Republic v Inspector General of Police & 3 others; Kerich (Ex parte Applicant) (Miscellaneous Application E276 of 2024) [2025] KEHC 15386 (KLR) (Judicial Review) (30 October 2025) (Judgment)

Neutral citation: [2025] KEHC 15386 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

JUDICIAL REVIEW

MISCELLANEOUS APPLICATION E276 OF 2024

JM CHIGITI, J

OCTOBER 30, 2025

BETWEEN

REPUBLIC ..... APPLICANT

AND

INSPECTOR GENERAL OF POLICE ..... 1ST RESPONDENT

OFFICER COMMANDING STATION KICC POLICE STATION .... 2ND RESPONDENT

OFFICER COMMANDING STATION CENTRAL POLICE STATION NAIROBI ..... 3RD RESPONDENT

ATTORNEY GENERAL ..... 4TH RESPONDENT

AND

HON. CHARLES KERICH ..... EX PARTE APPLICANT

JUDGMENT

1. The application that is before this court for determination is the Notice of Motion application dated 20th December 2024 wherein the applicants seek the following orders:

    a. That the Honorable Court be pleased to grant leave to the Exparte Applicants herein to move this Honourable Court for a judicial review order of certiorari, to remove and quash the summons issued by the 1st, 2nd and 3rd Respondents to the Exparte Applicants.

    b. That the Honorable Court be pleased to grant leave to the Exparte Applicants herein to move this Honourable Court for a judicial review order of Prohibition to prevent the 1st 2nd and

3rd Respondents from issuing further summons to the Exparte Applicants requiring their attendance before them for proceedings relating to execution of decrees against the County Government of Nairobi listed in paragraph 4 of the Supporting Affidavit dated 4th December 2024.

c. That the leave to commence Judicial Review Proceedings operates as a stay order against the Respondents halting any execution proceedings against the Exparte Applicants in their personal and official capacity for decrees issued against the County Government of Nairobi as listed in paragraph 4 of the Supporting Affidavit dated 4th December 2024 pending the hearing and determination of the Judicial Review Proceedings.

d. That the Honorable Court be pleased to grant the Exparte Applicants anticipatory bail pending arrest or charge on such terms as this court may deem fit.

e. That the costs of this application be borne by the Respondents.

The Applicant's Case;

2. In the application dated 20.12.24 that was filed pursuant to the leave of the court, the Applicant indicates that the application is supported by the annexed affidavit of Christine Ireri though none was filed.

3. The applicant's initial application by way of chamber summons dated 4.12.25 was supported by the Verifying Affidavit of Christine Ireri where she had deponed that she had read and understood the statement and the annexures accompanying the Application for leave to apply for Judicial Review by way of Order of Certiorari and Prohibition in view of the above matter.

4. She deponed that she swore the affidavit in Support of the Application for leave to apply for Judicial Review by way of Order of Certiorari and Prohibition.

5. She adopted all the averments and the statements of facts contained in the statement filed in regard further annexed copies of the documents referred to is the aforesaid marked CI-1, CT-2, CI-3, CI-4 andCI-5.

6. The said applicants' case was also supported by the statutory statement which the court reproduces here.

7. As reliefs they are asking the Court to grant leave to the Exparte Applicants herein to move this Honourable Court for a judicial review order of CERTIORARI, to remove and quash the summons issued by the 1st, 2nd and 3rd Respondents to the Exparte Applicants.

8. That the Honorable Court be pleased to grant leave to the Exparte Applicants herein to move this Honourable Court for a judicial review order of PROHIBITION to prevent the 1st, 2nd and 3rd Respondents from issuing further summons to the Exparte Applicants requiring their attendance before them for proceedings relating to execution of decrees against the County Government of Nairobi.

9. That the leave to commence Judicial Review Proceedings operates as a stay order against the Respondents halting any execution proceedings against the Ex-Parte Applicants in their personal and official capacity for decrees issued against the County Government of Nairobi pending the hearing and determination of the Judicial Review Proceedings.

10. That the Honorable Court be pleased to grant the Exparte Applicants anticipatory bail pending arrest or charge on such terms as this court may deem fit.

11. That the costs of this application be provided for.

12. They relied on the grounds inter alia;

    1. That the Ex-Parte Applicants herein are cognizant that there is a risk of being arrested by the 1st, 2nd and 3rd Respondents. They had been summoned by the 3rd Respondent over warrants of arrest issued by the Honourable Court in various suits. The intended arrests are an abuse of the criminal process and a weaponization of the police service in matters where the Ex-Parte Applicants are not personally responsible for the alleged debts owed by the County Government of Nairobi.

