chief Magistrate's Court at Mombasa Ex Parte Ganijee & Another* [2002] 2 KLR 703, the mere fact that the Applicant has a good defence in the criminal process is not a ground for halting a criminal prosecution. The police or the DPP must be allowed to carry out their investigations and prosecute unless it can be shown that there is a clear abuse of the process.
  74. With the evidence pointing to a scheme of fraudulent dealings with public registries, and investigations tracing what appears to be unlawful entries in both the Companies Registry and the Lands Registry, and the *ex parte* Applicant being the beneficiary of this alleged fraudulent scheme, the court is satisfied



that there are prima facie grounds for prosecution, which this Court will not pre-empt by delving into factual disputes best left to the trial court.

75. I reiterate that the prosecution of the applicant is not shown to be an abuse of the court process or instituted for a purpose other than the vindication of criminal justice.
76. For those many reasons, I find that allowing the Applicant to avoid prosecution simply because he filed a civil suit against the interested party and others seeking eviction from the land he believes he has good title, would amount to shielding an accused person from answering serious criminal allegations, and this Court will not allow its processes to be used in that manner.
77. The interested party's allegations that the applicant has threatened to use all machinery and influence this court or the highest court of the land to ensure he retains the title is neither here nor there as this court cannot fall prey to such machinations which only tarnish the reputation of the court. I shall ignore the allegations knowing the oath office each one of us took in the service of the people of Kenya, without fear or favour.
78. I find and hold that the DPP acted within the lawful bounds of his constitutional and statutory mandate, the decision to prosecute was supported by reasonable suspicion and investigative findings and the Applicant has failed to demonstrate that the prosecution is in bad faith, unlawful, or an abuse of the court process.
79. My humble view, in this case, is that to quash the initiated criminal proceedings would amount to sanitizing impunity and stifling the truth-finding mission of the criminal justice process. The gaps in the Applicant's case can only be properly interrogated at the criminal trial, where evidence will be tested through cross-examination and other procedural safeguards.
80. Consequently, I find and hold that the judicial review reliefs sought cannot be granted. I find that the application dated 16<sup>th</sup> August, 2023 is devoid of merit and the same is hereby dismissed.
81. Each party shall bear their own costs of these proceedings.

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

**R.E. ABURILI**

**JUDGE**

