



**Republic v County Government of Kajiado & 3 others; Maxam Ltd  
(Exparte Applicant); Kabara (Interested Party) (Judicial Review Application  
E007 of 2021) [2024] KEHC 444 (KLR) (18 January 2024) (Judgment)**

Neutral citation: [2024] KEHC 444 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAJIADO  
JUDICIAL REVIEW APPLICATION E007 OF 2021**

**SN MUTUKU, J**

**JANUARY 18, 2024**

**IN THE MATTER OF ARTICLE 10, 22, 23, 40(1), (3), 47(1)  
201 AND 209(5) OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER FOR FAIR ADMINISTRATIVE ACTION ACT, 2015**

**AND**

**IN THE MATTER OF SECTIONS 8 AND 9 OF THE  
LAW REFORM ACT CAP 26 LAWS OF KENYA**

**AND**

**IN THE MATTER OF ALCOHOLICS DRINKS CONTROL ACT, 2020**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**COUNTY GOVERNMENT OF KAJIADO ..... 1<sup>ST</sup> RESPONDENT**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... 2<sup>ND</sup> RESPONDENT**

**THE OCS KISERIAN POLICE STATION ..... 3<sup>RD</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**MAXAM LTD ..... EXPARTE APPLICANT**

**AND**

**DESMOND KABARA ..... INTERESTED PARTY**



## JUDGMENT

### The Application

1. The Ex parte Applicant filed this Notice of Motion application dated 21<sup>st</sup> February 2021 anchored on various provisions of the law as shown on the face of the application seeking the following reliefs:
  - i. An Order of Certiorari do issue to remove into the Honourable Court and quash the decision of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to charge and prosecute the Interested Party herein in Ngong Criminal Case No. 1333 of 2021.
  - ii. An Order of Certiorari do issue to remove and bring to this Honourable Court for purposes of terminating, the prosecution of the Interested Party herein in Ngong Criminal Case No. 1333 of 2021.
  - iii. An Order of Prohibition do issue to prohibit the 1<sup>st</sup> Respondent from levying any licence fee for delivery of alcoholic goods by the ex parte applicant to its customers within Kajiado county.
  - iv. An Order of Prohibition do issue to prohibit the 3<sup>rd</sup> Respondent from impounding- the applicant's motor vehicle on account of lack of distributors Liquor Licence from the 1<sup>st</sup> Respondent.
  - v. That the leave so granted do operate as stay of the proceedings in Ngong Criminal Case No. 1333 of 2021 and the applicant be allowed to continue delivering its products to its customers without harassment by the 1<sup>st</sup> and 3<sup>rd</sup> Respondents pending the hearing and determination of the substantive Motion.'
  - vi. That costs of this application be provided for.
2. The ex parte applicant has stated in support of this application that it is an alcoholic beverages importer, stockiest, distributor and supplier with its primary offices and warehouses located in Nairobi County and with customers spread throughout the 47 counties in Kenya.
3. The Applicant owns a fleet of motor vehicles that are deployed all over the county to distribute its products to its customers. One such motor vehicle is registration number KBT 084T, a Tata Pick Up. The Interested Party was driving this motor vehicle while distributing alcoholic beverages to the applicant's customers on 16<sup>th</sup> October 2021 at Quickmart Kiserian when the Interested Party was arrested on allegations that he was distributing alcoholic drinks without distributors liquor licence of Kajiado County.
4. The Applicant stated that he has all the required licenses for its business issued by the County of Nairobi where its business is located and that it does not run business in Kajiado County and therefore does not require a licence issued by Kajiado County. The Applicant claims that to be required to obtain a distribution licence from Kajiado County when he already has one from Nairobi County would be double taxation and that its reading and understanding of the provisions of the *Alcoholic Drinks Control Act*, under sections 7 and 9 is that one does not require a distributors/delivering liquor licence to deliver products to customers from one county to another.
5. The Applicants asserts that it has complied with sections 7 and 9, above, in its operations and that having been issued with all the required liquor licenses by the Nairobi County Government where its



business is domiciled and given that it does not have a distribution premises within Kajiado County, it does not require another licence to supply or deliver its products to its customers in Kajiado County.

