



**Director of Public Prosecution v Chavda & another; Trv Developers Limited & another (Interested Parties) (Criminal Revision 1546 of 2024) [2025] KEHC 13506 (KLR) (Crim) (17 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13506 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL**

**CRIMINAL REVISION 1546 OF 2024**

**AM MUTETI, J**

**SEPTEMBER 17, 2025**

**BETWEEN**

**DIRECTOR OF PUBLIC PROSECUTION ..... APPLICANT**

**AND**

**TRIBHOVAN LALJI CHAVDA ..... 1<sup>ST</sup> RESPONDENT**

**JAYESH TRIBHOVAN CHAVDA ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**TRV DEVELOPERS LIMITED ..... INTERESTED PARTY**

**TRV TOWERS LIMITED ..... INTERESTED PARTY**

**RULING**

1. The DPP through Ms Virginia Kariuki prosecution counsel wrote to the Deputy Registrar on 24<sup>th</sup> October 2024 seeking a revision against a decision made by Honorable Ben Mark Ekuhbi on 24<sup>th</sup> of October 2024.
2. It is important to reproduce the full contents of the letter so as to contextualize this application.
3. The letter reads:

The Deputy Registrar,  
High Court of Kenya,  
Criminal Division.  
Nairobi.



Kenya

Date: 24<sup>th</sup> October, 2024.

Re: Application For Revision Under Section 362 And 364 Of The Criminal Procedure Code, Cap.75, Laws Of Kenya

Milimani Chief Magistrate's Court Criminal Case No. E988 Of 2024 Revision On Ruling And Orders Issued By Hon. Ben Mark (spm) On 24/10/2024 Under Certificate Of Urgency.

Republic-versus - Jeyesh Chavda And Tribhovan Chavda

We refer to the above matter.

We write to certify That this application is extremely urgent and should be placed before the learned head of the High Court's Criminal Division as the order and ruling it seeks to have revised has far reaching and adverse ramifications on the pending Criminal Case No. E 988 of 2024 at Milimani chief Magistrate's Court, as the trial Court on 24/10/2024 declined the prosecution's application seeking leave to withdraw the charges under section 87(a) of the CPC and directed the intended accused persons/ Respondents to take plea on the 25/10/24 at 9.00 am, despite compelling grounds as to why the decision to charge needed to be reviewed, being laid before the Court.

Prayers in the interim

The Court refused to grant leave to withdraw the charges under section 87 (a) of the CPC and directed the intended accused persons to take plea on 25/10/24, Hence the urgency.

We pray for stay of any further proceeding and ruling at the trial Court pending the hearing and final determination of this revision.

## Background

- 1 The Respondents, Jeyesh Chavda and Tribhovan Chavda were charged before the Chief Magistrate's Court at Milimani with four counts to wit;
  - a) Stealing by director contrary to section 282 of the Penal Code.

The particulars were That on diverse dates between 18th October, 2019 and 31st July, 2023 the respondents being directors of TRV Towers Limited, stole kshs. 112,000,000/- the property of TRV Towers limited, That came into their possession by virtue of their employment.
  - b) Conspiracy to defraud contrary to section 317 of the Penal Code.

The particulars were That on diverse dates between 16th October, 2019 and 31st July, 2023 the respondents with others not before court, conspired to defraud TRV Towers Limited kshs. 112,000,000/-.
  - c) Making a false document contrary to section 357 (a) of the Penal Code. The particulars were That on 16<sup>th</sup> October, 2019, the Respondent with intent to defraud and without lawful authority jointly made Bank of Boroda Account opening document, purporting it to be genuine.
  - d) Uttering a false document contrary to section 353 of the Penal Code. The particulars were That on diverse dates between 16th October, 2019, the Respondent with intent to defraud,



knowingly uttered a bank account opening document purporting it to have been signed by TRV Towers Limited directors.

- 2 That on the 25<sup>th</sup> of September 2024 the Director of Public Prosecution approved charges against the two respondents after evaluating evidence submitted DCI Parklands.
- 3 That subsequently, the plea was registered That very morning and in fact, two pleas were registered That day and assigned Court file numbers E988/2024 and the other E989/2024, each being an independent file on its own.
- 4 That due to procedural technicalities on the part of judiciary case registration system, only Court file E989/2024 was availed in Court for plea taking in the morning and it was not until 3.00pm when Court file E 988/2024 was availed for plea taking.
- 5 That at the time plea was registered there was every intention by the Applicant for the respondents to take plea, however and unforeseeable to the Applicant, prior to 3 pm, it was brought to the DPP's attention, of the existence of another file involving the same subject matter, over the same accused persons and filed by the same complainant, which was being investigated by Banking Fraud Unit and which had not been submitted to him.
- 6 That procedurally, this was not proper, as a matter cannot be subjected to two parallel investigations by different offices of the same institution, hereby being Parklands DCI and Banking Fraud Unit, both being under National Police Service.
- 7 That the evidence contained in the Banking Fraud file is material and needed to be taken into consideration before any decision to charge can be conclusively made by the DPP.
- 8 That there was a real and imminent threat of abuse of the legal process, if the Applicant application was not allowed, as afore mentioned, That it is neither procedural nor proper, for a matter to be subjected to parallel investigations on a complaint made by the same party, over the same subject matter and against similar parties, which could arrive at adverse conclusions.
- 9 That until the DPP evaluates the banking fraud file, which could contain evidence That is either inculpatory or exculpatory to the intended accused persons/ Respondents, a decision to charge cannot be said to have been made.
- 10 That this called for the immediate action by the Applicant, which was to seek the charges to be withdrawn before the respondents could take plea, as it was important for the DPP to evaluate evidence contained in both files before a conclusive decision could be made on whether to charge or not.
- 11 That on the 26th of September 2024, the Applicant moved the Court with an oral application to seek leave to withdraw the matter under section 87 (a) of the CPC.
- 12 That on 24th October, 2024 the Court delivered it ruling declining to grant the Applicant leave to withdraw the charges, on the ground That the Magistrate perused the correspondences from Banking Fraud Unit, which were submitted by Counsel watching brief for the complainant, and That he had formed the opinion That the Applicant's application was not made in good faith.
- 13 That the Court erred and usurped itself powers constitutionally conferred to the Applicant, as declining to grant leave inevitably resulted in making the decision to charge in place of the Applicant, especially since the Applicant had submitted merited grounds as to why the decision to charge was not conclusive and needed to be reviewed.



- 14 That the material developments That had occurred before plea was taken could not have been preempted by the Applicant and thus the Applicant cannot be said to have made the application in bad faith.
- 15 That the Applicant application was in fact made in order to prevent abuse of the legal process and administer justice.
- 16 That the Court erred in failing to appreciate the role and mandate of the Applicant in the institution of criminal proceedings as envisioned in Article 157 (6).
- 17 That the Court erred in inferring That the decision to charge was conclusively made, from perusing documents from an investigating body, submitted by Counsel watching brief.
- 18 That the Court erred in allowing the role of the Counsel watching brief to be held in competition with That of the Applicant, a role which should be jealously guarded.
- 19 That the Court erred in declining to grant leave to withdraw the charges under section 87 (a) of the CPC, as it allows abuse of the legal process.

