



**Republic v Investigations & 2 others; Ramji & 2 others (Exparte Applicants) (Judicial Review Application E010 of 2024) [2024] KEHC 9348 (KLR) (24 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9348 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
JUDICIAL REVIEW APPLICATION E010 OF 2024  
DO CHEPKWONY, J  
JULY 24, 2024**

**IN THE MATTER OF: APPLICATION FOR ORDERS OF CERTIORARI & PROHIBITION  
IN THE MATTER OF: THREATENED ARREST, DETENTION &  
INTENDED PROSECUTION OF THE EXPARTE APPLICANTS.  
IN THE MATTER OF: ARTICLES 22,23(F), 47 OF THE CONSTITUTION,  
2010, THE LAW REFORM ACT, CAP 26 LAWS OF KENYA &  
THE CIVIL PROCEDURE ACT, CAP 21 LAWS OF KENYA.**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**DIRECTOR OF CRIMINAL INVESTIGATIONS ..... 1<sup>ST</sup> RESPONDENT**

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

**DIRECTOR OF PUBLIC PROSECUTIONS ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**BHARAT RAMJI ..... EXPARTE APPLICANT**

**HARISH RAMJI ..... EXPARTE APPLICANT**

**ASHVIN RAMJI ..... EXPARTE APPLICANT**

**RULING**

1. This ruling addresses two applications made by the Ex-parte Applicants. The first and primary application is the substantive judicial review application dated the 25<sup>th</sup> April, 2024 which seeks to quash the Respondents' decision to summon the Ex-parte Applicants under Section 52 of the National Police Service Act to investigate them for alleged forgery of Title L.R No. 11895/50 and 48. It also seeks to



prohibit the Respondents from initiating any criminal proceedings based on this decision or the alleged forgery of Title L.R No. 11895/50 and 48.

2. On 23<sup>rd</sup> April, 2024, when the initial application was presented to the court for leave to apply for judicial review orders, the court granted the leave and directed that it would operate as a stay. However, on 31<sup>st</sup> May, 2024, the Ex-Parte Applicants were arrested and detained by police officers at Muthaiga Police Station as part of the investigations into the alleged forgery. This prompted the second application by the Ex-parte Applicants dated 5<sup>th</sup> June, 2024, seeking the arrest and punishment of the police officers involved for contempt of court.
3. On 7<sup>th</sup> June, 2024, the court directed the parties to address both applications simultaneously through written submissions, which were later highlighted by the respective counsels on 26<sup>th</sup> June, 2024. However, for the sake of clarity, this court will address the two applications separately, starting with the contempt of court application dated 5<sup>th</sup> June, 2024.

### **The Application dated 5th June, 2024**

4. The contempt application is brought under Section 5 of the Judicature Act, Order 40 Rul3 3(1), Order 51 Rule (1) and (13) of the Civil Procedure Rules and Sections 1A, 1B, 3A, and 63 (e) of the Civil Procedure Act. That application seeks for the following orders: -
  - a. Spent.
  - b. That this Honourable Court be pleased to issue warrants of arrest against, Wilhelm K. Kimutai, Boniface Makando Omar Fadhili and Joseph Parsait for arraignment to show cause why they should not be jointly and severally committed to serve for six (6) months imprisonment for disobeying the orders of this Honourable Court.
  - c. That the Honourable Court be pleased to punish Wilhelm K. Kimutai, Boniface Makando Omar Fadhili and Joseph Parsait by committing them to prison for a period not exceeding six (6) months for disobeying court orders herein made on 23<sup>rd</sup> April, 2024.
  - d. That the costs of this application be borne by the said cited contemnors.
5. The grounds supporting the application are outlined in the application itself and the affidavit sworn by the 2nd Ex-parte Applicant. Their case is that, on 23<sup>rd</sup> April, 2024 the court granted the Ex-parte Applicants leave to file substantive Judicial Review proceedings within twenty-one (21) days and directed that the said leave would operate as stay. That the said orders were duly served upon all the Respondents but on 31<sup>st</sup> May, 2024, in defiance and willful disobedience of the orders, the above-named police officers proceeded to arrest, detain and confine the Ex-parte Applicants at Muthaiga Police Station in furtherance of investigations touching allegations of forgery. They were released only upon payment of Kshs. 100,000/= cash bail. And according to the Applicants, the arrest, detention and confinement were illegal and undertaken in blatant disregard of the court orders. That therefore, to uphold the rule of law and the court's dignity, the cited contemnors should be punished for their willful disobedience of court orders issued on 23<sup>rd</sup> April, 2024.
6. On the other hand, the Respondents did not dispute the issuance of the court orders on 23<sup>rd</sup> April 2024 or their service. However, Mr. Owiti, learned counsel for the Respondents, argued that the court orders were ambiguous and subject to various interpretations thus making them difficult to implement. According to Mr. Owiti, the court granted a twenty-one (21) days leave for the Ex-parte Applicants to file a substantive judicial review application, and this leave was to operate as a stay. Therefore, the stay was to lapse upon the expiry of the twenty-one days, and without an extension, it was lawful for the



