



**Republic v Director of Public Prosecution & 2 others; Masibo (Exparte Applicant);
MM (Minor) & another (Interested Parties) (Miscellaneous Criminal Application
E040 of 2022) [2023] KEHC 22555 (KLR) (22 September 2023) (Judgment)**

Neutral citation: [2023] KEHC 22555 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
MISCELLANEOUS CRIMINAL APPLICATION E040 OF 2022
JRA WANANDA, J
SEPTEMBER 22, 2023
**IN THE MATTER OF AN APPLICATION BY VICTOR WAFULA
MASIBO 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 BUTALI PRINCIPAL MAGISTRATE’S
COURT CRIMINAL CASE NO. SOE36 OF 2022**

BETWEEN

REPUBLIC APPLICANT

AND

DIRECTOR OF PUBLIC PROSECUTION 1ST RESPONDENT

INSPECTOR GENERAL OF POLICE 2ND RESPONDENT

**PRINCIPAL MAGISTRATE’S COURT BUTALI LAW COURTS 3RD
RESPONDENT**

AND

VICTOR WAFULA MASIBO EXPARTE APPLICANT

AND

MM (MINOR) INTERESTED PARTY

OCS – NANGILI POLICE STATION INTERESTED PARTY



JUDGMENT

1. On 8/07/2022, by the orders made by Hon. W. Musyoka, the Applicant obtained leave to commence these Judicial Review Proceedings. Pursuant thereto, on 19/07/2022, the Applicant filed the present substantive proceedings vide the Application brought by way of the Notice of Motion dated 15/07/2022 (erroneously typed as 2021). The Application seeks the following orders:
 - i. That the Hon Court be pleased to grant judicial review order of certiorari to move to this court the decision of the 1st, 2nd and 3rd Respondents to charge and prosecute the Ex Parte-Applicant in the Butali Principal Magistrate's Court Criminal Case No. SOE36 of 2022 as per the said OB-Report No. 03/19/05/2022 for purposes of the same being quashed
 - ii. That the costs be borne by the Respondents and the Interested Parties.
2. The Applicant filed the said Application when he was still acting in person and the same is stated to be brought under Order 53 Civil Procedure Rules and "all enabling provisions of the laws of Kenya". It is premised on the grounds stated on the face of the Application and is supported by the Verifying Affidavit and Affidavit in Support sworn by the Applicant. A Statement of Facts is also attached.
3. In the Affidavit in Support and in the Statement, the Applicant basically depones that he was falsely arrested and charged in Butali Principal Magistrate's Court Criminal Case No. SOE36 of 2022 on the basis of the Nangili Police Station Occurrence Book (OB) Report No. OB/03/19/05/2022, he is not aware of the offence which caused his arrest, the contents of the said OB Report differ with the contents of the charge sheet and the contents of the statement of the 1st Interested party (who is the complainant) who caused his arrest, he has the locus standi to institute the Application for purposes of quashing the decision of the 1st and 2nd Respondents to charge and prosecute him in the said criminal case, it is in the interest of justice and fair play that judicial review orders of certiorari be granted so that the decision of the Respondents to charge him may be declared false, malicious and ultra vires and the same be quashed

Respondents' Response

4. Through Principal Prosecution Counsel, Osoro Nyaboke Loice, the 1st Respondent filed the Grounds of Opposition dated 25/10/2022. The grounds raised were that the Application does not disclose sufficient facts/evidence to warrant the Court to quash the decision to charge the Applicant, to give the orders sought would be usurping the powers of the 1st Respondent donated by Article 157 of *the Constitution* of Kenya 2010, the Application is raising issues of facts that can only be ventilated at a full trial, the issue of identification can only be determined once the complainant in the subordinate Court case has testified and been cross-examined by the Applicant, in the alternative and without prejudice the Applicant can apply to the 1st Respondent for review of the charges, the Application is otherwise misconceived, misplaced and an abuse of the process of the Court.