### **Our contention**

- 20 That on the 26th of September 2024, the Applicant moved the Court with an application to seek leave to withdraw the matter under section 87 (a) of the CPC on the grounds That:
  - a. the decision to withdraw the matter was reached guided by the decision to charge guidelines, provisions of the ODPP Act, 2013 and the National Prosecution Policy, which mandate the DPP to be objective, fair and independent in discharging his duty, a duty which includes continually reviewing cases to ensure interests of justice are protected at every stage of the prosecution process.
  - b. upon undertaking an appropriate review and the DPP forms an opinion That the matter ought not be instituted, if already instituted, the same to be halted forthwith.
  - c. the ODPP being an independent and well-established constitutional office, it is the only office solely mandated to prosecute in criminal proceedings through the DPP.
  - d. by preventing abuse of the legal process, the DPP is acting in exercise of the powers conferred to him by *the Constitution*.

There was a real and imminent threat of abuse of the legal process, if the Applicant's application was not allowed, as it was neither procedural nor proper, for a matter to be subjected to parallel investigations on a complaint made by the same party, over the same subject matter and against similar parties, yet the same was not brought to the knowledge of the DPP at the time of making the decision to charge. Your Lordship, we therefore humbly request this Honorable Court to call for and examine the records in Milimani Chief Magistrate's Court Criminal Case E988 of 2024 pursuant to Section 362 of the Criminal Procedure Code and:

SUBPARA a)

Determine the correctness, legality or propriety of the proceedings leading to the ruling and order by the Court denying the prosecution leave to withdraw charges under section 87 (a) of the CPC, despite sufficient grounds having been laid by the prosecution as to why the decision to charge needs to be reviewed.



Determine the correctness, legality or propriety of the proceedings leading to the ruling and order issued on 24/10/2024 without giving cogent reasons and whether there is any provision of law That granted the Court authority to take over and exercise the prosecutorial mandate to make the decision to charge and if so, its regularity and/or correctness considering the provisions of Article 157 (6) (a) as read with Article 157 (6) (c) of *the Constitution*, in view of the peculiar circumstances of this case.

SUBPARA c)

Examine the correctness, legality or propriety of the entire proceedings in this case and the manner the Court conducted the proceedings and determine whether the Court held in competition, the role of the Prosecution, with That of the Counsel watching brief for the complainant.

SUBPARA d)

Whether the said the grounds the Court to relied on in order to decline to grant leave to withdraw the charges, amounted to what the Court termed as the Applicant not acting in good faith, despite the peculiar circumstances surrounding this case including the imminent threat of abuse of the legal process.

We urged this Honorable Court to set aside the orders denying the prosecution leave to withdraw charges under section 87 (a) of the CPC and set aside the orders directing the intended accused persons/Respondents to take plea on 25/10/24.

We also request this Court to issue in the interim stay orders, staying the Court from proceeding and/or making any further directions pending the hearing and final determination of this revision and any other orders That commends itself in the circumstances.

Yours faithfully,

Virginia Kariuki

Prosecution Counsel

Milimani Law Courts

For: The Director Of Public Prosecutions.

4. The respondents filed an affidavit in support of the DPP's application sworn on 23<sup>rd</sup> May 2025 by both respondents. In it the respondents have given a detailed and vivid account of matters touching on investigations and how the decision to charge was arrived at by the DPP.
5. It is imperative That this court lays bear the case by the respondents in support of the DPP thus the need to reproduce in extenso the affidavit by the respondents:-
  2. That we have read the DPP's Application for Revision dated 24th October, 2024 and where necessary, had the contents thereof explained to us by our Advocates on record and we swear this Affidavit in support of the said Application for Revision of Hon. Ben Mark Ekhubi (SPM)'s Ruling of 24th October, 2024 in Milimani CMCR Case No. E988 of 2024;

### Introduction

3. That from the onset, we confirm That the accusations against us comprise no more than baseless allegations and trumped up charges founded on falsehoods and misrepresentations disguised as genuine complaints, a fact which we clearly demonstrated to the trial court;



4. That we therefore, acknowledge with gratitude and associate ourselves fully with the DPP's averments in its Certificate of Urgency and Application for Revision herein, both dated 24th October, 2024;
5. That in addition, and for the benefit of this Court, we shall reiterate herein the averments in our Affidavit of 8th October, 2024 filed before the trial court particularly because in its ruling, the trial court failed to analyse the facts and issues raised therein at all;
6. That we therefore, urge this honourable court to patiently walk with us through this Affidavit and ultimately lift the corporate veil behind which the individuals, disguising themselves as TRV Towers Limited and TRV Developers Limited are hiding to advance this malicious agenda. For the record, neither of these companies lost a coin under our watch from Bank of Baroda or any other bank, for the period alleged and/or at all;
7. That contrary to the allegations That the complainants herein are TRV Towers Limited and TRV Developers Limited, the real persons behind this scheme are five individuals namely, Virji Meghji Patel, Purshottam Premji Vera, Vinod Narshi Lathia, Bhimji J. Bhudia and Patrick Sagwa Kisia. The first three are currently illegally posing as Directors, and unlawfully excluding Tribhovan Lalji Chavda from the Board of Directors of the companies while Bhimji J. Bhudia and Patrick Sagwa Kisia are purported employees thereof;

#### **Events Preceding The Criminal Complaints Herein**

8. That since incorporation, Tribhovan Lalji Chavda was, and still is a Director and Shareholder of TRV Towers Limited and TRV Developers Limited. He is the majority shareholder of TRV Developers Limited, owning 51% of the total paid up shares thereof and also a shareholder of TRV Towers Limited owning 30% of the shares thereof (Annexed at pages 16 & 17 hereof and marked TLC-1 i & ii are CR-12 for the companies showing shareholding);
9. That Tribhovan Lalji Chavda was the Managing Director of the two companies. He ethically and professionally steered the companies without any financial scandal, real or perceived, for a record 16 years, until September 2023 when his Co-Directors, Virji Meghji Patel, Purshottam Premji Vera and Vinod Narshi Lathia together with Bhimji J. Bhudia and Patrick Sagwa Kisia (hereinafter collectively referred to as 'The Five') rocked the ship for their selfish, malicious gains;
10. That in September, 2023, The Five unlawfully removed Tribhovan Lalji Chavda as Director of the two companies to enable them take over and financially molest the companies, Tribhovan Lalji Chavda having denied them a chance to do so under his watch. Jayesh Tribhovan Chavda is just a collateral victim, being a son of Tribhovan Lalji Chavda and an employee of both companies;
11. That after unlawfully removing Tribhovan Lalji Chavda as a Director of both companies, we lodged a complaint at the Registrar of Companies against his unlawful removal, which complaint was not replied to by The Five despite being given a right of reply, constraining the Registrar to revoke their illegal decision on 30th August, 2024 (Annexed at pages 18-23 hereof and marked TLC-2 i- iv' are our correspondences with the Registrar of Companies);
12. That our said complaint before the Registrar of Companies provoked The Five to file various civil suits against us to frustrate, intimidate and bully us into silence. However, we were not, and will not be silenced by their outdated tricks;
13. That in addition, The Five filed innumerable civil suits against various banks where the companies' accounts were domiciled, alleging fraudulent transactions by us in collusion with those banks and with the Central Bank of Kenya (CBK);



