



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**JUDICIAL REVIEW NO. 497 OF 2016**  
**IN THE MATTER OF LAW REFORM ACT, CAP 26, LAWS OF KENYA**  
**AND**  
**IN THE MATTER OF THE CONSTITUTION OF KENYA**  
**AND**  
**IN THE MATTER OF THE INTENDED LEVYING OF CRIMINAL CHARGES AGAINST**  
**PATRICK MACHARIA NDERITU, AT THE CHIEF MAGISTRATES COURT AT KIBERA**  
**AND**  
**IN THE MATTER OF AN APPLICATION BY PATRICK MACHARIA NDERITU**  
**FOR LEAVE TO APPLY FOR ORDERS OF PROHIBITION, CERTIORARI**  
**PATRICK MACHARIA NDERITU.....APPLICANT**  
**VERSUS**  
**THE DIRECTOR OF CID.....1<sup>ST</sup> RESPONDENT**  
**THE DIRECTOR OF PUBLIC PROSECUTIONS.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. On 18<sup>th</sup> October 2016 the court granted leave to the ex parte applicant Patrick Macharia Nderitu to apply for Judicial Review orders of certiorari and prohibition and also ordered that the leave granted do operate as stay after hearing the chamber summons interparties.
2. The applicant dutifully filed the substantive motion on 25<sup>th</sup> October 2016 within the 21 days stipulated in the order of granting leave. The main motion which is dated 24<sup>th</sup> October 2016 seeks for the following orders:-
  - a. An order of certiorari to remove into the honourable court, the proceedings before the 1<sup>st</sup> respondent, the Director of Criminal Investigations Department and or the Land Fraud Unit,

CID Headquarters for the purposes of being quashed, and quash the proceedings and the intended charge sheet therein;

b. An order of prohibition directed at the respondents prohibiting them from presenting a charge sheet against him, charging him with a criminal offence relating to LR No. Nairobi/Block 94/66, Nairobi, and or consolidating the intended charge sheet with criminal case No. 616 of 2012 of Kibera Chief Magistrate's Court, or bringing any charges against the applicant, arising from the same transaction as the current case.

c. An order of prohibition directed at the respondents, prohibiting them from presenting a charge sheet against him, charging him with a criminal offence relating to LR No. Nairobi/Block 94/66, Nairobi and or consolidating the intended charge sheet with criminal case No. 6161/2012 at Kibera Chief Magistrate's Court, or bring any charges against the applicant, arising from the same transaction as the current case before any court in Kenya

d. An order of prohibition directed at the respondents, prohibiting the respondents from presenting a charge sheet against him, charging him with a criminal offence relating to LR No. Nairobi/Bock 94/66, before any court including the Chief Magistrate's Court in Kibera.

e. Costs of this application be provided for.

3. The application, as required by the provisions of Order 53 of the Civil Procedure Rules, is supported by the grounds contained in the statutory statement and verifying affidavit and annexures all supporting or accompanying the chamber summons for leave dated 17<sup>th</sup> October 2016.

4. The exparte applicant's case as detailed in the facts relied upon in the statutory statement and the verifying affidavit is that he is a businessman and that on several occasions, he has been summoned by the CID Land Fraud Department and asked to write a statement on what he knows about the sale transaction relating to land LR No. Nairobi/Block 94/66.

5. Upon being summoned, he was shown the statement of one Stanley Kihiko for Puthucode Krishnaiyer Seshadri, the complainant therein.

6. That the said statement does not mention the applicant or at all with regard to the mentioned land and neither does he know the complainant as he has never dealt with them. That although the police have recorded several statements from the applicant since 2012, they have never charged him with any offence but that they have been intimidating and threatening him with criminal charges if he fails to show them or to produce the vendors of LR No. Nairobi/Block/94/66.

7. That the police are threatening to arrest and charge the applicant with obtaining money by false pretences yet there is no complaint against him regarding the sale of LR No. Nairobi/Block 94/66.

8. That on 11<sup>th</sup> October 2016 the 1<sup>st</sup> respondent appeared before the Chief Magistrate's Court at Kibera during the hearing of **criminal case No. 6161/2012 Republic vs Thomas Nyakangu** Maosa and another and informed the court that he is in the process of arresting and charging the exparte applicant.

