



**Republic v Director of Public Prosecution & 2 others; Eisa (Exparte Applicant);  
Omondi (Interested Party) (Judicial Review Miscellaneous Application  
E001 of 2023) [2024] KEHC 16849 (KLR) (12 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 16849 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E001 OF 2023**

**DK KEMEL, J**

**APRIL 12, 2024**

**IN THE MATTER OF AN APPLICATION BY JOSEPH TUMWETI  
KISA FOR JUDICIAL REVIEW ORDER OF CERTIORARI**

**AND**

**IN THE MATTER OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF THE PENAL CODE, CAP 63, LAWS OF KENYA**

**AND**

**IN THE MATTER OF KIMILILI PRINCIPAL MAGISTRATE'S  
COURT CRIMINAL CASE NO. E823 OF 2023**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE DIRECTOR OF PUBLIC PROSECUTION ..... 1<sup>ST</sup> RESPONDENT**

**INSPECTOR GENERAL OF POLICE ..... 2<sup>ND</sup> RESPONDENT**

**KIMILILI LAW COURTS ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**JOSEPH TUMWETI EISA ..... EXPARTE APPLICANT**

**AND**

**PC- PATRICK OTIENO OMONDI ..... INTERESTED PARTY**



## JUDGMENT

1. The ex-parte Applicant herein is an adult Kenyan citizen. By a Notice of Motion dated 17<sup>th</sup> November 2023, the ex-parte Applicant herein seeks the following orders:
  - i. That the hon. Court be pleased to grant judicial review order of certiorari to move this court the decision of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> Respondent and the interested party to charge and prosecute the ex-parte Applicant in Kimilili Principal Magistrate's Court Criminal Case No. E823 of 2023 and Criminal Case No. E824 and any other case arising thereof as per the said OB – Report No. 21/14/01/2023 and OB – report No. 17/19/09/2023.
  - ii. That Costs be borne by the Respondents and the Interested Party.
2. 'The application is supported by a verifying affidavit sworn on the same date by Joseph Tumweti Kisa , the ex-parte Applicant, and a Statutory Statement dated 17<sup>th</sup> November 2023, and an affidavit in support sworn by the said deponent on 17<sup>th</sup> November 2023.
3. The Respondents filed no response to the application.
4. Upon extensive perusal of the court record, I was not able to trace the Interested Party's replying affidavit dated 5<sup>th</sup> December 2023 and the ex-parte Applicant's response in form of further supporting affidavit dated 11<sup>th</sup> December 2023.
5. The ex-paste Applicant's case is inter alia; that he was falsely arrested and charged in Kimilili Principal Magistrate's Court vide Criminal case No. E823 of 2023, Criminal Case No. E824 of 2023 and any other arising thereof on the basis of the Kapsokwony Police Station Police station OB-Report No. 23/14/01/2023 and OB-Report No. 17/19/09/2023; that the Interested Party unlawfully without instructions of the Complainants ignored the settlement vide agreement dated 20<sup>th</sup> January 3023, Ex-parte Applicant annexure JTX-1 and arrested the ex-parte Applicant nine month after the settlement; the Interested Party lied to the Court on arraignment that the ex-parte Applicant assaulted him thus the unlawful creation of OB-Report No. 17/ 19/09/2023 that is now in Kimilili Principal Magistrate's Court vide Criminal case No. E823 of 2023; that the two cases imposed on him arose from already settled allegations.
6. The ex parte Applicant also urged that it is in the interest of justice that the orders sought be granted so that the decision by the 1<sup>st</sup> , 2<sup>nd</sup> , 3<sup>rd</sup> Respondents and Interested Party to charge and prosecute him be declared false, malicious and ultra-vires as the same is inconsistent and contravention with the provisions of the law.
7. The Application was canvassed by way of written submissions. The ex-parte Applicant relied on his written submissions dated 28<sup>th</sup> December 2023 while Counsel for the Respondents relied on their written submissions dated 23<sup>rd</sup> January 2024.
8. It was submitted by the ex-parte Applicant that the allegations as contained in the Kapsokwony Police Station OB-Report No. 23/14/01/2023 and police file No. 951/161/2023 led to the Kimilili Principal Magistrate's Court Criminal Case No. E 824 of 2023, which was the basis of his arrest by the Interested Party. He submitted that those actions led to the generation of the OB-Report No. 17/19/09/2023 that brought about Kimilili Principal Magistrate's Court Criminal Case No. E 823 of 2023 yet the same was settled vide a settlement agreement dated 20<sup>th</sup> January 2023.