14. That though the said civil suits relate to the same subject matter, raise the same issues and are against same parties, The Five duplicated them by splitting and suing the Defendants separately in a clear case of forum shopping, with the hope of chancing upon at least one Judgment That would castigate us, the Banks or CBK, so as to bully the Judgment Debtor to concede to their demands. This trick too, failed, with several suits pronounced dead on arrival and struck out vide Preliminary Objections;
15. That further, in all the said civil suits, both closed and alive, The Five did not file a single Bank Account Statement to prove the alleged fraudulent transactions despite sentimentally inflating sums as having been stolen and having unlimited access to the said accounts. The said civil suits include, but are not limited to the following:

Suits Already Struck Out Vide Preliminary Objections Nbi Hccomm Misc App Case No. E819 Of 2023: Virji Meghji Patel -vs- Tribhovan L. Chavda (see Pages 24-33 Hereof)

Nbi Hccomm Misc App Case No. E920 Of 2023: Trv Towers Ltd -vs- Ncba Bank Plc (see Pages 34-37 Hereof)

Nbi Hccomm Misc App Case No. E921 Of 2023: Trv Developers Ltd -vs- Ncba Bank Plc (see Pages 38-41 Hereof)

Nbi Hccomm Misc Appl Case No. E929 Of 2023: Trv Towers Ltd -vs- Ncba Bank Plc (see Pages 42-49 Hereof)

Nbi Hccomm Misc App Case No. E930 Of 2023: Trv Developers Ltd -vs- Ncba Bank Plc (see Pages 50-59 Hereof)

Suits Still Alive Before Various Judges In The High Court

NBI HCCOMM Case No. E541 of 2023: TRV Towers Ltd -vs- NCBA Bank PLC & Tribhovan Lalji Chavda (See pages 60-66 hereof)

NBI HCCOMM Case No. E548 of 2023: TRV Developers Ltd -vs- NCBA Bank PLC & Tribhovan Lalji Chavda (See pages 67-82 hereof)

NBI HCCOMM Case No. E618 of 2023: TRV Developers -vs- Tribhovan Lalji Chavda (See pages 83-93 hereof)

NBI HCCOMM Case No. E619 of 2023: TRV Towers -vs- Tribhovan Lalji Chavda (See pages 94-103 hereof)

NBI HCCOMM Case No. E020 of 2024: TRV Towers Ltd -vs- Bank of Baroda (K) Ltd, Central Bank of Kenya, Tribhovan Lalji Chavda & Jayesh Tribhovan Chavda (See pages 104-137 hereof) NBI HCCOMM Case No. E021 of 2024: TRV Developers Limited -vs- Bank of Baroda (K) Ltd, Central Bank of Kenya, Tribhovan Lalji Chavda & Jayesh Tribhovan Chavda (See pages 138- 177 hereof)

NBI HCCOMM Case No. E229 of 2024: TRV Developers Ltd -vs- Jayesh Tribhovan Chavda (See pages 178-187 hereof)

NBI HCCOMM Case No. E256 of 2025: Virji Meghji Patel -vs- Tribhovan Lalji Chavda (See pages 188-232 hereof)

(Annexed at pages 24-232 hereof and marked TLC-3i-xiii are extracts of pleadings and/or court orders in the said civil suits);

16. That realizing That we were not intimidated, but were spirited to defend ourselves from their allegations, and do so with ease and solid defences, The Five enhanced their threats, bullies and



intimidations against us through the abuse of criminal justice system, hence the proceedings before the trial court and this court;

### **Events Leading To The Trial Court's Proceedings**

17. That just like the civil cases above, the purported complaint therein is an alleged theft at TRV Towers Limited and TRV Developers Limited, mischievously lodged by Virji Meghji Patel, Purshottam Premji Vera and Vinod Narshi Lathia at two different and distinct investigative authorities, in a clear show of forum shopping so as to manipulate and influence the investigations by one authority to achieve their malicious, illegal and unlawful predetermined outcome to wit intimidating, frustrating and bullying us into silence;
18. That The Five first lodged the original complaint against us in December 2023 at the Banking Fraud Investigations Unit (BFIU) - a specialized organ of the National Police Service handling bank fraud cases and domiciled at the Central Bank of Kenya - vide Investigations File Number BFIU IF No. 365 of 2023;
19. That in the said complaint, The Five alleged:
  - i. That we operated Accounts Numbers XXXXXXXXXXXXXXX and XXXXXXXXXXXXXXX in the name of TRV Towers Limited and TRV Developers Limited respectively, both at Bank of Baroda (K) Limited without their knowledge;
  - ii. That we forged some of the account opening forms; and
  - iii. That all the transactions in those accounts, both credits and debits, which they approximate at K.Shs. 112,000,000.00 constitutes stealing by Director, irrespective of the source of the funds and how the funds were utilized;Each of these allegations is false as already established by BFIU and demonstrated herein;
20. That BFIU Detectives began their investigations immediately and obtained necessary court orders vide Milimani Misc. Criminal Application No. E635 of 2024 to enable them obtain relevant documents from various banks (Annexed at pages 233-241 hereof and marked "TLC- 4i-iv" are copies the said Court Orders);
21. That the BFIU Detectives conducted their investigations objectively and meticulously with a view to establishing the veracity of the allegations. They therefore, questioned The Five for explanations on various issues That featured in the documents obtained by BFIU. This did not sit well with The Five as the interrogations exposed their motives and unsettled them a great deal;
22. That having obtained various documents and established the motive of The Five, the BFIU Detectives, vide a phone call, summoned us to appear before them. With Tribohovan Lalji Chavda having just undergone a medical procedure, we fixed a meeting with them on 15th July, 2024 for interrogations on the complaint;
23. That however, in May, 2024, in the pendency of the investigations by, and the aforesaid meeting with BFIU, The Five, aggrieved by BFIU's objectivity, lodged a second complaint at the DCI, Parklands Police Station. The purported complaint was similar to, and a mirror copy of the BFIU complaint, touching on the same subject matter, arising from the same set of facts and raising exactly the same issues;
24. That we were therefore, hastily summoned by, and appeared before the DCI at Parklands Police Station on 11th and 15th July, 2024 where we were arrested, interrogated by three DCI Officers namely,



