



REPUBLIC OF KENYA



KENYA LAW
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Republic v Director of Public Prosecution & 3 others; Saroya (Exparte Applicant) (Judicial Review Miscellaneous Application E008 of 2022) [2024] KEHC 7125 (KLR) (19 June 2024) (Judgment)

Neutral citation: [2024] KEHC 7125 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E008 OF 2022**

FR OLEL, J

JUNE 19, 2024

**IN THE MATTER OF: AN APPLICATION FOR LEAVE TO
COMMENCE PROCEEDINGS IN THE NATURE OF
JUDICIAL REVIEW**

**IN THE MATTER OF: THE LAW REFORM ACT SECTION 8
AND 9 CHAPTER 26. LAWS OF KENYA**

AND

IN THE MATTER OF: THE PENAL CODE CAP 63

AND

IN THE MATTER OF: LAW OF CONTRACT ACT, CAP 23

AND

**IN THE MATTER OF THE CONTRAVENTION OF
FUNDAMENTAL RIGHTS AND FREEDOMS IN THE BILL
OF RIGHTS UNDER THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF: THE DECISION OF THE DIRECTOR
OF PUBLIC PROSECUTIONS TO INSTITUTE CRIMINAL
PROCEEDINGS AGAINST THE EX-PARTE APPLICANT
CONTAINED IN THE LETTER DATED 1ST DECEMBER 2022**

AND

**IN THE MATTER OF: ARTICLE 10, 22, 23, 27, 73, 74
AND 75 OF THE CONSTITUTION OF KENYA 2010**



BETWEEN

REPUBLIC APPLICANT

AND

THE DIRECTOR OF PUBLIC PROSECUTION 1ST RESPONDENT

THE DIRECTOR OF CRIMINAL INVESTIGATIONS 2ND RESPONDENT

**THE OFFICER COMMANDING STATION (OCS) ATHI RIVER POLICE
STATION 3RD RESPONDENT**

THE CHIEF MAGISTRATE MAVOKO LAW COURT 4TH RESPONDENT

AND

MOHAMED ZESHAN SAROYA EXPARTE APPLICANT

JUDGMENT

A. Introduction

1. *Vide* a chamber summons dated 22.12.2022, accompanied by the Ex applicant's statement of facts and verifying affidavit, the *Ex parte* Applicant sought for leave to institute judicial review proceedings to challenge various decisions made by the respondents to institute criminal charges as against him, culminating with him being charged at Mavoko court Criminal case No 1222 of 2022, *Republic v Mohammed Zeshan Saroya*. *Vide* an order dated 23rd December 2022, the *Ex parte* applicant was so granted leave to institute these proceedings and subsequently file this notice of motion dated 29th December 2022 seeking for orders that;
 - a. That pending hearing and determination of this Application inter parties the honorable court do issue an order of stay of implementation of the directive issued in the letter dated 1st December, 2022 and referenced MKS/ADV/7/(162) and further restrain the arrest , detention or prosecution of the *ex parte* applicant by the respondent or restrain in any way the proceedings in Mavoko chief Magistrate's court criminal case No 1222 of 2022, *Republic v Mohammed Zeshan Saroya*.
 - b. That pending hearing and determination of this motion the Honorable court do issue an order of stay of implementation of the directive issued in directive issued in the letter dated 1st December, 2022 and referenced MKS/ADV/7/(162) and further restrain the arrest , detention or prosecution of the *ex parte* applicant by the respondent or restrain in any way the proceedings in Mavoko Chief Magistrate's court criminal case No 1222 of 2022, *Republic v Mohammed Zeshan Saroya*.
 - c. An order of *Certiorari* be granted by this honourable court to bring into this court and quash the decision by the 1st respondent to institute criminal proceedings against the *ex-parte* applicant, contained in the letter dated 1st December 2022 and referenced MKS/ADV/7(162) and further to quash the entire criminal case and the entire proceedings in Mavoko Chief Magistrate's Court Criminal Case No. 1222 of 2022 *Republic v Mohamed Zeshan Saroya*.