9. That on 13<sup>th</sup> October 2016 a CID officer called the applicant and directed the applicant to appear before the Kibera Court on 19<sup>th</sup> October 2016 to take a plea for the offence of obtaining money by false pretence contrary to Section 313 of the Penal Code and in default thereof, a warrant of arrest would be issued.

10. That the actions and procedure adopted by the respondents in charging the applicant because the applicant cannot produce vendors in LR No, Nairobi/Block 94/66 is malicious, vexatious and an abuse of the court process, and tainted with ulterior motive on the part of the respondents; that the

respondent's actions violate the legal principles of the Constitution, is in bad faith, is in breach of the fundamental rights and freedoms and calls for this court's intervention.

11. That the actions of the Director of Public Prosecutions are unlawful and are intended to frustrate the control of the public of criminal proceedings and the administration of justice in Kenyan courts.

12. That it is an abuse of court process to purport to charge the applicant with a criminal offence 4 years after the conclusion of investigations. That therefore the respondents are acting irrationally and without regard to applicable principles.

13. The applicant annexed to the verifying affidavit a copy of a statement recorded on 9<sup>th</sup> November 2012 by Stanley Kihiko on behalf of MR PUTHUCODE KRISCHNAIYER SESHADRI and MRS PREMA SESHADRI regarding property No.LR No. Nairobi/ Block 94/66- NYARI ESTATE, NAIROBI.

14. The respondents filed replying affidavit sworn by No. 67487 PC Thomas Kareithi on 20<sup>th</sup> December 2016 deposing that he is the investigating officer attached to the CID Headquarters Land Fraud Unit and conversant with this matter and the circumstances surrounding the whole matter.

15. The deponent denies the depositions of the applicant and questions how the applicant came into possession of the complainant's letter written by Mr Stanley Kihiko Advocate, since he, the applicant is not a suspect in criminal case No. 6162/2012 at Kibera Law Courts.

16. The investigating officer maintains that all the allegations made by the applicant are untrue since the police have not treated the applicant as a suspect or a witness in the ongoing criminal case in Kibera Law Courts.

17. That the applicant has not demonstrated how his rights have been infringed. That the Director of Public Prosecutions is empowered under Article 157 of the Constitution to institute, undertake, take over, continue and or terminate criminal proceedings amongst other duties, in accordance with the principles laid out in the Constitution hence the court should exercise caution and care not to interfere with the constitutional powers of the respondents to investigate and subsequently institute and undertake criminal proceedings and should only interfere with the independent judgment of the respondents if it is shown that the exercise of his powers is contrary to the Constitution, is in bad faith or amounts to an abuse of process.

18. That the applicant's averments are trumped up, misconceived, unfounded, unmeritorious and baseless. That the applicant has not demonstrated that the respondents have not acted independently or acted capriciously, in bad faith or has abused the legal process in a manner to trigger the High Court's intervention hence the motion should be dismissed entirely.

19. The parties' advocates filed and exchanged written submissions which they wholly adopted and urged the court to adopt the same and which submissions the court did adopt as filed.

20. In Mr Mariaria's submissions filed on 21<sup>st</sup> November 2016, on behalf of the exparte applicant, counsel reiterated the grounds and depositions of his client as per the statutory statement and verifying affidavit while maintaining that the respondent's conduct and actions are malafides in deciding to charge the applicant with a criminal offence yet no complaint has been raised against the applicant and that the respondents have flouted the procedures for charging accused persons. He relied on **Joram Mwenda v The Chief Magistrate, Nairobi Appeal No. 228/2003 [2007] 2 EA 170** where the Court of Appeal held that prohibition would issue where there is evidence of oppression, abuse of court process and is vexatious.

21. Further reliance was placed on **Mexner & Another v The Attorney General [2005] 2 KLR 189** where the Court of Appeal held, inter alia, that prohibition restrains abuse of excess of power.

22. Further reliance was placed on **Kuria & 3 Others v Attorney General [2002] 2 KLR 69** where the court held that it has power and duty to prohibit continuation of the criminal prosecution if extraneous matters divorced from the goals of justice guide the investigations and that the duty of the court is to ensure its process does not degenerate into tools for personal score-settling or vilification of issues not pertaining to that which the system was even formed to perform; where the prosecution violates fundamental principles of justice which underline the society's senses of fair play and decency and or where the proceedings are oppressive or vexatious.