- Douglas Ongicho, Ngatia and Pauline who recorded our statements and thereafter, released us on police cash bail of K.Shs. 200,000.00 and K.Shs. 150,000.00 respectively (Annexed at pages 242-245 hereof & marked "TLC-5 i& ii" are our Cash Bail receipts);
25. That on 15th July, 2024, in honour of the initial summons by BFIU, we met Detectives Corporal Daniel Lokeno Partany and Stephen Ochieng' both of BFIU who informed us That they were investigating an alleged theft at TRV Towers Limited and TRV Developers Limited reported by Virji Meghji Patel, Purshottam Premji Vera and Vinod Narshi Lathia;
  26. That to the BFIU Detectives' shock, we confirmed to them That we were already under investigations by DCI Parklands Police Station over the same complaint, lodged by the same complainants on the same set of facts. The BFIU officers admitted That the foregoing was indeed, irregular and having taken copies of our Cash Bail Receipts, undertook to consolidate the two files so That we do not suffer double jeopardy. Meanwhile, we continued to cooperate with DCI Parklands and appeared there whenever we were so, directed;
  27. That on 8th August, 2024 at 9:00am, the BFIU Detectives, Daniel Lokeno Partany and Stephen Ochieng visited the DCI Parklands and met with Douglas Ongicho, Ngatia and Pauline on the issue of parallel investigations and they agreed to consolidate the files and thereafter, have the complaint taken over by BFIU, which fact was expressly communicated to us by both offices;
  28. That the decision to have the BFIU take over the complaint was informed by three main reasons namely:
    - i. That the complaint at BFIU was the first in time;
    - ii. That BFIU had already conducted more in-depth investigations and obtained and examined documents from various banks; and
    - iii. That BFIU was, in any event, the specialized branch of the DCI, mandated and equipped with skilled personnel and appropriate facilities to process complaints of this nature;
  29. That despite the said agreement, DCI Parklands declined to release its file to the BFIU Detectives at the said meeting, claiming That they needed to draft a forwarding letter for their records. In the circumstances, DCI Parklands promised to forward their investigation file to BFIU at the earliest;
  30. That however, immediately after BFIU Detectives left Parklands Police Station, DCI Parklands swiftly recommended charges against us and hastily forwarded their file to the DPP on the same day, 8th August, 2024. Thereafter, BFIU and DCI Parklands engaged in cat and mouse games, with DCI Parklands manifestly frustrating the intended, and agreed upon consolidation;
  31. That upon submission to the DPP, the said file from DCI Parklands took more than a month without feedback from the DPP, during which period our cash bail was extended for a record nine (9) times without being arraigned before court;
  32. That on 13th August, 2024, BFIU assured us That the two agencies had addressed the issue and resolved That the two files would be consolidated for take-over by BFIU. The DCI Parklands was therefore, to recall their file from the DPP and submit it to BFIU, which never happened;
  33. That accordingly, the BFIU Detectives recorded our statements and continued with their investigations, all the while with our cooperation. Despite their assurance, both offices held onto their independent files, subjecting us to parallel investigations over the same complaint;



34. That BFIU continued with its investigations which were far more exhaustive and thorough than DCI Parklands, from which investigations, BFIU obtained documentary evidence, including exculpatory evidence against us and incriminatory evidence against The Five;

35. That the said exculpatory and incriminating evidence, which we also submitted to, but were totally disregarded and concealed by DCI Parklands, include the following:

Bank of Baroda Kenya Limited Transactions Account Ledger for TRV Towers Limited Account No. XXXXXXXXXXXXXXXX showing ALL the transactions conducted in That account, without a single transaction pointed out to us as being fraudulent (See pages 246-247 hereof);

Bank of Baroda Kenya Limited Transactions Account Ledger for TRV Developers Limited Account No. XXXXXXXXXXXXXXXX showing ALL the transactions conducted in That account, without a single transaction pointed out to us as being fraudulent (See pages 248-249 hereof);

Letters of Offer, duly signed by Virji Meghji Patel confirming payments of 27th May, 2020 vide cheque numbers 137, 138 and 139 for K.Shs. 611,168.00, K.Shs. 499,616.00 and K.Shs. 694,312.00 respectively, payable to N. K. Mugo & Company Advocates for stamp duty on behalf of Prasad Investments Limited, which is a company owned by Virji Meghji Patel in respect of office units purchased by him being 5E, 5F and 5G at TRV Centre Building. These cheques were issued from TRV Towers Limited Account No. XXXXXXXXXXXXXXXX whose existence, Virji Meghji Patel now claims not to have known, despite receiving these funds from That account (See pages 250-261 hereof);

CR-12 for Prasad Investments Limited showing That Virji Meghji Patel is a Director thereof (See page 262 hereof);

Cheque payments of 3rd February, 2020, 3rd March, 2020, 7th July, 2020 and 24th July, 2020 vide cheque numbers 33, 49, 109 and 122 for K.Shs. 2,392,241.00, K.Shs. 2,432,694.00, K.Shs. 2,007,894.00 and K.Shs. 1,000,000.00 respectively, all paid to Kedar Builders Limited which is a company owned by Virji Meghji Patel. These payments were part settlement of his fees, having been contracted by TRV Developers Limited to develop TRV Park West Office Suites. These cheques were all paid from TRV Developers Limited Account No. XXXXXXXXXXXXXXXX whose existence, Virji Meghji Patel now claims not to have known, despite receiving these funds from That account (See pages 263-274 hereof);

CR-12 for Kedar Builders Limited showing That Virji Meghji Patel is a Director thereof (See page 275 hereof);

Bank Statement dated 3rd August, 2020 showing two RTGS remittances of 14th July, 2020 for K.Shs. 750,000.00 each paid by Purshottam Premji Vera into TRV Towers Limited Account No. XXXXXXXXXXXXXXXX, whose existence, Purshottam Premji Vera now claims not to have known, despite paying these sums into That very account through RTGS (See page 276 hereof);

Bank Statement dated 3rd August, 2020 showing one cash payment on 14th July, 2020 for K.Shs. 500,000.00 and two Cheque payments vide cheque numbers 226 and 227 respectively, on 25th July, 2020 for K.Shs. 500,000.00 each, all paid by Purshottam Premji Vera into TRV Towers Limited Account No. XXXXXXXXXXXXXXXX whose existence Purshottam Premji Vera now claims not to have known despite depositing these sums into That account (See page 277 hereof);

