

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

JUDICIAL REVIEW MISC. APPLICATION NO. E152 OF 2025

**IN THE MATTER OF APPLICATION FOR LEAVE TO COMMENCE PROCEEDINGS
IN THE NATURE OF JUDICIAL REVIEW**

-AND-

**IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS
AND FREEDOMS UNDER ARTICLES 2,10,19(2), 20(2), 28,29 AND 35(1)(a) AND (b) OF
THE CONSTITUTION OF KENYA, 2010**

-AND-

THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTION ACT

-AND-

**IN THE MATTER FOR AN APPLICATION FOR JUDICIAL REVIEW ORDERS OF
PROHIBITION AND CERTIORARI**

-AND-

IN THE MATTER OF VIOLATION OF THE RIGHT TO HUMAN DIGNITY

JUDITH NGINA MWILU.....APPLICANT

-VERSUS-

THE DIRECTOR OF PUBLIC PROSECUTIONS.....1ST RESPONDENT

CHIEF MAGISTRATE COURT AT MILIMANI.....2ND RESPONDENT

THE ATTORNEY GENERAL.....3RD RESPONDENT

KENZO DEALERS LIMITED.....INTERESTED PARTY

RULING

1. The applicant Judith Ngina Mwilu by her chamber summons dated 18th November, 2025 seeks leave of this Court to mount judicial review proceedings, specifically, to apply for prohibition restraining the respondents from prosecution in Milimani CMCR Case No. E077 of 2022 and a further order of certiorari removing into this Court and quashing the decision to charge her with the offence of obtaining money by false pretences.
2. The application is brought under certificate of urgency. However, I find no urgency involved, noting that the impugned criminal proceedings were initiated in 2022 and that the Civil case CC12932 OF 2021 which the applicant laments has been determined over the same subject matter was determined in 2024. I therefore decline to certify the application as urgent.
3. The application is brought under the provisions of **Order 53 of the Civil Procedure Rules and constitutional provisions**. It is supported by statutory statement and verifying affidavit sworn by the applicant on 18/11/2025. The applicant laments that the prosecution mounted against her is in bad faith and malicious because the documents relied on by the prosecution are forgeries, among other allegations.

4. At the leave stage, this court is not expected to delve deep into the merits of the intended substantive proceedings. All that the Court demands is a prima facie arguable case which is not frivolous or vexatious.
5. In my humble view, the allegations levelled against the prosecution can only be established at the substantive stage by hearing all the parties involved in the matter. I am satisfied that the applicant has established an arguable case for in depth inquiry at the substantive stage. I therefore grant leave to the applicant to apply for judicial review orders as sought in the chamber summons.
6. The substantive motion to be filed and served upon the respondents and interested parties within twenty-one days of today and in a fresh judicial review application file, not in these Miscellaneous proceedings.
7. As to whether the leave so granted should operate as stay of the criminal proceedings which are ongoing before the Chief Magistrate's Court at Milimani, I note that the proceedings have been pending since 2022 and that the applicant must have been in possession of all the documents which the prosecution was relying on to mount the prosecution against her. However, the applicant claims that some of the documents which include mpesa statements are forgeries and that they were edited to read different amounts of money, from the actual money sent. Further, that Bank

statements do not reflect correct amounts allegedly deposited therein, among other allegations.

8. In view of the serious allegations levelled against the continued prosecution of the applicant, it is only fair and just that the prosecution is temporarily halted to allow these proceedings which will be fast tracked, to be concluded, so as to avoid a situation where the applicant, if successful, will be rendered a pious explorer in the judicial process, as the criminal trial would have been concluded. I also find that no prejudice will be occasioned if stay sought is granted.

9. Accordingly, I allow the prayer staying the prosecution of the applicant in Milimani CR Case No. E077 of 2022 until the judicial review proceedings once filed are heard and determined.

10. I make no orders as to costs. This file is closed.

Dated, Signed & Delivered at Nakuru this 19th Day of November, 2025

**R.E. ABURILI
JUDGE**