9. It was submitted that subject to the settlement agreement dated 20<sup>th</sup> January 2023, the Interested Party lacked the mandate to either investigate and/or arrest the ex-parte Applicant and that the decision by the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Respondents to charge and prosecute him was not necessary as it was malicious, unlawful and unjustified.
10. According to him, the offences against him are categorized as misdemeanors and that the aspect of reconciliation is permitted in accordance with the provisions of the law under Article 159 (2) (a) of *the Constitution* of Kenya 2010 and section 3 (2) of the *Judicature Act* and Section 176 of the *Criminal Procedure Code*.
11. He submitted that the failure by the 1<sup>st</sup> Respondent to prevent the abuse of legal processes in regard to the decision to charge and prosecute him over an issue that was settled was contrary to the provisions of Article 157 (ii) of *the Constitution* of Kenya, 2010. This was a violation of the ex-parte Applicant's rights as guaranteed under Article 25 and 50 (2) of *the Constitution* of Kenya 2010.
12. He submitted that the 3<sup>rd</sup> Respondent's failure to assess the evidence on record and before it, like the settlement agreement and Complainant's affidavit prior to deciding whether there was a case against the ex-parte Applicant was contrary to and inconsistent to the provisions of section 89 (5) of the *Criminal Procedure Code*.
13. The Respondent's Counsel submitted that the 1<sup>st</sup> Respondent was well within the scope of its powers as stipulated under Article 157 of *the Constitution* of Kenya and that the ex-parte Applicant failed to demonstrate any illegality or abuse of that constitutional mandate in the lower court criminal matters.
14. On the aspect of the settlement agreement, Counsel submitted that the arguments as fronted by the ex-parte Applicant are baseless and misleading as it is only the 1<sup>st</sup> Respondent that is tasked with the mandate of instituting and terminating criminal proceedings and on the aspect of alternative dispute resolution mechanisms, reconciliation, as alleged, the same was not brought to the attention of the trial court at any stage from plea talking.
15. It was submitted that subject to the dints of Article 159, reconciliation under Alternative Dispute Resolution Mechanisms is allowed but that the same ought to be within the legal thresholds and be conducted in the manner as envisaged in section 176 and 204 of the *Criminal Procedure Code*. This simply means that the assault charges in CR E824 of 2023 are indeed justified as long as the due process with regard to reconciliation was not followed.
16. Counsel submitted that the application before this Court does not meet the threshold for a judicial review as the ex-parte Applicant failed to demonstrate which of his rights were violated and how the same were violated to warrant this Court to grant his prayers. Counsel finally urged the court to dismiss the application.
17. I have considered the application, the various affidavits filed in support of the application as well as the submissions filed and exchanged by the parties.
18. The ex-parte Applicant's bone of contention in summary is that being arrested, charged, arraigned, taken through plea taking stage in Criminal Case Number E823 of 2023 and E824 of 2023 respectively was an abuse of process and contravened his fundamental rights since there was already an existing settlement agreement between him and the complainants.
19. The principles which guide the grant of the orders in the nature sought herein are now well crystallized in this jurisdiction. What is essential is the application of the same to the facts of each case. Several decisions have been handed down which, in my view, correctly set out the law relating to circumstances



in which the court would be entitled to prohibit, bring to a halt or quash criminal proceedings. However, while applying the said principles to a particular case, the court must always be cautious in its findings so as not to prejudice the intended or pending criminal proceedings so as not to transform itself into a trial court. The court in judicial review proceedings is therefore not allowed to delve into the merits or otherwise of the criminal process as that would amount to unnecessarily trespassing into the arena specially reserved for the criminal or trial court. This court in determining the issues raised therefore shall not usurp the constitutional and statutory mandate of the Respondents to investigate and undertake prosecution in the exercise of the undoubted discretion conferred upon them.

20. As was reiterated by the Court of Appeal in *Municipal Council of Mombasa vs. Republic & Umoja Consultants Ltd* Civil Appeal No. 185 of 2001:

“The court should not act as a Court of Appeal over the decider which would involve going into the merits of the decision itself-such as whether there was or there was not sufficient evidence to support the decision...”