6. The Applicant has stated that on 16<sup>th</sup> October 2021, its driver the Interested Party, was delivering alcoholic products to customers including Quickmart Ltd Kiserian through Invoice No. IN248011 when the driver was arrested. The Applicant attached the invoices in respect to the deliveries the Interested Party was making on the material day and the licenses it had acquired for the purpose. It asserts that the 1<sup>st</sup> Respondent has no jurisdiction to levy tax to it since it is not domiciled in this County.

## Responses

7. The 1<sup>st</sup> Respondent filed Grounds of Opposition dated 31<sup>st</sup> October 2022 opposing the application. It is the case for the 1<sup>st</sup> Respondent that the application is fatally defective and lacks basis for the reason that the applicant has misdirected itself in regard to the National and County Alcohol Control Act; that the application lacks merit, is brought in bad faith, is vexatious, frivolous and an abuse of court proceed; that the grounds for granting the orders sought are not pleaded and that this court lacks jurisdiction to question the merits and demerits of the decisions of the 1<sup>st</sup> Respondent.
8. The 1<sup>st</sup> Respondent has stated that the applicant is seeking immunity from the law and is desirous of circumventing the law and acquiring lawful licenses to distribute alcohol from Kajiado County Government.
9. It is the case for the 1<sup>st</sup> Respondent that other alcohol distributors have taken requisite licenses to distribute alcohol in Kajiado County and the Applicant has not shown cause why it should be exempted from taking out such licenses as required by the law; that Schedule IV of *the Constitution* 2010 empowers the County Government of Kajiado to regulate liquor licensing and to issue trace licenses within its jurisdiction; that liquor permits and licenses issued to the Applicant in Nairobi County are not applicable in Kajiado County; that section 8(1) of the Kajiado County Alcoholic Control Act allows licensing under the Act and that the Applicant ought to apply for a licence.
10. The 1<sup>st</sup> Respondent asked this court to dismiss the application with costs.
11. The 2<sup>nd</sup> Respondent has not filed any response to the application despite service and acknowledgment of that service by stamping on it.
12. The 3<sup>rd</sup> and 4<sup>th</sup> Respondents filed Grounds of Opposition dated 27<sup>th</sup> October 2022 to the effect that the Applicant has not demonstrated the prejudices he will suffer in the ongoing prosecution in Ngong Criminal Case No. 1333 of 2021; that the 3<sup>rd</sup> and 4<sup>th</sup> Respondents made a decision to charge the Interested Party in accordance with the law; that the decision to charge the Interested Party is based on overwhelming evidence and therefore the trial court should be allowed to proceed with the matter and that the applicant has not demonstrated that the decision to charge the Interested Party is illegal, unfair or irrational.
13. It is further stated that the Applicant has not persuaded the court that the application raises serious issues worth the merits of a Judicial Review application; that it is in the interest of the public that complaints made are investigated and perpetrators of crimes be prosecutor and that the orders sought are therefore not tenable against the Respondents as the applicant has not shown how the criminal proceedings in Ngong Criminal Case No. 1333 of 2021 are unconstitutional and how the Respondents infringed the applicant's constitutional rights worth the orders sought.