Cheque image for cheque number 462 and Deposit slip thereof both dated 21st November, 2022 for K.Shs. 215,250.00 paid to Prasad Investments Limited which is a company owned by Virji Meghji Patel being a refund of funds received from his tenant for office unit M1 under him. This cheque was issued from TRV Towers Limited Account No. XXXXXXXXXXXXXXXX whose existence, Virji Meghji



Patel now claims not to have known, despite receiving these funds from That very account (See pages 278-279 hereof);

Audited Annual Financial Statements of TRV Towers Limited for the year ended 30th June, 2020, duly signed and approved by both Directors namely, Tribhovan Lalji Chavda and Virji Meghji Patel on 24th February, 2021. The said Financial Statement was in respect of all the company accounts including Account No. XXXXXXXXXXXXXXXX held at Bank of Baroda, whose existence, Virji Meghji Patel now claims not to have known despite signing and approving this Audit Report (See pages 280-300 hereof);

Audited Annual Financial Statements of TRV Developers Limited for the year ended 30th September, 2020 duly signed and approved by both Directors namely, Tribhovan Lalji Chavda and Virji Meghji Patel on 20th April, 2021. The said Financial Statement was in respect of all the company accounts including Account No. XXXXXXXXXXXXXXXX held at Bank of Baroda, whose existence, Virji Meghji Patel now claims not to have known despite signing and approving this Audit Report (See pages 301-322 hereof);

36. That we submitted the same set of documents to BFIU when they interrogated us recorded our statements. However, immediately after BFIU obtained the said evidence, on 13th September, 2024, the DCI Parklands directed us to appear at Milimani Law Courts to take plea on 19th September, 2024, clearly demonstrating their intentionally malicious efforts to charge us before BFIU could interrogate the said documents (The said Directives appear on our Cash Bail Receipts at pages 243 and 245 hereof);
37. That on 16th September, 2024, following those directives, we wrote to BFIU to inquire whether the complaint at their office had been withdrawn, to which they confirmed in the negative. They reiterated to us That their file was still active and would be forwarded to the DPP for approval of charges upon completion of investigations (Annexed at pages 323- 324 hereof and marked "TLC - 7" is a copy of our said letter to BFIU);
38. That on 16th September, 2024, we wrote to the DPP decrying the foregoing and proposed That the plea, then scheduled for 19th September, 2024 be deferred pending the DPP's consideration of BFIU's file and review of its decision to charge (Annexed at pages 325-326 hereof and marked "TLC-8" is a copy of our said letter to the DPP);
39. That on 19th September, 2024, we appeared at Milimani Law Courts for plea taking as directed. Having patiently waited up to 3:30pm and upon inquiry, Hon. Onsarigo informed us That our charge sheet was not registered. The Prosecutor in charge of Court 10, Mr. Murage further confirmed to us That the DPP received our aforesaid letter and needed more time to review the file and therefore, the Charge Sheet was not registered. In the circumstances, Mr. Murage endorsed our Cash Bail receipts with his signature to confirm That we were present in court;
40. That on 20th September, 2024, we wrote to the DPP informing them of the foregoing and assuring them of our cooperation pending their receipt of BFIU file and review of their decision to charge (Annexed at page 327 hereof and marked "TLC-9" is a copy of our said letter);
41. That on 20th September, 2024, we also wrote to BFIU seeking to record further statement and to furnish them with further evidence which we had just obtained from Bank of Baroda (K) Limited and were critical for these investigations (Annexed at page 328 hereof and marked "TLC-10" is a copy of our said letter);
42. That in response to our said letter, BFIU directed us to furnish them with the said evidence, which we did. The documents include:



- i. Our emails of 17<sup>th</sup> and 19<sup>th</sup> September, 2024 to Bank of Baroda Limited requesting for cheque image and remittance for TRV Towers Limited's Account No. XXXXXXXXXXXXXXXX for Cheque No. 462 for K.Shs. 215,250.00 paid to Prasand Investments Limited, a company owned by one of the complainants namely, Virji Meghji Patel (See page 329 hereof);
  - ii. Bank of Baroda's forwarding email of 20th September, 2024 forwarding to us the said cheque image and remittance above (See page 330-331 hereof); and The cheque image and remittance as received from Bank of Baroda, indicating That the said cheque was deposited by Bhimji J. Bhudia, who is Virji Meghji Patel's accountant (See pages 332-333 hereof);  
  
(Annexed at pages 329-333 hereof & marked "TLC - 11 (i-iii)" is a bundle of the said documents)
43. That the purpose of the said documents was to dispel further the falsehood propagated by Virji Meghji Patel That he did not know of the existence of TRV Towers Limited Account No. XXXXXXXXXXXXXXXX domiciled at Bank of Baroda. These documents are not in the DCI Parklands file as we obtained them long after their file was forwarded to the DPP;
  44. That after we submitted the documents in paragraphs 33 and 40 herein to BFIU, the BFIU Detectives summoned Virji Meghji Patel, Purshottam Premji Vera, Vinod Narshi Lathia and Bhimji J. Bhudia for further interrogations on the contents thereof and to take their specimen handwritings and signatures but they refused to co-operate and declined to give their specimen handwritings, with the protection of their Advocates;
  45. That on 24th September, 2024, we were summoned by DCI Parklands and upon arrival, we were directed to attend before the trial court for plea taking on 30th September, 2024. The Officer at DCI Parklands however, declined to endorse our cash bail receipts and directed us to appear before him on 27th September, 2024 when our cash bail receipts would be endorsed, with directions to take plea on 30th September, 2024. Upon inquiring whether the DPP had reviewed the files as earlier advised, the Officers declined to respond;
  46. That on the same date, 24th September, 2024, we visited the DPP - Head of Nairobi Region - to establish whether indeed the DPP had reviewed its decision to charge, and if so, whether the review was subject to the BFIU file. The DPP - Head of Nairobi Region verbally confirmed to us as follows:
    - i. That the DPP had not yet received the BFIU file;
    - ii. That in the absence of the BFIU file, further evidence or new information, the DPP reinstated its initial decision to charge, without reviewing it; and
    - iii. That however, if we could furnish the DPP with the further evidence and new information That we believed was missing from DCI Parklands file, the DPP could have a basis to review its decision to charge, pending receipt of the BFIU file;
  47. That on the said 24th September, 2024, we engaged BFIU which confirmed to us That they were yet to finalize their Report and would forward the same to the DPP upon conclusion, which would require them about a month;
  48. That in the circumstances, on 25th September, 2024, we wrote to the Director of Public Prosecution, Mr. Renson M. Ingonga, OGW decrying the foregoing. We also furnished him with the evidence That was wilfully disregarded by DCI Parklands in their investigations, and intentionally excluded from their file. The said new evidence comprised all the documents listed in paragraphs 35 and 42



herein (Annexed at pages 334-338 hereof and marked "TLC-12" is a copy of our said letter dated 25th September, 2024);

