M'Mbijiwe v OCS, Central Police Station & 2 others (Judicial Review 059 of 2025) [2025] KEHC 17227 (KLR) (Judicial Review) (24 November 2025) (Judgment)

Neutral citation: [2025] KEHC 17227 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

JUDICIAL REVIEW

JUDICIAL REVIEW 059 OF 2025

JM CHIGITI, J

NOVEMBER 24, 2025

BETWEEN

EMMA M'MBIJIWE ..... APPLICANT

AND

THE OCS, CENTRAL POLICE STATION ..... 1ST RESPONDENT

THE INSPECTOR GENERAL OF POLICE ..... 2ND RESPONDENT

THE HON. ATTORNEY GENERAL ..... 3RD RESPONDENT

JUDGMENT

1. The Application that comes up for a determination is the one that is dated 12th of March 2025 wherein the Applicant is seeking the following reliefs;

    1. ...Spent.

    2. That this Honourable Court be pleased to issue an interim order restraining the 1st and 2nd Respondents and any other officers under their authority, from intimidating, harassing, threatening and/or arresting the Applicant herein for the alleged offence of stealing the sum of Kshs. 600,000/= pending the hearing and determination of this Application inter-partes.

    3. That an order of Prohibition do issue, prohibiting the 1st and 2nd Respondents and any other officers under their authority, from intimidating, harassing, threatening and/or arresting the Applicant herein for the alleged offence of stealing the sum of Kshs.

    4. THAT the costs of this Application be provided for.

2. The Applicant's case is that on the 27th February 2025, she was arrested and detained at Central Police Station for the alleged offence of stealing the sum of Kshs. 600,000/= from one Deborah Nkirate. She was subsequently released from custody on a cash bail of Kshs. 100,000/=.

3. She is aggrieved because on the 5th March 2025, when she had been informed that she would be arraigned in Milimani Law Court, no plea was taken since her case was not listed. She was instead directed by officers of the 1st Respondent to appear at the Central Police Station on the 13th March 2025 and pay the balance of Kshs. 500,000 failing to which she would be re-arrested violation/non-compliance with the mandatory provisions of clause 8 (9) of the National Police Service Standing Orders.

4. It is her case that this decision made with an ulterior motive or purpose calculated to prejudice her legal right to be heard. According to her, the 1st Respondent's failure to forward the criminal matter/file on the 5th March 2025 to the Chief Magistrates Court at Milimani constituted an action tainted with gross bad faith.

5. The 1st Respondent's failure to forward the cash bail to the Chief Magistrates Court at Milimani on the 5th March 2025 when the matter was scheduled for plea taking constituted gross violation/non-compliance with the mandatory provisions of clause 8 (1) (c) of the National Police Service Standing Orders according to her.

6. It is her case that the 1st Respondent's threat of re-arrest on 13th March 2025 in the event of non-payment of Kshs. 500,000 when she is currently out on cash bail, is manifestly unfair and constitutes a flagrant abuse of power.

7. In her submissions she indicates that she moved this court as a result of the fear of re-arrest by the 1st Respondent despite having paid the requisite cash bail and having not taken plea before the criminal court.

8. She further submits that the 1st Respondent's direction that the Applicant appears at the Central Police Station on the 13th March 2025 for purposes of paying the balance of Kshs. 500,000 of the alleged stolen monies or face re-arrest is a decision that is procedurally unfair, taken with an ulterior motive or purpose calculated to prejudice the Applicant's legal right to be heard.

9. According to her, the totality of 1st Respondent's actions were not only illegal but made in flagrant abuse of power as to date, the Applicant has not been formally charged or taken plea in a court of law for the alleged offence of stealing.

10. She submits that no reason(s) whatsoever have been given by the 1st Respondent as to why the matter was not listed for plea and why there has been non-compliance with the mandatory provisions of the Chapter 15, clause 8(1) (c) of the National Police Service Standing Orders.

11. The failure to pay the cash bail into Court as soon as is reasonably practicable and a receipt issued for such payment does not sit well with her since under no circumstances should cash bail be retained at any police station after the date on which the accused shall have appeared in court.