    2. That the 1st, 2nd and 3rd Respondents intend to use state machinery to arbitrary arrest the Ex-Parte Applicants when they appear before them to honour the summons.

    3. That on 25th October 2024, through a text message, Mr. Noor, the 3rd Respondent herein, summoned the Respondents to appear before him over warrants of arrest that were issued by a High Court. (Annexed hereto and marked "CI-I" are copies of the text messages).

    4. That the 3rd Respondent did not disclose the particular suit where warrants of arrest were issued. The Ex-Parte Applicants later on discovered that the summons were in respect of decrees issued against the County Government of Nairobi.

    5. That the County Government of Nairobi, like most County Governments, is struggling with meeting its financial obligations owing to delayed disbursements from the National Treasury. These delays have made it more difficult for the County Government of Nairobi to pay its debts on time.

    6. That to meet its recurrent financial obligations, such as employee salaries and their respective statutory deductions, the County Government of Nairobi has resulted to request for advances from various financial institutions such as the Co-operative Bank of Kenya. (Annexed hereto and marked "CI-2" are copies of letters and correspondence between the I™ Ex-Parte Applicant and the Manager Co-operative Bank of Kenya, City Hall Branch).

    7. That the County Government of Nairobi has been marred by the weight of pending bills that have been accrued over the years. As at 30th June 2023, the total pending bills were Kshs. 106,849,430,182.00 and as at 30th June 2024 Kshs. 119,155,744.785.00. (Annexed hereto and marked "CI-3" is a copy of the Nairobi City County report on Outstanding payables as at 30th June 2024).

    8. That despite the County Government of Nairobi collecting revenue on a daily basis, the same cannot sustain the wage bill, outstanding payables and debts accrued over the years. The delay in payments is not a fault of the Ex-Parte Applicants, but rather, an issue of insufficient funds to settle what is due to the various creditors. (Annexed hereto and marked CI-4 is a copy of the Nairobi City County report on Expenditure and Revenue Performance).

    9. That the County Government of Nairobi has an outstanding debt balance of Kshs. 119, 155,744,785. 00 out of which Kshs. 20,798,319, 572.00 are owed in legal fees. (Annexed hereto and marked "CI-5" is a copy of the Nairobi City County Pending Bill Report).

    10. That the 1st, 2nd and 3rd Respondents' actions amount to an abuse of the police institution and state machinery intending to punish the Exparte Applicants due to the inability of the County Government of Nairobi to settle the outstanding decretal amounts.

11. That it is thus improper for the Respondents to embarrass the Exparte Applicants by making unlawful arrests under the disguise of "summons."

12. That there is no basis upon which the Respondents can peg a cause of action against the Exparte Applicants. The intended actions of the Respondents are unlawful because:

    i. That the 1st, 2nd, 3rd, 4th and 5th Ex-Parte Applicants, are a separate and distinct legal entity from the County Government of Nairobi the Authority to be Prosecuted.

    ii. That the Decree Holders in the various suits against the County Government of Nairobi have failed to adhere to the provisions of Section 21 of the *Government Proceedings Act*, consequently jumping the gun by obtaining warrants of arrest against the Ex-Parte Applicants.

13. That the Ex-Parte Applicants rights enshrined under Articles 2(1), 3(J), 10, 19, 20, 22, 23, 25, 27, 28, 29, 43, 47, 48, 50(2) and 258 of *the Constitution* of Kenya, 2010, have been infringed and/or being threatened.

14. That the 5th Ex-Parte Applicant is protected from personal liability by dint of Section 10 of the Office of the County Attorney Act, to the extent that no criminal proceedings or civil suit shall be brought against the County Attorney, the County Solicitor, County Legal Counsel or any other officer in the Office in respect of any proceedings in a court of law or in the course of discharging of the functions of the County Attorney.

15. That arresting the 5th Ex-Parte Applicant for satisfaction of decrees against the County Government of Nairobi would amount to a violation of the law and an affront to justice which this court should prevent from occurring.

16. That this Honourable Court has the power to intervene, protect and uphold the Ex-Parte Applicants' rights and freedoms from unlawful abuse through arbitrary arrests.

17. That the Respondents, through their actions, have violated their duty to act fairly as mandated by the Fair Administrative Actions Act.

18. That the law frowns upon the abuse of power and the new Constitutional dispensation shifted from the culture of authoritarianism to a culture of justification for all state and non-state parties.

19. That the orders sought herein ought to be granted to ensure enforcement and protection of Ex-Parte Applicants' right to a fair trial as encapsulated in Article 50 of *the Constitution*.

20. That the dictates of the rule of law and natural justice abhor absolute and unbridled exercise of discretionary powers, however unrestricted or permissive the language of the statute of legislation.