## The Applicant's Submissions

14. The Applicant, the 1<sup>st</sup> Respondent, the 3<sup>rd</sup> and 4<sup>th</sup> Respondents have filed their submissions. The Applicants submissions are dated 24<sup>th</sup> October 2024. He has cited the provisions of the *Alcoholic Drinks Control Act* (the Act) 2010 sections 3, 7(1), 8(1) and 9 and submitted that under those provisions it is a requirement for every individual dealing with alcoholic products to first obtain the requisite licenses from the county where they intend to establish their business, which the applicant has done. That the Applicant does not operate businesses in other counties but deliver its products to other counties where its customers are based on order from. That it does not solicit for customers within Kajiado County but carries specific orders and delivers the same to specific customers and therefore it is illegal to levy a charge upon the Applicant for delivering specific goods ordered by its customers within Kajiado County.
15. It was submitted that the provisions of the law do not require an individual to obtain separate licenses to deliver alcoholic products from one county to another; that the Act does not require an independent licence to be issued by the 1<sup>st</sup> Respondent to enable the Applicant to deliver specific products to its customers within the jurisdiction of the 1<sup>st</sup> Respondent. That the Respondents misinterpreted the provisions of the Act in apprehending the Interested Party and charging him with the criminal offences. That courts must always apply the literal construction of *the constitution* and legislation and that constitutional and statutory bodies tasked with implementing the law must also apply the law as it is and must not seek to imply anything in them which is inconsistent with the words used.
16. On statutory interpretation, the Applicant cited *Mutugi Gateria Mugo v Judges and Magistrates Vetting Board & 2 others* [2018] eKLR and *P. Asokan v Western India Plywoods Cannanore* AIR 1987 KER 103. The Applicant urged to find that the 3<sup>rd</sup> Respondent in reaching a decision to charge the Interested Party misinterpreted the law in question and that the 2<sup>nd</sup> Respondent upon receiving the investigation file from the 3<sup>rd</sup> Respondent was under a duty to satisfy themselves that indeed an offence had been committed which they did not do. The Applicant cited *Republic v. Director of Public Prosecutions & 2 others: Evans Muriuki Kariuki (Interested Party) Ex Parte James M. Kahumbura* [2019] eKLR where the court stated as follows:

“It has never been the rule in this country that suspected criminal offences must automatically be the subject of prosecution. There must be sufficient evidence to mount a prosecution. the initial consideration in the exercise of this discretion is whether the evidence is sufficient to justify the institution or continuation of a prosecution. It is for the DPP to determine that the evidence presented is sufficient to justify a prosecution. A prosecution should not be instituted or continued unless there is admissible, substantial and reliable evidence that a criminal offence known to the law has been committed by the accused.”
17. It was submitted that this court has inherent powers to quash, stay or prohibit criminal proceedings; that these powers are discretionary but must be exercised to prevent the miscarriage of justice and for correcting some grave errors; that the criminal charges against the Interested Party have no legal justification and this court should terminate them.
18. It was submitted that the imposition of liquor licence fee against the Applicant by the 1<sup>st</sup> Respondent amounts to double taxation, curtails free movement of goods and prejudices national economic policies and activities across the counties; that the impounding of the Applicant's motor vehicle and the goods abode amounts to arbitral depriving the applicant and its customers their proprietary rights



over the said goods and contravenes Article 40(1) of *the Constitution*. The Applicant urged this court to find that the application is merited and grant the prayers sought.

### **The 1st Respondent's Submissions**

19. The 1<sup>st</sup> Respondent's submissions are dated 10<sup>th</sup> January 2022. Seven grounds have been identified for determination as follows:

#### **Whether the Ex parte Applicant was acting in contravention of the law**

20. The 1<sup>st</sup> Respondent cited the provisions of the law, from *the Constitution* 2010 Articles 209, 210, Part 2 of the Forth Schedule of *the Constitution* and sections 7, 8, 9, 11 and 12 of the *Alcoholic Drinks Control Act* 2010 and submitted that this Act only applies to persons intending to manufacture or otherwise produce any alcoholic drink and to persons who operate establishments for sale of alcoholic drinks within those premises and not to licensing of persons who distribute alcoholic drinks and especially not to persons who distribute alcoholic drinks across borders on a large scale such as the ex parte applicant.
21. It was submitted that the regulation of the manufacture, sale and distribution of alcohol is exclusively the function of the County Government by virtue of Schedule IV Part 2 (4) of *the Constitution* of Kenya; that the only licenses contemplated by the Act and Schedule 1 therein, are the brewers licenses, wholesale and retail licence, licenses that are only for the sale of alcohol within the premises where such licence is displayed; that the applicable law with regards to the licensing of the manufacture, sale and distribution of alcohol within Kajiado County is the Kajiado Couy *Alcoholic Drinks Control Act* 2014 as shown under section 8 of that Act; that the ex parte applicant has demonstrated that he has not taken out a licence to distribute alcoholic drinks within Kajiado County, thereby denying the county and its people their social, cultural and economic rights under Articles 43 and 44 of *the Constitution*.

