



**Sharafi v Director of Public Prosecution (Petition E003 of 2025)  
[2025] KEHC 15830 (KLR) (5 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 15830 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
PETITION E003 OF 2025**

**HM NYAGA, J**

**NOVEMBER 5, 2025**

**IN THE MATTER OF CHAPTER FOUR- THE BILL OF  
RIGHTS OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF ARTICLES, 21, 22 & 23, 157(/ I), 159 & 165 (6) OF THE  
CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS &  
FREEDOMS UNDER ARTICLE 27, 28, 48 & 50 OF THE CONSTITUTION OF KENYA, 2010**

**BETWEEN**

**ALI TEHRANI SHARAFI ..... PETITIONER**

**AND**

**THE DIRECTOR OF PUBLIC PROSECUTION ..... RESPONDENT**

**RULING**

1. Before me is an application dated 3<sup>rd</sup> January 2025, which seeks the following orders;
  - i. Spent.
  - ii. That a conservatory order do issue in the nature of a stay of further proceedings including mentions in Meru Chief Magistrate Criminal Case No. 110 Of 2025, Republic Vs Ali Tehrani Sharafi pending hearing and determination of this application inter-partes or pending further orders of this court.



- iii. That a conservatory order do issue in the nature of a stay of further proceedings including mentions, in Meru Chief Magistrate Criminal Case no. 110 of 2025, republic vs ali tehrani sha rafi pending hearing and determination of the petition herein.
  - iv. That costs of this application be borne by the respondents.
2. The application is premised upon the grounds set out on its face and is supported by the applicant's affidavit sworn on even date.
  3. In a nutshell the applicant avers that the aforementioned Criminal case is preferred against him in order to exert pressure, harass, intimidate, malign and incriminate the applicant which is not the intended purpose of the Criminal Justice System in view of the pending Civil matter in Meru High Court Civil Suit No. E026 OF 2024 Tarsila Kawiria M'liburu Vs Mahan Ltd & Ali Tehrani. That the Respondent has a duty to use the Criminal Process for the bona fide purpose and not unfairly as is the case herein. That under Article 157(11) of *the Constitution*, the Respondent while exercising his power conferred by *the Constitution*, shall have regard to the interests of the Administration of Justice and the need to prevent and avoid abuse of the legal process. It is further stated that under Article 165 (6) of *the Constitution* of Kenya (2010) this court has power to supervise criminal proceedings before subordinate courts and to make such orders and directions as it may consider appropriate for purposes of ensuring that justice is duly administered by the subordinate courts concerned.
  4. The applicant also states that under Article 159 of *the Constitution* of Kenya 2010, Judicial Authority is exercised by the courts and tribunals established by or under *the constitution*. It is further averred that under Article 50 of *the Constitution*, the applicant is entitled to a fair Judicial process which cannot be achieved if the pending Criminal Case being Meru Chief Magistrate Criminal Case No. E110 Of 2025. Republic Vs Ali Tehrani Sharafi is let to run in view of the attendant petition pending for determination. That the said Criminal case is slated for Mention on 12.2.2025 for pretrial and for Hearing on 2.4.2025 before the Chief Magistrate's court at Meru.
  5. Lastly the applicant avers that the application is preferred in the interests of Justice.
  6. The court directed the applicant to serve the application, which he did. The Prosecutor, representing the Respondent, sought time to respond but at the time of writing this ruling no response had been filed.

### **Analysis and Determination.**

7. There is no dispute that the Respondent is an independent institution, created under Article 157 of *the Constitution*. The Respondent is under no directions from any other person or institution, when exercising its functions. Article 157 (10) is clear on this and it provides as follows;
  - (10) The Director of Public Prosecutions shall not require the consent of any person or authority for the commencement of criminal proceedings and in the exercise of his or her powers or functions, shall not be under the direction or control of any person or authority.
8. Are these powers unfettered? There is settled law that the powers of the Respondent cannot be beyond interrogation by the court. Indeed, the said Article provides for the manner in which the 1<sup>st</sup> respondent is to act. Article 157 (11) provides as follows: -
  - (11) In exercising the powers conferred by this Article, the Director of Public Prosecutions shall have regard to the public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process.



9. Therefore, whereas this court ought, as much as possible, to allow the Respondent and any other independent institution to perform their Constitutional or statutory functions, those institutions are not beyond the reach of this court to put a check on any errant acts or omissions. Thus, if any act by the Respondent is found to be against public interest, against the administration of justice, or is an abuse of the legal process, then the court will no doubt step in.

10. This position was confirmed in Republic Vs AE and 4 Others: Exparte Kenneth Kariuki Githii [2014] eKLR where the court held that: -

“It is therefore clear that whereas the discretion given to the 3<sup>rd</sup> respondent to prosecute criminal offences is not to be lightly interfered with, that discretion must be properly exercised and where the Court finds that the discretion is being abused or is being used to achieve some collateral purposes which are not geared towards the vindication of the commission of a criminal offence such as with a view to forcing a party to submit to a concession of a civil dispute, the Court will not hesitate to bring such proceedings to a halt.”

11. Having stated the above, I will now delve into the matter at hand.

12. It is not in dispute that the Complainant in the matter has filed a civil suit arising out of the contract, where she seeks judgment against the petitioner and another person/entity. The matter is pending before this court.

13. From the pleadings therein the applicant claims that there was a contract between the parties where she agreed to invest in a road construction contract that the defendants had secured. In return the parties were to share the profits. It is clear that the criminal case in question is also based on the same contract.

14. It is also not in dispute that under Section 193A of the Criminal Procedure Code (CPC) parallel civil and criminal proceedings can take place. The section states as follows;

“193A. Concurrent criminal and civil proceedings.