21. That this Honourable Court has original and unlimited jurisdiction.

The Exparte Applicants' Submissions;

13. It is their submission that the Exparte Applicants, in their official capacities have found themselves in a conflicted arena whereby, they have been summoned by agents of the 1st Respondent for questioning over unsatisfied decrees and debts incurred by Nairobi City County.

14. They submit that arresting or threatening to arrest them, the Exparte Applicants does not aid in solving the issue of outstanding legal debts.

15. The Applicants submit that the facts in this suit are comprehensively stated in the Judicial Review Application.

16. It is their submission that debt is not a novel concept in the government. For governments to successfully operate and discharge their mandates, they rely on taxes, grants and other revenue streams, which frequently do not meet their ballooning expenses.

17. The Exparte Applicants, have opted to seek the protection of their fundamental freedoms and rights under the new constitutional dispensation.

18. They submit that their only mistake according to the Applicants is that they oversee the day-to-day activities and operations of Nairobi City County.

19. It is submitted that the Nairobi City County's failure to pay these debts has not been deliberate but a saddening reality that has affected most county governments.

20. The Applicants invite the court to appreciate the situational awareness of the tough environments within which, county governments operate.

21. In addressing the issue whether the Exparte Applicants are personally liable for debts of Nairobi City County, they submit that at paragraphs 3 and 4 of the Supporting Affidavit dated 4th December 2024 to the Judicial Review Petition herein, the County Attorney the 5th Exparte Applicant (hereinafter "County Attorney') deposes that she was summoned by the 3rd Respondent to appear before him over warrants of arrest that were issued by a High Court.

22. They submit that the 3rd Respondent failed to disclose over which proceedings were the warrants of arrest issued. The Exparte Applicants, perturbed by the actions of the 3rd Respondent sought to establish the root of the warrants upon which the discovered that the warrants concerned unsettled decrees.

23. According to the Applicants the question that arises is whether employees and officials of a county government are personally liable for debts incurred by the county.

24. They also rely on Section 10 of the Office of the County Attorney Act provides that:

> "No criminal proceeding or civil suit shall be brought against the County Attorney, the County Solicitor, County Legal Counsel or any other officer in the Office in respect of any proceedings in a court of law or in the course of discharging of the functions of the County Attorney under this Act."

25. They submit that the County Attorney cannot be summoned, or be required to show cause through warrants of arrest for debts incurred by the county government.

26. Reliance is placed in the case of Baylem Limited vs County Government of Nairobi (2018) eKLR where it was held that;

> "
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> "12. Nevertheless, whether or not the two Officers are culpable for contempt depends, not on the fact that the debt remains unattended, but on whether the non-failure is willful and without good or plausible cause or explanation.

It has to be remembered that what the Officers are charged with is failure to pay a debt that is not personal to themselves but of The County Government. If the Officers demonstrate that they have done enough to attend to the debt but the matter is out of their hands due to insolvency of the Government in which they are blameless, then they cannot be guilty of contempt Effort that can count in favour of the Officers may include diligently providing for the debt in the Government budget and pursuing all possible Revenue streams to pay. Guilt is only on a reluctant, obstinate. negligent or in diligent Officer. This is in much the same way as Civil Jail for failure to pay a debt is only for the intransigent or obstructive debtor and not one who is clearly unable to pay."

15. The wise words of Tuiyott J begs the question; have the Exparte Applicants demonstrated that they have done enough to attend and settle the debts? The answer is in the affirmative. At Paragraph 9 of the Supporting Affidavit of the County Attorney, she depones:

"THAT I am aware that the Count Government of Nairobi collecting revenue on a daily basis the same cannot sustain the bill outstanding payables and debts accrued over the years. The delay in pavements is not a fault of the Exparte Applicants, but rather an issue of insufficient funds to settle what is due to the various creditors."

27. It is submitted that the non-settlement of the decrees is not out of negligence, impunity or disrespect, it is occasioned by the unavailability of funds, a fact beyond the control of the Exparte Applicants.

28. It is submitted that the enforcement criteria which the Respondents intend to adopt in this matter does not address the problem in question; which is the payment of debts.

29. They submit that Summons, threats of arrests and attachment of salaries against the Exparte Applicants cannot offset the debts in question.

30. They submit that the Exparte Applicants are not personally liable for the debts of the Nairobi City County and as such, it is improper for them to be summoned by the 1st, 2nd and 3rd Respondents. Enforcement is to the office and not the person holding the office.

31. In buttressing the issue whether the Respondents actions were illegal, irrational and procedurally improper they make reference to the new constitutional dispensation which has sanctioned a shift in the modus operandi of the state.

32. State organs and representative were mandated to cede the culture of authoritarianism and embrace a culture of justification where all acts are rooted in the law.

