



**Shah v Director of Public Prosecutions; County Government  
of Kajiado & 3 others (Interested Parties) (Criminal Revision  
E053 of 2024) [2025] KEHC 15637 (KLR) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15637 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAJIADO  
CRIMINAL REVISION E053 OF 2024  
CW MEOLI, J  
OCTOBER 30, 2025**

**IN THE MATTER OF LOITOKITOK CHIEF MAGISTRATE  
CRIMINAL CASE NO E224 OF 2024 REPUBLIC -VS- JOHN SANCHA  
IN THE MATTER OF VIOLATION OF ARTICLES 28, 29(A)(B)(D), 39(1), 40, 49(1)  
(H) AND 50 OF THE BILL OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS.  
IN THE MATTER OF THE LAND ACT AND NATIONAL ENVIRONMENTAL  
MANAGEMENT AND COORDINATION ACT CHAPTER 387**

**BETWEEN**

**SAHEEL ANIL SHAH ..... APPLICANT**

**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... RESPONDENT**

**AND**

**COUNTY GOVERNMENT OF KAJIADO ..... INTERESTED PARTY**

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY .... INTERESTED  
PARTY**

**WATER RESOURCE AUTHORITY ..... INTERESTED PARTY**

**KENYA FOREST SERVICE ..... INTERESTED PARTY**

**RULING**

1. The live prayer in the motion dated 26.6.2024 brought by Saheel Anil Shah, (hereafter the Applicant) and invoking Section 362 of the Criminal Procedure Code seeks that this court be pleased to call for the subordinate court file in respect of Loitokitok CM’s Criminal Case No. E224 of 2024 R-vs- John Sancha (hereafter the subject case) for review and thereafter, set aside the charge sheet and



terminate the entire case, and order that cash bail be refunded, while restraining the Director of Public Prosecutions (DPP), (hereafter the Respondent) whether by himself, agents, servants or any person purporting to exercise the Respondent's authority, from causing the arrest of the Applicant, his partner Urvi Gitasavar Shah and or any of his farm employees, farm manager or agents in relation to the charges now before the subordinate court.

2. The Application was supported by the grounds on its face and the affidavit sworn by the Applicant. To the effect that he and Urvi Gitasavar Shah are jointly registered as absolute owners of Loitokitok/ Eselenkei/1457 and 1479 measuring approximately 17.0190 hectares (hereafter the suit property) which is freehold and was purchased for agricultural use. He further deposed that one John Sancha, the accused person in the subject suit was employed as his farm manager in 2024. And that the Applicant had the necessary authorization obtained from the Water Resources Authority (hereafter the 3<sup>rd</sup> Interested Party) authorization to drill a borehole on the suit land (annexure marked SAS 4) and the procured preparation of the impact assessment report dated 29.04.2024 (annexure SAS 5) by the National Environment Management Authority- NEMA (hereafter the 2<sup>nd</sup> Interested Party).
3. He stated further that on 14.5.2024, the County Government of Kajiado (hereafter the 1<sup>st</sup> Interested Party) published a notice declaring certain areas within Eselenkei as special planning areas under the county Spatial Plan, and inviting public comments on the proposal. He complains that on 5.06.2024, employees of the Kenya Forest Service (hereafter the 4<sup>th</sup> Interested Party) and other government agents forcefully entered the suit property, arresting 2 employees while issuing threats to return and arrest the Applicant and his partner. The Applicant expresses fear of impending arrest, viewing the threat as harassment and intimidation intended to silence him and his partner from opposing the proposed Spatial Plan. He avers that it is in the interest of justice for the court to grant the orders sought.
4. The motion was opposed by the Respondent through grounds of opposition dated 1.7.2024. To the effect that the motion is without merit, and is an abuse of the process of the court, there being no evidence presented to demonstrate that the charges preferred were mounted for an ulterior motive or that the Respondents have acted in excess of their powers. Further, that the trial court is best equipped to deal with quality and sufficiency of evidence in the subject case and that it is in the public interest that alleged violations are investigated and the offenders charged. Moreover, the application is premature as investigations are still ongoing.
5. The 1<sup>st</sup> to 4<sup>th</sup> Interested Parties did not file any responses or submissions on the motion despite due service.