- d. An order of Prohibition to prohibit the 1st 2nd 3rd and 4th respondents herein, being the Director of Public prosecution (DPP), Directorate of criminal investigations, The OCS Athi River police station, and the chief Magistrate s court, Mavoko from prosecuting, trying, hearing or taking any further proceedings whatsoever in Mavoko Chief Magistrate’s Court Criminal Case No. 1222 of 2022 *Republic v Mohamed Zeshan Saroya*.
 - e. An order of *Mandamus* be issued by this honourable court to compel the respondents to allow the applicant to operate without interference and carry on his activities in accordance with the law.
 - f. There be an order of stay of the implementation of the directive issued in the letter dated 1st December, 2022, and reference MKS/ADV/7(162) and shall serve as stay of proceedings in Mavoko Chief Magistrate’s Court Criminal Case No. 1222 of 2022 *Republic v Mohamed Zeshan Saroya*.
 - g. Such further orders and directives be issued to the respondents jointly and severally to facilitate just, expeditious and fair administration.
 - h. That the cost of this application be borne by the respondents, its servants, employees and or agents.
2. Subsequently the applicant also filed a second notice of motion application dated 9th February 2023, where he sought for similar order of stay of proceedings and consequential orders issued in Mavoko Chief Magistrate’s Court Criminal Case No. 1222 of 2022 *Republic v Mohamed Zeshan Saroya*
 3. Both Applications was opposed by the interested party, who filed their ground of opposition dated 27th May 2023 and a replying affidavit dated 7th June 2023, sworn by one Michael Karanja, the operations and Human resource Manager of the Interested Party. The 1st to 4th respondent did not file any pleadings in this matter.
 4. The applicant sought to have the application dated 9th February 2023 heard and determined first, but to the extent that both applications by and large seeks for similar orders and given the need to ensure quick disposal of the proceeding herein as provided for under the “oxygen principles”, the court will determine both Applications simultaneously.

B. The Applications

5. The *Ex parte* Applicant deposed that the 1st respondent through a letter dated 1st December, 2022 and referenced MKS/ADV/7 (162) issued directives that criminal proceedings should be commenced against him for the offences of obtaining credit by false pretenses contrary to section 316(a) of the [Penal Code](#) and issuing bad cheque contrary to section 316(A) (1) (4) of the Penal Code. Subsequently in December 2022, the criminal file was presented before Mavoko court and in his absence warrants of Arrest were issued.
6. It was not in dispute that his company Zan Steel Limited and Athi River Plant Limited (the complainant company), had been in business for nearly four years and had transacted business to the tune of Kenya shillings three billion (Kshs 3,000,000,000/=) over the said period. At the point of advancing the materials to his company, the parties had entered into contractual binding agreements, which defined the terms of business engagement and put in place means of dispute resolution. There was need therefore to resolve this dispute as per the business channels agreed upon, without resorting to criminalizing what was purely a commercial transaction. Further it was to be noted that the interested party (company) was currently under receivership and hence could not legally lodge a criminal suit.



7. The *Ex parte* applicant further reiterated that given his companies long business relationship with the interested party (company), the said company had continued to give his company material on credit and this demonstrated, the nature of contractual relationship, which they had. The respondents therefore had not demonstrated any illegality undertaken on his part with regard to the terms of credit, nor had the total credit amount outstanding been disclosed. The charge sheet, as filed therefore had no basis in law and had been filed with the ulterior motive to frustrate him and force him to pay up what was not due.
8. Further the *Ex parte* Applicant averred that the offence of issuing a bad cheque filed as against him was a malicious claim as the said cheques issued, were postdated and if they had bounced for reason of insufficient funds, the same did not constitute a criminal offence. He reiterated that the decisions to charge him over a civil dispute was misplaced, irrational, illogical, ultra vires and was meant to unjustly punish him, embarrass and ridicule his business. As a result, he stood to suffer loss of freedom, unless the orders sought were allowed and the criminal proceedings quashed.
9. Therefore, it was just and equitable to grant the orders as sought for the respondent's conduct had breached his legitimate expectation and right to fair administrative practice as provided for under Article 47 of the Constitution of Kenya 2010.