49. That having read our said letter and being satisfied prima facie with the new evidence, the Director of Public Prosecution confirmed That our request for review was justified and directed That the plea taking in this matter should not proceed until the DPP receives the BFIU file and reviews its decision to charge. It is noteworthy That this directive was issued and communicated on 25th September, 2024 in the forenoon;
50. That it was only at 1:30pm the same day when our Advocate was submitting a copy of our said letter to the DPP - Head of Nairobi Region That he was informed That this matter was coming up in court on That very date, 25th September, 2024 at 2:00pm for plea taking, prompting him to dash to court in our absence, as we were never notified of the same;
51. That we verily believe That this was a deliberate and malicious attempt by DCI Parklands to have us swiftly charged in court either before the aforesaid DPP's Directives could reach the Prosecutor in the trial court or in total disregard of the DPP's Directives altogether, which plans failed only because our Advocate was miraculously present in court;
52. That otherwise, we invite this court to wonder with us as follows:
  - i. Why and how was the impugned charge sheet registered and the matter scheduled for plea taking without a notice to us?  
How could we have known of the said plea taking if not for our Advocate coincidentally delivering our said letter in person to the DPP - Nairobi Region's office?
  - ii. What would have happened had our Advocate been absent in court, noting That the complainants' Advocate, in fact applied for warrants of arrest against us? and
  - iii. How did the Interested Parties and their Advocate know about the plea taking on 25th September, 2024 yet we, the accused persons, did not know?
53. That it is evidently suspicious That on 24th September, 2024, DCI Parklands directed us to attend court on 30th September, 2024 for plea taking but declined to endorse our cash bail receipts, only for this matter to be brought for plea on 25th September, 2024, without notice to us. This happened despite us being out on police bond and cooperating with the DCI Parklands from 11th July, 2024 all through;
54. That it was on the said 25th September, 2024 when our Advocate attended court in our absence That the trial court directed That the plea be deferred to 26th September, 2024 and rightly rejected the Complainants' application for warrants of arrest against us;
55. That it is on 26th September, 2024 when we appeared for plea taking That the DPP made the oral application for termination of the charges which we supported through our Advocate but was opposed by the complainants. The trial court reserved its ruling thereon on 1st October, 2024;
56. That on 1st October, 2024, the trial court did not deliver the ruling but directed parties to file their respective Affidavits on the foregoing, which we did. However, instead of filing their Affidavit as was directed by the trail court, the complainants mischievously wrote to BFIU Director requesting him to close the BFIU file and give his consent for the continuation of the DCI Parklands file. This move was intended to manipulate the facts and suppress the evidence in the BFIU file with a view to influencing the then pending ruling;



57. That in response to the said request an in a manifest show of corruption, influence and abuse of office, the BFIU Director purported to clandestinely close the BFIU file and allegedly left the matter for DCI Parklands to handle. His response manifestly lacked the independence required of his office, noting the timing of his letter and the fact That it was a product of the complainants' request and/or directives (Annexed at pages 339-340 hereof and marked "TLC - 13 (i & ii)" are Letters between the complainant and BFIU Director);
58. That despite all our letters and the DPP's letters to the Director of BFIU, the latter refused to address the issues we raised therein for several months, only to write his very first letter herein in a record five days when he was asked to do so by the complainants. Even then, he still avoided and evaded addressing the issue of new information and evidence in the BFIU file and whether or not the same would be released to us or the DPP, and if so, when;
59. That in totality of the foregoing circumstances, we verily believe That the BFIU Director's letter dated 7th October, 2024 is a product of undue influence, manipulation and an abuse of both the criminal justice system and the court process. It is quite unfortunate That the trial court's ruling placed exclusive reliance on this manifestly suspicious letter to dismiss the DPP's Application before it, by which action, we believe That the Learned Magistrate grossly misdirected himself;
60. That on 5th November, 2024, we wrote to the BFIU Director requesting to be supplied with the information withheld by him for our use in these proceedings pursuant to Article 35 of the Constitution of Kenya and Sections 4, 5 and 7 of Access to Information Act. Our said letter however, elicited no response to date (Annexed at pages 341 - 342 hereof and marked "TLC-14" is our said letter to the BFIU Director);
61. That on 5th November, 2024, we also wrote to the DPP requesting for his intervention regarding the conduct of investigations in the BFIU File and to ensure That the BFIU file is not clandestinely closed but forwarded to him for his review (Annexed at pages 343-344 hereof and marked "TLC-15" is our said letter to the DPP);
62. That we are aware That in reaction to our said request, the DPP wrote to the BFIU Director asking him to forward the BFIU File to the DPP for the latter's action, which directions were ignored, declined and or disregarded by the BFIU Director, to date (Annexed at pages 345-346 hereof and marked "TLC-16" is our said letter to the DPP);
63. That it is therefore, in fact false That the BFIU file was forwarded to DCI Parklands as alleged in paragraph 11 and 12 of the Interested Parties' Affidavit in support of their Application dated 29th January, 2025. The BFIU file is still with the Director of BFIU who has locked it up in his office cabinet thus denying the BFIU Investigation Officers access thereof in order to complete their work therein;
64. That had the BFIU file been submitted to DCI Parklands as alleged, which we deny, this honourable court must then wonder: Why has DCI Parklands therefore, refused to forward the said file to the DPP for its review despite DPP's numerous requests thereof? The only reason for That refusal, we believe, is to hide the exculpatory evidence in our favour and suppress the inculpatory evidence against the Five so as to achieve their predetermined objective, to wit, our conviction by all means;
65. That it is further suspicious why DCI Parklands disregarded the evidence we submitted to them and wilfully refused to interrogate purported complainants and take their specimen handwritings, which aspects of investigations were critical to the allegations herein. It is noteworthy That purported complainants declined to cooperate with BFIU Detectives when the latter interrogated them and sought their specimen handwritings;