33. Reference is made to Etienne Mureinik in his paper Etienne Mureinik (1994) A Bridge to Where Introducing the Interim Bill of Rights, South African Journal on Human Rights, 10:14 31-48 DOI expounded on the need for state actions to be justified under the law as follows:

"If the new Constitution is a bridge a way from a culture of authority, it is clear what it must be a bridge to. It must lead to a culture of justification-a culture in which every exercise of power is expected to be justified; in which the leadership given by government rests on the cogency of the case offered in defense of its decisions, not the fear inspired by the force at its command. The new order must be a community built on persuasion, not coercion."

34. Reliance is placed in the case of in Council of Civil Service Unions V Minister for The Civil Service [1985] defined these elements in the following terms:

> " By illegality as a ground for Judicial Review I mean that the decision maker must understand correctly the law that regulates his decision-making power and must give effect to it.
>
> By irrationality...it applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.
>
> Procedural propriety depends upon the subject matter of the decision and the particular circumstances in which the decision came to be made."

35. They submit that the actions of the 1st, 2nd and 3rd Respondents of summoning the Exparte Applicants were illegal because the law does not allow them to be personally liable for the debts incurred by Nairobi City County.

36. According to them it wouldn't hurt if the Respondents, who bear the duty to enforce law and order, found out the nature of the cases for which the Exparte Applicants were summoned.

37. Further, they submit that the actions of the 1st, 2nd and 3rd Respondents were irrational because they did not specify to the Exparte Applicants the court cases from which the decrees arose.

38. They submit that the Exparte Applicants are yet to be informed of the decrees, essentially violating their rights to a fair hearing. It is principle of natural justice that no person shall be condemned unheard.

39. It is their case that it has become a worrying trend that the National Police Service has from time to time been used as an agent of impunity.

40. Reliance is placed in Kenya Human Rights Commission & 8 others v Koome Nchebere; Law Society of Kenya & 2 others [2024] KEHC 16607 (KLR) J Ngaah J held that the Inspector General of Police bears responsibility of the actions of the officers under his command.

41. At Paragraph 103, the court held that:

> " Irrespective of whether these provisions are considered from the perspective of the doctrine of command responsibility, or any other doctrine, by whatever name called, they all lead to the conclusion that, where, as in the instant case, the Inspector General violently descends upon members of the public exercising their rights in a manner endorsed in the Bill of Rights, to curtail or in any way to disrupt their appropriation of these rights, he will thereby be held accountable and personally responsible for the consequences that may inevitably ensue. The buck stops with him, so to speak."

42. Section 8 of the *National Police Service Act* appreciates the fact that the National Police Service is under the command of the Inspector General of Police and even where he has delegated tasks, he is not divested of responsibility.

43. The Applicants submit that the actions of the Respondents were illegal to the extent that there was no appreciation of the laws and the decisions of this court on liability of debts incurred by the Nairobi City County. The decision to summons the Exparte Applicants was not justifiable in terms of article 47 of *the Constitution*.

44. The actions of the Respondents were irrational, borrowing from Lord Diplock's definition above, a person in the station and professional capacity of the Respondents, faced with the facts that led to the institution of this suit, could not have reached the same decision that the Respondents made.

45. They further submit that the decision of the Respondents to summon and further threaten the Exparte Applicants with the possibility of arrest was penurious of procedural fairness. The decision ripped them off their rights yet they were not given an opportunity to be heard prior to the making of the decision. This means that the Respondents failed to uphold Article 47 of *the Constitution* and the Fair Administrative Actions Act. The decision to summon and possible arrest the Exparte Applicants was prejudicial to them.

46. On another front the Applicants submit that at the heart of this case, is the fact that the Respondents acted ultra vires, in total disregard of the law.

47. Article 47 of *the Constitution* provides that:

> " Fair administrative action
>
> 1. Every person has the right to fair administrative action that is expeditious, lawful, reasonable and procedurally fair.
>
> (2) If a right or fundamental freedom is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action. "

48. The drafters of *the Constitution* foresaw instances where the wielders of power may choose to overlook the law and act with impunity according to them.

49. They further submit that the wielders of power and the bearers of arms must be constrained by law and reasonableness lest citizens should find themselves raising the Shakespearean lament in King Lear, that "as flies to wanton boys [in blue?] Are we to the gods [or demigods?]; they kill us for their sport. " (Per Gloucester) see Elkington (Suing as personal representatives of the Estate of Charles Antony Elkington Deceased) v Attorney General & another [2024] KEHC 12743 (KLR)

50. They submit that it is evident that no written reasons were given for the actions of the Respondents, showing the level of impunity.