C. The Replying Affidavit

10. The 1st to 4th respondents did not file any response to this Application, but the interested party did file their ground of opposition dated 27th May 2023 and replying affidavit dated 7th June 2023 sworn by one Michael Karanja, the Operations and Human Resource Manager. He did aver that between 1st July 2021 to 16th May 2022, the *Ex parte* applicant had obtained goods being metal products from the interested party pretending that he was in a position to pay and that they were to make payment upon receipt of the goods. That the *Ex parte* applicant personally signed and issued cheques for the payment of goods supplied, which cheques all bounced/ were dishonored and that the interested party's claim against the *Ex parte* applicant and his company was in the sum of kshs.161,022,020.64/= plus interests being the balance due and owing in respect of the metal products he falsely obtained on credit.
11. That as a result of the said offence, they lodged a complaint with the police whereby investigations were conducted, statements recorded and the *Ex parte* applicant arrested and arraigned to answer charges in Mavoko Law Courts Criminal Case No 1222 of 2022 *Republic versus Mohamed Zeshan Saroya*. It was deposed that the *Ex parte* applicant was released on a cash bail of Kenya shillings One Million and on the day the matter was slated for hearing it could not proceed as counsel for the *Ex parte* applicant had sought for an adjournment on the basis that he had been arrested in relation to a different criminal matter and arraigned at Milimani law courts to answer to the said charges. It was therefore in the interest of justice to decline the orders sought in the substantive motion as all the issues raised could be ventilated before the trial court.

d. Determination/Analysis

12. I have considered at length both Applications as filed, the response of the interested party and submissions filed by the Applicant and find that the issues which arise for determination is whether;
 - a. This court should stay proceedings of Mavoko Chief Magistrate's Court Criminal Case No. 1222 of 2022 *Republic v Mohamed Zeshan Saroya*.
 - b. The Applicant is entitled to the orders as sought to quash the criminal proceeding initiated, prohibit the respondents from taking further action in the said matter and to issue an order



of *mandamus* to allow the *Ex parte* Applicant to operate without interference and carry out his activities in accordance with the law.

- c. Who should bear the costs of this suit.

I. Stay proceedings of Mavoko Chief Magistrate’s Court Criminal Case No. 1222 of 2022 Republic v Mohamed Zeshan Saroya.

13. *Halsbury’s Laws of England*, 4th Edition, Vol. 37 at p. 330 discussed the parameters under which orders of stay of proceedings can be allowed; The learned author states that

“The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the Court’s general practice is that a stay of proceedings should not be imposed unless the proceedings, beyond reasonable doubt, ought not to be allowed to continue....This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases...It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for a stay on this ground must show not merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of this case.”

14. In short, a stay of proceedings is a radical remedy which is only granted in very exceptional circumstances. In the words of Ringera J. in *Global Tours & Travels Limited* (Nairobi HC Winding Up Cause No. 43 of 2000):

“As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of Justice.....the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously (emphasis added).”

15. What emerges from the discussion above is that the grant of a stay of proceedings pending the hearing of an interlocutory appeal/application in civil matters is a rare and exceptional remedy. As a general matter, the court will only exercise its discretion to grant a stay of proceedings pending an appeal over an interlocutory matter before a magistrate’s Court or Tribunal only in exceptional circumstances. While difficult to determine with mathematical precision when the Court will use this power, it is only to be sparingly used where, in the words of South African authors, *Gardiner and Lansdown* (6th Ed. Vol. 1 p. 750),

“grave injustice might otherwise result or where justice might not by other means be attained.” As the authors correctly write, the Court will generally “hesitate to intervene, especially having regard to the effect of such a procedure upon the continuity of proceedings in the Court below.”