12. The fact that the 1st Respondent continues to retain the said cash bail to date, with no justification whatsoever is in flagrant disregard of the mandatory provisions of Chapter 15, clause 8(1) (c) of the National Police Service Standing Orders.

13. It is the Applicant's humble submission that it is highly doubtful that a clear reading of Chapter 15, clause 8(1) (c) of the National Police Service Standing Orders, grants the 1st Respondent an unlimited time frame to retain cash bail paid to it.

14. In demonstrating the expanded scope of judicial review under the Fair Administrative Act, 2015,reliance is placed in Republic vs Public Procurement Administrative Review Board ex parte Syner-Chemie [2016] eKLR it was held inter-alia that:

> " 97. With the enactment of *Fair Administrative Action Act*, 2015 which Act implements Article 47 of *the Constitution* to give effect to the right to fair administrative action, the above Act effectively modifies the *Law Reform Act* and Order 53 of the Civil procedure Rules on flexibility in the Application of the law to the circumstances of a particular case, with the sole intention of achieving substantive justice for the parties and especially where no prejudice is shown to be occasioned to the Respondents or interested parties herein.
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> 98. In my modest view, no statute can be enacted with the sole intention of doing an injustice to parties. Article 47 of *the constitution* elevates fair administrative action from a common law action to a constitutional right under the Bill of rights. The same position applies to Article 48 of *the Constitution* which commands the state to ensure that all persons are facilitated to access justice without any impediments....." (Emphasis added)

15. In Republic v Speaker of the Senate & Another ex parte Afrison Export Import Limited & Another[2018] eKLR it was held inter-alia that:

> " As the Supreme Court of Appeal of South Africa observed 'all statutes must be interpreted through the prism of the Bill of Rights.' This statement is true of decisions made by statutory bodies and State organs. The governing statute and the resultant decision must be interpreted through the prism of Article47 of *the Constitution*. It is beyond argument that Article 47 codifies every person's right to fair administrative action that is expeditious. Efficient, lawful, reasonable and procedurally fair our constitution recognizes a duty to accord a person procedural fairness or natural justice when a decision is made that affects a person's rights, interests or legitimate expectations. Judicial Review in now entrenched in *the Constitution*. The concept of Judicial Review under *the Constitution* of Kenya is similar to that under *the Constitution* of South Africa where the South African Court held in Pharmaceutical Manufacturers Association of South Africa in re Exparte President of the Republic of South Africa & Others that "the common law principles that previously provided the grounds for Judicial Review of public power have been subsumed under *the Constitution* and, insofar as they might continue to be relevant to Judicial Review, they gain their force from *the Constitution*. In the Judicial Review of public power, the two are intertwined and do not constitute separate concepts. "The court went further to say that there are not two systems of law, each dealing with the same subject matter, each having similar requirements, each operating in its own field with its own highest court, Rather, there was only one system of law shaped by *the Constitution* which is the supreme law, and all law, including the common law, derives its force from *the Constitution* and is subject to constitutional control.
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> The entrenchment of the power of Judicial Review, as a constitutional principle should of necessity expand the scope of the remedy. First, parties, who were once denied Judicial Review on the basis of the public-private power dichotomy, should now access Judicial Review if the person, body or authority against whom it is claimed exercised a quasi-judicial function or a function that is likely to affect his rights. Second, the right to access the

Court is now constitutionally guaranteed. This makes the requirement for the existence of a decision, order or proceedings should be read to include any administrative action as defined in section 2 of the *Fair Administrative Action Act*. Third, an order of Judicial Review is one of the reliefs for violation of fundamentals rights and freedoms under Article 23(3) (f). Fourth, section 7 of the Fair Administrative Action provides that any person who is aggrieved by an administrative action or decision may apply for review of the administrative action or decision to a court in accordance with section 8 or a tribunal in exercise of its jurisdiction conferred in that regard under any written law. Section 7 (2) of the act provides for grounds for applying for Judicial Review.