23. It was also submitted that the intended criminal prosecution of the applicant has no factual foundation and that the respondents have not demonstrated that they have a reasonable and probable cause for mounting a criminal prosecution against the applicant hence they are malicious and unreasonable. Reliance was placed on **Republic vs Attorney General Exparte Kipngeno Arap Ngeng HC Miscellaneous 406/2001**.

24. Further, counsel submitted that the discretion given to the Director of Public Prosecutions under Article 157 of the Constitution and Section 4 of the office of the Director of Public Prosecutions Act No. 2 of 2013 is not absolute and must be exercised within certain laid down standards set by the Constitution and the Office of Director of Public Prosecutions Act.

25. That it is an abhorrent affront to the judicial conscience and the Constitution to argue that the court cannot question the discretion given to the Director of Public Prosecutions to prefer charges against the applicant. Reliance was placed on **Nakusa V Torora & 2 Others No. 2 Nairobi HCC 4/2003[2008] 2 KLR 565 and Koinange V Attorney General & Others [2007] EA 256; Republic vs Minister for Home Affairs & Others Exparte Sitamze Nairobi HCC 1652/2004**.

26. On what orders to make, reliance was place on **Nancy Makokha Baraza JSC & Others [2012] e KLR; Communications Commission of Kenya V Royal Media Services [2014] e KLR; Martin Nyaga Wambora v Speaker of the Senate [2014] e KLR and Nairobi HCC 1729/2001 Thomas Mboya Oluoch & Another v Lucy Muthoni Stephen & Another**.

27. According to the applicant's counsel, the intended charges are actuated by ulterior motives and not to achieve the purposes of criminal justice hence the motion as filed should be allowed.

28. In opposition to the motion and the submissions filed by the applicant, the respondent filed submissions on 19<sup>th</sup> January 2017 relying wholly on their replying affidavit, case law and legal and constitutional provisions.

29. According to the respondents, the applicant has failed to discharge his burden of proving that the respondents have discharged their mandates contrary to the Constitution.

30. That it is the mandate of the police, as stipulated in Article 245 of the Constitution, to investigate complaints which they have done in accordance with the law. Reliance was placed on **Cape Holdings Ltd v Attorney General & Another [2012] e KLR**.

31. It was submitted that this application is an abuse of the court process as similar application was filed vide **JR 130/2013 Republic v Inspector General & another** seeking similar orders in respect of several land transactions including the land subject of this case but that the court declined to grant him the orders sought.

32. It was also submitted that the applicant had not demonstrated that there is any decision to arrest or charge him with any criminal offence and that a decision to prosecute him can only be made by the Director of Public of Prosecutions, which decision has not been made.

33. Further, that there is no evidence that a police officer ever called him and asked him to appear in court. That prohibition is not available to the applicant as there is no evidence of abuse of power and that the court should be cautious not to interfere with constitutional mandates of constitutional

offices.

34. That there is no evidence of how the respondents have breached their public duty. Reliance was placed on **Kuria & 3 Others vs Attorney General** (supra).

35. On the duty of police to investigate any complaint, the case of **Michael Monari & Another V The Commissioner of Police & 3 Others Miscellaneous Application 68/2011** was cited.

36. Further reliance was placed on **Michael Sistu Mwaura Kamau & 12 Others vs EACC & 4 Others [2016] e KLR; Director of Public Prosecution V Humphrey [1976] 2 ALL ER 497 at 511; Republic vs Attorney General & 4 Others ex parte Kenneth Kariuki Gathii [2014] e KLR; and George Joshua Okungu & Another vs Chief Magistrate's Court Anti Corruption Court at Nairobi & Another Petition 227 & 230 of 2009**. It was submitted that these proceedings are an abuse of the court process hence they should be dismissed with costs.

### **Determination**

37. I have considered the ex parte applicant's notice of motion and all the supporting documents. I have also considered the respondent's response to the application. I have given equal consideration to the parties' advocates written submissions which were adopted by the court to canvass the motion. In my humble view, the issue for determination is whether the prayers of certiorari and prohibition are available to the applicant.

38. First and foremost, the court notes that the applicant has in his notice of motion duplicated the two Judicial Review prayers. The chamber summons for leave only sought, and the court only granted leave to the applicant to apply for two Judicial Review Orders of certiorari and prohibition in terms of prayers b and c of the chamber summons dated 17<sup>th</sup> October 2016.

