



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION- MILIMANI COURT
CRIMINAL MISC APPLICATION NO. E137 OF 2025

ONIANG'O ELIUD AMIMO.....APPLICANT

VERSUS

PROSECUTOR..... 1

RESPONDENT DIRECTOR OF PUBLIC

PROSECUTIONS.....2

RESPONDENT INSPECTOR GENERAL OF POLICE

.....3D RESPONDENT THE HONOURABLE ATTORNEY

GENERAL..... 4TH

RESPONDENT

RULING

NOTICE OF MOTION

1. On 26th May 2025 John Wanjohi Advocate for the Applicant filed Notice of Motion on behalf of the Applicant seeking the following orders.
2. THAT the Application be certified urgent and service thereof be dispensed with in the first instance due to its extreme urgency.
3. THAT the Court be pleased to order stay of the criminal proceedings in **CRIMINAL CASE NO. E134** OF 2025 currently pending before the Milimani Chief Magistrates Court, pending the hearing and determination of **ELC CASE NO. E256 OF 2020** proceedings relating to ownership and/or interests over land parcel known as DAGORETTI/RIRUTA/S.455.
3. THAT the Court be pleased to issue such further and/or other orders as may be deemed just and expedient in the circumstances.
4. THAT costs of the application be provided for.
 - (a) THAT the Applicant is charged in **CRIMINAL CASE NO E/134/2025** at the Milimani Chief Magistrate's Court with offences relating to alleged fraudulent dealings in land parcel known as

DAGORETTI/RIRUTA/5.455, a matter that is also the subject of live and active proceedings before the **ELC CASE NO. E256 OF 2020 Environment and Land Court in ELC NBI**

- (b) That the issues raised in the criminal trial are substantially identical to the matters in controversy before the Environment and Land Court, and the substratum of both proceedings revolves around the question of legal ownership, title, and transfer of title of the suit property.
- (c) That the Applicant maintain that the subject property was legally acquired and possessed with the knowledge and acquiescence of the Complainants, and that no fraudulent acts as alleged were committed.
- (d) The proceeding with the criminal trial while civil proceedings regarding ownership, transfer, and title over the suit land are pending will prejudice the Applicant, expose them to parallel litigation, and risk conflicting findings on issues of fact and law.
- e) That it is in the interest of justice, fairness, and procedural propriety that the criminal trial be held in

abeyance until the Civil Court conclusively determines ownership and the legality of the transaction forming the basis of the charges.

- (f) That the continued prosecution of the Applicant in the absence of a prior judicial pronouncement on the ownership question amounts to an abuse of the court process and offends the right to a fair hearing under Article 50(1) of the Constitution.
- (g) That the Director of Public Prosecutions is constitutionally obligated under Article 157(11) to exercise prosecutorial discretion in a manner that serves public interest and avoids proceedings instituted in bad faith, maliciously, or in disregard of pending civil disputes.
- (h) That no prejudice will be occasioned to the Prosecution or any party if the stay is granted, whereas grave prejudice will be suffered by the Applicant if compelled to undergo a criminal trial whose foundation is yet to be judicially determined in the appropriate forum.

SUPPORTING OF AFFIDAVIT BY ONIANG'O

ELIUD AMIMO

1. THAT the land parcel known as DAGORETTI/RIRUTA/S.455 is the subject of serious and disputed civil claims between the Complainants and I, which is currently pending adjudication before the Environment and Land Court at Nairobi. **(Annexed hereto and marked "OEA-1" is a copy of the Complaint filed in ELC CASE NO, E256 OF 2020.)**

2. THAT he was advised by his Advocates on record that the question in the present criminal charges- namely the ownership, possession, and alleged fraudulent transfer of the suit property- cannot be conclusively determined within the confines of a criminal trial without first resolving the contested propriety claims before the land court. ***(Annexed hereto and marked "OEA-2" is a copy of charge sheet in Criminal Case No. E134 of 2025).***

3. THAT the transfer of the property into their names was carried out legally, transparently, and with the knowledge and tacit consent of the Complainants, contrary to the allegations of fraud. **(Annexed hereto and marked "OEA-3" is a copy of the Sale**

Agreement and land transfer documents relating to
DAGORETTI/RIRUTA/S455)

4. THAT the criminal proceedings have been instituted prematurely with the intent of coercing, embarrassing and silencing him by subjecting him to parallel litigation on the same matter already under judicial inquiry.
5. THAT he was advised by his Advocates that the institution and continuation of the said proceedings offends the letter and spirit of Article 157(11) of the CoK 2010 which prohibits the Director of Public Prosecutions from instituting proceedings aimed at achieving collateral objectives, or driven by improper motives
6. THAT the criminal process is clearly being weaponized to pursue private vendettas, settle personal scores, and malign his reputation under the guise of criminal justice, despite the fact that ownership and legality of title are civil questions that remain unsettled.
7. THAT should this Court allow the criminal proceedings to proceed before resolution of the civil

dispute, it shall cause irreparable prejudice to occasioning a miscarriage of justice, conflicting findings, and the unlawful duplication of judicial effort.