51. In reflecting on the role of this court in these proceedings, Chigiti J in Republic v Law Society of Kenya & another; Irungu (Exparte Applicant); Wyne 2 others (Interested Parties) (Judicial Review Application 028 of 2024) [2024] KEHC 1489 (KLR) (Judicial Review) (19 February 2024) pronounced himself thus:

> "
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> " 64. In Municipal Council of Mombasa v Republic & Umoja Consultants Ltd [2002] eKLR, the Court of Appeal stated;
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> "Judicial review is concerned with the decision making process, not with the merit itself; the court would concern itself with such issues as to whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether the in making the decision the decision maker took into account relevant matters or did take into account irrelevant matters...The court should not act as a court of appeal over

the decider which would involve going into the merits of the decision itself-such as whether there was or there was not sufficient evidence to support the decision".

65. This court is bound by this judgment and I will not carry out a merit analysis nor seat on appeal."

52. It is their case that without delving into the merits of this matter, it is clear that the Respondent's decision-making process did not comply with the law, hence violating the rights of the Exparte Applicants.

53. The Application seeks an order of certiorari to remove and quash the summons issued by the 1st, 2nd and 3rd Respondents to the Exparte Applicants, an order of prohibition to prevent the issuance of further summons and anticipatory bail pending arrest or charge.

54. Reliance is also placed in Republic v Law Society of Kenya another (supra) Chigiti J held that:

"

" 87. With respect to efficaciousness of the remedy in the exercise of discretion, it is not in doubt that the decision whether or not to grant judicial review reliefs is an exercise of discretion which must however be exercised judicially. As is stated in Halsbury's Laws of England 4th Edn. Vol. 1(1) para 12 page 270:

"The remedies of quashing orders (formerly known as orders of certiorari), prohibiting orders (formerly known as orders of prohibition), mandatory orders (formerly known as orders of mandamus) ...are all discretionary. The Court has a wide discretion whether to grant relief at all and if so, what form of relief to grant. In deciding whether to grant relief the court will take into account the conduct of the party applying, and consider whether it has not been such as to disentitle him to relief. Undue delay, unreasonable or unmeritorious conduct, acquiescence in the irregularity complained of or waiver to the right to object may also result in the court declining to grant relief. Another consideration in deciding whether or not to grant relief is the effect of doing so. Other factors which may be relevant include whether the ant of the remedy is unnecessary or futile, whether practical problems. Including administrative chaos and public inconvenience and the effect on third parties who deal with the bod in question, would result from the order and whether the form of the order would require close supervision by the court or be incapable of practical fulfilment"

55. They submit that it is public debt that led to the filing of this suit. As it was demonstrated in the affidavit of the County Attorney, these debts and the resultant decrees are not the creation of the county government, but have arisen from unavailability of funds.

56. They submit that if the orders sought herein are not granted, there will be public chaos, public inconvenience to the residents of Nairobi City County and the operations of the Nairobi City County will be paralyzed.

57. They submit that they foresee a scenario where county officials will be summoned frequently, to give an account of the debts owed by the County Government.

58. The net effect of this would be anarchy; which won't be to the benefit of either party to this suit and they implore this court to exercise its discretion and allow Nairobi City County time to pay its debts, as it has been making attempts.

59. The Exparte Applicants also seek a grant of anticipatory bail, Aburili J in Oloo v Director of Public Prosecution 3 others (Miscellaneous Criminal Application E004 of 2024) [2024] KEHC 4836 (KLR) (24 April 2024) (Ruling) relied on Mandiki Luveve v Republic [2015] eKLR where the court held that:

> " Similar sentiments were observed in the case of Eric Mailu v Republic and 2 others Nairobi Misc. Cr. Application No. 24 of 2013 in which it was emphasized that anticipatory bail would only issue when there was serious breach of a citizen 's rights by organs of state Accordingly, it is salient that anticipatory bail is aimed at giving remedy for breach of infringement of fundamental Constitutional rights in conform with what *the Constitution* envisages constitutes protection of fundamental rights and freedoms of a citizen. It cannot issue where an Applicant labours under apprehension founded on unsubstantiated claims. The fear of breach to fundamental right must be real and demonstrable. An Applicant must demonstrate the breach by acts and facts constituting the alleged breach."

60. They submit that the Exparte Applicants right to a fair administrative action and the right to be presumed innocent have been violated. It is submitted that if this court does not intervene and protect them from the violation of their rights, they will have no other recourse.

