



**Republic v Directorate of Public Prosecutions & 3 others; Karuga (Ex parte Applicant); Kuria (Interested Party) (Judicial Review E039 of 2024) [2025] KEHC 17225 (KLR) (Judicial Review) (25 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17225 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
JUDICIAL REVIEW E039 OF 2024  
JM CHIGITI, J  
NOVEMBER 25, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**DIRECTORATE OF PUBLIC PROSECUTIONS ..... 1<sup>ST</sup> RESPONDENT  
DIRECTORATE OF CRIMINAL INVESTIGATIONS ..... 2<sup>ND</sup> RESPONDENT  
THE HON. ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT  
CHIEF MAGISTRATES COURT, NAIROBI ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**MWAURA KELVIN KARUGA ..... EX PARTE APPLICANT**

**AND**

**GEOFFREY KIARIE KURIA ..... INTERESTED PARTY**

**RULING**

1. The Application that comes up for determination is the one dated 2<sup>nd</sup> February 2024 wherein the Exparte Applicant seeks the following orders:
  1. ...spent.
  2. That leave be granted to the Applicant to apply for an Order of Certiorari do issue, to remove into this Honorable court, for purposes of quashing all decisions, orders, proceedings and the charge sheet in Criminal case E1107 2023 Republic vs Kelvin Karuga Mwaura pursuant to this



courts supervisory jurisdiction over the subordinate court under Article 165(6), (7) of *akn ke act 2010 constitution the Constitution of Kenya 2010*.

3. That leave be granted to the Applicant to apply for an Order of Prohibition, do issue to prohibit the Respondents from proceeding with the hearing of Criminal Case E1107 2023 Republic vs Kelvin Karuga Mwaura pending in the Chief Magistrate's Court at Nairobi.
  4. That leave be granted to the Applicant to apply for an Order of Mandamus do issue to Order the termination of proceedings of Criminal Case No. E1107 2023 Republic vs Kelvin Karuga Mwaura
  5. That leave so granted to operate as a stay of proceedings in question, that is to say, from proceeding with the hearing of Criminal case E1107 2023 Republic vs Kelvin Karuga Mwaura until further orders of this Honourable Court.
2. It is the Applicant's case that on 11<sup>th</sup> September 2023 Geoffrey Kiarie Kuria the interested Party wrote to the Nairobi County Investigations Officer a complaint titled complaint of threats to life and cyber bullying against the Applicant.
  3. On 15<sup>th</sup> September 2023, the DCI Regional Headquarters wrote to the Director General Communications Authority of Kenya requesting for information and particulars of the registered owners of email addresses mwaurakelvin6@gmail.com and Geoffrey.kiariek@gmail.com.
  4. The DCI also requested for chats as for the 5<sup>th</sup> November 2022 and those for the period running from 1<sup>st</sup> July 2023 to 12<sup>th</sup> September 2023 from the stated emails.
  5. It is Applicant's case that Mr. Ezra Koech retrieved and analyzed email communication between the following email accounts: Kelvin Mwaura Mwaurakelvin6@gmail.com and Geoffrey Kiariejovoh00@gmail.com.
  6. The Applicant is aggrieved since Geoffrey Kiarie submitted his email account jovoh00@gmail.com and not Geoffrey.kiariek@gmail.com as per the letter dated 15<sup>th</sup> September 2023.
  7. He is also troubled that the consent to search digital media dated 20<sup>th</sup> September 2023 indicates that he consented to have items searched in his email address jovoh00@gmail.com and emails received from Mwaura Kelvin of email address Mwaurakelvin6@gmail.com for the period between 9<sup>th</sup> February 2022 to September 2023, which is NOT what the letter dated 15<sup>th</sup> September 2023, by Mr. Vincent Kokeno of DCI regional Headquarters addressed to the Director General Communications Authority of Kenya "Requesting for information on email address" on particulars of the registered owners of email addresses mwaurakelvin6@gmail.com and Geoffrey.kiariek@gmail.com was about .
  8. It was not about retrieved chats as on the 5<sup>th</sup> November 2022 and as from 1<sup>st</sup> July 2023 to 12<sup>th</sup> September 2023 from the stated emails.
  9. The Applicants case is further that the investigations failed to appreciate that Geoffrey Kiarie Kuria has two email addresses namely, jovoh00@gmail.com and Geoffreykiariek@gmail.com.
  10. It is his case that the interested Party also intentionally misled the investigators as to which of his two emails was the subject of his complaint against Mwaura Kelvin from his email address Mwaurakelvin6@gmail.com.
  11. The Applicant argues that had they searched the chats from Mwaurakelvin6@gmail.com to Geoffreykiariek@gmail.com on the subject dates being 5<sup>th</sup> November 2022 and as from 1<sup>st</sup> July 2023 to 12<sup>th</sup> September 2023, and for the period between 9<sup>th</sup> February 2022 to September 2023, they would



have discovered that he sent offensive emails to Mwaurakelvin6@gmail.com as well which would not have led to the charging the Applicant.