Whether this application can terminate the charging and prosecution of Interested Party by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents

22. The 1<sup>st</sup> Respondent cited *Soy Africa Limited v. Inspector General of Police and 4 others* [2017] eKLR to stress the point that the court ought not to usurp the constitutional mandate of the DPP to investigate and prosecute a matter in the exercise of the discretion conferred upon that office and that the mere fact that the intended or ongoing criminal proceedings are in all likelihood bound to fail is not 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. It was submitted that the ex parte applicant is not one of the persons charged with the criminal offence he seeks to terminate and that whether the Interested Party was operating lawfully is a matter of defence in the trial court.

Whether the applicant ought to take out alcoholic drinks distributorship licenses within Kajiado County and whether taking out said licenses in two counties amounts to double taxation

23. The 1<sup>st</sup> Respondent cited *Okiiya Omtatah Okoiti v County Government of Kiambu* [2018] eKLR to emphasize the point that the effect of paragraph 4(c) of Part 2 of the IV Schedule of *the Constitution* was to devolve the entire licensing function and assign it to the county government and that the county level government, and not the national government, bears the constitutional mandate to make and enforce legislation for the control of alcoholic drinks. It was submitted that the payment of licensing fees in Kajiado County and Nairobi County, which are two different authorities and governing bodies, cannot amount to double taxation, which is defined in the following terms:

“To constitute ‘double taxation’ that tax must be imposed on the same property by same governing body during same taxing period and for same taxing purpose.”



Whether a judicial review court's mandate is to review the merit of a decision of an administrative body

24. The 1<sup>st</sup> Respondent submitted that this application is misplaced as it does not fall within the purview of judicial review and therefore it is misconceived. That for a judicial review application to succeed, it must demonstrate that the respondent has acted with illegality, irrationality and procedural impropriety which has not been done by the ex parte applicant. That the 1<sup>st</sup> Respondent acted within the law and therefore this court does not have a reason to intervene, and that the ex parte applicant has misdirected itself with regards to the law and therefore the application should be dismissed with costs. The 1<sup>st</sup> Respondent relied on *Kamau v Kenya Anti-Corruption Commission (2007) IEA 112* and *Municipal Council of Mombasa v. Republic & Umoja Consultants Ltd (Civil Appeal No. 185 of 2001)* on what constitutes judicial review proceedings.

### 3rd and 4th Respondents Submissions

25. The 3<sup>rd</sup> and 4<sup>th</sup> Respondents submitted on one issue:  
Whether the ex parte applicant is entitled to the judicial review orders sought.
26. It was submitted that the applicant has not demonstrated that this court should grant them the orders sought; that the 3<sup>rd</sup> Respondent, in making the decision to charge the Interested Party in Ngong Criminal Case No. 1333 of 2021, was acting within his mandate under section 24 of the *National Police Service Act* and that an order of Certiorari can only be issued if the 3<sup>rd</sup> Respondent acted outside the law. They relied on *Examination Council v Republic Ex Parte Geoffrey Gathenji & 9 others, Nairobi Civil Appeal No. 266 of 1996* where it was held that:
- “Only an order of Certiorari can quash a decision already made and order of Certiorari will issue if the decision is made without or in excess of jurisdiction, or where the rules of natural justice are not complied with or for such like reasons.....”
27. They submitted that the 3<sup>rd</sup> Respondent did not act in excess of its jurisdiction and neither was it in violation of any rules of natural justice and therefore the order of Certiorari is groundless and undeserved.
28. They submitted that the applicant has not demonstrated that he will suffer any prejudice if the criminal case proceeds. That the trial court is an impartial arbiter and should be given an opportunity to determine the matter on merit. They relied on *Republic v. OCS Nairobi Central Police Station & Others, Ex Parte Applicant: Sixtus Gitonga Mugo [2020] eKLR* where it was held that:
- “This Honourable Court is entitled to quash a criminal proceeding if it comes to the conclusion that allowing the criminal proceedings to continue would be an abuse of the court process or that the ends of justice require that the investigations or criminal proceedings ought to be quashed. This test has not been satisfied.”
29. They also relied on *Benjamin Kahindi Katana v Director of Public Prosecutions & 3 Others [2018] eKLR* and *Michael Monani & Another v The Commissioner of Police & 3 Others (UR)* and urged this court to allow the criminal proceedings to go on to enable the trial court to determine whether the Interested Party is guilty or not.
30. In regard to the prayer for the order of Prohibition, they submitted that this order can only be issued where there is an illegality or when a body acts in excess of jurisdiction. That in impounding the



