



**Gulf Energy Holdings Limited & 2 others v Director of Public Prosecutions & another  
(Judicial Review E027 of 2024) [2024] KEHC 12635 (KLR) (18 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12635 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
JUDICIAL REVIEW E027 OF 2024**

**RE ABURILI, J**

**OCTOBER 18, 2024**

**IN THE MATTER OF AN APPLICATION BY GULF ENERGY HOLDINGS LIMITED,  
FRANCIS ORIA OUMA AND KEN AJUMA SARAWIWA FOR LEAVE TO APPLY  
FOR JUDICIAL REVIEW ORDERS OF CERTIORARI AND PROHIBITION**

**AND**

**IN THE MATTER OF THE DECISION OF THE DIRECTORATE OF CRIMINAL  
INVESTIGATIONS AND THE DIRECTOR OF PUBLIC PROSECUTIONS TO  
CHARGE FRANCIS ORIA OUMA AND KEN AJUMA SARAWIWA WITH ALLEGED  
OFFENCE OF ROBBERY CONTRARY TO SECTION 296(1) OF THE PENAL CODE**

**AND**

**IN THE MATTER OF EXERCISE OF POST TERMINATION RIGHTS AND OBLIGATIONS  
OF THE LICENCE AGREEMENT MADE BETWEEN GULF ENERGY HOLDINGS LIMITED  
AND DOLMUND (K) ENTERPRISES LIMITED IN RESPECT TO RUBIS NYAMASARIA**

**AND**

**IN THE MATTER OF THREATENED INFRINGEMENT OF  
RIGHTS GUARANTEED UNDER ARTICLES 40, 47 OF THE  
CONSTITUTION, 2010 THE FAIR ADMINISTRATIVE ACT NO. 4 OF 2015**

**BETWEEN**

**GULF ENERGY HOLDINGS LIMITED ..... 1<sup>ST</sup> APPLICANT**

**FRANCIS ORIA OUMA ..... 2<sup>ND</sup> APPLICANT**

**KEN AJUMA SARAWIWA ..... 3<sup>RD</sup> APPLICANT**

**AND**

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

**DIRECTORATE OF CRIMINAL INVESTIGATIONS ..... 2<sup>ND</sup> RESPONDENT**



## RULING

1. The Applicants herein Gulf Energy Holdings Ltd, Francis Oria Ouma and Ken Ajuma Sarawiwa have filed the application dated 17<sup>th</sup> October 2024 under certificate of urgency seeking leave of court to institute Judicial Review proceedings against the Respondents, seeking orders of certiorari and Prohibition.
2. The urgency disclosed is that the Respondents have charged the Applicants with a criminal offence yet the acts complained of were done in execution of an order of the court upon termination of a Dealer Licence Agreement between the 1<sup>st</sup> Applicant and the Interested Party, vide Kisumu CMCC No. E125 of 2024.
3. I have perused the Chamber Summons, the supporting affidavit, statement of facts and annextures. I am satisfied that the application is urgent. I certify it as urgent.
4. On the prayer for leave to apply for Judicial Review Orders of Certiorari and Prohibition, I have perused the application and depositions. In applications for leave, the court ought not to delve deep into the arguments of the party applying but make a cursory perusal of the evidence before the court and make the decision as to whether an applicant's case is sufficient meritorious to justify leave.
5. Leave of court to file Judicial Review application is a prerequisite to making a substantive application, with a view to filtering out frivolous applications and the grant or refusal involves an exercise of judicial discretion and the test to be applied is whether the applicant has an arguable case. (See [Uwe Maxner & Another v Attorney General](#) (2005) eKLR).
6. Having perused the Chamber Summons and the accompanying documents, I am satisfied that the application for leave is not frivolous.
7. I grant leave to the Applicant to apply for Judicial Review Orders of Certiorari to remove into the High Court for purposes of quashing the decision of the Director of Public Prosecutions and the Directorate of Criminal Investigations, the Respondents herein to investigate, charge and prosecute the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants Francis Oria Ouma and Ken Ajuma Sarawiwa with the offence of Robbery contrary to Section 296(1) of the [Penal Code](#) relating to the exercise of post termination rights and obligations under a Licence Agreement made between Gulf Energy Holdings Ltd the registered owner of property Kisumu/Nyalunya/2319 and the Rubis branded service station erected thereon and Dolmuld (K) Enterprises Ltd, a Licensee thereunder and a named Interested Party herein.
8. Leave is further granted to the Applicants to apply for Judicial Review Orders of Prohibition directed at the Director of Public Prosecutions the 2<sup>nd</sup> Respondent herein prohibiting and or restraining him from preferring, commencing and or sustaining any criminal charges against Francis Oria Ouma and Ken Ajuma Sarawiwa the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants herein or such other officer of Gulf Holdings Limited, with the offence of Robbery and other undisclosed offences relating to the exercise of post termination rights and obligations under a Licence Agreement made between Gulf Energy Holdings Ltd being the registered owner of Land Parcel No. Kisumu/Nyalunya/2319 and the Rubis branded and Dalmuld (K) Enterprises Ltd, a Licensee thereunder and a named Interested party herein.
9. On the prayer that the leave so granted should operate as stay of all or any actions or proceedings to investigate, prefer, commence and or sustain any criminal charges against Francis Oria Ouma and Ken Ajuma Sarawiwa the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants, or such other officer of Gulf Energy Holdings Limited including Winam SPMCRC No. E303 of 2024 *Republic v Francis Oria Ouma and Ken Ajuma*



*Sarawiwa*, the settled Judicial pronouncement are that although an applicant for leave to apply may demonstrate that they deserve leave, stay is not automatic either. They have to show that unless stay of the impugned action is granted the intended application, if successful, will be rendered nugatory and therefore the applicant will be rendered a pious explorer in the Judicial process.

10. I observe that the charges preferred against the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants are in the initial stages. The hearing has not commenced. They allege that they were acting on the basis of a court order in Kisumu CMCC No. E125 of 2024 where Hon. E. Obina issued orders allowing the 1<sup>st</sup> Applicant to take possession of Rubis, Nyamasaria and the 1<sup>st</sup> Applicant was to take an inventory of items and properties at Rubis Nyamasaria at the time of taking possession at the station among others.
11. In view of the above, I find that if the stay sought is not granted and the criminal case is heard, the applicants will be rendered pious explorers in the Judicial process.
12. Accordingly, I order that the leave granted herein shall forthwith operate as stay of any action or proceedings commenced or to be commenced against Francis Oria Ouma and Ken Ajuma Sarawiwa, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents herein or such other officer of Gulf Energy Holdings Limited including Winam SPM Criminal Case No. E303 of 2024 (*Republic v Oria Ouma and Ken Ajuma Sarawiwa*, until the substantive motion once filed is heard and determined.
13. The substantive motion shall be filed and served upon the Respondents and the Interested Parties within 21 days of today.
14. Costs of this application shall be considered in the substantive motion.
15. This file is closed.
16. I so order.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 18<sup>TH</sup> DAY OF OCTOBER, 2024**

**R. E. ABURILI**

**JUDGE**