61. Their fear of arrest is real, demonstrable and deserving of this court's indulgence.

The Respondent's Case;

62. In opposing the Application, the Respondents raised Grounds of Opposition alleging; -

i. That the Application herein is unmerited and therefore an abuse of the due process of the Court.

ii. That the Application is intended to curtail the statutory obligations and duties of the 1st to 3rd Respondent herein.

iii. That the Application is frivolous, vexatious and an abuse of court process since it does not disclose how the Respondent has acted outside their mandate as provided in law.

iv. That the Application does not disclose any single act of illegality on the part of the 1st to 3rd Respondent.

v. That the summons by the 1st to 3rd respondents were issued by courts of competent and similar Jurisdiction as this court and as such the respondents were not acting outside their power and were just complying with court orders from other courts of similar jurisdiction as this court.

vi. That, if granted, the orders sought in the application will undermine the functions of the Respondent provided for under Section 24(j) of the *National Police Service Act*, No. 11A of 2011, justice system.

vii. That the police are under a statutory duty to enforce court orders issued by courts of competent Jurisdiction when issued with the same.

viii. That this Honorable Court would be usurping the statutory mandate of the 1st to 3rd respondents if it were to take up that role as proposed by the Exparte Applicant.

ix. That the Applicant in essence, seeks that this honorable Court directs Public officers to exercise or not to exercise his/her statutory discretion in a particular manner hence usurp the said officer's authority.

x. That the Applicant is inviting this court to trespass into the arena specifically reserved for the police and ought not to usurp the constitutional or statutory mandate of the 1st to 3rd respondents.

xi. That the summons brought without any ulterior motive on the part of the 1st Respondent nor is there any procedural impropriety on the part of the 5th Respondent.

xii. That further to the foregoing the on 6th December 2024, the Applicants were granted leave to file a substantive application. An Application dated 20th December 2025 seeking for leave to apply for prerogative writs of Certiorari and Prohibition was filed. The application dated 20thDecember 2024 is therefore defectively incurable.

xiii. That the Applicants having failed to apply for the substantive judicial review orders as directed by the court there is no suit before the court for Judgment to be rendered.

xiv. That the Applicant has failed to show how the acts complained are tainted with illegality, irrationality and procedural impropriety hence the judicial review orders sought should not be granted and as such the application herein should be dismissed with costs.

The Respondents Submissions;

63. It is the Respondents submission that the orders sought were already granted by on the 6th of December 2024. Granting them again would be superfluous. The Exparte applicant did not apply for the Orders of certiorari and Prohibition and there is no suit before the court to render a judgment.

64. They submit that the application dated 20th December 2024 is incurably defective as it seeks for orders that are already spent.

65. Further the Respondents rely on the case of Pastoli v Kabale District Local Government Canal & Others (2008) 2EA where the learned Judge stated;

> " In order to succeed in an application for Judicial Review, the Applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety.
>
> Illegality, is when the decision-making authority commits an error of law in the process of taking the decision or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires or contrary to the provision of a law or its principles are instances of illegality----.
>
> Irrationality, is when there is such gross unreasonableness in the decision taken or act done that no reasonable authority, addressing itself to the facts and the law before it would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards.
>
> Procedural impropriety, is when there is failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice to act 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 legislature instrument by which such authority exercises jurisdiction to make a decision."

66. They also place reliance in the Court of Appeal in Kenya Revenue Authority & 2 others v Darasa Investments Limited [2018] eKLR judgment where it was held that:

> " Nonetheless, judicial review orders are still discretionary in nature and whenever this Court is called upon to interfere with the exercise of judicial discretion, as in this case, it ought to be guided by the principles enunciated in Coffee Board of Kenya vs. Thika Coffee Mills Limited & 2 Others [2014] eKLR. The Court ought not to interfere with the exercise of such discretion unless it is satisfied that the Judge misdirected himself in some matter and as a result arrived at a wrong decision, or that it be manifest from the case as a whole that the Judge was clearly wrong in the exercise of discretion and occasioned injustice."

67. It is their case that the summons were issued by courts of competent and similar Jurisdiction as this court and as such the respondents were not acting outside their powers and were just complying with court orders from other courts of similar jurisdiction as this court and they submit that if granted, the orders sought are granted it will undermine the functions of the Respondent provided for under Section 24(j) of the *National Police Service Act*, No. 11A of 2011.The police are under a statutory duty to enforce court orders issued by courts of competent Jurisdiction when issued with the same.

68. According to them ,the summonses were issued without any ulterior motive on the part of the 1st to 3rd Respondent nor was there any illegality, irrationality procedural impropriety on the part Respondents.

Analysis and Determination;

Following are the issues for determination.

1. Whether the application has merit.
2. Who shall bear costs?

Whether the application has merit

69. On 6th December 2024, the Applicants were granted leave to file a substantive application.

70. N compliance with the said directions, the Applicant filed an application by way of a Notice of Motion dated 4.12.2025 which according to the Applicant is supported by the 5th Applicants supporting affidavit. No Supporting Affidavit was filed.