16. On 23rd December 2022, this matter was placed before the duty Judge Honorable lady Justice S.N. Mutuku- duty Judge sitting at Kajiado High court and after considering the merits of the chamber's summons dated 22nd December 2022, she did grant leave to the *Ex parte* applicant to commence judicial review proceedings but specifically at pray (4) declined to stay the proceedings in Mavoko Chief Magistrate's Court Criminal Case No. 1222 of 2022 *Republic v Mohamed Zeshan Saroya*.
17. The prayer for stay of proceedings having been denied, left the applicant with the only option of filing an Appeal as against the said decision or apply for review of the said decision on legal basis allowed in law. He cannot in good conscious expect, this court sit on appeal over a decision already made by a sister judge, of concurrent jurisdiction. That would be a *nullity abinitio* and therefore his prayers seeking for stay of proceedings is found to be totally unfounded, unmerited and is outrightly rejected.

(ii) Whether the Applicant is entitled to the orders as sought to quash the criminal proceeding initiated, prohibit the respondents from taking further action in the said matter and to issue an order of madamus to allow the Ex parte Applicant to operate without interference and carry out his activities in accordance with the law.

18. The first issue the court has to examine is the mandate of the 1st to 4th respondents as provided for under the constitution the relevant Acts and whether they have acted in an ultra vires manner, while exercising their mandate. Article 157 of the Constitution which establishes the office of the DPP and gives the DPP certain functions. The relevant clauses of Article 157 provide as follows:
 - (4) The Director of Public Prosecutions shall have power to direct the Inspector-General of the National Police Service to investigate any information or allegation of criminal conduct and the Inspector-General shall comply with any such direction.
 - (6) The Director of Public Prosecutions shall exercise State powers of prosecution and may—
 - (a) institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed;
 - (b) take over and continue any criminal proceedings commenced in any court (other than a court martial) that have been instituted or undertaken by another person or authority, with the permission of the person or authority; and
 - (c) subject to clause (7) and (8), discontinue at any stage before judgment is delivered any criminal proceedings instituted by the Director of Public Prosecutions or taken over by the Director of Public Prosecutions under paragraph (b).
 - (10) The Director of Public Prosecutions shall not require the consent of any person or authority for the commencement of criminal proceedings and in the exercise of his or her powers or functions, shall not be under the direction or control of any person or authority.
 - (11) In exercising the powers conferred by this Article, the Director of Public Prosecutions shall have regard to the public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process.
 - (12) Parliament may enact legislation conferring powers of prosecution on authorities other than the Director of Public Prosecutions.
19. Article 157 of the Constitution is operationalized by the Office of the Director of Public prosecution Act, Cap 6B, which at Section 5 (1) provides that:



Pursuant to Article 157 of the Constitution the Director shall—

- a. Have power to direct the Inspector-General to investigate any information or allegation of criminal conduct and the Inspector-General shall comply with any such direction;
- b. Exercise State powers of prosecution and may:-
 - i) Institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed;
 - ii) Take over and continue any criminal proceedings commenced in any court (other than a court martial) that have been instituted or undertaken by another person or authority, with the permission of the person or authority; and
 - iii) Subject to Article 157 (7) and (8), discontinue at any stage before judgment is delivered any criminal proceedings instituted by the Director of Public Prosecutions or taken over by the Director of Public Prosecutions.

20. Further Section 6 of the said ODPP Act broadcasts the independence granted to the DPP in the performance of his duties by stating that:

Pursuant to Article 157(10) of the Constitution, the Director shall—

- a) not require the consent of any person or authority for the commencement of criminal proceedings;
- b) not be under the direction or control of any person or authority in the exercise of his or her powers or functions under the Constitution, this Act or any other written law; and
- c) be subject only to the Constitution and the law.

21. The courts have in several cases recognized and appreciated the DPP's constitutional independence. In the case of Justus Mwenda Kathenge v Director of Public Prosecutions & 2 others [2014] eKLR the Court while discussing the mandate of the 1st Respondent under Article 157 of the Constitution observed that:

“It is now trite that Courts cannot interfere with the exercise of the above mandate unless it can be shown that under Article 157(11);

- (i) he has acted without due regard to public interest,
- (ii) he has acted against the interests of the administration of justice,
- (iii) he has not taken account of the need to prevent and avoid abuse of Court process.

These considerations are not new and have over time been taken as the only bar to the exercise of discretion on the part of the 1st Respondent.”