Respondents to arrest the Ex-parte Applicants on 31<sup>st</sup> May, 2024, as there were no orders preventing them from doing so.

7. Mr. Owiti's submissions were further supported by Learned Senior Counsel, Mr. Khagram Sanjeev for the Interested Party. He referenced the case of Republic -vs- Public Procurement Review Board Ex-parte Synergy Chemie [2010] eKLR, where the court held that when leave to file a substantive Judicial Review Application lapses, the stay orders granted alongside the leave expire simultaneously. The learned Senior Counsel added that the situation would have been different if the court had issued separate or independent stay orders.

#### **Analysis and Determination of the Application dated 5th June 2024**

8. Having carefully considered the submissions by the counsels for the parties, the key question is whether the ex-parte Applicants have made a case for contempt to warrant the orders sought.
9. This court has consistently reiterated that the law governing contempt of court proceedings is the English Law applicable in England at the time the alleged contempt is committed. Section 5 of the Judicature Act grants the High Court of Kenya powers similar to those of the High Court of Justice of England to punish any party who violates its orders thus ensuring that the court's process is not abused and its authority and dignity are upheld at all times.
10. Part 81 of the English Civil Procedure Rule, which deals with Applications and Proceedings in relation to Contempt, requires that the application fully outline the grounds upon which the contempt application is made and identifies separately and numerically each alleged act of contempt, supported by affidavits containing all the relied-upon evidence. Thus, in order to succeed in Civil Contempt Proceedings, the Applicant must prove three key requirements: that the terms of the order were clear and unambiguous and were binding on the Respondent; that the Respondent was aware of the terms of the order; and that the Respondent, while aware of the terms, failed to comply with the order. Upon proving these requirements, willful disobedience and bad faith on the part of the Respondent can usually be inferred.
11. In this case, the existence of the orders issued by the court on 23<sup>rd</sup> April, 2024, is not disputed, nor does the Respondent deny having been served with the order or committing acts contrary to the orders. The main contention is whether the orders were too vague and ambiguous to be enforced.
12. The court firmly believes that a judicial order must be a precise and unequivocal command to be enforceable as between the parties. In the case at hand, the orders of 23<sup>rd</sup> April, 2024, granted by this court are as follows: -
  - a. That the application be and is hereby certified as urgent.
  - b. That leave be and is hereby granted to the Applicant to file substantive Judicial Review application for orders listed on the face of the chamber summons Application.
  - c. That the substantive motion be filed within twenty-one (21) days from the date hereof and be service upon the Respondents forthwith.
  - d. The leave granted shall operate as stay in terms of prayer (3) of the application.
  - e. The Respondents are granted seven (7) days leave upon service, to file a response to the substantive judicial review application.
  - f. Mention on 20<sup>th</sup> June, 2024 to confirm compliance.