66. That while we no doubt acknowledge and respect the constitutional mandate of the DPP, it is clear That in making the decision to charge That informs the charges before the trial court, the DPP lacked the benefit of full facts in this matter, most of which we submitted to them on 25th September, 2024, with more yet to be received by them from BFIU;
67. That we submitted the said evidence to the DPP after the charge sheet had been registered hence, the need to terminate the charges pending consideration of the new evidence those received from us and those yet to be received from BFIU - so as to attain an informed review of its decision to charge,
68. That we are advised by our Advocates on record, which advice we verily believe to be true That discovery of new evidence is a valid ground warranting a review of decision to charge. Accordingly, we verily believe That having received new evidence from us on 25th September, 2024 and being aware of another investigation file at BFIU on the same matter, the DPP is justified to terminate the present charges and review its decision to charge.
69. That in any event, a review of the decision to charge does not necessarily mean That the DPP must of necessity, reach a contrary conclusion. Upon considering all the evidence from us, DCI Parklands and BFIU, the DPP may still approve the charges against us afresh, in which case, justice will still have been served;
70. That we have so far, been subjected to a double and parallel investigation process over the same complaint, lodged by the same complainants before the two organs of the DCI and we now face threat of suffering a parallel trial process in court, should the trial court's proceedings continue and thereafter, we be arraigned in court again by BFIU;
71. That consequently, should the charges herein not be terminated, the trial court shall be unknowingly allowing itself to be misused and abused by The Five and DCI Parklands who are clearly driving this process with the sole motive to harass, frustrate, bully and embarrass us against the interest of administration of justice;
72. That we have legitimate expectation, in line with the principles of fair trial and logic, That the two complaints before the two investigative agencies should be consolidated and processed by one office as was promised by both BFIU and DCI Parklands, to enable us competently respond to the allegations therein without unnecessary difficulties;
73. That contrary to the rules of natural justice and in blatant violation of our constitutional rights to fair trial, we shall no doubt suffer double jeopardy should the charges before the trial court continue and thereafter, have fresh charges preferred against us on account of the BFIU file should it be forwarded to the DPP and the DPP approves fresh charges;
74. That should the charges not be terminated, our criminal trial will proceed without the benefit of the exculpatory evidence currently with the BFIU. There would therefore, be no basis to ask the DPP to supply the evidence from BFIU in a file That was not forwarded to the DPP, which will weaken our cross examination thus, prejudicing our right to fair trial;
75. That we verily believe That the decision to charge by DPP as contemplated under *the Constitution* of Kenya, 2010 is not a free card to an arena of violation of the fundamental rights and freedoms of suspects as implied by the purported victims herein;
76. That the National Police Service has, as mandated by the law, set up specialized bureaus dedicated to conducting in depth investigations into various matters. The core mandate of BFIU is to investigate banking fraud and related matters. The DCI Parklands should have forwarded any complaint made



- before it to BFIU and not purport to have greater capacity than BFIU in light of the nature of complaint herein;
77. That the complaint herein falls squarely under BFIU and it is suspicious why DCI Parklands is unwilling to either have the files consolidated or release its file released to BFIU;
  78. That the scope of work undertaken by BFIU cannot be undertaken by an officer at a Police Station as it requires skilled gathering of information, analysis of forensic evidence and uncovering facts related to specific issues in the complaint, which was not undertaken by the officers at DCI Parklands;
  79. That only the DPP is entitled to, and has discretion to make the Decision to Charge, which decision must be made within the confines of *the Constitution*, the ODPP Act and the Decision to Charge Guidelines without being directed by anyone, including the trial court;
  80. That should the charges herein not be terminated, our fundamental rights and freedoms will be abused by the very institutions mandated to protect and uphold *the Constitution*;
  81. That the purported complainant's hands are clearly traceable in the investigations by DCI Parklands, the purported closure of the BFIU file, our harassment, intimidation and the violation of our rights, and now the fabricated charges. Their actions are intended to achieve a goal That they hopelessly failed in by abusing the civil justice system, an act That must be frowned upon by this court;
  82. That unknown to the DPP, in registering the charge sheet at the trial court, the DPP's office was used for ulterior motives to violate our rights and further the abuse of the court process. The DPP now seeks to cure the same by terminating the charges and reviewing its Decision to Charge, lest it knowingly propagates the manifest violations and abuse court process, which request, we believe, is fair, just and lawful and ought to be granted;
  83. That it is notable That the complainants challenge our joinder to Milimani HCCCOMM E020 and E021 both of 2024 wherein they claim the monies subject of these charges. Why would the complainants, on the one hand, want us charged for stealing the alleged funds yet, on the other hand exclude us as Defendants in the civil suit in which they claim the said sums and oppose our joinder as Third Parties thereto? (See pages 124-126, 127-134, 135-137 and pages 164-166, 167-174, 175-177 hereof);
  84. That should this Honourable Court fail to review the trial court's ruling and terminate the charges, we stand to suffer double jeopardy contrary to the rules of natural justice and in violation of our constitutional rights to fair trial which right cannot be limited;
  85. That it is in the interest of justice, fairness, equity and the law That the DPP's Application for Revision of the trial court's ruling be allowed;
  86. That what is deponed to herein is true to the best of our knowledge and belief, save for the facts deponed to on information, sources whereof we have disclosed.
3. To the affidavit are annexures running into hundreds of pages some touching on civil disputes to wit Commercial and Admiralty Division Misc. No. E819 of 2023, No. E921 of 2023, No. E929 of 2023 , No. E930 of 2023 , No. E541 of 2023 , No. E548 of 2023, No. E618 of 2023, No. E619 of 2023, No. E020 of 2024, No. E021 of 2024 , No. E229 of 2024, No. E256 of 2025, besides other documents. It is therefore not in doubt That this matter is a highly contentious matter between the respondents and the interested parties.



4. The interested parties have taken the position That the case should be allowed to proceed as ordered by the Magistrate and That the DPP's application for revision should be declined. All the parties have filed submissions in support of their respective positions which this court has duly considered.
5. An analysis of the factual situation presented by the applicant (DPP) leaves no doubt That there were parallel investigations conducted by the Banking Fraud Investigation Unit and the DCI Parklands, Nairobi.
6. It does appear to this court That when the DPP registered the charge which he later to withdraw on the same day certain facts may not have come to light at That state of the decision to charge. It is expressly stated by counsel for the DPP That upon discovery of the fact of parallel investigations, the DPP moved in to immediately seek to withdraw the proceedings but the trial court declined.
7. The High court under Article 165 (6) of *the Constitution* and Sections 362 of the Criminal Procedure Code is empowered to call for the record of the lower court, examine the same and satisfy itself as to the legality, correctness and or propriety of the impugned order.
8. The High court in exercising its supervisory and revisionary jurisdiction seeks to ensure That the subordinate courts function within the law and do not preside over matters in a manner That directly offends provisions of *the Constitution* and the fair trial rights of the accused.
9. The court notes That this is a matter That seems to have very many angles to it. The need to have the evidence in support of the prosecution objectively reviewed cannot be overemphasized.
10. The DPP did not move the lower court for the withdrawal of the matter after a protracted delay. The action was almost spontaneous thus the court view the move as having been timeously made so as to vert an injustice to the accused.
11. The DPP under Article 157 (6) and (8) can move the court to terminate proceedings at any stage before judgement. The leave of court whenever such applications are made should not be unreasonably denied except where the trial court is on an objective assessment of a matter takes the view That the withdrawal is being sought in bad faith and is calculated at shielding the accused persons from the criminal Justice.
12. In Republic -vs- Director of Public Prosecutions & 2 others (2022)KEHC 12905 (KLR), the High Court stated as follows on discontinuation of criminal charges:
 

“...courts have a duty to promote justice and prevent injustice. The inherent power bestowed upon this Court to issue judicial review orders can only be exercised where it has been demonstrated by the Applicant That to allow the prosecution to continue would be against the public interest and would amount to an abuse of the process of the court or infringe on the rights of the subject of the prosecution. In exercising the said power, this Court must be guided by the need to advance justice and not to frustrate it. It is therefore the duty of he who alleges abuse of power by the investigator and or the prosecutor to present evidence to the Court in support of the allegation That the powers granted to the said officers have been exercised unconstitutionally and in violation of statute.”(emphasis mine)
13. The court should therefore be inclined to grant a request for withdrawal where the DPP establishes That the withdrawal is geared towards the furtherance of the interests of justice in line with Article 157 (11) and is sought to be done in the public interest to avoid abuse of the legal process.
14. To allow the continuation of a matter where the DPP has been made aware of the existence of parallel investigations is to create a window for abuse of the criminal justice process. The DPP would be failing



in his duty to protect the interests of the administration if he were to allow investigators to open multiple investigations files in different stations on the same matter and decide on whether or not to prosecute without reviewing both files.

