



**Orioki v Director of Public Prosecutions & 2 others; Musembi
(Interested Party); Orioki (Applicant) (Judicial Review E022 of 2025)
[2025] KEHC 16258 (KLR) (5 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16258 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
JUDICIAL REVIEW E022 OF 2025
DO CHEPKWONY, J
NOVEMBER 5, 2025**

**IN THE MATTER OF: AN APPLICATION BY GRACE KERUBO ORIOKI FOR LEAVE
TO APPLY FOR JUDICIAL REVIEW ORDERS OF CERTIORARI AND PROHIBITION**

-AND-

**IN THE MATTER OF: ARTICLES 1, 2, 10, 22,23,48,50, 157
(11) AND 165 OF THE CONSTITUTION OF KENYA 2010**

-AND- .

IN THE MATTER OF: ORDER 53 OF THE CIVIL PROCEDURE RULES

-AND-

**IN THE MATTER OF: NAIROBI CHIEF MAGISTRATES COURT CRIMINAL
CASE NUMBER E463 OF 2025 REPUBLIC VS GRACE KERUBO ORIOKI**

BETWEEN

GRACE KERUBO ORIOKI APPLICANT

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS 1ST RESPONDENT

THE DIRECTOR, DCI 2ND RESPONDENT

**THE CHIEF MAGISTRATE, MILIMANI CRIMINAL DIVISION 3RD
RESPONDENT**

AND

EUNICE MBINYA MUSEMBI INTERESTED PARTY

AND

GRACE KERUBO ORIOKI APPLICANT



RULING

1. This is a ruling in respect of two (2) applications pending determination before this court:-
 - a. A Chamber Summons application dated 19th September, 2024 in which the Ex-parte Applicant, Grace Kerubo Orioki, wherein this court granted the Exparte leave to institute Judicial Review proceedings which leave to operate as stay of charges and proceedings in Chief Magistrate’s Criminal Case No.E463 of 2025, Republic –vs- Grace Kerubo Orioki on 22nd September, 2025. The application is based on the grounds set out on its face and Verifying Affidavit sworn by Grace Kerubo Orioki on even date
 - b. A Notice of Motion application dated 24th September, 2025 filed by Eunice Mbinya Musembi (the Interested Party) seeking the court to set aside all the exparte orders issued on 22nd September, 2025 and strike out the Judicial Review application filed herein. This application is premises on the grounds set out on its face and supported by the affidavit sworn by the said Interested Party on even date.
2. The records will show that the Ex-parte Applicant filed a Replying Affidavit and Grounds of Opposition in response to the application by the Interested Party dated 3rd October, 2025. Having assessed these applications, it is this court’s view that these application be dealt with contemporaneously with the Notice of Motion application dated 24th September, 2025 being treated as a response to the Chamber Summons application dated 19th September, 2025.
3. Mr. Kiarie, counsel for the Interested Party was given the opportunity to address court first. He submitted that the Interested Party is aggrieved by the orders issued by this Court on 22nd September, 202 which orders have stayed proceedings in Milimani Chief Magistrate’s Court being Criminal Case No.E463 of 2025 where she is the Complainant against the Ex-parte Applicant herein. He invited the court to note that the Applicant and Interested Parties were parties to an agreement for the sale of a house whose details are in the proceedings and as a result of this, the Ex-parte Applicant has in existence a total of three (3) active cases before the courts in Milimani touching on the same facts and parties. He pointed out that there is a High Court Criminal Revision No.E090 of 2025, Kerubo Omwenga –vs- the Director of Public Prosecutions (ODPP) in which she has sought to have the orders issued in Miscellaneous Application No.E1841 of 2025 before the Chief Magistrate’s Court at Milimani reviewed for being irregular and illegal. Counsel contended that the reason the Ex-parte Applicant had approached this Court is because she had failed to get favourable orders from the High Court in Milimani, which is abuse of the court process. Counsel further pointed out that the Ex-parte Applicant has employed all manner of tricks to avoid taking plea in the Criminal Case No.E090 of 2025 to the extent of falling ill on the day that she was meant to take plea. He urged that the court strikes out the Judicial Review application and sets aside the orders issued on 22nd September, 2025.
4. Mr. Gacharia, counsel for the Office of Director of Public Prosecutions (herein referred to as 1st Respondent) confirmed that they had initiated proceedings in Milimani Chief Magistrate’s Court by Criminal Case No.E090 of 2025 where the Exparte Applicant has been charged with criminal offence and same is pending plea taking. He supported the sentiments raised by Mr. Kiarie, counsel for the Interested Party.
5. Mr. Ogeto, counsel appearing alongside Mr. Nyakundi for the Ex-parte Applicant confirmed that they, Exparte Applicant had initiated the substantive Judicial Review proceedings herein and had filed a Replying Affidavit alongside Grounds of Opposition in response to the Notice of Motion application