13. The court's interpretation of order (d) above is that the court essentially granted stay orders to be effective for the same period as the leave granted to file the substantive review application, which is twenty-one (21) days. Although the court scheduled a mention date beyond this twenty-one (21) day period, it was the responsibility of the Ex-parte Applicants to request for an extension of the interim stay orders once the period granted for leave to file the substantive Judicial Review Application expired. Likewise, in their application, the Ex-Parte Applicants did not seek for the stay to subsist pending the determination of the Application.
14. In a contempt application, the order alleged to have been breached must clearly and unequivocally state what actions should and should not be taken. In the case at hand, the court orders specified that the stay would remain effective as long as the period for the granted leave subsisted. Thus, the orders, having been granted on 23<sup>rd</sup> April, 2024, and intended to last for twenty-one (21) days, expired on 15<sup>th</sup> May, 2024. It was then up to the Ex-parte Applicants to request for an extension. Since the alleged act of contempt occurred on 31<sup>st</sup> May, 2024, when the leave operating as a stay had lapsed, this court must disagree with the Ex-parte Applicants' claim that there was a breach of the court orders. Given the circumstances, the court is not convinced that the Ex-parte Applicants have proven their case to the required standard. Consequently, the Application dated 5<sup>th</sup> June, 2024 is disallowed with an order that each party bears their own costs.

#### **The Application dated 25th April, 2024**

15. Now, moving to the second application dated the 25<sup>th</sup> April, 2024, upon being granted leave to apply for Judicial Review Orders the Ex-parte Applicants are now seeking the following: -
  - a. That the Honourable Court be pleased to grant Orders of: -
    - i. Certiorari directed to the Respondents removing into the High Court for purposes of being quashed the Respondents decision as contained in the summons dated 18<sup>th</sup> April, 2024 requiring attendance of the Exparte Applicants under Section 52 of The *National Police Service Act* No. 11 of 2011 in respect of investigations on alleged forgery of Title L.R No. 11895/50 and 48 and or any subsequent criminal proceedings that may be instituted on the basis and touching the Ex-parte Applicants relating to Title L.R No. 11895/50 and 48;
    - ii. Prohibition directed at the Respondents jointly and severally prohibiting themselves, their agents, employees, functionaries and persons acting in their name from processing and or proceeding with the 1<sup>st</sup> Respondent's decisions as contained in the Summons dated 18<sup>th</sup> April, 2024 requiring attendance of the Exparte Applicants under Section 52 of The *National Police Service Act* No. 11 of 2011 in respect of investigations on alleged forgery of Title L.R No. 11895/50 and 48 and or any subsequent criminal proceedings that may be instituted on the basis and touching the Ex-parte Applicants relating to Title L.R No. 11895/50 and 48;
  - b. That the Costs and incidental to this application be provided for.
16. As required under Order 53 of the Civil Procedure Rules, the grounds upon which the Notice of Motion is based are contained in the Statutory Statement accompanying the Chamber Summons for leave. Therefore, the court shall consider those grounds alongside the verifying affidavit sworn by Mr. Harish Ramji, on 22<sup>nd</sup> April, 2024, the attached annexures, the affidavits filed with leave of the court and the submissions made by Ms. Lumallas, learned Counsel for the Ex-Parte Applicants.