### **Submissions**

6. The motion was canvassed by way of written submissions. On his part, the Applicant filed submissions dated 12.9.2024. After reiterating his affidavit material and citing the right to protection of property under Article 40 of *the Constitution*, counsel for the Applicant identified two issues for determination, firstly on the jurisdiction of the court to entertain the motion, and secondly, the question whether the charges preferred in the subject case are unconstitutional.
7. On the jurisdictional question, counsel invoked Section 362 of the Criminal Procedure Code, which empowers the High Court to "call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court."



8. He cited the case of Joseph Nduvi Mbuvi v Republic (2019) eKLR, where Odunga J (as he then was) held inter alia that the revisionary jurisdiction of the High Court should only be invoked where there are glaring acts or omissions but should not be a substitute for an appeal.
9. Additionally, the Applicant refers to Prosecutor v Stephen Lesinko [2018] eKLR before proceeding to invoke Article 165(6) and (7) of *the Constitution*, which grants the High Court supervisory jurisdiction over subordinate courts and quasi-judicial bodies. Counsel arguing that the motion is a legitimate attempt to correct irregularities and prevent an unlawful arrest, hence falling squarely within the High Court's revisionary mandate.
10. On the second issue counsel contended that the charges against the accused in the subject case and the anticipated arrest of the Applicant are unconstitutional and unjustified. And cited the guarantees in Article 50 of *the Constitution* to the right to a fair trial and prohibition for prosecution for acts that were not offences at the time they were done. Highlighting here that the Applicant and co-owner followed due legal process in acquiring the land and obtained all necessary consents under the *Land Control Act* and *Land Registration Act*, having confirmed that the land was agricultural and not forestland, and the requisite authorization from the 2<sup>nd</sup> and 3<sup>rd</sup> Interested Parties.
11. Counsel therefore posited that the arrest and prosecution of the accused in the subject case, and the threat of arrest against the Applicant and co-owner, are illegal. The court was urged to declare the proceedings in the subordinate court unlawful and to bar further arrests to prevent a miscarriage of justice.
12. In their submissions dated 30.10.2024, the Respondents addressed two issues, being whether the application is properly before this court and whether the Applicant's fundamental rights and freedoms have been violated. Regarding the first question, the Respondent asserted that the Applicant has improperly invoked the High Court's revisionary jurisdiction under Section 362 of the Criminal Procedure Code, which is limited to reviewing the correctness, legality, or propriety of findings, sentences, or orders of and regularity of proceedings before subordinate courts. And state that a challenge to the Director of Public Prosecution's decision to prosecute falls outside the scope of such revision and should instead be pursued through prerogative writs. Nonetheless, the Respondent proceeded to address the substance of the motion.
13. On the second question, the Respondent contends that the Applicant failed to demonstrate how his constitutional rights have been violated. Here citing Leonard Otieno v Airtel Kenya Limited [2018] eKLR on the onus of an applicant where constitutional violations are alleged. And further reiterating the provisions of Article 24(1) of *the Constitution* as to the lawful, reasonable, and justifiable limitation of fundamental rights and freedoms. The Respondent, relying on dicta in the case of William and Others v Spautz [1993] 2 LRC 659 to the effect that, unless the interests of justice demand it, courts should exercise, rather than refrain from exercise of jurisdiction, especially the jurisdiction to try persons charged with criminal offences, and that persons charged with such offences should not obtain an immunity from prosecution. The Respondent concluded that no breach of natural justice or jurisdictional error has been demonstrated to justify restraining the DPP from exercising its mandate.
14. The Respondent asserted that the DPP had acted independently within his constitutional powers under Article 157(6) and (10) and that a decision to prosecute must involve considerations of public interest, justice, and avoidance of abuse of process as stipulated in Article 157(11). The Respondent asserted that no evidence has been presented to show that the DPP acted unfairly or unlawfully. Relying on Douglas Maina Mwangi v Kenya Revenue Authority and Another, High Court Constitutional Petition No. 528 of 2013, the Respondent argued that judicial intervention is only



warranted when prosecutorial discretion is exercised in bad faith or contrary to law, which is not the case here.