dated 24th September, 2025. He claimed that there are multiple suits pending in other courts raising similar issues and in respect of similar parties. He stated that the High Court Criminal Revision No.E090 of 2025 was filed in respect of orders issued by the Chief Magistrate Milimani No.E1841 of 2025 where the Ex-parte Applicant's accounts were to be frozen and she sought to have this order reviewed. He stated that a decision in this matter was yet to be rendered. He argued that this Judicial Review application is seeking orders that are distinct from the orders they have sought in Revision No.E090 of 2025 that is pending before the High Court at Milimani and even the Director of Public Prosecutions was not a party therein. He even added that Criminal No.E090 of 2025 has even been withdrawn. Counsel for the Ex-parte Applicant went on to state that they were not forum shopping since the High Court in Kiambu under Article 165(3) of the Constitution like all other High Courts in Kenya has unlimited jurisdiction and its jurisdiction is concurrent to the jurisdiction of all the other High Courts. He also pointed out that the 2nd Respondent, the Director of Criminal Investigations has its Headquarters in Kiambu. Further, he submitted that the 1st Respondent, the Director of Public Prosecutions has its offices and present all the Republic of Kenya.

6. On the issue of the Ex-parte Applicant circumventing justice and abusing court process, Mr. Ogetto submitted that the Judicial Review proceedings are against the Director of Public Prosecutions and not the Interested Party. He states that the proceedings are anchored on the Constitution, the Civil Procedure Act and Fair Administrative Action Act so that the Interested Party can be seen as attempting to usurp the powers and functions of the Director of Public Prosecutions who has initiated the impugned criminal proceedings against the Ex-parte Applicants. The application is only governed by the Civil Procedure Act.
7. In addition, Mr. Nyakundi equally acting for the Exparte Applicant has urged the Interested Party to hold her house and allow for all the issues in the substantive Judicial Review application to be addressed by the court. In response, Mr. Kiarie for the Interested Party has abandoned the claim on forum shopping and pointed out that the Exparte Applicant has intentionally not meted the other cases such as the ELC No.E292 of 2025, CMCC No.E463 of 2025, Criminal Miscellaneous No.E184 of 2025 in which the parties are the same. He submits that the Exparte Applicant has not approached this Court with clean hands and is only seeking to evade the charges against her. He has urged that their application be allowed and the Judicial Review proceedings be set aside.

Analysis and Determination

8. Having considered the applications, the affidavits sworn in support and in rebuttal of the same, the Grounds of Opposition and the oral submissions made on behalf of the parties by their respective counsel, this Court finds the central issues that fall for determination are:-
 - a. Whether sufficient grounds have been laid to warrant the setting aside of the Ex-parte orders made on 22nd September, 2025; and or,
 - b. Whether this suit should be dismissed.

Whether leave and stay orders ought to be set aside

9. It is now trite that the grant of leave to commence Judicial Review proceedings under Order 53 Rule 1 of the Civil Procedure Rules is a matter of judicial discretion. The purpose of leave is to act as a filter mechanism, ensuring that only those applications which disclose an arguable case proceed to hearing. At this preliminary stage, the Court does not engage in an exhaustive evaluation of the merits but merely satisfies itself that there is a prima facie case deserving of further consideration. This principle was succinctly stated in the case of Republic –vs- County Council of Kwale & Another; Kondo &



57 Others (Exparte) (Miscellaneous Civil Application No.384 of 1996)[1998] KEHC 2 (KLR) (2 February 1998) (Ruling), where Waki J. (as he then was) observed that the leave stage is not meant for the Court to delve deeply into the arguments or determine the merits of the case but merely to eliminate frivolous or hopeless claims.