applicant's motor vehicle, the 3<sup>rd</sup> Respondent was merely enforcing the law as required of him by the law and that the 3<sup>rd</sup> Respondent did not violate the law or the rules of natural justice in so acting. They relied on Kenya National Examination Council case cited above where the court states as follows:

“What does an Order of Prohibition do and when will it issue? It is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. It lies, not only for excess of jurisdiction or absence of it but also for a departure from the rules of natural justice. It does not, however, lie to correct the course, practice or procedure of an inferior tribunal or a wrong decision on the merits of the proceedings-see Halsbury's Law of England, 4<sup>th</sup> Edition, and Vol. 1 at pg 37 paragraph 128.”

31. They relied on *Pastoli v Kabale District Local Government Council & Others* (2008) 2 EA 300 and other authorities cited in their submissions to emphasize the submissions as to the threshold to be met by an applicant to satisfy the court to grant judicial review orders. They submitted that the applicant in this matter has not met that threshold and asked this court to dismiss the application with costs.

### **Analysis and Determination**

32. I have read the pleadings in this application, the submissions of the parties and the authorities cited. I understand the ex parte applicant to be saying that it was licensed to distribute alcoholic products in Kajiado County, and for that matter, any other county and that the law does not require it to obtain a licence from the Kajiado County Government to distribute these products in Kajiado County because that would amount to double taxation given that it already has a licence for that purpose from Nairobi County Government. In its submissions it has relied heavily on the *Alcoholic Drinks Control Act* 2010.
33. The Respondents are saying that there is a law in place in Kajiado County, the Kajiado County *Alcoholic Drinks Control Act* 2014, that regulates, inter alia, the distribution of alcoholic products within its borders and their actions in respect to this case were guided by this law and are within the law.
34. To my mind, the central issue for determination in this application is whether the ex parte applicant is entitled to the judicial review orders it is seeking. This issue summarizes the issues raised by all the parties.
35. Section 7 (1) of the *Alcoholic Drinks Control Act*, 2010, provides that:  
No person shall-
- a. Manufacture
  - b. Sell, dispose of or deal with
  - c. Import or cause to be imported, or
  - d. Export or cause to be exported, any alcoholic except under and in accordance with a licence issued under this Act.
36. Section 9(1) of the same Act provides that:  
A person intending to manufacture or otherwise produce any alcoholic drink in Kenya or to operate an establishment for the sale of an alcoholic drink shall make an application in a prescribed form to the District Committee in the district where the premises is to be situated and shall pay a prescribed fee (emphasis added).