21. According to *Judicial Review Handbook*, 6th Edition by Michael Fordham at page 5, judicial review is a central control mechanism of administrative law (public law), by which the judiciary discharges the constitutional responsibility of protecting victims against abuses of power by public authorities. It constitutes a safeguard which is essential to the rule of law: promoting the public interest; policing parameters and duties imposed by Parliament; guiding public authorities and securing that they act lawfully; ensuring that they are accountable to law and not above it; and protecting the rights and interests of those affected by the exercise of public authority/power.

22. Under *the Constitution*, this court is empowered to invoke its judicial review jurisdiction in the proceedings of this nature in order to grant appropriate orders including the orders sought herein. In other words, judicial review jurisdiction has now been fused with the remedies under *the Constitution* and this is clearly perceptible from the remedies arranged under section 11 of the Fair Administrative Action, Act 2015. Referring to the South African Constitutional Court in *Pharmaceutical Manufacturers Association of South Africa & Another vs. Minister of Health* Case CCT 31/99 where the court held that:

“The common law supplements the provisions of the written Constitution but derives its force from it. It must be developed to fulfill the purposes of *the Constitution* and the legal orders that it proclaims — thus, the command that law be developed and interpreted by the courts to promote the “spirit, purport and objects of the Bill of Rights.” This ensures that the common law will evolve within the framework of *the Constitution* consistently with the basic norms of the legal order that it establishes. There is, however, only one system of law and within that system *the Constitution* is the supreme law with which all other law must comply. What would have been ultra vires under the common law by reason of a functionary exceeding a statutory power is invalid under *the constitution* according to the doctrine of legality. In this respect, at least, constitutional law and common law are intertwined and there can be no difference between them. The same is true of constitutional law and common law in respect of the validity of administrative decisions within the purview of section 24 of the interim Constitution. What is “lawful administrative action,” “procedurally fair administrative action” and administrative action “justifiable in relation to the reasons given for it”. Cannot mean one thing under *the constitution* and another thing under the common law... Although the common law remains relevant to this process, judicial review of the exercise of public power is a constitutional matter that takes place under the Constitutional and in accordance with its provisions. Section 167 (3) (c) of *the constitution* provides that



the Constitutional Court “makes the final decision whether a matter is a constitutional matter”. This Court therefore has the power to protect its own jurisdiction, and is under a constitutional duty to do so. One of its duties is to determine finally whether public power has been exercised lawfully. It would be failing in its duty if it were to hold that an issue concerning the validity of the exercise of public power is beyond its jurisdiction.”

23. It is clear that our Constitution is progressive in its language and supports the grounds for the grant of judicial review relief which ought to be developed and expounded and expanded so as to meet the changing needs of our society so as to achieve fairness and secure human dignity.
24. Therefore, a mere allegation that the intended or ongoing criminal proceedings are in all likelihood bound to fail, does not merit the grant of judicial review relief in the nature of either prohibiting or quashing criminal proceedings. In other words, if the ex-parte Applicant demonstrates by way of credible evidence that the criminal proceedings that the police or the Director of Public Prosecutions instituted against him were simply an abuse of due process as he had already reconciled with the respective complainants, and that the 1<sup>st</sup> Respondent was privy to the reconciliation process, the Court will not hesitate in putting a halt to such proceedings.
25. In the case of *Joram Mwenda Guantai vs. The Chief Magistrate, Nairobi Civil Appeal No. 228 of 2003 [2007] 2 EA 170*, the Court of Appeal held:

“It is trite that an order of prohibition 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 in excess of Jurisdiction of absentee 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..... Equally so, the High Cout has inherent jurisdiction to grant an order of prohibition to a person charged before a subordinate court and considers himself to be a victim of oppression. If the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious, the Judge has the power to intervene and the High Court has the inherent power and the duty to secure fair treatment for all persons who are brought before the court or to a subordinate court and to prevent a abuse of the process of the court.”