8. THAT unless this Hon. Court intervenes and grants the stay sought, we shall suffer continuous violation of our constitutional rights under Articles 47,48 and 50 of CoK 2010 and the Application herein shall be rendered nugatory, as the harm shall already have been done.
9. THAT he was advised by Advocates on record, which advice he verily believes to be true and sound in law, that it is both judicious and necessary for this Court to grant the orders sought in the application, in order to prevent abuse of process and safeguard the integrity of the judicial system.
10. THAT it is the interests of justice that the present Application be allowed, and the criminal proceedings stayed, to enable the Environment and Land Court to conclusively determine the question of ownership of the suit property.

SUBMISSIONS BY THE APPLICANT

1. The Applicant herein, Oniang'o Eliud Amimo, is an accused person in Criminal **Case No. E134** of 2025 currently pending before the Chief Magistrate's Court in Nairobi. He has been charged with criminal offences allegedly arising from acts related to the ownership and possession of disputed parcel of land L.R. NO. DAGORETTI/RIRUTA/S.455.
2. The same subject matter is actively the subject of litigation in the Environment and Land Court (ELC) Case No. E256 of 2020, where the Applicant, together with two other persons, is contesting ownership and occupation of the same parcel of land. The ELC matter is scheduled for hearing on 8th October 2025.
3. On or about May 2025, the Applicant was arrested and charged following a letter from the Office of the Director of Public Prosecutions recommending the arrest.
4. The Applicant contends that the criminal proceedings are premature, selective, and intended to influence the outcome of the ELC case. He therefore filed the

present application under **Article 165(6) & (7)** of the Constitution seeking an order for a stay of the criminal case pending the full hearing and determination of the land dispute in the ELC.

5. The Respondents filed Grounds of Opposition and written submissions opposing the stay, arguing that the DPP acted independently and that civil proceedings should not bar criminal prosecution under **Section 193A of the Criminal Procedure Code**.
6. The Applicant now responds to the said opposition and urges the Court to exercise its supervisory jurisdiction and grant a stay in the interest of Justice, fairness, and proper administration of judicial processes
7. This application is not an attack on the DPP's independence, nor is it an attempt to subvert justice. It is a constitutional application invoking **Article 165(6) & (7)** of the Constitution to supervise and ensure fairness in the exercise of judicial and prosecutorial power.

GROUNDNS FOR STAY BY THE APPLICANT

8. The ELC Court is seized with the original jurisdiction under **Article 162(2)(b)** of the Constitution and **Section 13 of the ELC Act** to determine disputes relating to land ownership and use
9. The criminal case is based on allegations that cannot be determined independently of the ELC matter. To proceed with the criminal case while the civil dispute is pending amounts to predetermining the land issue by criminal process, which is improper and prejudicial.
10. They rely on **Kuria & 3 others v AG (2002) 2 KLR 69**, which the Respondent also cites, and where the Court held that where the criminal process is being used to settle civil disputes or where it is likely to prejudice the fair trial of a civil matter, the court is entitled to intervene.
11. Under **Article 50 of the Constitution**, the Applicant is entitled to a fair trial. This includes freedom from oppression through improper parallel prosecution.

THE FACTS OF THE CASE SHOW;

12. The DPP issued a letter recommending that three individuals (including the Applicant) be prosecuted in relation to the land dispute.
13. To date, only the Applicant has been charged, while the other two remain free. This selective prosecution points to a targeted and oppressive process, rather than even-handed application of justice.
14. The alleged criminal acts are directly linked to the land in dispute, which is still pending determination before the ELC Court.
15. The Respondents cite this case to suggest civil and criminal matters can run concurrently. That is true but only where there is no abuse, and where both processes serve distinct purposes.
16. However, the same facts disputed ownership of land are now being used to prosecute only one individual, even though the civil court is seized of jurisdiction and the case is active.
17. On **Section 193A of the Criminal Procedure Code**. The criminal proceedings in Criminal **Case No. E134 of 2025** arise from the same set of facts that

are pending determination in **ELC Case No. E256 of 2020**, whose hearing is scheduled for 8th October, 2025;

18. The subject matter of both cases is a land dispute, which falls squarely within the jurisdiction of the Environment and Land Court:
19. The criminal charges were instituted selectively, despite a directive from the DPP recommending prosecution of three individuals, only the Applicant has been charged to date.