22. Similarly, the Court of Appeal in the case of *Diamond Hasham Lalji & another v Attorney General & 4 others* [2018] eKLR opined as follows:

“(41) Thus, the exercise of prosecutorial discretion enjoys some measure of judicial deference and as numerous authorities establish, the courts will interfere with the exercise of discretion sparingly and in the exceptional and clearest of cases...”

23. The *National Police Service Act*, 2011 operationalizes the National Police Service which is established under Article 243 of *the Constitution*. Under Section 35 of the Act the office of the Director of Criminal Investigations, which is established under Section 28, is given the following functions:

- a) Collect and provide criminal intelligence;
- b) undertake investigations on serious crimes including homicide, narcotic crimes, human trafficking, money laundering, terrorism, economic crimes, piracy, organized crime, and cybercrime among others;
- c) maintain law and order;
- d) detect and prevent crime;
- e) apprehend offenders;
- f) maintain criminal records;
- g) conduct forensic analysis;
- h) execute the directions given to the Inspector-General by the Director of Public Prosecutions pursuant to Article 157 (4) of *the Constitution*;
- i) co-ordinate country Interpol Affairs;
- j) investigate any matter that may be referred to it by the Independent Police Oversight Authority; and
- k) perform any other function conferred on it by any other written law.

24. In *Republic v Commissioner of Police & another Ex-Parte Michael Monari & another* [2012] eKLR the Court held that:

“It is also clear in my mind that the police have a duty to investigate on any complaint once a complaint is made. In deed the police would be failing in their constitutional mandate to detect and prevent crime.”

25. Further, in the case of *Pauline Adhiambo Raet v Director of Public Prosecutions & 5 others* [2016] eKLR the National Police Service’s role was affirmed as follows:

“The Respondents are enjoined to investigate any allegations of criminal activity or conduct both by statute as well as by the *Constitution*. The investigations may take them to anyone including the Petitioner. They could investigate on their own prompting or upon being prompted by any member of the public as did the Interested Party in this case. In so doing, it is a legal mandate they would be undertaking.”



26. In *Investments & Mortgages Bank Limited (I&M) v Commissioner of police and The director of criminal investigations Department & DPP & 2 others*, Nairobi HCC Petition No 104 of 2012 (2013) Eklr, Justice Majanja remarked as follows;

“I agree with the respondents that it is within their mandate to investigate crimes where there is reasonable basis of commission of an offence and that in performance of their duties, they are independent institutions. The office of the Director of public prosecutions established under Article 157 is an independent office which is empowered to conduct its duties free from any influence or control by any authority. Its actions must be within the law and in accordance with what the *Constitution* dictates. One such dictate is that in the exercise of their powers, it is to “have regard to the public interest, the interests of administration of justice and the need to prevent and avoid abuse of the legal process.” Article 244 enjoins the National police service to amongst other things “comply with constitutional standards of human rights and fundamental freedoms.”

27. The *Ex-parte* applicant averred the decision to charge him was ultra vires as the dispute arose out of a private contractual matter and was shocked when criminal proceedings were instituted against him and he stood to suffer loss of freedom if the orders sought are not granted as the decision to charge him was irrational, illogical and against the rules of fair administration. He further deposed that the offence alleged against him was meant to unjustly punish him, embarrass and ridicule his business and that the dispute was civil in nature and should have been pursued as such. The criminal platform therefore being abused by the 1st and 2nd respondents and it was in order for the said criminal proceedings to be quashed.
28. The interested party in their replying affidavit averred that on or about 1st July 2021 to 16th May 2022, the *Ex parte* applicant obtained goods being metal products from them pretending that he was in a position to pay and that they were to make payment upon receipt of the goods. That the *Ex parte* applicant personally signed and issued the cheques for the payment of goods supplied which all bounced/ were dishonored and that the interested party’s claim against the *Ex parte* applicant and his company is a sum of kshs.161,022,020.64/= plus interests as being the balance due and owing in respect of the metal products he falsely obtained on credit. That as a result of the said offence, a complaint was lodged with the police whereby investigations were conducted, statements recorded and the *Ex parte* applicant was arrested and arraigned in Mavoko Law Courts Criminal Case No 1222 of 2022 *Republic versus Mohamed Zeshan Saroya*.
29. The *Ex parte* applicant has admitted being indebted to the interested party and further has not denied issuing dudde cheques for supplies received. It is noted that none of his postdated cheques was honoured and as a result he was charged with falsely obtained goods on credit. The applicant he has not pointed out how the 1st and 2nd respondent have abused their power or acted in excess of their authority to enable the court intervene. His arrest and being charged before Mavoko court, is the net result of the investigation process carried out and does not demonstrate any ultra vires conduct on the part of the 1st and 2nd respondents as they have acted within their mandate as provided for under *the Constitution*.
30. The final issue raised by the *Ex parte* Applicant was that, their dispute was of a civil nature and not criminal. The law on concurrent civil and criminal proceedings is set out in Section 193 A of the *Criminal Procedure Code*, Cap 75:

“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.”

31. . The Court of Appeal in *Commissioner of Police & The Director of Criminal Investigation Department & another v Kenya Commercial Bank Limited & 4 others* [2013] eKLR stated that Section 193A should be exercised responsibly, lawfully and in good faith. The court stated as follows:

“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, we reiterate that that power must be exercised responsibly, in accordance with the laws of the land and in good faith.”

32. In *Alfred Lumiti Lusiba v Petbad Ranik Shantilal & 2 others* [2016] eKLR, Ngaah J opined as follows with respect to the applicability of Section 193 A of the *Criminal Procedure code*:

“But even so, the viability of a cause of action in a civil claim does not necessarily stem from the conviction of a defendant in a criminal trial. Further still, the success or failure of a civil suit based on facts similar to those that a criminal prosecution is mounted does not necessarily depend on the conviction or acquittal of the defendant in the criminal trial; the outcome of a civil suit is independent from that of a criminal trial largely because the standard of proof required of a prosecutor in criminal prosecution is higher than that required of a claimant in a civil suit. To sustain a conviction, the prosecution must discharge the burden of proof beyond all reasonable doubt that the accused committed the offence with which he is charged. On the other hand, the claimant in a civil suit will only need to demonstrate on a balance of probability that the defendant is the tortfeasor and as a result of his tortious act or omission, the claimant suffered some sort of loss or damage that would warrant a remedy...The law is clear that the pendency of a civil suit is not a bar to criminal proceedings; it acknowledges the fact that the trial of the tortfeasor in a criminal prosecution need not be affected by the pending civil action against him. It is implied, therefore, that a civil suit cannot be stayed because of the prosecution of the tortfeasor for the obvious reason that the cause of action is neither rooted in the prosecution of the tortfeasor nor in his subsequent conviction.... the conclusion that one can draw from Section 193A of the *Criminal Procedure Code* together with the decisions of the learned judges in aforementioned cases is that both civil and criminal jurisdictions can run parallel to each other and that neither can stand in the way of the other unless either of them is being employed to perpetuate ulterior motives or generally to abuse of the process of the court in whatever manner.”

33. This argument by the *Ex parte* applicant that this dispute, therefore does not hold because, both civil and criminal proceedings can run concurrently. In this instance this court is only to determine based on the pleading filed if there has been any violation in instituting the criminal proceedings and as determined above none has been shown. In any event the rights of the *Ex parte* Applicant are well protected under Article 48 and 50(2) of the *Constitution* of Kenya and he shall be given ample and appropriate opportunity to cross examine all witnesses and put up a robust defense in the pending criminal case.



Disposition

34. Taking all relevant factors into consideration, I accordingly find that both the notice of motion dated 29th December 2022 and 3rd February 2023 both lack merit and the same are hereby dismissed with costs to the interested party.

35. It is so ordered.

JUDGMENT WRITTEN, DATED AND SIGNED AT MACHAKOS THIS 19TH DAY OF JUNE, 2024.

FRANCIS RAYOLA OLEL

JUDGE

DELIVERED ON THE VIRTUAL PLATFORM, TEAMS THIS 19TH DAY OF JUNE, 2024.

In the presence of;

Ms Mukobi for Applicant

Mr Keaton for Respondents

Sam Court Assistant

