



**Republic v Office of the Director of Public Prosecutions & 2 others;
Malala & 7 others (Interested Parties) (Judicial Review Application
E003 of 2022) [2023] KEHC 2772 (KLR) (24 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2772 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
JUDICIAL REVIEW APPLICATION E003 OF 2022
WM MUSYOKA, J
MARCH 24, 2023**

BETWEEN

REPUBLIC APPLICANT

AND

**OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS 1ST RESPONDENT
DIRECTOR OF CRIMINAL INVESTIGATIONS 2ND RESPONDENT
ATTORNEY-GENERAL 3RD RESPONDENT**

AND

**CLEOPHAS WAKHUNGU MALALA INTERESTED PARTY
JOEL WEKESA BARASA INTERESTED PARTY
MARVIN KOMBO OMANI INTERESTED PARTY
ABABU SHARGO BORCHERD INTERESTED PARTY
CECIL AMBEYI MUYUKA INTERESTED PARTY
JOYCE KAVERE ABACHI INTERESTED PARTY
HAKIM JUMA AMBANI INTERESTED PARTY
SHAKILA AMBOYE OWINGWA INTERESTED PARTY**

RULING

1. The application that am tasked with determining is dated 18th July 2018. It seeks, in the main, provision of certain documents to the ex parte applicants, by the respondents, to facilitate prosecution of their case.



2. The said application was before me on 20th July 2022, when I was informed, by the ex parte applicants, that they had not served it, whereupon I directed that the same be served, and it be canvassed by way of written submissions. I fixed it for mention on 24th October 2022, ostensibly to confirm service, and filing of replies and submissions, and allocation of a date for ruling. When the matter was mentioned on 24th October 2022, I was informed that service had been done, and I allocated a date for ruling, 3rd February 2023.
3. I am unable to prepare the ruling, for I have established, from the record, that there is no evidence that the application, dated 18th July 2022, was ever served on the respondents, the persons or entities who or that are supposed to supply the documents sought in that application. There is no affidavit of service to evidence service of the said application. All I see on record is a mention notice, placed in the record without an affidavit, and it relates to the mention scheduled for 24th October 2022. It bears a receipt stamp by the 2nd respondent, but not the other respondents.
4. As the respondents have never been served with the application that I am meant to write a ruling on, it would not be just to consider granting orders against them, when they have not had a fair hearing. Service of court process is cardinal to a fair hearing.
5. Let the ex parte applicants comply with my directions of 20th July 2022, before any further step can be taken in the matter. It is so ordered.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 24TH DAY OF MARCH 2023

WM MUSYOKA

JUDGE

Mr. Erick Zalo, Court Assistant.

Dr. Malalah, instructed by Malalah & Company, Advocates for the ex parte applicants.