15. Moreover, that property rights under Article 40 of *the Constitution* are subject to lawful regulation under Articles 10, 60, and 66 of *the Constitution*, which provisions empower the State and County Governments to enforce land use planning and environmental safeguards. The Respondent stating the Applicant's failure to obtain a NEMA license is a deliberate circumvention of lawful procedures, and that the prosecution is justified due to the Applicant's disregard for planning regulations and environmental compliance.
16. In conclusion, the Respondent submitted that the DPP's decision to prosecute was based on credible evidence and within constitutional parameters. And asserting that no improper conduct or abuse of process has been demonstrated, the Respondent urged the court to dismiss the application and allow the criminal proceedings in the trial court to continue.

### **Analysis and Determination**

17. The court has considered the application, the responses thereto and the rival submissions by the parties. In the court's considered view, the motion turns on the related questions whether on the facts of the motion the court's supervisory and revisionary jurisdiction donated by Article 165 (6) and (7) of *the Constitution* and Section 362 and 364 of the Criminal Procedure Code has been properly invoked in this matter and whether the motion is merited. The court proposes to deal simultaneously with both issues.
18. It is apposite to state at the outset that the Applicant is not an accused person in the subject case; the accused therein is the Applicant's alleged employee John Sancha, who is neither a party herein nor has he sworn any affidavit. As for the Applicant, he has neither been arrested nor charged in the subject case, nor any other related case but he cites what appears to be hearsay reports received, of alleged threats to arrest and charge him over the same matters as his employee. Equally, the Applicant is not a victim in the subject case in terms of the *Victim Protection Act*. The foregoing is also true concerning the Applicant's alleged partner Urvi Gitasavar Shah and other workers allegedly employed on the suit property.
19. Although the motion invoked Section 362 of the Criminal Procedure Act, it is apparent from the long title of the motion and supporting material that the motion has been brought to address alleged violations or threat of violation of fundamental rights and freedoms protected by several articles of *the Constitution*. Including, the right to human dignity (Article 28); the right to freedom and security of the person (Article 29); the right to freedom of movement (Article 39); the right to protection of property (Article 40); the rights of arrested persons (Article 49); and the right to a fair trial (Article 50).
20. The Applicant's submissions invoke, in addition to the revision jurisdiction of this court under Section 362 of the Criminal Procedure Code, Article 165 sub-articles (6) and (7) of *the Constitution*. As framed however, the instant cause is neither a constitutional petition nor a judicial review application. The live prayer in the motion is an omnibus prayer seeking that this court be pleased to call for the subordinate court file in respect of the subject case for review and thereafter set aside the charge sheet and terminate the entire case and order that cash bail be refunded, while restraining the Director of Public Prosecutions, from causing the arrest of the Applicant, his partner Urvi Gitasavar Shah and or any of his farm employees, farm manager or agents in relation to the charges now before the subordinate court. Based on the factual grounds on the face of the motion and supporting affidavit.
21. Article 165 (6) and (7) of *the Constitution*, provide that : -



- (6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but over a superior court.
- (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.

22. On the other hand, Section 362 of the Criminal Procedure Code provides: -

The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of any such subordinate court.

23. In the case of *Simiyu vs Nyakongo & Anor.* (2023) KECA 66 (KLR), which was an appeal from a criminal revision decision in the High Court, the Court of Appeal considered the jurisdiction of the High Court under the foregoing provisions as follows:

“Before we deal with the issues that arise in this appeal, let us first consider whether the jurisdiction of the High Court donated under Section 362 to 367 of the CPC, can be equated to the jurisdiction prescribed under Article 165 (6) & (7) of *the Constitution*.

Mativo, J. (as he then was) in the persuasive authority in the case of *Rana Auto Selections Ltd & 2 others v Kenya Revenue Authority & another* (Judicial Review Application 9 of 2020) [2021] KEHC 323 (KLR) had this to say about the purpose and application of supervisory jurisdiction of the High Court:

“Supervisory jurisdiction refers to the power of superior courts of general superintendence over all subordinate courts. Through supervisory jurisdiction, superior courts aim to keep subordinate courts within their prescribed sphere, and prevent usurpation. In order to exercise such control, the power is conferred on superior courts to issue the necessary and appropriate writs. This power of superintendence is conferred by article 165 (6) of *the Constitution*. As was pointed out by Harries, C.J. in *Dalmia Jain Airways Ltd. v Sukumar Mukherjee* 1953 SC 58, this power is to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors. This power involves a duty on the High Court to keep the inferior courts and tribunals within the bounds of their authority and to see that they do what their duty requires and that they do it in a legal manner. But this power does not vest the High Court with any unlimited prerogative to correct all species of hardship or wrong decisions made within the limits of the jurisdiction of the Court or Tribunal. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principle of law or justice, where grave injustice would be done unless the High Court interferes. As the Supreme Court of India stated unless there is grave miscarriage of justice or flagrant violation of law calling for intervention, it is not for the High Court under article 165 (6) of *the Constitution* to interfere.”