17. In Summary, the Ex-Parte Applicant's case is that the Court of Appeal, in a judgment delivered on 15<sup>th</sup> December, 2023, being Civil Appeal Case No. 590 of 2019, Harish Ramji & 2 Others -vs- Mombasa Cement Limited & Another, upheld that the Ex-parte Applicants had duly and legally acquired Title No. L.R No. 11895/50 and 48 (the suit property) and are therefore the bona fide registered owners thereof. However, following its loss in the Court of Appeal, the Interested Party maliciously lodged a complaint with the 1<sup>st</sup> Respondent, accusing the Ex-parte Applicants of forging Title No. L.R No. 11895/50 and 48, which is adjacent to the Interested Party's parcel of land. Consequently, the 1<sup>st</sup> Respondent issued summons dated April 18, 2024, threatening to arrest the Ex-parte Applicants. Hence, the Ex-parte Applicants believe that the 1st Respondent's decision and the ongoing investigations deliberately ignored the findings and facts of the Court of Appeal Judgment.
18. According to the Ex-Parte Applicant, the Respondents decision to conduct investigations based on the interested party's complaint about the validity of Title No. L.R No. 11895/50 and 48 lacks legal justification in view of the Court of Appeal's Judgment and is unlawful, unreasonable and unfair to the Ex-parte Applicants thus infringing on their Constitutional rights. Ms. Lumallas, learned Counsel for the Ex-Parte Applicants, further submitted that the ongoing investigations are merely a tool of intimidation used by the Interested Party, who has refused to accept the Judgment and findings of the Court of Appeal and that the Respondents are being maliciously used to abuse their administrative mandate. The learned counsel has also argued that if the investigations were genuine, they should have been initiated along time ago when the ownership dispute first arose. In her view, the complaint should have been raised by the National Social Security Fund, which initially owned the suit property before transferring it to the Ex-Parte Applicants, rather than by the Interested Party, who never proved any proprietary rights to the subject property.
19. The Respondents and the Interested Party vehemently opposed the Ex-parte Applicants' application vide grounds of opposition, which appear to duplicate each other that this court's jurisdiction and mandate do not extend to limiting or defining the constitutional mandate of the Respondents. They argue that the Respondents are constitutionally and legally mandated to investigate and prosecute any crime or offense where there are visible grounds and facts to support such actions. Mr. Owiti, learned counsel for the Respondents has contended that criminal justice investigations are separate from any civil litigation that may have occurred between the parties. Therefore, granting the prayers sought by the Ex-parte Applicants would usurp the Respondents' constitutional mandate. Senior Counsel Mr. Khagram, representing the Interested Party, submitted that criminal justice is not subject to time limitations and can be undertaken whenever sufficient grounds exist. Furthermore, Mr. Khagram has stated that the Court of Appeal Judgment is not yet conclusive as the Interested Party has filed an appeal and is seeking leave to appeal to the Supreme Court. They urged the court to disallow the application and allow criminal justice to take its course, with the trial court determining the validity of the complaints.

#### **Analysis and Determination of the Application dated 25th April, 2024**

20. The court has carefully considered the Ex-parte Applicants' Motion, the responses, and counter-responses, as well as the oral submissions and all the authorities cited by the parties' advocates. In its view, the main issue for determination is whether the Ex-parte Applicants are entitled to the judicial review orders sought.
21. From the outset, this court acknowledges that judicial review is not only a constitutional remedy intended to control the powers of state organs and other administrative bodies but also entrenches the right to fair administrative action in the Bill of Rights. This court also acknowledges that the criminal



justice system, including criminal trials, is a matter of public interest and is conducted to ensure the rule of law as a pillar of good governance, is protected and promoted.

22. Various state organs, including the Respondents, are entrusted with the duty to safeguard the criminal justice system. For example, the Director of Criminal Investigations (the 1<sup>st</sup> Respondent) operates under the Inspector General of Police and is responsible for investigating complaints lodged by the public to determine if a crime has been committed by deriving its powers under Section 24 of the [National Police Service Act](#). On the other hand, the Director of Public Prosecutions (the 3<sup>rd</sup> Respondent) exercises powers conferred by Article 157 of [the Constitution](#) and the [Office of the Director of Public Prosecutions Act](#).
23. However, these state organs are subject to the authority granted by [the Constitution](#). Although the court should not usurp the constitutional mandate of such organs of investigating and prosecuting, where it is alleged that these state organs have not adhered to constitutional standards in a particular case, it is incumbent upon this court to investigate and determine the allegations. It should also be understood that the mere likelihood that ongoing or anticipated criminal proceedings will fail is not a ground for halting those proceedings through judicial review since the later, is concerned with the decision-making process and is available where it is clear that the process followed in performing a public duty or other administrative action, as stipulated under Article 47 of [the Constitution](#) and the [Fair Administrative Action Act](#), is illegal, irrational, procedurally improper, or tainted with malice and bad faith. Therefore, the Ex-Parte Applicants in this case are required to demonstrate that the ongoing investigations and intended prosecution constitute an abuse of the court process to warrant judicial review intervention.
24. In this case, the Ex-Parte Applicants contend that the ongoing investigations into the alleged forgery of the title to the suit property are illegal, given the Court of Appeal's decision that affirmed the Ex-Parte Applicants' valid title to the property. They argue that since the civil dispute was concluded, it would be malicious and illegal to reopen the matter in criminal proceedings.
25. This court wishes to align itself with the findings in the case of Director of Public Prosecutions & 2 Others v Pius Ngugi Mbugua & Another Exparte Muktar Saman Olow [2017] eKLR where the court held as follows: -