26. In *Kuria & 3 Others vs. Attorney General [2002] 2 KLR 69*, the High Court held:

“The Court has power and indeed the duty to prohibit the continuation of the criminal prosecution if extraneous matters divorced from the goals of justice guide their instigation. It is a duty of the court to ensure that its process does not degenerate into tools for personal score-settling or vilification on issues not pertaining to that which the system was even formed to perform ... A stay (by an order of prohibition ) should be granted where compelling an accused to stand trial would violate the fundamental principles of justice which underlie the society’s senses of fair play and decency and/or where the proceedings are oppressive or vexatious....The machinery of criminal justice is not to be allowed to become a pawn in personal civil feuds and individual vendetta. It is through this mandate of the court to guard its process from being abused or misused or manipulated for ulterior motives that the power of the judicial review is in variably invoked so as to zealously guard its (the courts ) independence and impartiality (as per section 77(I) of the Kenya Constitutional in relation to criminal proceedings and section 79(9) for the civil process ). The invocation of the law, whichever party in unstable circumstances or for the wrong ends must be stopped,



as in these instances, the goals for their utilization is far from that which the courts indeed the entire system is constitutionally mandated to administer ”

27. In Republic vs. Chief Magistrate’s Court at Mombasa Exparte Ganijee & Another [2002] 2 KLR 703, it was held:

“It is not the purpose of a criminal investigation or a criminal charge or prosecution to help individuals in the advancement of frustrations of their civil cases. That is an abuse of the process of the court. No matter how serious the criminal charges may be, they should not be allowed to stand if their predominant purpose is to further some other ulterior purpose. The sole purpose of criminal proceedings is not for the advancement and championing of a civil cause of one or both parties in a civil dispute, but it is to be impartially exercised in the interest of the general public interest. When a prosecution is not impartial or when it is being used to further a civil case, the court must put a halt to the criminal process. No one is allowed to use The machinery of justice to cause injustice and no one is allowed to use criminal proceedings to interfere with a fair civil trial. If a criminal prosecution is an abuse of the process of the court, oppressive vexatious , prohibition and/or certiorari will issue and go forth... For in a criminal case a person is put in jeopardy and his personal liberty is involved. If the object of the appellant is to over-awe the respondent by brandishing at him the sword of punishment the thereunder, such an object is unworthy to say the least and cannot be countenanced by the court. .. In this matter the interested party is more actuated by a desire to punish the applicant or to oppress him into acceding to his demands by brandishing the sword of punishment under the criminal law .....

to punish on behalf of the public a crime committed. The predominant purpose is to further that ulterior motive and that is when the high Court steps in...”

28. Normally, these types of proceedings focus on the procedure rather than the substance of the case. In other words, these proceedings determine, among other things, whether the decision makers had jurisdiction, whether the persons affected by the decision were heard before the decision was made, whether the decision maker considered relevant or irrelevant factors in making the decision, whether the decision to initiate criminal charges is contrary to the ex-parte Applicant’s legitimate expectation, and whether the Respondents’ decision to charge the ex-parte Applicant is contrary to the ex-parte Applicant’s legitimate expectation. As a result, if the ex-parte Applicant brings such proceedings with the intent of resolving disputed facts and effectively asks the Court to decide the merits of two or more different versions presented by the parties, the court will lack jurisdiction to do so and will leave the parties to resort to the Courts. In other words, such processes are not the right forum for determining the Petitioner’s innocence or otherwise, and a party should not bring such proceedings with the intention of having the Court assess his innocence or otherwise. To do so, in my opinion, is an abuse of the legal system. In these types of cases, the Court is primarily concerned with the question of fairness to the applicant in the institution and continuation of criminal proceedings, and whether such proceedings amount to a violation of his or her rights and fundamental freedoms. Once the court is satisfied that this is not the case, the High Court should not usurp the jurisdiction of the trial court and trespass into the arena of trial by determining the sufficiency or otherwise of the evidence. Where, on the other hand, it is evident that the contrary is sought to be achieved, the High Court will intervene and quash the proceedings or issue an order of prohibition where appropriate.

29. As a result, the outcome of this case must be considered in light of the preceding decisions. However, it is up to the ex-parte Applicant to persuade the Court that the Respondents’ power to investigate and prosecute should be curtailed.