24. With regard to Sections 362 and 364 of the Criminal Procedure Code, the Court of Appeal proceeded to express the following view:

“ We now make reference to the persuasive judgment delivered by the Indian Apex Court in the case of *Krishnan and Another v Krishnaveni and ano* {1997} 4 SCC 241. The Court extensively interpreted the relevant provisions of the Indian Criminal Procedure Code, [which are quite similar to our own CPC, Sections 362 to 364 on the revisionary power of the High Court, and made the following observations:

“It is seen that exercise of the revisional power by the High Court ..... is to call for the records of any inferior Criminal Court and to examine the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court and to pass appropriate orders. ....Section 397 gives powers to the High Court to call for the records as also suo motu power under Section 401 to exercise the revisional power on the grounds mentioned therein, i.e., to examine the correctness, legality or propriety of any finding, sentence or order, recorded or passed and as to the regularity of any proceedings of such inferior Court, and to dispose of the revision in the manner indicated under Section 401 of the Code. The revisional power of the High Court merely conserves the power of the High Court to see that justice is done in accordance with the recognized rules of criminal jurisprudence and that its subordinates Courts do not exceed the jurisdiction or abuse the power vested in them under the Code or to prevent abuse of the process of the inferior Criminal Courts or to prevent miscarriage of justice.

The object of Section 483 and the purpose behind conferring the revisional power under Section 397 read with Section 401, upon the High Court is to invest continuous supervisory jurisdiction so as to prevent miscarriage of justice or to correct irregularity of the procedure or to meet out justice. ....The power of the High Court, therefore, is very wide. However, High Court must exercise such power sparingly and cautiously .....However, when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/incorrectness committed by inferior Criminal Court in its juridical process or illegality of sentence or order.” (Emphasis added).”

25. The Court of Appeal concluded that:

“Undoubtedly the High Court’s power of revision under the provisions of Sections 362 and 364 of the CPC, and indeed under the entire spectrum of Sections 362 to 367 of the CPC, are limited to finding, sentence or order recorded or passed by a subordinate court, other than an order of acquittal. The provisions are clear that the High Court in exercise of the power of revision, may call for the record which has been reported for orders, or which otherwise comes to its knowledge. The High Court’s attention could be drawn through any medium including social media. That means that in the exercise of the power of revision, the High Court could also act suo moto. It is therefore safe to say that no formal mode of approaching the Court or of drawing the Court’s attention is required or is necessary before the revision process can be invoked. The power of revision is limited to examination of the



record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.

26. As concerns the supervisory powers donated to the High Court under Articles 165(6) and ( 7) the Court of Appeal had this to say:

“It is worth noting that under Article 165 (6) of *the Constitution* takes a completely different approach and confers a supervisory jurisdiction on the High Court, not only over subordinate courts but is exercised over any tribunal, person, body or authority exercising a judicial or quasi-judicial function. The only rider is that the High Court cannot exercise the supervisory power over a superior court. This jurisdiction is also not limited to criminal proceedings only but covers proceedings of civil nature. Further it is not limited to the High Court satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court, but in addition to the powers under the CPC, *the Constitution* has expanded the scope of the High Court’s power to “make any order, or give any direction it considers appropriate to ensure the fair administration of justice”. So that if the High Court in the exercise of its supervisory jurisdiction calls for a record and finds that there was an unfairness in the administration of justice by the subordinate court, body or tribunal the High Court may intervene even if there may be no other challenge to the proceedings, order or sentence, whichever is the case”.

27. The jurisdiction of this court under Section 362 and 364 of the Criminal Procedure Code (CPC) includes the power to call for records of proceedings in the subordinate court for the purpose of satisfying itself as to the correctness, regularity or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court. The foregoing position is fortified by a review of the remedial options prescribed in Section 364 CPC where a court is exercising its jurisdiction under Section 362 of the CPC.