10. As such, this Court reiterates that leave serves to weed out hopeless cases at an early stage so as to prevent the wastage of the court's time by busybodies with misguided or trivial complaints. Therefore, at this stage, the threshold is not high, it is sufficient that the Applicant demonstrates an arguable case based on credible material showing that the impugned decision may have been made in excess of jurisdiction, in breach of natural justice, or in violation of constitutional or statutory provisions.
11. In the present case, the Ex-parte orders issued on 22nd September, 2025 were made upon the court's consideration of the Ex-Parte Applicant's application dated 19th September, 2025. The record shows that after a cursory examination of the application, affidavit, and annexures, the court was satisfied that the Applicant had disclosed an arguable case warranting leave. The Court also directed that the said leave is to operate as stay of the impugned criminal proceedings, pending determination of the substantive Motion. In this Court's view, those orders were interlocutory and preservative in nature, designed to maintain the status quo pending a full hearing on the merits. They did not determine the rights in finality nor were they issued in excess of the court's jurisdiction.
12. The Interested Party's principal contention is that the orders were obtained through concealment of material facts, particularly the alleged existence of parallel proceedings in Milimani High Court Criminal Revision No. E090 of 2025 – Grace Kerubo Omwega –vs- Office of the Director of Public Prosecutions, which arose from Milimani Chief Magistrate's Criminal Miscellaneous Application No. E1841 of 2025 – Republic –vs- I & M Bank, Kenya Limited. It is therefore necessary to examine whether the existence of those proceedings would have precluded the grant of leave and stay.
13. Upon perusal of the pleadings and annexures attached thereto, it is evident that the said revision proceedings before the Criminal Division concerned interlocutory orders issued by Hon. E.O. Wambo, Principal Magistrate, authorising the 2nd Respondent (DCI) to investigate and freeze certain bank accounts belonging to the Ex-parte Applicant. The relief sought therein was purely supervisory, seeking this Court's intervention under Sections 362 to 367 of the Criminal Procedure Code to revise those interlocutory orders. On the other hand, the present Judicial Review proceedings challenge the subsequent and distinct decision by the Director of Public Prosecutions, 1st Respondent made on 8th September, 2025 to institute criminal proceedings against the Applicant in the case of Nairobi Chief Magistrate's Court Criminal Case No. E463 of 2025 – Republic –vs- Grace Kerubo Orioki. As such, the subject matter, cause of action, and reliefs sought in the two proceedings are thus materially distinct.
14. The Court is therefore persuaded that the existence of the earlier revision proceedings could not amount to concealment of material facts or establish multiplicity of suits since multiplicity of proceedings arises only where the same parties litigate over the same subject matter and same issues before different court forums. That is not the case here.
15. The Court also takes note that the jurisdiction of the High Court in criminal revision proceedings under the Criminal Procedure Code as being supervisory and limited to correcting irregularities, illegalities and impropriety on the record of subordinate courts. In contrast, Judicial Review jurisdiction is concerned with the legality, reasonableness, and procedural propriety of administrative and quasi-judicial actions. These two jurisdictions, though both are exercised by the High Court, are conceptually and functionally distinct hence the institution of Judicial Review proceedings cannot be



- deemed to offend the principle against multiplicity of suits merely because a separate criminal revision concerning a related matter was previously filed.
16. As to whether the Court can set aside the leave already granted, it is settled law that such discretion should be exercised sparingly and only where it is shown that the order was obtained through material non-disclosure, misrepresentation, or fraud. As such, once the Court has granted leave upon satisfaction of the threshold, it should not lightly interfere with that decision unless the Applicant I shown to have acted dishonestly or had concealed material facts that would have affected the court's discretion. The burden of proving such concealment rests on the party seeking to set aside the order.
 17. In the present matter, the court having clarified that there was no multiplicity of suits as alleged, no further credible evidence has been adduced to demonstrate that the Ex-parte Applicant misled the Court or suppressed material facts when seeking leave. Consequently, the allegation of concealment has been found to be unsubstantiated and cannot form a valid basis for setting aside the orders of 22nd September, 2025.
 18. Furthermore, the argument that the leave should be set aside for alleged abuse of court process is equally unpersuasive. The power to strike out Judicial Review proceedings for abuse of process must be exercised judiciously and with great caution, as the effect of such an order is to deny a party access to justice before the courts. Article 48 of *the Constitution* guarantees every person the right of access to justice, while Article 50(1) ensures the right to a fair hearing before an independent and impartial tribunal. It would therefore be inimical to those constitutional guarantees to terminate Judicial Review proceedings at a preliminary stage on speculative grounds of multiplicity, particularly where the issues before the two courts are distinct.
 19. In any event, the orders of 22nd September, 2025 were expressly limited to preserving the status quo pending the hearing of the substantive motion. Such preservation is necessary to forestall prejudice or render the intended Judicial Review proceedings nugatory. Furthermore, the order that leave do operate as stay is discretionary and intended to prevent irreversible consequences pending determination of the substantive motion. In light of the foregoing, this Court finds no viable material non-disclosure that would justify setting aside the ex parte orders of 22nd September, 2025.
 20. However, the foregoing notwithstanding, since it is common ground that the present judicial review proceedings arise from proceedings in Milimani Chief Magistrates Court Criminal Case No. E463 of 2025 – Republic –vs- Grace Kerubo Orioki. Guided by the provisions of Article 165(6) of *the Constitution* which vests the High Court with supervisory jurisdiction over the subordinate courts with the High Court and any person, body, or authority exercising a judicial or quasi-judicial function, this court reiterates that the administrative structure and judicial practice dictates that such supervisory jurisdiction is exercised territorially through the relevant High Court stations established across the Republic, each with defined geographical mandates.
 21. Given that it is undisputed that the impugned criminal proceedings in Nairobi Chief Magistrates Court Criminal Case No. E463 of 2025 – Republic –vs- Grace Kerubo Orioki, are proceedings of a subordinate court situate within Nairobi County, the High Court at Milimani, and in particular its Judicial Review Division, is the division specifically vested with supervisory and Judicial Review jurisdiction over all subordinate courts and tribunals within Nairobi County.
 22. The principles governing territorial competence of High Court stations were succinctly expressed that although the High Court enjoys countrywide jurisdiction, matters ought to be filed before the station exercising supervisory control over the subordinate court or authority in question, both for administrative orderliness and efficient dispensation of justice.