Applicant's Further Affidavit

5. The Applicant then swore the Further Affidavit filed on 15/11/2022 in which he deponed that despite the Respondents being aware of the contents of the said OB which differ with the contents of the charge sheet and the statement of the 1st Interested Party (complainant), they have continued to harass, intimidate and frustrate him to accept responsibility for the alleged offence yet the Applicant's name is not mentioned anywhere in the said documents. He added that despite being served with a letter requesting it to bring its file to this Court for purposes of quashing, the 3rd Respondent Court has not



forwarded the file and as a result, it has continued listing the matter for hearing when at the same time this judicial review case is proceeding, that judicial pronouncements of the superior Courts should not be challenged by inferior Courts and that his arrest, detention and arraignment in Court was in contravention of and inconsistent with Article 50 and 10 of *the Constitution* of Kenya hence he should be relieved under Article 23(3) thereof.

Hearing of the Application

6. By the Notice of Appointment filed on 6/12/2022, Messrs Andia & Co. Advocates came on record for the Applicant who, as aforesaid, had hitherto been acting in person.
7. Regarding participation in this matter by the other Respondents, I note that although there are Affidavits of Service on record indicating that all the Respondents were served, I have not come across any responses from the rest of the Respondents. I therefore presume that they opted not to file any.
8. Regarding Submissions, the Applicant filed his written Submissions on 17/5/2023 while Prosecution Counsel Mr. Busienei opted to make oral Submissions. As aforesaid, the rest of the Respondents did not participate in these proceedings.

Applicant's Submissions

9. Counsel for the Applicant submitted that the OB states that the 1st Interested Party was found in the house of a boda boda (motor cycle taxi) rider known as "Allan", that the Applicant was then arrested on 21/05/2022 and arraigned on 25/05/2022. He added that the Applicant was then charged with the offence of defilement and indecent assault, he denied the charges and the matter was ordered to proceed to full trial, the 1st Interested Party's statement does not mention the Applicant, the statement states that the person who was in the 1st interested party's company throughout was one Brian Wangila with whom she spent the entire night. He submitted that the decision being challenged is why the prosecution elected to charge the Applicant and not the said Brian Wangila,
10. Counsel submitted further that the charge sheet is defective, the offence of defilement is rooted on three ingredients being age of the victim, penetration and identification, in this suit the identity of the Applicant is not disclosed, the investigations by the 2nd Respondent are not only incomplete but also malicious and unlawful, no move has been made to amend the charges, the 1st interested Party stated that on 12/05/2022 she spent the night with the said "Brian", that they had sex but the charge sheet states that the offence allegedly occurred on 19/05/2022, with all these illegalities the proceedings against the Applicant is not only unlawful but malicious. Counsel doubted whether the police conducted an identification parade for the 1st Interested Party to choose who among "Brian", "Allan" and "Victor" defiled her, this Application should not however encourage the Respondent to rethink its position based on what has been pointed out.
11. Counsel further submitted that the Applicant is aggrieved by the decision to subject him to trial with no evidence directly linking him to the offence, the only sure way to challenge this is by judicial review, proceeding with the trial will not only be unfair to the Applicant but also an abuse of the Court process and a waste of precious time.

Respondent's Submission's

12. In his brief oral submissions, Prosecution Counsel argued that the Applicant is already in Court on trial, it is the mandate of the State to charge, there is prima facie evidence and that all the Applicant has raised can be canvassed at the trial.



Analysis and Determination

13. I have considered the Application, Affidavits, Submissions and authorities filed. In my opinion, the broad issue that arises for determination in this matter is the following:

“Whether sufficient material has been disclosed to warrant the quashing of the decision to charge and prosecute the Appellant with the offence of defilement.”