28. Section 364 of the CPC states as follows:

1. “1. In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may:
  - a. in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by Sections 354, 357 and 358, and may enhance the sentence;
  - b. In the case of any other order other than an order of acquittal, alter or reverse the order.
2. No order under this Section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence:
  - a. Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence, which it was required to pass under the written law creating the offence concerned.
3. Where the sentence dealt with under this Section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed that might have been inflicted by the court which imposed the sentence.



4. Nothing in this Section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.
  5. When an appeal lies from a finding a sentence or an order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.”
29. The Court of Appeal in the case of *Amuno v Republic* (2025) KECA 1617 (KLR) observed with regard to the above sections that:
- “In view of the above, it is patent that the powers of revision under Section 362 of the CPC are invoked to enable the court satisfy itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any subordinate Court. Therefore, if the Subordinate court’s decision is wanting in its correctness, legality or propriety or the proceedings are irregular, the High Court will no doubt step in and correct the same. It follows that if no such situation arises, then the High Court cannot purport to exercise those powers therein and revise a lawful, legal and regularly issued order of the trial court”.
30. According to annexure SAS 8 to the Applicant’s affidavit, three charges were preferred against the accused in the subject case, namely, Illegal logging contrary to Section 64 (1) (a) of the Forest and Conservation Act; Borehole Drilling without an environmental impact assessment contrary to the Environmental Impact Assessment Regulations of 2003 part 3, Sections 11 (1&2 ), 12 (1& 2) as read with Section 58 of the *Environmental Management and Co-ordination Act*; and Unauthorised land cultivation contrary to Kajiado County Land use Spatial Plan of 2022, page 309 Map No. 13.1 of Kajiado (sic). The offences are stated to have been committed at Eselenkei area, Imbirikani on 5<sup>th</sup> June 2024.
  31. The supporting affidavit and submissions of the Applicant do not cite any specific finding, sentence or order recorded or passed in the subordinate court with which he is aggrieved. Perhaps alluding to the element of irregularity, he asserts by his submissions that the anticipated charges against him, which are unknown, and those laid against his employee in the lower court are unconstitutional because he and his partner are rightful owners of their land and had obtained all necessary authorization to commence their farming activities on the suit land.
  32. Thus, with respect to the subject case, no grossly erroneous decision, non-compliance with the law, finding of fact affecting the decision not based on evidence or resulting from misapprehension of evidence, failure to consider material evidence, arbitrary or perverse exercise of discretion, by the trial court has been alleged by the Applicant. (See *Amuno v Republic*, supra). The Applicant has not even demonstrated the allegation of anticipated or imminent arrest or prosecution and appears to be staking his own case on the back of the existing subject case, which is against a different person.
  33. For the purposes of the review jurisdiction under Section 362 of the Criminal Procedure Code, it is arguable whether revision orders can issue in respect of non-existent charges and proceedings. A reading of Section 362 of the CPC together with Article 165(6) and (7) of *the Constitution* as invoked here presuppose an existing finding, sentence or order recorded or passed, in a proceeding, or irregularity in a proceeding with which a party is aggrieved. While he was perfectly entitled to challenge his alleged imminent arrest in appropriate proceedings, it is disingenuous for the Applicant to attempt to hitch himself to a proceeding to which he is not a party, in a bid procure what are without doubt, far reaching orders , some of which go beyond the subject case.