23. In the present case, the Ex-parte Applicant challenges actions and decisions directly arising from proceedings before the Milimani Chief Magistrates Court and the ultimate decision in this case should it be successful shall affect the said proceedings. Consequently, the proper forum for initiating and determining these Judicial Review proceedings is the Milimani High Court Judicial Review Division, not the Kiambu station.
24. The Court therefore finds that while the High Court at Kiambu and that at Milimani are coordinate in status under Article 165, this particular cause falls squarely within the supervisory remit of the Milimani Judicial Review Division, and the filing of the same at Kiambu was procedurally irregular and contrary to the principle of forum convenience.
25. This Court also observes that Judicial Review is a special jurisdiction meant to supervise subordinate judicial and administrative bodies within the Court's territorial purview. Entertaining the present proceedings at Kiambu would therefore amount to an exercise of supervisory powers beyond its territorial limits, which this Court declines to do.

On the Stay Orders

26. The Ex-parte orders of 22nd September, 2025, which granted leave to commence Judicial Review proceedings and directed that the said leave operates as a stay of the criminal proceedings before the Milimani Chief Magistrates Court, were granted Ex-parte at the leave stage.
27. However, now that this Court has found that it lacks territorial competence to exercise supervisory jurisdiction over the Milimani Chief Magistrates Court, it follows that the said stay orders cannot properly subsist. Continuing to enforce them would amount to perpetuating orders made without the proper territorial jurisdiction.
28. Accordingly, the Ex-parte stay orders issued on 22nd September, 2025 are hereby set aside, to pave way for the proper exercise of supervisory powers by the High Court at Milimani, Judicial Review Division.
29. In view of the foregoing, and guided by the provisions under Article 165(6) and (7) of *the Constitution*, Section 11 of the *Civil Procedure Act*, this Court makes the following final orders:-
 - a. This Court finds that it lacks supervisory and territorial jurisdiction to entertain Judicial Review proceedings arising from the Milimani Chief Magistrates Court Criminal Case No. E463 of 2025 – Republic –vs- Grace Kerubo Orioki.
 - b. The Judicial Review Application, Kiambu HC JR No. E022 of 2025, is hereby transferred to the High Court of Kenya at Nairobi (Milimani), Judicial Review Division, being the court seized with supervisory jurisdiction over the Milimani Chief Magistrates Court.
 - c. The Ex parte stay orders issued on 22nd September, 2025 are hereby vacated and set aside to enable the Milimani Judicial Review Court to issue such further or other directions as it may deem just and expedient in exercise of its supervisory jurisdiction.
 - d. The Deputy Registrar of this Court to forthwith transmit the entire file to the Deputy Registrar, Judicial Review Division, High Court of Kenya at Milimani, for mention and further directions before a Judge of that Division.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 5TH DAY OF NOVEMBER, 2025.



D. O. CHEPKWONY
JUDGE