Court decisions should boldly recognize *the Constitution* as the basis for Judicial Review. Judicial review is now a constitutional supervision of public authorities involving a challenge to the legal validity of the decision. Time has come for our Courts to fully explore and develop the concept of Judicial Review in Kenya as a constitutional supervision of power and develop the law on this front. Courts must develop Judicial Review jurisprudence alongside the mainstreamed "theory of a holistic interpretation of *the Constitution*.

Judicial Review is no longer a common law prerogative, but is now a constitutional principle to safeguard the constitutional principles, the Judicial Review powers that were previously regulated by the common law under the prerogative and the principles developed by the courts to control the exercise of public power are now regulated by *the Constitution*.

It is therefore her conclusion that all that an Applicant is required to do is to demonstrate that the impugned decision whether it is a letter order or proceedings violates or threatens to violate the Bill of Rights or violation of *the Constitution*. No matter how noble and worthy of admiration the common law principles are, if they are simply irreconcilable with constitutional parameters, then *the Constitution* must prevail."

16. According to her, the Respondent's argument that she should wait for the decision on whether or not she will be prosecuted is comical for the reason that on the 5th March 2025, the Applicant was present at the Milimani Law Courts ready to take plea but the 1st Respondent ensured that the criminal file was not listed.

17. The prayer sought herein is an order of Prohibition restraining the 1st Respondent from harassing/ threatening and re-arresting the Applicant. It is worth noting that there is no order sought by the Applicant seeking to restrain the 1st Respondent from conducting their official duties as provided in law.

18. In addition the Applicant is currently out on a cash bail of Kshs. 100,000 pursuant to the provisions Judiciary Bail & Bond Policy Guidelines and Chapter 15, clause 8(1) (a) of the National Police Service Standing Orders.

19. Section 87 of the *National Police Service Act* establishes the Internal Affairs Unit under Part X of the Act that deals with offences and discipline of police officers. Section 87(2) (a) on its part enumerates the functions of the Internal Affairs Unit to include receiving and investigating complaints against police officers.

20. The Independent Policing Oversight Authority is established under Section 3 of the *Independent Policing Oversight Authority Act* and under Section 6 it is mandated to investigate any complaints related to the disciplinary or criminal offences committed by members of the National Police Service.

21. She admits that it is trite law that under the doctrine of exhaustion, an Applicant must first exhaust any statutorily provided internal mechanisms before approaching the court for judicial review orders.

22. This is under pinned by Section 9(2) of the *Fair Administrative Action Act* which provides that;

> "The High Court or a subordinate court under subsection (1) shall not review an administrative action or decision under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted."

23. The Court of Appeal in Speaker of National Assembly vs Karume [1992] KLR 21 stated inter-alia that:

> "Where there is a clear procedure for redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed. Accordingly, the special procedure provided by any law must be strictly adhered to since there are good reasons for such special procedures."

24. After the promulgation of *the Constitution* of Kenya, 2010, the Court of Appeal in Geoffrey Muthinia Kabiru & 2 Others - vs - Samuel Munga Henry & 1756 others.[2015] eKLR the Court of Appeal provided the constitutional rationale and basis for the doctrine as follows:-

> "It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the Courts is invoked. Courts ought to be of last resort and not the first port of call the moment a storm brews... The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside the courts... This accords with Article 159 of *the Constitution* which commands Courts to encourage alternative means of dispute resolution."

25. However, it is also trite that in order to address unique and peculiar circumstances, the Courts have recognized exceptions to the doctrine of exhaustion of remedies, which exceptions are also provided for under the *Fair Administrative Action Act*.

26. She argues that Section 9 (4) of the Act provides that in exceptional circumstances, and on Application by a party, the Court may exempt such party from the obligation of exhausting alternative remedies if the Court considers such exemption to be in the interest of justice.

27. The exceptional circumstances are however not outlined in the Act, thus leaving the Courts to exercise their discretion when faced with an Application for exemption.