12. It is the Applicant's case that from the above it is clear that the investigations conducted were unreasonable and irrational and this court should intervene in exercise of its supervisory power under Article 165 of *akn ke act 2010 constitution the Constitution*.
13. The Applicant believes that he has made out a case for the grant of the orders sought under Order 53 of the Civil Procedure Rules.

#### **The Respondent's Case:**

14. The Respondents oppose the Application. According to the Respondents, the Application is premature, incompetent, misplaced and an abuse of the Court process.
15. It is their case that the 4<sup>th</sup> Respondent is immune from the proceedings like the one before this court owing to the judicial independence that is guaranteed under article 160 of *akn ke act 2010 constitution the Constitution*.
16. It is their case that the Exparte Applicant ought to have filed a Constitutional Petition for the infringement of his Constitutional Rights and not a Judicial Review Application.
17. The 3<sup>rd</sup> Respondent acted within the principles of the law as a neutral arbiter based on facts presented to the court by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.
18. According to the Respondent granting the orders sought would amount to controlling the 3rd Respondent's Authority.
19. It is their case that the Applicant should wait for the Criminal Case to proceed to its conclusion and subsequently after the judgment, he can pursue appropriate redress avenues for compensation through a malicious prosecution suit as a result of which the Application is premature.

#### **The Interested Party Case:**

20. The Interested Party appreciates that the Application that is before the court is an Application for leave to institute Judicial Review orders.
21. It is the Interested Party's case that the Applicant is not entitled to the order for leave to institute the Judicial Review prerogative orders.
22. According to the Interested Party, the Applicant was their family lawyer until when they fell out and the Applicant started insulting them through electronic media.
23. This led to the lodging of a complaint to the police and ultimately the arraignment of the Applicant in court who now faces the criminal charges that he is seeking to stop.
24. Reliance is placed in the case of *Republic v County Council of Kwale & another; Kondo & 57 others (Exparte) [1998] KEHC 2 (KLR)* where the Court held that;

“The purpose of the Application for leave to apply for judicial review was to eliminate at an early stage any Applications for judicial review which were either frivolous, vexatious or hopeless and to ensure that the Applicant was only allowed to proceed to the substantive hearing if the court was satisfied that there was a case fit for further consideration.



Leave may only be granted if on the material available the court was of the view, without going into the matter in depth, that there was an arguable case for granting the relief claimed by the Applicant, the test being whether there was a case fit for further investigation at a full inter partes hearing of the substantive Application for judicial review. It was an exercise of the court's discretion but as always it had to be exercised judicially.”

25. The objectives therefore are to:
- i. Screen frivolous, vexatious or hopeless Applications;
  - ii. Ensure the Applicant has sufficient interest (*locus standi*);
  - iii. Confirm the Applicant is within the statutory time limit (six months from the date of the impugned decision under Order 53 rule 2); and
  - iv. Verify that no alternative remedy or statutory appeal exists
26. The complainant submits that the Application is frivolous, vexatious and hopeless. The Exparte Applicant's main complaint is that the email address that the Investigating Officer indicated in his letter to the Director General of Communications Authority dated 15<sup>th</sup> September, 2023 requesting for information on email address is not the same email that the Interested Party signed a consent for search of digital media in regard to.
27. The Interested Party's email address that the Applicant sent the abusive emails to is joivoh00@gmail.com, and it is the email that he consented to be searched.
28. The email extracts that are to be relied on in court in the said criminal case are extracts of emails sent to the said email address joivoh00@gmail.com.
29. This is evidenced by the DCI certificate under section 65(8) as read with section 106B (4) of the *akn ke act 1963 46 Evidence Act* dated 21 9 2023 and the DCI Consent to search digital media dated 20 9 2023.
30. He admits that the said letter by the Investigating Officer to the Director General of Communications Authority dated 15 9 2023 erroneously quoted the Interested Party's other email address Geoffrey.kiarie@gmail.com which was and is not the subject email.
31. In Republic v Commissioner of Police & Another Ex-Parte Michael Monari & another [2012] KEHC 4595 (KLR) the Court held that;
- “... the police have a duty to investigate on any complaint once a complaint is made. Indeed, the police would be failing in their constitutional mandate to detect and prevent crime. The police only need to establish reasonable suspicion before preferring charges. The rest is left to the trial court...As long as the prosecution and those charged with the responsibility of making the decisions to charge act in a reasonable manner, the High Court would be reluctant to intervene....”
32. In the case of Republic v National Transport & Safety Authority, Cabinet Secretary For Transport & Infrastructure, Principal Secretary -State Department of Transport, Traffic Commandant, Attorney General, Equity Bank Ltd, Kenya Commercial Bank Ltd, Co-operative Bank Ltd, Family Bank Ltd, Fibre Space Ltd (1963) & Safaricom Ltd Ex parte James Maina Mugo [2015] KEHC 5372 (KLR) the