“Nonetheless, although the power to prosecute is not absolute, the fact that the facts constituting the basis of a criminal proceeding may similarly be a basis for a pending civil suit is no ground for staying or stopping the criminal process if the same facts can similarly be a basis for a criminal offence. This is what Section 193 A of the Criminal Procedure Code underscores. Therefore, the concurrent existence of the criminal proceedings and civil proceedings would not, ipso facto, constitute an abuse of the process of the court unless the commencement of the criminal proceedings is meant to force the applicant to submit to the civil claim in which case the institution of the criminal process would have been for the achievement of a collateral purpose other than its legally recognized aim. This position is fortified by Section 193A of the Criminal Procedure Code which stipulates:

193 A. 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.”



26. On the duty of the police to investigate complaints, the court in the case of Republic v Commissioner of Police and Another Ex parte Michael Monari & Another [2012] eKLR stated:-

“The police have a duty to investigate on any complaint

once a complaint is made. Indeed, the police would be failing in their constitutional mandate to detect and prevent crime. The police only need to establish reasonable suspicion before preferring charges. The rest is left to the trial court. The predominant reason for the institution of the criminal case cannot therefore be said to have been the vindication of the criminal justice. As long as the prosecution and those charged with the responsibility of making the decisions to charge act in a reasonable manner, the High Court would be reluctant to intervene”.

27. Based on the foregoing, it is imperative that the court exercises caution in its findings so as to avoid prejudicing the intended criminal proceedings. The duty of the police to investigate allegations should not be interfered with unless it is shown that their discretion is being abused or used to achieve collateral purposes unrelated to the vindication of a criminal offense, such as coercing a party into conceding a civil dispute.

28. With this in mind, the investigations being conducted by the 1st Respondent involve a complaint of alleged forgery concerning the title of the subject property. These investigations are still ongoing, and no charges have been shown to have been brought against the Ex-parte Applicants. This court has also taken time to read through the Court of Appeal Judgment dated 15<sup>th</sup> December, 2023 and apart from affirming that the Ex-parte Applicants have valid title to the property, the Superior Court did not adjudicate on an alleged claim of forgery. Therefore, the ongoing investigations cannot be said to be aimed at settling the civil dispute that culminated in the case before the Court of Appeal.

29. This court reiterates that, in exercising its judicial review jurisdiction, it is primarily concerned with ensuring fairness to the Applicant in the institution and maintenance of the criminal proceedings. Once the court is satisfied that the criminal proceedings are bona fide, it should not usurp the trial court's jurisdiction or delve into the sufficiency of the evidence to be presented against the Applicants. Consequently, if charges are brought against the Applicants following the investigations, the Applicants ought to be granted a fair trial and or hearing, and if dissatisfied with the outcome, they will be at liberty to appeal the same.

30. For these reasons, this court finds that the Ex-parte Applicants have not demonstrated that they are deserving of the judicial review remedies of Certiorari and Prohibition as requested. Therefore, the Notice of Motion dated 25<sup>th</sup> April, 2024 is hereby dismissed with orders that each party bears its own costs.

It is so ordered.

**DATED AND SIGNED AT KIAMBU THIS 22ND DAY OF JULY, 2024.**

**D.O CHEPKWONY**

**JUDGE**

**DELIVERED DATED AND SIGNED AT KIAMBU THIS 24th DAY OF JULY, 2024.**

**ABIGAIL MSHILA**

**JUDGE**

In the presence of:



Sanjeer Khagram for the Interested Party  
M/S Owiti for the ODPP  
Court Assistant - Mourice