14. I now proceed to analyze the Issue.

15. It is generally agreed that the role of the Court in a judicial review application of this nature is to ensure that an Applicant is not dragged into Court on criminal charges when there is no substantial evidence to sustain such charges preferred. It is not in doubt that under *the Constitution* of Kenya, the 1st Respondent (hereinafter referred to as “the DPP”) has the authority and discretion to decide who, when and how to prosecute within the bounds of legal reasonableness. That role cannot be usurped by the Court. However, if the DPP acts outside the bounds of legal reasonableness, then he acts ultra vires and the Court retains the power and duty to intervene. This is because it is the Court’s responsibility and obligation to secure fair treatment for all persons brought before courts, and to prevent abuse of the court’s process (see the decision of Hon. Justice R. Mwangi in *Johnson Kamau Njuguna & another v Director of Public Prosecutions* [2018] eKLR)

16. It is however also agreed that the Court is not permitted 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 trial Court. The Court should not to usurp the constitutional or statutory mandate of the DPP and the Police (see decision of Hon. Justice G.V Odunga (as he then was) in *R v CS In charge of Internal Security & 3 Others Ex parte Jean Eleanor Margiris Otto* [2015] eKLR).

17. Closely related to the above is the position that the jurisdiction to decide whether or not a charge discloses an offence lies with the trial Court and not with the Judicial Review Court. That jurisdiction is donated to the trial magistrate by dint of Section 89(5) of the Criminal Procedure Code which provides as follows:

“Where the magistrate is of the opinion that a complaint or formal charge made or presented under this section does not disclose an offence, the magistrate shall make an order refusing to admit the complaint or formal charge and shall record his reasons for the order.”

18. On powers of prosecution, Hon. Justice M. Warsame (as he then was), in *Republic v Commissioner of Police and Another Ex parte Michael Monari & Another* 2012[eKLR] stated as follows:

“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 referring charges. The rest is left the trial court... 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”

19. Further, in Applications of this nature, the Court should not act as if it were an appellate Court and involve itself in delving into merits of the decision itself as to whether or not there was sufficient evidence to support the decision (see the Court of Appeal case of *Municipal Council of Mombasa v Republic & Umoja Consultants Ltd* [2002] eKLR).



20. Even where an Applicant has a seemingly plausible comeback to each of the charges made against him and even where they may be persuasive, it is the factual disputes in the case that necessitate a rational actor to conclude that there is sufficient evidence to take the case to trial in a criminal case (see the Court of Appeal decision in Patrick Ngunjiri Maina v Director of Public Prosecutions & 2 Others [2017]eKLR).
21. In connection thereto, Hon. Lady Justice Mumbi Ngugi (as she then was) in Hon. James Ondicho Gesami v The Attorney General & Others [2012] eKLR, correctly held that the DPP is at liberty to prefer charges against any person in respect to whom he finds sufficient evidence to do so. This power of the DPP can only be questioned where sufficient grounds for a violation of the powers is established. The Judge stated further as follows:
- “73. requiring a person to subject himself to the normal criminal prosecution process mandated by the law where he has all the safeguard guaranteed by *the Constitution* does not in any way amount to an attack on the human dignity of his constitutional rights.”
22. In respect to the powers of the Court in proceedings of this nature, in Joram Mwenda Guantai vs. The Chief Magistrate, Nairobi Civil Appeal No. 228 of 2003 [2007] 2 EA 170, the Court of Appeal held as follows:
- “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 or absence 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 Court 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 an 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 an abuse of the process of the court.”
23. From the above guidelines, it is clear that in proceedings of this nature, the Courts do not deal with the merits of the case but only with the process. Delving too much into the merits would be a usurpation of the powers vested in the trial court by *the constitution* and statute.
- It would also be tantamount to micromanaging the proceedings in that court. As was stated by Hon. Justice Odunga in the case of Republic vs Attorney General & 4 others ex-parte Diamond Hashim Lalji and Ahmed Hasham Lalji, the role of the Court is to determine, for instance, whether the decision to commence the criminal charges was made with jurisdiction, whether the persons affected by the decision were heard before it was made, whether the affected person was given a hearing before the decision was made, whether the decision took into account relevant matters or took into account irrelevant matters, whether the decision is contrary to the affected party’s legitimate expectation, whether the decision to charge is irrational ejusdem generis.
24. As Judge Odunga further guided, where an applicant brings such proceedings with a view to determining contested matters of facts and in effect urges the Court to determine the merits of two or more different versions presented by the parties the Court would not have jurisdiction to determine



such a matter and will leave the parties to resort to the usual forums where such matters ought to be resolved. In other words, such proceedings are not the proper forum in which the innocence or otherwise of the applicants is to be determined and a party ought not to institute such proceedings with a view to having the Court determine his innocence or otherwise. To do so in my view amounts to abuse of the judicial process.