39. It therefore follows that this court can only consider the merits of the substantive motion as per the order of leave. Accordingly, I would only consider the merits of prayers No. a and b of the notice of motion which are a reproduction of the prayers b and c in the chamber summons for leave, and ignore prayers c and d of the notice of motion albeit they substantially and materially are a duplicate of the first two prayers.

40. Behind the whole saga, appears to be the 'sale' of land Reference No.LR Nairobi/Block 94/66 which the applicant claims he was never involved in and neither have the respondents claimed in their reply to these proceedings, that he is a suspect nor a witness in any criminal case relating to that 'transaction' which appears to have been fraudulent, as shown by the statement of Mr Stanley Kihiko Advocate annexed. It is this statement which the applicant says he was shown on being summoned to the CID Headquarters in October 2012 and told that unless he produces the fraudulent vendor of the land in question, he would be charged in court and his case consolidated with criminal case No.6161/2012 against Mr Thomas Maosa Advocate and another.

41. The applicant denies knowing the complainants in that case and or even dealing with them in any matter.

42. The respondents wonder how the applicant got the letter of complaint but maintain that he is neither a witness nor a suspect in the criminal case.

43. However, the applicant maintains that he is being intimidated and harassed by the police who intend to charge him with the offence of obtaining money by false pretences, and consolidating his case with criminal 6161/2012 Republic vs Thomas Maosa & another.

44. However, no charge sheet was produced in court to show that indeed the applicant was intended to be charged with the said offence. The respondents also raised in their submissions the issue of the application being an abuse of process because the applicant filed similar proceedings

which were dismissed by the court. That matter was never raised in the replying affidavit or even in the grounds of opposition filed in response to the prayers for leave. Neither was the decision in JR 130/2013 Republic vs Inspector General of Police & Another availed to the court for perusal and consideration. I have however taken judicial notice of decisions of the High Court which are reported by The National Council for Law Reporting noting that the applicant had an opportunity to respond to that issue but chose not to respond thereto and simply adopted his written submissions. I have searched on Kenyalaw.org and found JR **130/2013 Republic vs Inspector General of Police & Another Exparte Patrick Macharia Nderitu**. The applicant therein vide a notice of motion dated 13<sup>th</sup> May 2013 had sought for Judicial Review orders of prohibition to prohibit the respondents Inspector General of Police and the Director of Criminal Investigations Department from harassing, threatening, charging and arresting him in relation to land sale transactions involving plots Nos LR No.12565/22 94/66 and 206/6903 situated in Nairobi. He claimed that the respondents had questioned him and harassed him severally over land transactions that he was unaware of, urging him to produce the unnamed person who had been in his company who is involved in the alleged fraudulent transactions.

45. In that JR 130/2013, the scenario described by the judge in the facts of that case, is similar to the circumstances leading to the complaint in criminal case No.6161/2012 as per the statement of Stanley Kihiko annexed to the applicant's verifying affidavit herein save that in that case, the money which was deposited with Thomas Maosa Advocate was withdrawn by Jane Kemunto the advocate's wife and handed over in cash to the applicant herein and in JR 130/2013 for onward handing over to the vendors. The decision in JR 130/2013 also revealed that the applicant herein had previously sought similar orders in JR 424/2012 which was withdrawn on 2<sup>nd</sup> May 2013 by advocates. I will revert to that matter latter.

46. As correctly discussed by Honourable Justice Odunga J in JR 130/2013, in order for an application for judicial review to succeed, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality or procedural impropriety. Illegality is when the decision making authority commits an error of law in the process of taking or making the act, the subject of the complaint.

47. Acting without jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances of illegality. Irrationality is where there is such gross unreasonableness in the decision taken or act done, that no reasonable authority addressing itself to the facts before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standard. Procedural impropriety is where there is failure to act fairly on the part of the decision making authority in the process of taking a decision.

48. The unfairness may be in non observance of the Rules of natural justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative instrument by which such authority exercises jurisdiction to make a decision.

49. The above position and principles were espoused in several decisions among them **Pastoli v Kabale District Local Government Council & Others[2008] 2 EA 300, Council of Civil Unions V Minister Civil Service [1985]AC.2** and **Re Bukoba Gymkhana Club [1963]EA 478**.

50. The applicant is seeking to remove into this court the proceedings before the Director of Criminal Investigations regarding the land fraud for purposes of quashing the proceedings and the intended charge sheet and prohibiting the respondents from presenting a charge sheet against him, charging him with a criminal charge relating to LR No. Nairobi/Block 94/66 or consolidating the charge sheet with criminal case No. 6161/2012 at Kibera Chief Magistrate's Court or bring any charges against him, arising from the same transaction as the current case.

