

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

JUDICIAL REVIEW APPLICATION NO. 399 OF 2025

ELIZABETH WAMBUI NDUN’GU.....
APPLICANT

-VERSUS-

DIRECTOR OF CRIMINAL INVESTIGATION.....1ST
RESPONDENT

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTION.....2ND
RESPONDENT

ATTORNEY GENERAL.....3RD RESPONDENT

RULING

1. The chamber summons dated 10th December, 2025 is brought under certificate of urgency. I have perused the application, the grounds and statutory statement together with the verifying affidavit and annexures thereto. I certify it as urgent.
2. On whether the court should grant leave to apply and ex parte, **Order 53 Rule 1(2) of the Civil Procedure Rules** provides that the chamber summons for leave shall be made ex-parte in chambers before a judge. However, under **Order 53 Rule 1(4) of the Civil procedure Rules**, where

the court is of the view that the matter ought to be considered inter partes, it may direct the applicant to serve the respondents and interested parties to appear for inter partes consideration of the application for leave and for stay.

3. In the instant matter, the applicant seeks the following orders:

I.

2. THAT this Honorable Court be pleased to grant leave to the Applicant to apply for orders of Prohibition, restraining the 1st and 2nd Respondents (DCI & ODPP) from investigating, arresting, charging, or prosecuting the Applicant personally in relation to any cheques issued. by Vema & BJJ Traders Limited, including but not limited to the cheque deposited by Huge Share Ltd, and any other similar corporate transaction.

3 THAT pending the hearing and determination of the substantive application, an interim order be issued prohibiting the 1st and 2nd Respondents from arresting, detaining, or prosecuting the Applicant personally for any bounced cheques or corporate obligations of Vema & BJJ Traders Limited.

4. THAT leave be granted to operate as stay of the decision of the Respondents to charge the Applicant.

5. THAT the costs of this application be awarded to the Applicant.

4. The application is based on the grounds set out in the statutory statement and verifying affidavit of ELIZABETH WAMBUI NDUNG'U. the applicant who claims that she is the director of Vema & BJJ Traders Limited which is undergoing insolvency proceedings as shown by the copy of petition annexed and dated 1st December, 2025.

5. That the DCI is undertaking investigations into a bounced cheque issued to one of the creditors, which investigations will make other listed creditors to bank the cheques issued to them and which will bounce as well, thereby prejudicing the applicant and the ongoing insolvency proceedings, among other grounds.
6. At this stage for leave, the applicant is only expected to demonstrated an arguable case, which need not necessarily be a meritorious case.
7. In other words, unless the case as presented is demonstrably frivolous or hopeless and or where the court is deprived of jurisdiction to entertain the claim or that a claim is statute barred, the court should not decline to grant leave upon which the main issues will be canvassed in the substantive motion. In this case, without delving into the merits of the intended motion, and in order to accord the applicant an opportunity to be heard, I grant leave to the applicant to file judicial review application in terms of prayer 2 of the chamber summons dated 10th December, 2025. The main motion to be filed and served within 21 days of today.
8. On whether the leave so granted should operate as stay, prohibiting the 1st and 2nd Respondents from arresting, detaining, or prosecuting the Applicant personally for any bounced cheques or corporate obligations of Vema & BJJ Traders Limited; and that leave be granted to operate as stay of the decision

of the Respondents to charge the Applicant, I have carefully considered the prayer for prohibition and stay of any intended criminal process and i am not satisfied that the applicant shall suffer any prejudice if the DCI executes its statutory mandate of investigating alleged criminal offences, arising from cheques allegedly issued to persons, when or with full knowledge that there are no funds in the bank accounts for clearing those cheques. .

9. Insolvency proceedings may have been initiated by the applicant herein as petitioner but that does not absolve her absolutely from, being culpable, as director of the company from being investigated for possible criminality.
10. I decline to grant the prohibition or stay sought.
11. The substantive motion once filed, the hearing shall be fast tracked by this court.
12. The main motion shall be filed in a fresh substantive file.
13. This file is closed.
14. I so order.

Dated, Signed and Delivered at Nairobi this 11th Day of December, 2025

**R.E. ABURILI
JUDGE**