Notwithstanding the provisions of any other written law, the fact that any matter in issue in any criminal proceedings is also directly or substantially in issue in any pending civil proceedings shall not be a ground for any stay, prohibition or delay of the criminal proceedings.”

15. That said, the superior courts have always expressed their abhorrence to the use of the criminal justice system to settle a matter which is in essence seems to be civil in nature. For instance, in Republic vs Chief Magistrate’s Court Mombasa Ex-parte Ganijee and Another (2002) KLR 703 the High Court expressed itself as follows; -

“It is not the purpose of a criminal investigation or a criminal charge or prosecution to help individuals in the advancement of frustrations of their civil cases. That is an abuse of the process of the court. No matter how serious the criminal charges may be, they should not be allowed to stand if their predominant purpose is to further some other ulterior purpose. The sole purpose of criminal proceedings is not for the advancement and championing of a civil cause of one or both parties in a civil dispute, but it is to be impartially exercised in the interest of the general public interest. When a prosecution is not impartial or when it is being used to further a civil case, the court must put a halt to the criminal process. No one is allowed to use the machinery of justice to cause injustice and no one is allowed to use criminal proceedings to interfere with a fair civil trial. If a criminal prosecution is an abuse of



the process of the court, oppressive or vexatious, prohibition and/or certiorari will issue and go forth... When a remedy is elsewhere provided and available to person to enforce an order of a civil court in his favour, there is no valid reason why he should be permitted to invoke the assistance of the criminal law for the purpose of enforcement. For in a criminal case a person is put in jeopardy and his personal liberty is involved. If the object of the appellant is to overawe the respondent by brandishing at him the sword of punishment thereunder, such an object is unworthy to say the least and cannot be countenanced by the court... In this matter the interested party is more actuated by a desire to punish the applicant or to oppress him into acceding to his demands by brandishing the sword of punishment under the criminal law, than in any genuine desire to punish on behalf of the public a crime committed. The predominant purpose is to further that ulterior motive and that is when the High Court steps in..."

16. In *Rosemary Wanja Mwangi vs A. E. and 3 Others* [2013] eKLR the court held as follows; -

"It is, I believe, undisputed, as provided under Section 193 A of the Criminal Procedure Code, that the institution of civil proceedings does not preclude the State from undertaking criminal proceedings against a party with respect to an issue which is also directly in issue in a pending civil suit.

That notwithstanding, it is the duty of the Court to exercise its inherent jurisdiction so as to prevent its process being used to perpetrate injustice or otherwise as an abuse of its process. Since *Githunguri v Republic* (supra), it has been established that the High Court is entitled to exercise its jurisdiction to avert abuse of power, discretion or process. Thus, an examination of the events unfolding prior to the institution of the five civil suits and the eventual institution of the criminal complaints by the 2nd and 3rd respondents causes serious unease about the institution of the criminal process. Given the timing of the criminal complaint and the institution of the criminal prosecutions immediately following upon the filing of five civil claims involving the same parties over the same subject matter, and an application for orders of contempt against the petitioners in the Winding Up Causes which they had lodged against the 2nd and 3rd respondents, it is difficult to reach a conclusion other than that the criminal case was calculated to harass, coerce, oppress or otherwise intimidate the petitioners".

17. Similarly, in *Reuben Mwangi vs DPP and 2 Others* [2012] eKLR the court held that;

"It is, hence, a settled legal principle and position that whenever a Petitioner sufficiently demonstrates the stifling of or threats of infringement of rights, fundamental freedoms, *the Constitution* and/or the law by the investigative and prosecutorial agencies, a Court should not hesitate to intervene and stop such a prosecution. Such intervention by the Courts should, however, be in clearest of the cases.

18. Lastly, in *Kuria and 3 Others vs AE* (2002) 2KLR 69 the Court held that: -

"The Court has power and indeed the duty to prohibit the continuation of the criminal prosecution if extraneous matters divorced from the goals of justice guide their instigation. It is a duty of the court to ensure that its process does not degenerate into tools for personal score settling or vilification on issues not pertaining to that which the system was even formed to perform.....A stay (by an order of prohibition) should be granted where compelling an accused to stand trial would violate the fundamental principles of justice



which underlie the society's senses of fair play and decency and/or where the proceedings are oppressive or vexatious... The machinery of criminal justice is not to be allowed to become a pawn in personal civil feuds and individual vendetta. It is through this mandate of the court to guard its process from being abused or misused or manipulated for ulterior motives that the power of judicial review is invariably invoked so as to zealously guard its (the Court's) independence and impartiality (as per section 77(1) of the Kenya Constitution in relation to criminal proceedings and section 79(9) for the civil process).”

19. Looking at the matter it is clear that the civil suit was brought to the court in November 2024, where the complainant sought a number of orders including the impounding of the machinery and motor vehicles said to belong to the applicant and Mahan Limited. The said suit is pending determination. The criminal charges appear to have been preferred in 2025, after the civil suit was filed.
20. I agree with the Applicant that the intended criminal process pose a potential threat to his rights of liberty. Suppose this court which is seized of the civil case is to find in his favour, will he not have been unduly prosecuted?
21. Having considered the matter, I find that the applicant has met the threshold to warrant the grant of interlocutory relief sought.
22. Consequently, I grant the following orders;
  - a. There shall be a stay of the proceedings in Meru Criminal Case number E110 of 2025 pending hearing and determination of the petition herein.
  - b. The costs of the application shall be in the cause.
23. The court will grant further directions as regards the petition itself after delivery of this ruling.

**DATED, SIGNED & DELIVERED AT MERU THIS 5<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**H.M. NYAGA**

**JUDGE**