51. The complainants in criminal 6161/2012 are not parties to this case but were parties to JR130/2012. The respondents herein admit that there are investigations regarding the land transaction involving fraud but deny that they have made any decision to charge the applicant or even make him a witness in

the pending criminal case at Kibera.

52. In essence, the applicant seeks to quash the decision allegedly made by the respondents to charge him before Kibera Court and to consolidate his case with cr.6161/2012 on obtaining money by false pretences. Kibera Court is within the jurisdiction of this court. This court was not shown any charge sheet, whether charging the applicant alone or jointly with others related to the fraudulent land transaction herein presented. If there was any such decision, it would also be manifested in the form of summons to appear in court or a charge sheet.

53. In the absence of such summons or charge sheet, this court cannot assume that there is any decision made to charge the applicant with any criminal offence. This is not to say that the applicant may not have been summoned by the police on phone to shed light on the matter, as demonstrated by the evidence in JR 130/2012 which the applicant deliberately failed to disclose before this court, but that there is no evidence before this court to show that any decision has been made to charge him with any criminal offence. It is no longer secretive for the police to charge a suspect. Furthermore, they would, if they so wished to charge him with an offence related to criminal 6161/2012, even obtain summons or a warrant of arrest against him and they would not require his consent or permission to charge him.

54. It requires no citation in these proceedings that the police have the power to investigate crimes, enforce the law, apprehend offenders, prevent and detect crime, collect criminal intelligence among other duties assigned by the National Police Service Act No. 11A of 2011, Section 24 thereof.

55. There is no statutory time limitation within which the police should investigate and or charge someone with commission of a crime, noting that some crimes are committed in a very complex manner and detection or evidence gathering takes time.

56. As the criminal case No.6161/2012 is still pending in court, it cannot be said that inquiry or investigation to nab all possible suspects is closed. As correctly by Honourable Odunga J in **Republic Vs Chief Magistrate Milimani & Another Ex parte Tusker Mattresses Ltd & 3 Others [2013] e KLR**,

*“the court must in such circumstances take care not to trespass into the jurisdiction of the investigators or the court which may eventually be called upon to determine the issues hence the court ought not make determination which may affect investigations or the yet to be conducted trial. That this court has power to quash impugned warrants cannot be doubted. However, it is upon the ex parte applicant to satisfy the court that the discretion given to the police to investigate allegations of commission of a criminal offence ought to be interfered with. It is not enough to simply inform the court that the intended trial is bound to fail or that the complaints constitute both criminal offence as well as civil liability. The High Court ought not to interfere with the investigate powers conferred upon the police or Director of Public Prosecution unless cogent reasons are given for doing so. The warrants were issued to enable the allegations be investigated. Whether or not the investigations will unearth material which will be a basis upon which a decision will be made to commence a prosecution of the ex parte applicants or any of them is a matter which is premature at this stage to dwell on.”*

57. The applicant annexed copy of a statement written to the Criminal Investigation Division by Mr Stanley Kihiko advocate. That statement does not mention the applicant herein as being culpable. However, not all witness statements were annexed and or the statements of the suspects in criminal 6161/2012 annexed. On the other hand, in JR 130/2013 it emerged that Jane Kemunto the wife to Thomas Maosa, one of the accused persons in criminal 6161/2012 and who is named in the statement of Stanley Kihiko as the mastermind of the alleged fraud, alleged that she withdrew all the money deposited in her husband's bank account and paid it to the applicant herein. This is not to say that there is overwhelming evidence that the applicant received proceeds of the purported fraudulent sale which turned out to be fraudulent transactions, but that the applicant herein, is prima

facie, not a hoax as the applicant wished this court to believe.

58. Moreso, the applicant's conduct of refusing to disclose the existence of JR 130/2013 is suspect. This court also doubts that the police investigating a crime would give him a statement of a potential witness when he himself is neither a witness nor a suspect in a criminal case pending in court. The applicant did not state which police officer by name who gave him that statement of a witness in the criminal case. Judicial Review orders are discretionary in nature and a party's conduct in the proceedings go along way to influence the judge's exercise of discretion. Non disclosure of material facts is one of the factors that the court would take into account in deciding whether or not to grant the Judicial Review orders sought.