30. In this case, the ex-parte Applicant claims that the intent behind the criminal procedures was to attain some ulterior motive. According to him, there was a discord that ensued between himself and the Complainants and that he took a virtuous step to reconcile with the police officer, the Complainant in CR Case No. E824 of 2023 as per the settlement agreement dated 20<sup>th</sup> January 2023.
31. In exercising their discretion to charge a person both the police and the DPP's office must take into account and must exercise the discretion on the evidence of sound legal principles. As was held by Ojwang, J (as he then was) in Nairobi HCCC No. 1729 of 2001- Thomas Mboya Oluoch & Another -vs- . Lucy Muthoni Stephen & Another:
- “...policemen and prosecutors who fail to act in good faith, or led by pettiness, chicanery or malice in initiating prosecution and in seeking conviction against the individual cannot be allowed to ensconce themselves in judicial immunities when their victims rightfully seek recompense.....I do not expect that any reasonable police officer or prosecution officer would lay charges against anyone, on the basis of evidence so questionable, and so obviously crafted to be self- serving. To deploy the State's prosecutorial machinery, and to engage the judicial process with this kind of litigation, is to annex the public legal services for malicious purposes”.
32. Therefore, the police and prosecutors are expected to be professional in the conduct of their investigations and prosecutorial duties and ought not to be driven by malice or other collateral considerations. Malice, however, can either be express or can be gathered from the circumstances surrounding the prosecution.
33. In this case, the ex-paste Applicant's damning evidence on existence of a settlement agreement with the complainant in CR case No. E824 of 2033 implied that steps were taken by the parties to ensure that the case does not proceed in our Court systems. However, it is imperative to note that this Court is guided by three distinct provisions of the law in reconciliation and withdrawal of criminal cases. Section 87(a) of the *Criminal Procedure Code* (CPC ) provides:-
- In a trial before a subordinate court a public prosecutor may, with the consent of the court or on the instructions of the Director of Public Prosecutions, at any time before judgement is pronounced, withdraw from the prosecution of any person, and upon withdrawal:-
- a. If it is made before the accused person is called upon to make his defence, he shall be discharged, but discharge of an accused person shall not operate as a bar to subsequent proceedings against him on account of the same facts;
33. Section 176 of the CPC, the Court is enjoined to promote reconciliation of parties in a misdemeanor, even on its own motion. An example of the cases referred is the offence of assault where the Courts have often promoted reconciliation and brought an end to cases of such nature. The victim /Complainant may be paid compensation for injuries sustained as the parties may agree. Sometimes the parties may not involve the Court in the terms of their reconciliation.
34. Section 204 of the CPC provides that if a complainant, at any time before a final order is passed in a case satisfies the Court that there are sufficient grounds for permitting him to withdraw his complaint, the Court may permit him to do so and shall thereupon acquit the accused.
35. In the case before me, the Court was not informed that the complainant wished to withdraw the case as they had reconciled with the ex-parte Applicant herein as per the settlement agreement dated 20<sup>th</sup>



January 2023. The prosecution did not get to oppose or concur with the application as no application was presented before the Court.