28. In the case of Krystalline Salt Limited v Kenya Revenue Authority (2019) eKLR the court expressed its view on the definition of "exceptional circumstance" as follows:

> "What constitutes exceptional circumstances depends on the facts and circumstances of the case and the nature of the administrative action at issue. Thus, where an internal remedy would not be effective and/ or where its pursuit would be futile, a court may permit a litigant to approach the court directly. So too where an internal appellate tribunal has developed a rigid policy which renders exhaustion futile.
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> The *Fair Administrative Action Act* does not define 'exceptional circumstances.' However, this court interprets exceptional circumstances to mean circumstances that are out of the

ordinary and that render it inappropriate for the court to require an Applicant first to pursue the available internal remedies. The circumstances must in other words be such as to require the immediate intervention of the court rather than to resort to the applicable internal remedy."

29. In Republic v Council for Legal Education ex parte Desmond Tutu Owuoth (2019) eKLR, the court went further to state that in determining whether an exception to internal remedies should be granted in allowing parties to institute judicial review proceedings, the Court must look at whether the internal appeal mechanism available to a party under statute would serve the ends of justice. The Court had previously stated that the doctrine of exhaustion of remedies would not be applied where a party may not have an audience before the forum created, or the party may not have the quality of audience before the forum created which would be proportionate to the interests the party wishes to advance within the suit.

30. She submits that it is the Applicant's submission that a Court is obliged to look at whether the dispute resolution mechanism established under the statute in question is competent in the circumstances of the case to serve the interests of justice, or whether it warrants a party applying for an exemption from the doctrine of exhaustion of remedies.

31. In the case of Republic v Kenya Revenue Authority Exparte Style Industries Limited (2019) eKLR, the Court held that it would grant exemption where it would be impractical to make an Application to the administrative body.

32. It is her case that lodging a complaint against the 1st Respondent to either the Internal Affairs Unit or Independent Policing Oversight Authority would have been in the prevailing circumstances not been efficacious, proportionate to the interests of the Applicant or practicable.

33. In the instant case, it is clear beyond peradventure according to her that the institution of this Application was not only efficacious, proportionate, practicable in the circumstances but most importantly in the interest of justice.

34. It is the Applicant's humble submission that the prevailing circumstances in this case, constitute exceptional circumstances as envisaged by section 9(4) of the *Fair Administrative Action Act*.

The 1st, 2nd and 3rd Respondents Case:

35. The 1st Respondent argues that during the transactions as advanced by the applicant it was performing its functions as set out under Section 24 of the *National Police Service Act* which include apprehending offenders, enforcing laws and regulations within its mandate and investigating crime.

36. Under Section 123 of the Criminal Procedure Code there is no time limit as to when the cash bail should be handed over to the court and the Application is speculative and unsupported by credible evidence.

37. It is the Respondents case that the Applicant tendered no evidence to prove that the 1st Respondent and his officers threatened to re-arrest the Applicant or that the 1st Respondent demanded the alleged Kshs. 500,000.

38. The Police are mandated to evaluate the complaints, investigate and then forward the files to the Director of Public Prosecution who evaluates the evidence before deciding whether or not to prosecute the matters that are placed before it.

39. According to the Respondents the Applicant should await the decision whether or not to prosecute her and tender her defence in the trial court.

40. The Internal Affairs Unit of the Police is mandated under Chapter 5 of the National Police Service Standing Orders and Section 87 of the National Police Act to receive and investigate complaints against Police and to investigate and recommend appropriate actions in respect of any police officer found engaging in any unlawful conduct.

41. It is their case that the Application is premature and the same violates the doctrine of exhaustion and / or ripeness having been filed without exhausting the statutory dispute resolution procedures under Section 87 of the *National Police Service Act*.

42. Reliance is placed in the case of Pastoli v Kabale District Local Government Council and Others[2008) 2 EA 300, where the court, citing with approval Council of Civil Unions V Minister for the Civil Service [1985] A.C 2 and Re Bukoba Gymkhana Club [1963] EA 478 at 479, held that:

> " 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 or making the act, the subject complaint. Acting without jurisdiction or ultra vires, or contrary to the provisions 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 acceptance moral standards ..... procedural impropriety is when there is a 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 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 legislative instrument by which such authority exercises jurisdiction to make a decision."

