



Gikonyo v Director of Public Prosecutions & another (Judicial Review Application E341 of 2025) [2025] KEHC 15582 (KLR) (Judicial Review) (3 November 2025) (Ruling)

Neutral citation: [2025] KEHC 15582 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW APPLICATION E341 OF 2025
RE ABURILI, J
NOVEMBER 3, 2025**

BETWEEN

MARY WAITHERA GIKONYO APPLICANT

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS 1ST RESPONDENT

THE DIRECTOR OF CRIMINAL INVESTIGATIONS 2ND RESPONDENT

RULING

1. The chamber summons dated 3rd November 2025 is filed under certificate of urgency. It seeks leave of court to file Judicial Review application seeking for certiorari to remove into this court and quash the decision of the 1st and 2nd Respondents to charge, prosecute and arraign the applicant before the Chief Magistrate’s Court for alleged offence of malicious damage to property and prohibition to restrain the 1st and 2nd Respondents, their servants, agents and any other person acting under their authority from arresting, charging or prosecuting the applicant in relation to the same allegation, pending the hearing and determination of these proceedings.
2. The applicant also prays that the leave so granted do operate as stay of the intended prosecution and plea taking, pending the hearing and determination of the application and or the substantive motion to be filed thereafter.
3. The application is supported by the grounds on the face of the chamber summons, the statutory statement and what the applicant considers to be a “supporting affidavit” & annexures thereto.
4. As I perused the application, it indeed appeared to be urgent for consideration expeditiously and exparte in the first instance. However, upon perusal of the Affidavit supporting the chamber summons, I observed that the so-called ‘supporting affidavit’ is not signed by the applicant. Instead, there are typed



initials M.W.G in the jurat which is commissioned by Beatrice Chelangat Advocate and Commissioner for Oaths.

5. It struck the court that although commissioned, the affidavit is not sworn by the person whose initials are typed besides her name as the deponent. An affidavit is only an affidavit if it is sworn and signed before a Commissioner for Oaths.
6. A Deponent must sign the affidavit to confirm its truthfulness and contents which he or she is able of his or her own knowledge to prove. The signing of an affidavit as a deponent in the presence of a Commissioner for Oaths authenticates the correctness truthfulness of the contents of the affidavit.
7. Even in cases where an affidavit is transmitted to a deponent online, the law is now settled that such affidavit will be signed or executed, downloaded then commissioned and be accompanied by a certificate under Section 106B of the *Evidence Act*. See the case of Dardanelli & 6 Others vs Tilito & 3 Others (Land case E041 of 2024 [2025] KEELC 392 (KLR) 6th February 2025 (Ruling).
8. But that is not the case here. On the face of it, the applicant never signed the affidavit. Instead, his advocates typed the initials of her name at the place of deponent and had the affidavit commissioned. That is no affidavit at all and I proceed to strike it out from the record.
9. Having struck out the affidavit which is not sworn by the applicant, I note that order 53 Rule 1(2) of the Civil Procedure Rules mandates that an application for leave shall be accompanied by;
 - (a) ...
 - (b) Affidavits verifying the facts and averment that there is no other cause pending, and that there have been no previous proceedings in any court between the applicant and the respondent, over the same subject matter and that the cause of action relates to the applicants named in the application.
10. I have perused the incompetently filed ‘supporting affidavit’ and none of the words used in Order 53 Rule 2(b) are present. This requirement is not technical. It is substantive in Judicial Review Proceedings.
11. That said, there being no verifying affidavit accompanying the chamber summons dated 3/11/2025, I find no urgency involved in the matter. I decline to certify the application as urgent and having struck out the ‘supporting “affidavit”’ as being incompetently filed for failure to sign the affidavit by the deponent, the chamber summons dated 3/12/2025 cannot stand on its own.
12. It is hereby found to be incompetent and is accordingly struck out with no orders as to costs.
13. This file is hereby closed.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 3RD DAY OF NOVEMBER, 2025

R.E. ABURILI

JUDGE