25. The Court in these kinds of proceedings is mainly concerned with the question of fairness to the applicant in the institution and continuation of the criminal proceedings and whether such proceedings amount to a violation of his rights and fundamental freedoms. As was stated by Judge Odunga in the separate case of Republic v Inspector General of Police & another Ex-Parte George Gathuki Nganga & another [2015] eKLR, once the Court is satisfied that that is not the case, the High Court ought not to usurp the jurisdiction of the trial Court and trespass onto the arena of trial by determining the sufficiency or otherwise of the evidence to be presented against the applicant. Where, however, it is clear that there is no evidence at all or that the prosecution's evidence even if were to be correct would not disclose any offence known to law, to allow the criminal proceedings to continue would amount to the Court abetting abuse of the Court process by the prosecution
26. The determination of this case must therefore be conducted within the above parameters. It is therefore upon the Applicant to satisfy the Court that the discretion given to the 1st and 2nd Respondents to investigate and prosecute ought to be interfered with.
27. In the case of Kuria & 3 Others vs. Attorney General [2002] 2 KLR 69, the following was stated:
 - “ 1. The court has the power and indeed the duty to prohibit the continuation of criminal prosecutions if extraneous matters divorced from the goals of justice guide their instigation.
 2. It is the duty of the court to ensure that its processes are not used as tools for vilification on issues not pertaining to that which the system was even formed to perform.
 3. An order of prohibition should be granted where compelling an accused to stand trial would violate the fundamental principles of justice which underlie on society's senses of fair play and decency and/or where the proceedings are oppressive or vexatious.
 4. The machinery of criminal justice is not to be allowed to become a pawn in personal feuds and individual vendetta. The power of judicial review is invariably invoked so as to jealously guard it from this abuse.
 5. It is the duty of the court to ensure that the utilization and or invocation of its processes and the law is not actuated by other considerations so divorced from the goals of justice as to make the court virtually a scapegoat in personal score settling and vendetta.
 6. The limits of judicial review should not be curtailed but should be nurtured and extended in order to meet the changing conditions and demands affecting the decision-making process in contemporary society.
 7. The law must develop to cover similar or new situations and the application for judicial review should not be stifled by old decisions and concepts, but must be expansive, innovative and appropriate to cover new areas where they fit. It is therefore imperative that the intrusion of judicial review remedies



into criminal proceedings would have the effect of requiring a much broader approach.

8. It does not matter whether the decision has been made or not, what matters is the objectives for which the court procedures are being utilized. Once it is decided that the process is an abuse, it matters not that it has been commenced or whether there was acquiescence by all parties. The duty of the court in such instances is to purge itself of such proceedings. Thus, whereas the court cannot order that the prosecution be commenced, because already it can still order that the continued prosecution be stayed. An order of prohibition can be issued to prohibit the continued hearing.
 9. An order of prohibition should be granted where there is an abuse of the process of the court, which will have the effect of stopping the prosecution already commenced. A prerogative order is an order of a serious nature and cannot and should not be granted lightly. There should be concrete grounds for supposing that continued prosecution of a criminal case manifests an abuse of the judicial procedure, much that the public interest could be best served by staying of the prosecution.
 10. In the instant case several allegations of selective prosecution, harassment and pressure from the state were made. However, no evidence of those allegations or of malice unlawful actions, excess or want of authority and or manipulation had been shown.
 11. In order for an application such as this one to succeed, there is need to show how the court is being abused or misused, there is need to indicate or show the basis upon which the rights of the applicant are under serious threat of being undermined by the criminal prosecution.
 12. The effect of a criminal prosecution on an accused person is adverse, but so also are their purpose in society. There is a public interest underlying every criminal prosecution, which are being jealously guarded, whereas at the same time there is private interest of the rights of an accused person to be protected. Given these bipolar considerations, it is imperative for the court to balance these considerations vis-à-vis the available evidence. (emphasis mine)”
28. In the instant matter, the OB Report of 19/05/2022 annexed is incomplete but indicates that the 1st interested party’s father reported to the police that the interested party, a 17-year-old girl and a class 8 primary school pupil went missing from home and school on 17/05/2022, that on 19/05/2022 she was found and was taken back to school, that upon interrogations she revealed that she had been living with a boda boda (motor-cycle taxi) rider, that she however again ran away on the same date and was later found in the house of one boda boda rider by the name “Allan” who however ran away, and that they took the girl to the police station. From there, the rest of the pages of the OB are then missing.
29. In her statement, the 1st interested party’s explanation is that she had gone to an overnight funeral vigil within the neighbourhood, that in the morning she left and went to a nearby open field where she slept until she was woken up by a boy grazing cattle and who introduced himself as “Brian Wangila”, that on the next several days she always returned to the vigil and in the morning went back to the open field where she would meet with the said “Brian” and they would then spend time together, that after a few days “Brian” took her to his home where they spent a few days during which they had sex on several