43. The decision undertaken by the 1st Respondent to arrest the Applicant and issue a cash bail is within the mandate of the 1st Respondent and does not raise an issue of illegality, irrationality or procedural impropriety.

44. Chapter 15 Clause 8(1) (c) of the National Police Standing Orders provides that the Police should forward the cash bail to the Magistrate Court by the time that the accused is arraigned in court. Since the Applicant has not yet been arraigned in court, it goes without saying that no illegality has been occasioned as the time has not yet lapsed for the cash bail to be availed to the court.

45. It is not within the mandate of the 1st Respondent to decide whether to prosecute the Applicant or not. The 1stRespondent is tasked with evaluating the complaints, investigating and then forwarding the files to the Director of Public Prosecution who then evaluates the evidence and decides whether or not to prosecute the matter and the 1st Respondent acted fairly and in accordance with the law by not prosecuting the matter as the same is not within its mandate.

46. The decisions that were made by the 1st Respondent were all in accordance with the law and no irrationality, unfairness, abuse of power or procedural impropriety has been demonstrated by the Applicant as against the 1st Respondent in this matter.

47. Korir J in Republic V Public Procurement Administrative Review Board & Another Ex Parte Gibb Africa Ltd & Another [2012] eKLR established that;

> " In judicial review therefore, the court's jurisdiction is limited to applying the three tests of "legality", "rationality" and "procedural propriety" to the decision under review and once the decision passes the tests the court has no business taking any further step in respect of that decision..."

48. Further, the Court of Appeal in Grain Bulk Handlers Limited V J. B. Maina & Co. Ltd & 2 Others [2006] eKLR summarized the purpose of judicial review by stating that:-

> " Judicial Review jurisdiction regulates the process by which a decision making power given by the law is exercised by the person or body given the jurisdiction. The subject matter of Judicial Review is the legality of such decisions."

49. The Applicant has not provided any evidence to show that the decisions were in contravention with the law, unreasonable or unfair so as to warrant an Application for judicial review orders.

50. It is argued that the Applicant has failed to show this court that the Respondents have the intentions to act in a manner that is in contravention with any written law or that goes against the principles of natural justice as required for an order of Prohibition.

51. The Court, in the case of Margaret Wamahiga Gakuhi v Inspector General of Police & 2 Others [2017] KEHC 6085 (KLR) stated that:

> "For this court to issue prohibition against the 1st Respondent or any police officer under him or acting through him from conducting any investigations or recording any statements or arresting the Applicant in respect of the complaint ... there must be proof that the investigations are being carried out in excess of the mandate of the police or that the police have no such mandate to investigate the said complaint; or that there is breach of the rules of natural justice and or that there is abuse of power."

52. The Respondents argue that the Applicant did not provide proof that the Respondents have acted or intend to act or make decisions that are not within their mandate, are a breach of the rules of natural justice and/or are an abuse of their power so as to warrant the issuance of the orders the Applicant is seeking.

53. In closing it is their case that costs follow the event. In the case of Party of Independent Candidate of Kenya vs Mutula Kilonzo & 2 Others, the court held that:

> " ...it is clear from the authorities that the fundamental principle underlying the award of costs is two-fold. In the first place the award of costs is a matter in which the trial judge is given discretion... But this is a judicial discretion and must be exercised upon grounds on which a reasonable man could come to the conclusion arrived at. In the second place the general rule that costs should be awarded to the successful party is a rule that should not be departed from without the exercise of good grounds of doing so."

54. They urge this court to order the Applicant to shoulder costs.

Analysis and determination:

The issue for determination are whether the Application has merit.

55. Section 35 of the *National Police Service Act* No.11 A of 2011 mandates the Directorate of Criminal Investigations (DCI) to, inter-alia;

    (i) Undertake investigations on Serious Crimes including homicides, narcotic crimes, human trafficking, money laundering, terrorism, economic crimes, piracy, organized crimes and cybercrime amongst others.

56. It is not in dispute that the decision to prosecute the Applicant is yet to be made by the Office of The Director of Public Prosecutions-ODPP. Ordinarily this is done after the investigations file is forwarded to the ODPP by the police.