71. In the said application,the Applicants at Prayers A, B and C, seeks the leave of the court to institute judicial review orders.

72. In the case of Daniel Otieno Migore v South Nyanza Sugar Co. Ltd [2018] eKLR, the court stated as follows:

> " It is by now well settled by precedent that parties are bound by their pleadings and that evidence which tends to be at variance with the pleadings is for rejection. Pleadings are the bedrock upon which all the proceedings derive from. It hence follows that any evidence adduced in a matter must be in consonance with the pleadings. Any evidence, however strong, that tends to be at variance with the pleadings must be disregarded. That settled position was re-affirmed by the Court of Appeal in the case of Independent Electoral and Boundaries Commission & Ano. vs. Stephen Mutinda Mule & 3 others (2014) eKLR which cited with approval the decision of the Supreme Court of Nigeria in Adetoun Oladeji (NIG) vs. Nigeria Breweries PLC SC 91/2002 where Adereji, JSC expressed himself thus on the importance and place of pleadings: -

> "....it is now trite principle in law that parties are bound by their pleadings and that any evidence led by any of the parties which does not support the averments in the pleadings, or put in another way, which is at variance with the averments of the pleadings goes to no issue and must be disregarded.....
>
> ...In fact, that parties are not allowed to depart from their pleadings is on the authorities basic as this enables parties to prepare their evidence on the issues as joined and avoid any surprises by which no opportunity is given to the other party to meet the new situation."

73. The Supreme Court of Kenya in its ruling on inter alia scrutiny in the case of Raila Amolo Odinga & Another vs. IEBC & 2 others (2017) eKLR found and held as follows: -

> " In absence of pleadings, evidence if any, produced by the parties, cannot be considered. It is also a settled legal proposition that no party should be permitted to travel beyond its pleadings and parties are bound to take all necessary and material facts in support of the case set up by them. Pleadings ensure that each side is fully alive to the questions that are likely to be raised and they may have an opportunity of placing the relevant evidence before the court for its consideration. The issues arise only when a material proposition of fact or law is affirmed by one party and denied by the other party. Therefore, it is neither desirable nor permissible for a court to frame an issue not arising on the pleadings....."

74. In judicial Review cases when seeking substantive orders after the leave has been granted, the court is moved through a The Notice of Motion. The substantive reliefs that are ordinarily sought through such an application are orders of Certiorari, Mandamus and Prohibition under Order 53 of The Civil Procedure Rules.

75. In the Notice of Motion before this court for determination the applicants are seeking orders for leave to apply for prerogative writs of Certiorari and Prohibition.

76. On 6th December 2024, this court granted the Applicants leave to file a substantive application. The court is surprised that they seek the same orders again.

77. The issues courts determine when moved by litigants flow from their pleadings. In the instant, suit, it is clear that the issues that crystallize for the determination is whether or not court can grant leave. This has already been granted.

78. The pleadings in judicial review proceedings are the Verifying Affidavit or a Supplementary Affidavit, Replying or Supplementary Affidavits and Grounds of Opposition and the annexures thereto. The Exparte Applicant's case must always be buttressed by the Statutory Statement. The evidence is carried in the parties respective Affidavits which in any event and logically so must be relevant and or must support the relief sought in the pleadings. These are expressly provided for Order 53 of The Civil Procedure Rules.

79. There is no Supporting Affidavit that was filed by the Applicant. The court took the liberty to reproduce the Verifying Affidavit and the Statutory Statement only for the sake of firming up the finding that the same have no relevance given that the Substantive suit as drafted can't generate any binding substantive outcomes.

80. Even if this evidence is admitted, it is clear that the evidence that has been tendered in the Verifying Affidavit and the statutory statement in the instant suit by the applicants have no bearing or nexus to the reliefs sought in the substantive suit. The same cannot come to the aid of the Applicants and I so hold.

81. The Applicant filed submissions. It is this court's finding that no matter how well drafted, submissions are not evidence and they cannot come to the aid of the applicants on their own. It matters not how well they support the affidavit and the statutory statement if they do not have a logical linkage to the reliefs sought. That is what the suit herein ails from.

82. Even if the submissions are well drafted, they stand on quicks given that the Application seeks orders which are already spent.

83. This court shall address its mind to the principles that guide the doctrine of mootness.

84. Black's Law Dictionary Tenth Edition defines the term "moot" as having "no practical significance; hypothetical or academic "and a "moot case" as a "matter in which a controversy no longer exists; a case that presents only an abstract question that does not arise from existing facts or rights".