nights, they later moved to the house of a friend of the said “Brian” where they spent a few more days and continued with their now routine sexual encounters, one day when she was in a food kiosk in the market she met a different boda boda rider by the name “Hamsa” who took her to his house where they spent the night and had sex, in the morning several people including her father raided the house and took her away amid commotion and confrontation with a group of boda boda riders and took her to the police station. She later stated that she led the police officers to the homes of the said “Brian” and the said “Hamsa” and the two were arrested.

30. From the Charge Sheet, it is indicated that the Applicant was arrested on 21/05/2022 and arraigned on 25/05/2022. In his Submissions, the Applicant’s Counsel stated that the Applicant was then charged with the offence of defilement and indecent assault, that he denied the charges and the matter ordered to proceed to full trial.
31. From what I have recounted above, it is clear that the OB Report indicates that the 1st Interested Party was found in the house of a boda boda (motor cycle taxi) rider by the name “Allan”. In her statement, the 1st interested party stated that the person who was with her throughout was one “Brian Wangila”. The 1st interested Party expressly stated that she spent several nights with the said “Brian” and that they had sex during such nights. According to the 1st interested party, a few days later, she abandoned the said “Brian” and moved to a different partner by the name “Hamsa” with whom she also had sex. In light of the foregoing, I agree with Counsel that there is no explanation whatsoever on how and why the prosecution elected to charge the Applicant and not the said “Allan” or the said “Brian Wangila” who were the persons expressly mentioned by the interested party as having had sex with her on different occasions. It has not even been alleged that the Applicant is the same person as either the said “Brian” or the said “Hamsa”. There is therefore clearly no evidence on record linking the Applicant to the offence.
32. On its part, the State only filed Grounds of Opposition on points of law and did not file any Affidavit thus denying the Court an explanation on the basis of the decision to charge the Applicant rather than the said “Brian” or the said “Hamsa”. In the absence of any such explanation, the Court is left to merely speculate. Be that as it may, the absence of a Replying Affidavit means that the facts as presented by the Applicant are admitted or at the least, remain uncontroverted.
33. In the case of R v Attorney General Ex parte Kipngeno Arap Ngeny High Court Civil Application No 406 of 2001, the court held:

“A criminal prosecution which is commenced in the absence of proper factual foundation of basis is always suspect for ulterior motive or improper purpose. Before instituting criminal proceedings, there must be in existence material evidence on which the prosecution can say with certainty that they have a prosecutable case. A prudent and cautious prosecutor must be able to demonstrate that he has a reasonable and probable cause for mounting criminal prosecution otherwise the prosecution will be malicious and actionable.”
34. It is true that the role of the Judicial Review Court is to weigh the rights of an applicant and not to weigh the evidence. As such, the DPP’s decision to charge is itself unfettered but not unaccountable. In the case of Peter Ngunjiri Maina v Director of Public Prosecutions [2017] eKLR, Hon. Justice Prof. J. Ngugi (as he then was), held that:

“The decision of the DPP is unfettered but it must be accountable. The discretion of part of the court to interfere with the decision of the DPP is untrammelled but it is not to be exercised whimsically.”