57. The court cannot determine or dictate for the police or the ODPP how long they should take to complete the investigations or the decision to charge respectively.

58. Failure to forward the police file to the court for plea taking cannot be used to impute ill will, malice or any ulterior motive on the part of the police.

59. Upon completion of the investigations and after the decision to charge being made then the Applicant will have an opportunity to seek whatever legal interventions so as to safeguard her rights and in particular if the ODPP furnishes her with Form 1 The decision to charge her.

60. It is this court's finding the power to issue police bail and the terms thereto is a discretion that is in the hands of the officer commanding the concerned police station. This court cannot interfere with this discretionary power unless the Applicant proves that the process that was adopted was illegal. The Applicant has failed to do that.

61. In the instant suit, nothing bars the Applicant from asking the criminal court to review the terms of the bond downwards should she be get arraigned in court. Further her concerns of abuse of police power can be adequately addressed by the Independent Police Oversight Authority. The Applicant has not lodged any complaint.

62. The Applicant's argument that no reason(s) whatsoever have been given by the 1st Respondent as to why the matter was not listed for plea is misplaced. It is not the 1st Respondent who is in charge of listing cases for the court.

63. Chapter 15, clause 8(1) (c) of the National Police Service Standing Orders stipulates that cash bail shall be paid into Court as soon as is reasonably practicable and a receipt issued for such payment. There is no way the bail funds could have been deposited in court without the matter being lodged in court by the ODPP, registered and assigned a case number and placed before the court with a cause list.

64. The Applicant did not file an Application for anticipatory bail. This is an avenue that is at her disposal. It is this court's finding the power to issue bail and the terms thereto is a discretion that is in the hands of the Office commanding the police station concerned.

65. In the case of Pastoli -Versus- Kabale District Local Government Council & Others (2008)2 EA 300 where the court had held as follows;

> "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 or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances of illegality. It is, for example, illegality, where a Chief Administrative Officer of a District

> interdicts a public servant on the direction of the District Executive Committee, when the powers to do so are vested by law in the District Service Commission.....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 a 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-observation of the Rules of Natural Justice 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 legislative Instrument by which such authority exercises jurisdiction to make a decision".

66. In the case of Kenya National Examination Council versus Republic ex parte Geoffrey Gathenji Njoroge & 9 others [1997] eKLR, the Court stated the grounds upon which such an order of prohibition may issue as follows;

> " What does an order of prohibition do and when will it issue" It is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. It lies, not only for excess of jurisdiction or absence of it but also for a departure from the rules of natural justice. It does not, however, lie to correct the course, practice or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings – See HALSBURY&39; S LAW OF ENGLAND, 4th Edition, and Vol.1 at pg. 37 paragraphs 128"

67. The court agrees with the Respondents that no illegality has been occasioned, as the time has not yet lapsed for the cash bail to be availed to the court.

68. The Applicant has not made out a case that can inform the grant of the reliefs sought.

Costs;

69. In Joseph Oduor Anode v. Kenya Red Cross Society, Nairobi High Court Civil Suit No. 66 of 2009; [2012] eKLR Odunga, J. thus observed:

> " ...whereas this Court has the discretion when awarding costs, that discretion must, as usual, be exercised judicially. The first point of reference, with respect to the exercise of discretion is the guiding principles provided under the law. In matters of costs, the general rule as adumbrated in the aforesaid statute [the *Civil Procedure Act*] is that costs follow the event unless the court is satisfied otherwise. That satisfaction must, however, be patent on record. In other words, where the Court decides not to follow the general principle, the Court is enjoined to give reasons for not doing so. In my view it is the failure to follow the general principle without reasons that would amount to arbitrary exercise of discretion ..." [emphasis supplied].

70. The Applicant shall bear the cost of the suit.

Determination

71. The Applicant has not shown how the actions taken by the Respondents were illegal, irrational and/or procedurally flawed.

Order;

The Application is dismissed with costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24TH DAY OF NOVEMBER, 2025.

.....

J. CHIGITI (SC)

JUDGE