Court cited Lord Diplock in the case of Council for Civil Service Unions vs. Minister for Civil Service [1985] A.C. 374, at 401D when he stated that:-

“Judicial review has I think developed to a stage today when...one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call ‘illegality’, the second ‘irrationality’ and the third ‘procedural impropriety’...By ‘illegality’ as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it...By ‘irrationality’ I mean what can now be succinctly referred to as ‘Wednesbury unreasonableness’...it applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it...I have described the third head as ‘procedural impropriety’ rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision.”

33. It is his case that the fact that the Interested Party has an option of filing a civil case of defamation against the Applicant does not in any way limit him from proceeding with the said criminal case against him.
34. The Interested Party had has the option of choosing either the civil or criminal proceedings or both to run concurrently. In this instance, he chose to institute criminal proceedings which was well within his rights.
35. The Applicant is also challenging the constitutionality of provisions of the *akn ke act 2018 5 Computer Misuse and Cybercrimes Act* no. 5 of 2018.
36. It is the complainant’s submission that Judicial Review proceedings are special proceedings where the court sits in its supervisory jurisdiction to ensure that decisions made by relevant bodies of authority are lawful.
37. He argues that if the Applicant is of the view that some provisions of the said act of parliament are unconstitutional, then he should have filed a Constitutional Petition in the Constitutional and Human Rights Division and not a Judicial Review suit.

#### **Analysis and determination:**

The issue of determination is whether or not the Application has merit.

38. Order 53 of the Civil Procedure Rules provides as follow:
  1. No Application for an order of mandamus, prohibition or certiorari shall be made unless leave therefore has been granted in accordance with this rule.
  2. An Application for such leave shall be made ex parte to a judge in chambers and accompanied by —
    - a. a statement setting out the name and description of the Applicant, the relief sought, and the grounds on which it is sought; and
    - 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.



39. In order to succeed, the Applicant has to satisfy the court that he has an arguable case, which is not frivolous in nature.

40. In HCJR Case No. E087 of 2021, AAR Insurance vs Public Procurement Administrative Review Board, Secretary IEBC and Zamara Risk and Insurance brokers Limited Interested Parties (unreported), Ngaah J aptly summed up the rationale for the requirement for leave where he stated;

“I must reiterate that judicial review remedies are discretionary and it is partly for this reason that a judicial review court has been clothed with the discretion to interrogate, at a preliminary level, the intended Application for prerogative orders. It is at that stage that, in exercise of its discretion, the review court will weigh between ‘the legitimate requirement of public authorities that they should be free to perform their proper functions on behalf of the public and the corresponding requirement that they should have due regard for the legitimate rights and interests of the individual and groups of individuals. (Emphasis added)’ If upon examination of the material before it, the court is persuaded that a case has been made out that on further interrogation the legitimate rights and interests of the individual or group of individuals may have been abrogated, it will intervene and exercise its discretion in favour of grant of leave to institute a substantive motion for judicial review reliefs. It follows that the Application for leave is not a mere procedural technicality that can be dispensed with at the whims of either the court or an Applicant. It is a material stage in the Application of judicial review orders at which the discretion of this Honourable court is called into question and which, for this very reason, cannot be taken away without an express provision of the law in that regard.”

41. Upon looking at the instant case and without getting into the merits of the case, this court is satisfied that the Applicant has disclosed a prima facie case.

42. The court is cautious not to delve into the parties case lest it jeopardises the cases that they wish to advance in the criminal court should this court ultimately decide that the same should proceed. From the material before the Court this court is satisfied that the Applicant has demonstrated that there are issues that call for a deeper interrogation. This can only be achieved or advanced at the substantive suit phase.

### **Determination;**

43. The Application meets the legal threshold for the grant of the orders sought.

Orders:

1. Leave is hereby granted to the Applicant to file Judicial Review proceedings.
2. The leave so granted shall operate as a stay of proceedings pending the hearing and determination Criminal Case E1107 2023 Republic vs Kelvin Karuga Mwaura.
3. The leave so granted shall prohibit the Respondents from proceeding with the hearing of Criminal Case E1107 2023 Republic vs Kelvin Karuga Mwaura pending in the chief magistrate’s court at Nairobi.
4. This file is marked as closed.
5. The substantive Notice of Motion shall be filed and served within twenty-one (21) days from the date hereof.



6. In the event of failure to file the substantive suit within 21 days then the leave order shall automatically lapse.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25<sup>TH</sup> DAY OF NOVEMBER 2025.**

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**J. CHIGITI (SC)**

**JUDGE**