15. This is one of those rare cases where expedition in decision making should be commended rather than being vilified. The move to withdraw immediately upon discovery of the fact of there being another investigation file was spot on and in line with the provisions of Article 47 of *the Constitution*.
16. The respondents just like the interested parties are entitled to fair administrative action. The DPP in seeking to allowed an opportunity to review the two files was in all fairness acting in the public interest to give the matter a deeper consideration and evaluation.
17. Whereas the trial court has powers to interfere with the DPP's exercise of discretion to discontinue the charges, the court must do so sparingly and only in exceptional and in the clearest of cases of abuse of discretion by the DPP.
18. In Republic -vs- Director of Public Prosecutions & 2 others (2022) KEHC 12905 (KLR), the High Court stated That:

“Whereas courts do recognize the independence of the 1st and 2nd Respondents, the courts are empowered by *the Constitution* and the laws of this country to check any wayward action by the 1st and 2nd Respondents and give appropriate relief to any victim. In this regard the Court of Appeal in Diamond Hasham Lalji & another -vs- Attorney General & 4 others [2018] eKLR held That:

'Thus, the exercise of prosecutorial discretion enjoys some measure of judicial deference and as numerous authorities establish, the courts will interfere with the exercise of discretion sparingly and in the exceptional and clearest of cases...

The burden of proof rests with the person alleging unconstitutional exercise of prosecutorial power. However, if sufficient evidence is adduced to establish a breach, the evidential burden shifts to the DPP to justify the prosecutorial decision.'

19. The interested parties have not persuaded this court That the DPP in seeking to terminate the proceedings he had acted in excess of his constitutional mandate and That he had exercised his power unconstitutionally. The courts must give the other holders of constitutional offices room to fully exercise their mandate before intervening. This was a clear case where it appears like someone through craft ensured That two parallel investigations were opened but chose to conceal That fact from the DPP.
20. The trial court should therefore have allowed the DPP room to exercise his mind over the matter independently upon review of the contents of the two investigation files.
21. In Philomena Mbete Mwilu -vs- Director of Public Prosecutions & 3 others [2019] eKLR the High Court stated That it has the power to review the foundational basis of the DPP's decision to charge. The Court stated That:

'We agree That there is a real danger of courts overreaching if they were to routinely question the merit of the DPP's decisions. However, there are circumstances where the type of scrutiny set out in the majority decision of Njuguna S. Ndungu (supra) is called for. Should there be credible evidence That the prosecution is being used or may appear to a reasonable man to be deployed for an ulterior or collateral motive other than for advancing the ends of justice, then a scrutiny of the facts and circumstances of the case is not only necessary but



desirable. This is because it would enhance the administration of justice if the challenged charges were to be properly tested so That any fears of ill motive are dispelled...

22. .The court would only decline to grant leave or permission to withdrawal where there is prove of ill motive or bad faith or collateral purpose on the part of the DPP in seeking the withdrawal.

In the instant case I do not find That the interested parties have shown That the withdrawal was actuated by any of the above.

23. In Republic -vs- Kennedy Onsarigo Sebe & 3 Others (2029) eKLR, the High Court held That:

“In our instant case, there is no evidence That the application to withdraw the charges... was brought in bad faith or was an abuse of the court process... The DPP intimates That new information has been found which requires further investigations. The DPP cannot possibly be allowed to do prosecutions on a trial and error basis. He cannot be allowed to conduct a trial by ambush. However, if all rights under Article 50 are enforced, I find no prejudice That would be suffered by the accused persons even if they were to be re-arrested and charged.”

24. In the present case if the matter was to proceed in the circumstances set out by the DPP, the court would not be advancing the course of justice by doing so.

25. The victims have a right under Sections 9 and 20 of the Victims Protection Act to submit any information they may have That they consider necessary for review by the DPP as he retires to reconsider the matter.

- 26 The victims cannot, and should not interfere with the DPP's exercise of his discretion. In Joseph Lendrix Waswa -vs- Republic [2020] eKLR, the Supreme Court stated That:

“Article 157(1) of *the Constitution* establishes the office of DPP. The State's prosecutorial powers are vested in the DPP under Article 157 of *the Constitution*. That office, under sub-article 10, neither requires the consent of any person to institute criminal proceedings nor is it under the direction or control of any person or authority...

...We are of the view That the victim has no active role in the decision to prosecute, or the determination of the charge upon which the accused will finally be tried. This is the sole duty of the DPP. While the victim of a crime can participate at any stage of the proceedings, as deemed appropriate by the trial Judge, a victim or his legal representative does not have the mandate to prosecute crimes on behalf of the DPP. The DPP must at all times retain control of, and supervision over the prosecution of the case. As such, the constitutional and statutory powers of the DPP to conduct the prosecution is not affected by the intervention of the victim in the process.

Additionally, a victim cannot and does not wear the hat of a secondary prosecutor. When victims present their views and concerns in accord with section 9(2) (a) of the VPA, victims are assisting the trial Judge to obtain a clear picture of what happened (to them) and how they suffered, which the Judge may decide to take into account. Victim participation should meaningfully contribute to the justice process. It must be noted, however, That this does not mean That the Court's judgment will follow the wishes of the victim. The trial Judge will, of course, take into account the law, facts, all the different interests, and concerns, including the rights of the defence and the interests of a fair trial to arrive at a sagacious decision.



27. Accordingly, this court finds That there is merit in the revision application, the order by the magistrate declining the withdrawal is hereby quashed.
28. The matter is hereby ordered to be withdrawn and the DPP shall be at liberty to review the same and take any action That he may deem appropriate.
29. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 17<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**A. M. MUTETI**

**JUDGE**

In the presence of:

Kiptoo: Court Assistant

Ms Ogega for Applicant

Awuor for 1<sup>st</sup> & 2<sup>nd</sup> Respondent

Kiamba h/b Mutava for Interested Parties