59. The court notes that colossal sums of money were allegedly lost both in criminal 6161/2012 and as disclosed in JR 130/2013, and that detecting certain crimes like fraud is complex and can take longer than anticipated due to long webs and the secrecy involved. It is for that reason that Odunga J in JR 130/2013 held that if any investigations are required in which the applicant is required to furnish information let the respondents do so with dignity and in strict adherence to the due process and the rule of law. The court also noted that the charges facing the applicant were withdrawn by the respondents as a result of the said Judicial Review proceedings.

60. This court agrees with the applicant that the respondents ought not to subject the applicant to intimidation and harassment and that if they have evidence to charge him with any offence, they ought to do so with dignity and in the manner provided for in Article 50 of the Constitution. However, the applicant's application fell short of proving that he was being harassed or intimidated by the respondents or that he was being asked to produce the fraudster in the subject land transaction.

61. If there was any telephone calls made to him, then in this digital world, he ought to have sought for or extracted the numbers and availed them to the court. It is not sufficient to allege that he was being harassed and or intimidated by the police. Since the mode of alleged harassment and or intimidation was disclosed as being through phone calls, it was important for the applicant to avail to the court evidence of the calls made to him to show how he was being harassed without being charged in court. He did not.

62. Further, it is not sufficient to say that the Director of Public Prosecutions has made a decision to charge the applicant and or consolidate his case with criminal 6161/2012. The Director of Public Prosecutions makes a decision to charge through drawing of a charge sheet. No such charge sheet was produced. It cannot, therefore be concluded that there is abuse of any power or process or that there is a unreasonable or an irrational decision taken by the respondents. It was not shown as to what powers were being usurped in the circumstances of this case and therefore no illegality or impropriety on the part of the respondents was demonstrated by the applicant.

63. Indeed, it would not be appropriate to compel the applicant to produce the alleged vendor in the alleged fraudulent land transaction in the absence of evidence that the applicant knew or had such person in his custody. However, there was no evidence in the present case to show that the applicant was being forced to produce the said vendors, unlike in the JR 130/2012 where the applicant had even been charged in court, which charge was withdrawn.

64. Furthermore, the Honourable Odunga J in JR 130/2013 having declined to issue Judicial Review order of prohibition against the respondents, prohibiting them from arresting and charging the applicant with offences relating to land sale transactions involving plot Nos LR No.12565/22,94/66 and 209/6903, and the court having found that the respondent's putting pressure on the applicant to produce the person believed to have defrauded the interested party in that case was irrational, which decision was made on 9<sup>th</sup> March 2015, it was not open to the applicant, having in his possession an order of this court prohibiting the respondents from subjecting the applicant to acts of harassment, to return to the same court seeking for the same orders, using different terms.

65. What was available to the applicant, in the circumstances of this case, was to file an application in the same JR 130/2015 seeking to enforce orders of 9<sup>th</sup> March 2013. If those orders were being violated, the remedy is institution of contempt proceedings and not certiorari or prohibition since the circumstances have not changed.

66. It is for the above last reason that I find this application an abuse of court process. I say so because prayer No (a) of the notice of motion is couched in the manner of prohibition and not certiorari. The Criminal Investigation Department do not conduct proceedings and no such proceedings were demonstrated. They make decisions to investigate, arrest and charge the suspects, jointly with the Director of Public Prosecutions. An intended charge sheet is not a proceeding capable of being quashed. It can only be prohibited. And as there was no such charge sheet for presentation to court then there was nothing to be prohibited.

67. Accordingly, it is my humble view that the two main prayers sought by the applicant were in all material particulars the same as the prayers sought in JR 130/2013 which sought to prohibit the arrest, charging of the applicant with offences related to the alleged fraudulent land transactions and which prayer Odunga J declined to issue.

68. The applicant did not appeal against that order. It is therefore vexatious of him to reappear in court with similar prayers. In the end, I find that the applicant's notice of motion dated 24<sup>th</sup> October 2016 is not merited and I decline to grant all the prayers sought. The same is dismissed.

69. Having found that the applicant is vexatious and as it appears he did not notify his present advocates on record of the proceedings and orders in JR 130/2013, I order that the applicant bears costs of these Judicial Review proceedings.

Dated, signed and delivered in open court at Nairobi this 22nd day of February 2017.

**R.E. ABURILI**

**JUDGE**