85. In Evans Kidero v Speaker of Nairobi City County Assembly & another [2015] eKLR;

> " The law of mootness inquires whether events subsequent to the filing of a suit have eliminated the controversy between the parties. Mootness issues can arise in cases in which the plaintiff challenges actions or policies which are temporary in nature, in which factual developments after the suit is filed resolve the harm alleged, and in which claims have been settled. Generally, a case is not moot so long as the plaintiff continues to have an injury for which the court can award relief, even if entitlement to the primary relief has been mooted and what remains is small. Put differently, the presence of a "collateral" injury is an exception to mootness. As a result, distinguishing claims for injunctive relief from claims for damages is important. Because damage claims seek compensation for past harm, they cannot become moot. Short of paying plaintiff the damages sought, a defendant can do little to moot a damage claim. The Exparte applicant having ceased to be the Governor of Nairobi County, makes these proceedings are now moot and a mere academic exercise."

86. A matter is moot if further legal proceedings with regard to it can have no effect, or events have placed it beyond the reach of the law. Thereby the matter has been deprived of practical significance or rendered purely academic. Mootness arises when there is no longer an actual controversy between the parties to a court case, and any ruling by the court would have no actual, practical impact.

87. A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. In such instance, there is no actual substantial relief which a petitioner or applicant would be entitled to, and which would be negated by the dismissal of the case. Courts generally decline jurisdiction over such cases or dismiss them on grounds of mootness, save when, among others, a compelling constitutional issue raised requires the formulation of controlling principles to guide the bench, the bar and the public; or when the case is capable of repetition yet evading judicial review.

88. The case of Samuel Kimani & another v Dominic Kamiri Karanja [2022] eKLR the Judge in agreement with the sentiments of Mativo J in Evans Kidero v Speaker of Nairobi City County Assembly & Another (2018) eKLR held:

> " In the circumstances, it is my view that the matter before me stands moot for all intents and purposes and the Court therefore dismisses the second and third motions herein with costs to the Respondent."

89. In Mills vs. Green, 159 U.S. 651, 653 (1895) the court held: "because courts generally only have subject-matter jurisdiction over live controversies, when a case becomes moot during its pendency, the appropriate first step is a dismissal of the case."

90. In Chafin vs. Chafin, 133 S. Ct. 1017 (2013), the Supreme Court discussed mootness at length in a complex child abduction case and held that the dispute between the parents was not moot because issues regarding the custody of the child remained unresolved. The Court noted that the prospects of success of the suit were irrelevant to the mootness question, and uncertainty about the effectiveness and enforceability of any future order did not moot the case.

91. A case is moot, however, when the court cannot give any "effectual" relief to the party seeking it. See Knox v. Service Employees International Union, Local 1000, 132 S. Ct. 2277, 2287 (2012); A case can, of course, become moot when the plaintiff has abandoned their claims, but such abandonment must be unequivocal. Pacific Bell Telephone Company vs. Linkline Communications, 555 U.S. 438, 446 (2009).

92. Guided by the principles as set out in the above suits, it is this court's finding and I so hold, given that the court has already granted the applicants leave to institute judicial review proceedings, it is unfortunate that the court is being invited to issue the same orders again. The court cannot issue the same orders twice.

93. The suit is fatally and incurably defective and no amount of interpretation of Article 159 can resuscitate or breathe life into the said reliefs. An application cannot stand on its own.

94. There is no actual substantial relief which an applicant would be entitled to, and which would be negated by the dismissal of this case.

95. Given that the leave prayers sought had been granted earlier, then the suit is moot.

96. The Applicants have not produced evidence at all to support their case and the same is disallowed.

Costs;

97. Halsbury's Laws of England, 4th ed Re-Issue (2010), Vol. 10, para. 16:

> " The court has discretion as to whether costs are payable by one party to another, the amount of those costs, and when they are to be paid. Where costs are in the discretion of the court, a party has no right to costs unless and until the court awards them to him, and the court has an absolute and unfettered discretion to award or not award them. This discretion must be exercised judicially; it must not be exercised arbitrarily but in accordance with reason and justice" [emphasis supplied]. In Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others [2014] eKLR [13] it was held, to the same intent Mr. Justice (Rtd.) Kuloba thus writes in his work, Judicial Hints on Civil Procedure, 2nd ed. (Nairobi: Law Africa, 2011), p. 94: "Costs are [awarded at] the unfettered discretion of the court, subject to such conditions and limitations as may be prescribed and to the provisions of any law for the time being in force, but they must follow the event unless the court has good reason to order otherwise."

98. The applicants shall bear the costs.

Disposition:

99. The suit lacks merit.

Order:

The suit is dismissed with costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30TH DAY OF OCTOBER, 2025.

.....

J. CHIGITI (SC)

JUDGE