RESPONDENTS GROUNDS OF OPPOSITION

1. THAT the application lacks merit and is ill-advised.
2. THAT The 1st Respondent enjoys decisional independence in exercising State powers of prosecution and is therefore not under the control or direction of any person or authority. **Article 157 (10) of the Constitution.**
3. THAT the Applicant has failed to demonstrate any illegality or impropriety in the manner that the 1st Respondent exercised the State powers of

prosecution to warrant the intervention of this le court.

4. THAT the 1st Respondent adhered to the Constitution, the **ODPP Act, CAP 6B, the Decision to Charge Guideline 2019** and related Statutes in exercising the power to institute criminal proceedings.
5. THAT the Applicant will adduce and challenge evidence as provided for in **Article 50 of the Constitution of Kenya** hence the application is premature and without merit.
6. That the application offends the provisions of **Section 193A of the Criminal Procedure Code** which allow for concurrent criminal and civil proceedings.
7. That the applicant has not met the threshold for orders of stay as established in the case of **Kuria & 3 others vs AG (2002) 2LKR 69.**

THE RESPONDENTS' SUBMISSIONS

1. The Respondents submit that the Application herein should not be used to subvert the cause of

justice being sought by the complainant at the lower court that has merit and relies on the case of **Republic vs. Commissioner of Police and Another ex-parte Michael Monari & Another [2012] eKLR**, it was stated as follows:-

"The Police have a duty to investigate 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. The predominant reason for the institution of the criminal case cannot therefore be said to have been the vindication of the criminal justice. 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"

2. That the Applicant has failed to demonstrate how the prosecution in the lower court is faulty and or made in bad faith as enumerated in the case of **Douglas Maina Mwangi vs. KRA & Another**,

Constitutional Petition No. 528 of 2013, the court addressed the issue as follows:

"When dealing with the decision as to whether or not to prosecute, the office of the DPP exercises independent judgement as envisaged under Article 157(1) of the Constitution and Section 3 the DPP Act 2013, and the court cannot interfere unless it shown that the exercise is contrary to the Constitution is bad in faith and wants to an abuse of the process."

2. The court should take note that the Respondents are not a party in the ELC case and it does not have any vested interests on the said property and only acts where a wrong is committed and receives evidence from the Investigative agencies.
3. The Applicant approached this court in the wrong basis of the law that concurrent criminal and civil litigation amounts to double jeopardy.
4. We submit that pendency of civil matters does not in any way bar one from pursuit of criminal, recourse. In **Kuria & 3 Others Vs AG (2002) 2 KLR 69** court emphatically stated thus:-

The normal procedure in the co-existence of civil and criminal proceedings is to stay the civil proceedings pending the determination of the criminal case as the determination of civil rights and obligations are matter the subject of a criminal prosecution A prerogative order should only be granted where there is an abuse of the process of the law, which will have the effect of stopping the prosecution already commenced There should be concrete grounds for supposing that the continued prosecution of criminal case manifests are abuse of the judicial procedure, much that the public interest would be best served by the staying of the prosecution It is not enough to state that because there is an existence of a civil dispute or the more criminal proceedings commenced based on the same set of facts are on abuse of the court process.

There is a need to show how the process of the court is being abused or misused and a need to indicate or show the basis upon which the riches of the Applicant are under serious threat of being undermined by the criminal prosecution in the absence of concrete grounds it is not mechanical enough that the existence of a civil suit

precluded the institution of criminal proceedings based on the same set of facts. The effect of criminal prosecution on an accused person is adverse but so also are their purpose in the society, which are immense... an order of prohibition cannot also be given without any evidence that there is manipulation, abuse or misuse of court process or that there is a danger to the right of the accused person to have a fair trial"

5. Further the law states as follows-

Section 193A of the Criminal Procedure Code as follows:-

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

6. For this Court to issue an order or stay then it should be satisfied that-

- (i) The continuation of the proceedings would constitute an abuse of the process;

- (ii) The resultant trial would be unfair to the accused; and
- (iii) The continuation of the proceedings would tend to undermine the integrity of the criminal justice system.