36. In my view, it is clear that an application to withdraw the case was necessary as subject to the provisions of section 176 of the Criminal Procedure Code. As this a case of assault, it is imperative to note that the direction of the 1<sup>ST</sup> Respondent is not required for the withdrawal from Court as was the case in Republic v. Mohammed Adow Mohamed [2013] eKLR.
37. In cases of common assault, or any other offence of a personal or private nature not amounting to felony, and not aggravated in degree, section 176 of the *Criminal Procedure Code* allows the Court to promote reconciliation, encourage and facilitate the settlement, in an amicable way, of proceedings, on terms of payment of compensation or other terms approved by the Court. See Merdardo -v- R (2004) 2 KLR 433 and Shem Zhangua -vs- R , High Court at Nairobi Miscellaneous Criminal Application 396 of 2006.
38. As I understand, the 1<sup>ST</sup> Respondent is the constitutional custodian, enforces and defender of public interest in criminal justice which is the due administration of justice so that the offender is punished or otherwise dealt with, as appropriate, for deterrence and rehabilitation, the victim is assuaged and compensated as appropriate, and the society benefits from prevention of crime. In addition, the DPP ensures the criminal justice system is not abused to persecute the innocent, achieve collateral civil purpose or avoid due punishment for crime, among other improper use of the criminal process. This is the mandate of Article 157 of *the Constitution*, which only the DPP can discharge and, consequently, his involvement in any proposed compromise in criminal cases is indispensable.
39. In the present case, although the ex-parte Applicant and the complainant agree to compromise the charges in a situation of section 176 of the *Criminal Procedure Code*, the 1<sup>st</sup> Respondent argues that the institution and withdrawal of criminal proceedings only lie with it. However, it is clear that the DPP has violated the provisions of Article 157 (11) of *the Constitution* in refusing to allow or concur with the proposed withdrawal of the assault charge by the person indicated in the charge sheet as having been assaulted and that despite the presence of the settlement agreement, the DPP has deliberately refused to formally bring to the attention of the trial court of the existence of settlement agreement. This clearly demonstrates that the decision to charge the ex-parte Applicant was intended not to achieve justice but an ulterior motive. The ex-parte applicant has clearly indicated that he availed the settlement agreement to the investigating officer and the DPP but they have gone ahead to charge him. This then leaves no doubt that the DPP has abused its powers under Article 157 of *the Constitution* as he ought to act in the best interest of the public. It seems that the complainants are out to reap twice from the settlement and the prosecution of the ex-parte applicant and that the DPP has been used in the process to pervert the cause of justice. The prosecution of the Ex- parte applicant despite the parties having reached a settlement on a matter of common assault for which reconciliation is permitted is therefore in bad faith and meant to achieve an ulterior motive. The settlement agreement is still there as a sore thumb even if the DPP purports to continue with the impugned prosecutions. Clearly, such prosecutions will not serve the public interest as contemplated in Article 157(11) of *the constitution* as he will have failed to prevent the abuse of the legal process. This court is obliged to oversee the actions of the DPP as it undertakes its duties and ensure that it acts in compliance with the law and to ensure that the investigation and prosecution of the ex-parte applicant herein is reasonable and in good faith and not actuated by an ulterior motive such as personal score- settling or vilification. In such circumstances, the High Court ought to intervene to protect an accused who stands to suffer prejudice as the prosecution must be conducted with regard to consideration of candour, fairness and justice. The accused is entitled to a fair trial under Article 48 of *the Constitution*. In this case, the accused had already reached a settlement with the complainants and hence his prosecution was not necessary in



the circumstances as the parties were bound by the said agreement and that they were at liberty to enforce it by way of a civil claim and not mounting criminal prosecution. This court is under a duty to ensure that court proceedings ought not to be permitted to degenerate into a weapon of harassment or prosecution. Indeed, criminal proceedings commenced to advance other gains other than promotion of public good are deemed as vexatious and ought not to be allowed to stand.

40. In view of the foregoing observations, it is my finding that the prosecution of the ex-parte applicant in the two criminal cases before Kimilili Senior Principal Magistrate's court lacks a proper factual basis. It cannot be allowed to stand as it is an abuse of the law and criminal process. It is further my finding that the ex-parte applicant's application dated 17/11/3023 has merit. The same is allowed in the following terms:
- a. This court finds that the ongoing criminal proceedings against the ex-parte applicant is an abuse of the due process of the court.
  - b. An order of certiorari be and it hereby issued to bring before this court for the purposes of quashing the decision of the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Respondents to change and prosecute the ex-parte applicant in Kimilili Senior Principal Magistrate's Court Criminal cases numbers E823 of 2033 and E824 of 2023 and any other case arising thereof.
  - c. An order of prohibition is hereby issued to the Respondents prohibiting further proceedings in the said Kimilili Senior Principal Magistrate's Court Criminal cases numbers E823 of 2023 and E 824 of 2023 and further prohibiting the Respondents from initiating any further charges against the ex-parte applicant based on the same complaint, facts and circumstances the subject of the criminal charge as recorded in the OB-Reports numbers 23/14/01/2023 and 17/19/09/2023 save and unless where further material or additional facts and or circumstances are established.
  - d. Each party to bear their own costs.

It is so ordered.

**DATED AND DELIVERED AT BUNGOMA THIS 12<sup>TH</sup> DAY OF APRIL 2024.**

**D.KEMEI**

**JUDGE**

In the presence of :-

Joseph Tumweti Kisa Export Applicant

Miss Kibet for 1<sup>st</sup> Respondent

Miss Kibet for 2<sup>nd</sup> Respondent

Miss Kibet for 3<sup>rd</sup> Respondent

No appearance for Interested Party

Kizito Court Assistant