35. In the same case, Judge Prof Ngugi listed 8 instances where the Court’s duty and authority to review the DPP’s exercise of discretion ought to be called upon. Quoting Hon. Justice G.V. Odunga (as he then was), in *R v DPP & 2 Others Ex parte Nomoni Saisi* [2016]e KLR, he stated as follows:

“It is now clear that even in the exercise of what may appear to be prima facie absolute discretion conferred on the executive, the court may interfere. The court can only intervene in the following situations:

1. Where there is an abuse of discretion;
2. Where the decision-maker exercises discretion for an improper purpose;
3. Whether decision-maker is in breach of the duty to act fairly;
4. Whether decision-maker has failed to exercise statutory discretion reasonably;
5. Where the decision-maker acts in a manner to frustrate the purpose of the Act donating the power;
6. Where the decision-maker fetters the discretion given;
7. where the decision-maker fails to exercise discretion;
8. Where the decision-maker is irrational and unreasonable.”

36. Applying and weighing the above tests or guidelines against the facts, context and circumstances of this case, I find that the decision by the DPP to charge and prosecute the Applicant in this matter was irrational, an abuse of discretion, a failure to act fairly in the exercise of discretion and appears to have been actuated by extraneous considerations. The decision is, in my view, against the public interest, does not cohere with the interests of the due administration of justice and is oppressive.

37. Indeed, this was the caution given by the Court of Appeal in the case of *Commissioner of Police & the Director of Criminal Investigation Department & Another vs. Kenya Commercial Bank Limited & 4 Others* [2013] eKLR as follows:

“By the same token and in terms of Article 157(11) of *the Constitution* quoted above, in exercising powers donated by the law, including the power to direct the Inspector General to investigate an allegation of criminal conduct, the DPP is enjoined, among other considerations, to have regard to the need to prevent and avoid abuse of the legal process. The court on the other hand is required to oversee that the DPP and the Inspector General undertake these functions in accordance and compliance with the law. If it comes to the attention of the court that there has been a serious abuse of power, it should, in our view, express its disapproval by stopping it, in order to secure the ends of justice, and restrain abuse of power that may lead to harassment or persecution. See *Githunguri V. Republic* [1985] LLR 3090.

It has further been held that an oppressive or vexatious investigation is contrary to public policy and that the police in conducting criminal investigations are bound by the law and the decision to investigate a crime (or prosecute in the case of the DPP) must not be unreasonable or made in bad faith, or intended to achieve ulterior motive or used as a tool for personal score-settling or vilification. The court has inherent power to interfere with such investigation or prosecution process. See *Ndarua v. R.* [2002] 1EA 205. See also *Kuria & 3 Others v. Attorney General* [2002] 2KLR 69.”



38. From the circumstances of the case and the material placed before this Court, I am satisfied that the Application herein meets the threshold for granting of the Judicial Review Orders of Certiorari and Prohibition. Proceeding with the trial will not only be unfair to the Applicant but also an abuse of the Court process and a waste of precious time.

Final Orders

39. In the end, I find that the Application dated 15/07/2021 filed herein is merited and consequently, I allow the same in the following terms:
- i. This Court finds that the ongoing criminal proceedings against the ex parte Applicant is an abuse of the due process of the Court.
 - ii. An Order of Certiorari is hereby issued to bring before this Court for the purposes of quashing the decision of the 1st and 2nd Respondents to charge and prosecute the ex-parte Applicant in Butali Principal Magistrates’ Court Criminal Sexual Offence Case No. E036 of 2022;
 - iii. An order of Prohibition is hereby issued directed to the Respondents prohibiting any further proceedings in the said Butali Principal Magistrates’ Court Criminal Sexual Offence Case No. E036 of 2022 and further prohibiting the Respondents from instituting 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-Report No. 03/19/05/2022, save and unless where material further or additional facts and/or circumstances are established.
 - iv. Each party shall bear his/her own costs.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 22ND DAY OF SEPTEMBER 2023

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WANANDA J. R. ANURO
JUDGE