37. It is my understanding that section 9 refers to a premises, or a plant, or an establishment in which to manufacture, produce or sale alcoholic drinks. The *Alcoholic Drinks Control Act*, 2010 provides an elaborate procedure under section 8 of the Act on what a person intending to operate as per section 9(1) of the same Act ought to follow to obtain a licence for that purpose.
38. On the issue of the ex parte applicant having obtained a licence to operate a warehouse in Nairobi as an importer and stockiest of alcoholic products, I agree with it that they are within the law as regards the operations of the premises in Nairobi. But then there is the distribution of alcoholic drinks within Kajiado County that is governed by the Kajiado County *Alcoholic Drinks Control Act* 2014. The applicant has totally ignored that this latter piece of legislation was in operation at the time of the events giving rise to this application. The applicant has not submitted on the existence of this county legislation and its provisions.
39. Part 3 of *the Constitution* of Kenya 2010 provides for the Functions and Powers of the County Governments. Articles 186 and 187 provide for the respective functions and powers of national and county governments and the transfer of functions and powers between levels of government. These provisions clearly speak to ‘the functions and powers of the national government and the county governments, respectively, are as set out in the Fourth Schedule’.
40. Schedule 4 on Distribution of Functions between the National Government and the County Government, at Part 2, the functions and powers of the County Governments are specified as regards this case as follows:
- 4. Cultural activities, public entertainment and public amenities, including—
    - (a) betting, casinos and other forms of gambling;
    - (b) racing;
    - (c) liquor licensing;
    - (d) cinemas;
    - (e) video shows and hiring;
    - (f) libraries;
    - (g) museums;
    - (h) sports and cultural activities and facilities; and
    - (i) county parks, beaches and recreation facilities.
41. The preamble to the Kajiado County *Alcoholic Drinks Control Act* 2014 reads as follows:
- An Act of Kajiado County Assembly to provide for the licensing and regulation of the production, sale, distribution, consumption and outdoor advertising, of alcoholic drinks, and for connected purposes.
42. Under its section 8 (1), it provides that:
- No person shall— (a) manufacture or otherwise produce; (b) sell, distribute or dispose of, or deal with; any alcoholic drink in the county except under and in accordance with a license issued under this Act.



43. The Act criminalizes contravention of the Act under Section 8(2).
44. I have read and considered all the authorities cited by the parties in support of their respective submissions. It is clear to my mind, and I agree with the authorities that hold that, judicial review is concerned with the decision making process and not with the merits of the decision itself and that the court will concern itself such issues as to whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision the decision-maker took into account relevant matters or did take into account irrelevant matters (see *Municipal Council of Mombasa v Republic & Umoja Consultants Ltd*, Civil Appeal Nol 185 of 2001).
45. The ex parte applicant has not challenged the constitutionality of the Kajiado County *Alcoholic Drinks Control Act* 2014, whose purpose is, inter alia, to regulate the distribution of alcoholic products within the county. As far as this court is concerned, that legislation is existing and has not been found unconstitutional. Neither has the ex parte applicant demonstrated that the decision-making process of the Respondents to have the Interested Party arrested and charged was tainted with illegality or impropriety.
46. I agree with the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents that it is the ex parte applicant who has misapprehended the law and not the other way around. The Respondents were acting within the law and their respective jurisdictions.
47. As submitted by the Respondents, the trial court in Ngong Criminal Case No. 1333 of 2021 is empowered to determine the innocence or otherwise of the Interested Party who has been charged before that court. In my considered view, and as submitted by the Respondents, judicial review orders sought in this application is not the right way to handle that criminal case. It is my view that this Court will be interfering with the mandate of the trial court and the ends of justice in granting the judicial orders sought.
48. The Interested Party will have his day in court where he will be subjected to due process in an impartial manner. Any defence he has can only be presented to the trial court where criminal proceedings will be undertaken but not through judicial review orders sought in this application.
49. It is my considered view that the ex parte applicant has failed to demonstrate that it is entitled to the orders sought. It has failed to reach the threshold established in the various authorities including *Pastoli vs. Kabale District Local Government Council and Others* [2008] 2 EA 300, where the court stated as follows:

“In order 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...Illegality is when the decision-making authority commits an error of law in the process of taking or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances of illegality. .... Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards.....Procedural Impropriety is when there is a failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to



adhere and observe procedural rules expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision.”

50. It is my considered view that the present application lacks merit. It is ill-advised and is based on misapprehension of the law. Consequently, having subjected the evidence and issues raised in this application to the legal provisions and being guided by relevant authorities, it is my finding and I so hold that the Notice of Motion dated 21<sup>st</sup> February 2021 lacks merit and is hereby dismissed with costs to the Respondents.
51. The effect of the above order dismissing the application has the effect that the orders granted in the Ruling of this Court delivered on the 16<sup>th</sup> February 2022, staying the proceedings in Ngong Criminal Case No. 1333 of 2021 pending the hearing and determination of the substantive Motion automatically lapses.
52. Orders shall issue accordingly.

**DATED, SIGNED AND DELIVERED THIS 18<sup>TH</sup> DAY OF JANUARY 2024.**

**S. N. MUTUKU**

**JUDGE**