34. This brings me to the allegations of violations of fundamental rights and freedoms protected by several articles of *the Constitution*, such as the right to human dignity (Article 28); the right to freedom and security of the person (Article 29); the right to freedom of movement (Article 39); the right to protection of property (Article 40); the rights of arrested persons (Article 49); and the right to a fair trial (Article 50). From his material, the Applicant appears to make the case that the prosecution of his employee in the subject case, and his and his partner's alleged threatened imminent arrest and prosecution is unconstitutional and violates the foregoing rights and freedoms.
35. Because, he says, the suit property is freehold agricultural land owned by him and his partner; that necessary approvals including licences to drill a borehole had been obtained from the relevant bodies; that the notice by the Kajiado County Government in May 2024 declaring Eselenkei in which his land is located as a special planning area is based on a spatial plan that is yet to come into force; and that the arrests on 5<sup>th</sup> June 2024 and prosecution of his employee and his own threatened arrest are intended to intimidate the Applicant to dissuade him from taking part in the public participation process in respect of the draft spatial plan.
36. It is trite that a party alleging violation of constitutional rights must demonstrate the rights alleged to have been violated and the manner of violation, as held in *Anarita Karimi Njeru vs Republic* (No. 1) (1976 -80) 1KLR 1272 and *Mumo Matemu vs Trusted Society of Human Rights Alliance & Others* (2013) eKLR ; and *Meme vs Republic* (2004) 1 KLR , among other cases. Here, the Applicant has not demonstrated, for instance, how the fair trial constitutional safeguards (Article 50) in respect of the accused in the subject case have been violated or threatened with violation. What the Applicant appears to be doing here is canvassing the potential defence to the charges preferred or anticipated, and inviting this court to make a determination on evidential matters, which belong to the case pending before the subordinate court.
37. Equally, the Applicant has not shown how his own, and his partner's rights to freedom and security of the person, to freedom of movement have been violated or threatened with violation. No material was tendered in this regard. As to the right to protection of property (Article 40), while it is not disputed that the ownership of the suit property is vested in the Applicant, that fact without more, cannot immunise him or his employee(s) from arrest or prosecution for alleged offences committed thereon .
38. The Applicant appears to suggest that the subject case has been brought in bad faith for a collateral purpose separate from enforcement of the law, hence suggesting irregularity. No material beyond these bare assertions, was tendered in support. Without evidence that in the exercise of the Respondent's independent mandate under Article 157 of *the Constitution*, the Respondent made a decision which is unfair, unconstitutional, contrary to the law, irrational, or intended to achieve an ulterior purpose or motive, to prosecute the accused in the subject case and the Applicant , the court would not interfere. The jurisdiction of this court under Article 165 (6) and (7) of *the Constitution* is intended "to ensure the fair administration of justice". Where it is shown for instance, that grave dereliction of duty and flagrant abuse of fundamental principle of law or justice, grave injustice or miscarriage of justice or flagrant violation of law would be done unless the High Court interferes. That is not the demonstrated here.
39. As earlier intimated, the motion herein is essentially a challenge to the Respondent's prosecutorial mandate and would best have been presented as a constitutional petition or judicial review application, especially because the Applicant's locus standi to challenge the proceedings in the subject case in which he is not a party, appears tenuous, at best. That said, in this instance, the court is not persuaded that a proper case has been made to warrant its intervention under the provisions of Section 362 of the CPC and Article 165(6) and (7) of *the Constitution*.



40. The exhortation by Mativo J (as he then was) in *Rana Auto Selections Ltd vs Kenya Revenue Authority* (supra) concerning the exercise of the supervisory jurisdiction conferred on this court by the Article 165 (6) and (7) of *the Constitution* appears apt in this case, and worth repeating:-

“Through supervisory jurisdiction, superior courts aim to keep subordinate courts within their prescribed sphere, and prevent usurpation. In order to exercise such control, the power is conferred on superior courts to issue the necessary and appropriate writs. This power of superintendence is conferred by Article 165 (6) of *the Constitution*. As was pointed out by Harries, C.J. in *Dalmia Jain Airways Ltd. v Sukumar Mukherjee* 1953 SC 58, this power is to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors. This power involves a duty on the High Court to keep the inferior courts and tribunals within the bounds of their authority and to see that they do what their duty requires and that they do it in a legal manner. But this power does not vest the High Court with any unlimited prerogative to correct all species of hardship or wrong decisions made within the limits of the jurisdiction of the Court or Tribunal. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principle of law or justice, where grave injustice would be done unless the High Court interferes. As the Supreme Court of India stated unless there is grave miscarriage of justice or flagrant violation of law calling for intervention, it is not for the High Court under article 165 (6) of *the Constitution* to interfere.”

41. In the result, the court finds no merit in the motion dated 26.06.2024, and it is hereby dismissed.

**DELIVERED AND SIGNED ELECTRONICALLY AT KAJIADO ON THIS 30<sup>TH</sup> DAY OF OCTOBER 2025**

**C MEOLI**

**JUDGE**

In the presence of:

For the Applicant: Mr. Wasieba h/b for Mr. Simiyu

For the Respondent: Mr. Kilunda

C/A: Lepatei