7. The applicant herein failed to meet the threshold set in the case of **Kuria & 3 Others Vs. AG(supra)** and has wrongly moved the court on the presumption that there cannot be concurrent civil and criminal matters without setting out the prejudice he is to suffer.

ANALYSIS & DETERMINATION

1. The Court considered the Applicant's instant application; Respondent's grounds of opposition and written submissions by parties through Counsel and finds the issue oscillates around stay of Trial Court criminal proceedings pending hearing and determination of Environment and Land Court No E256 of 2020.

2. Kenya Wildlife Service v James Mutembei [2019] KEH10478 (KLR) the Court considered stay of proceedings as follows;

Stay of proceeding should not be confused with stay of execution pending appeal. Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore, the test for stay of proceeding is high and stringent.

3. In the case of Global Tours & Travels Limited; Nairobi HC Winding Up Cause No. 43 of 2000 Ringera J (as he then was) persuasively stated thus;

“As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of Justice the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it

will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously” (emphasis added)

4. To grant stay of proceedings the Court ought to consider the prevailing circumstances of each case. Although, the power of the court to stay proceedings is discretionary; In **Goddy Mwakio & Another vs. Republic (2011] eKLR, the Court of Appeal** stated that:-

“An order for stay of proceedings, particularly stay of criminal proceedings is made sparingly and only in exceptional circumstances.....The order is not given as a matter of course.”

5. In the instant case, the Applicant decries the fact that criminal proceedings are premature and constitute parallel proceedings that may lead to double jeopardy. The applicant submits that there is forum shopping and prosecutorial overreach and proceedings are being used to pursue private vendetta calculated to bring public vilification under guise of criminal justice system contrary to law.

6. The ODPP relies on **Article 157 (1) of Constitution** of its legal mandate and independent decision making to prosecute and **Section 5 of the DPP Act 2013** unless shown by virtue of **Art 157 (11)** the prosecution is an abuse of the Court process. The ODPP also relies on **Section 193A of CPC** that allows parallel civil and criminal proceedings.
7. Under the **Constitution; Article 48 & 22**; each party /person enjoys right to access to justice; pursue claim or right under the justice system and each party is accorded fair hearing as prescribed by **Article 50 CoK 2010**. The matter must have been reported by a Claimant to the Law enforcement institution and investigations commenced culminating to prosecution by ODPP as per the law.
8. This Court is not privy to facts/evidence pertaining to the subject matter of Criminal and Civil proceedings but notes that the Constitution and Legislative enactments bestow legal mandate (power) to Legal institutions and arms of Government on how to conduct their mandate. Therefore, within the Judiciary the Environment & Land Court has exclusive

jurisdiction under **Article 162 2 (b) of the Constitution** to hear and determine matters related to environment and the use and occupation of and title to land. The jurisdiction is amplified by **Section 13 of ELC Act.**

9. Similarly, the **ODPP under Article 157 (6) of the Constitution** has jurisdiction legal mandate to institute, undertake, take over, continue and withdraw criminal proceedings.
10. The DCI through National Police Service **Article 243 244 & 245 (4) of the Constitution** are mandated to investigate offences and enforce the law.
11. The Courts and judicial authority are prescribed **Chapter 10 of the Constitution** particularly **Article 159 of the Constitution.**
12. All these legal institutions carry/ought to carry out their respective functions independently without fear or favor. Therefore, the proper forum to ventilate any misgivings, agenda vendetta is before Trial Court and ELC which can interrogate the allegations and reach conclusive findings on the matter. This Court cannot

as it is not the Trial Court receive evidence or facts to confirm or deny the allegations.

DISPOSITION

- 1. In short, this Court cannot grant stay of proceedings unless any of those proceedings; it is shown not be in compliance with the law and more particularly in an appeal or revision of order finding or sentence.**
- 2. Parties through respective Counsel are at liberty in the spirit of material disclosure to inform each of the Courts of the other related matter proceeding over the subject-matter and each Court will be better placed to determine the way forward.**

**RULING DELIVERED DATED & SIGNED IN OPEN
COURT IN CRIMINAL DIVISION MILIMANI ON
9/12/2025 VIRTUALLY /PHYSICALLY.**

**M.W.MUIGAI
JUDGE**

ORIGINAL