



**Republic v National Police Service & another; Dhanjal & another (Interested Parties) (Miscellaneous Judicial Review E024 of 2025) [2026] KEHC 1083 (KLR) (2 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1083 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
MISCELLANEOUS JUDICIAL REVIEW E024 OF 2025**

**G MUTAI, J**

**FEBRUARY 2, 2026**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE NATIONAL POLICE SERVICE ..... 1<sup>ST</sup> RESPONDENT**

**THE DIRECTOR OF PUBLIC PROSECUTIONS ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**DALJIT SINGH DHANJAL ..... INTERESTED PARTY**

**NIRMAL SINGH DHANJAL ..... INTERESTED PARTY**

**RULING**

1. Before the court is a notice of motion application dated 27th January 2026. The application is brought under Section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules. In the main, the applicant, Joginder Singh Dhanjal, seeks a review of the orders that Ngaah, J., made on 25th November 2025, discharging the interim stay orders in respect of Mombasa Chief Magistrate’s Court Criminal Case No. E1174 of 2025; Republic v Joginder Singh Dhanjal.
2. Counsel for the 1st interested party filed a preliminary objection challenging this court’s jurisdiction to hear the impugned review application. The preliminary objection raises 5 grounds. These are that the court lacks jurisdiction to review a decision made by a court with equal jurisdiction, that if this court were to do so, it would be sitting in appeal from the orders of another court of equal jurisdiction, that this court cannot supervise another court with equal jurisdiction and that to do so would violate judicial comity and certainty, that the learned judge’s discharge of the orders was based



- on the applicant's conduct in failing to attend court, and that this court has no jurisdiction to revisit the same, and that review may be considered and determined only by the court that made the decision.
3. The preliminary objection was supported by the oral submissions of the counsel for the 2nd interested party and the 2nd respondent.
  4. The applicant's counsel, Ms Akedi and Mr Wamotsa, opposed the preliminary objection. They contended that the orders sought to be reviewed were made by the judicial review court and that this court, that is to say, this particular judge, could review the decision made on 25th November 2025. They contended that the application has merit, as the applicant and his counsel provided an explanation for the failure to attend court. In the applicant's case, it is stated that he was away for treatment. Counsel submitted that if the application was not heard and determined promptly, the applicant would suffer extreme prejudice, as he would be compelled to enter a plea on 3rd February 2026, the day after the date of this ruling. They contended that if a plea were entered, the application would become academic.
  5. Section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules provide that an application for review ought to be made to the court that made the impugned decision.
  6. The 11<sup>th</sup> edition of the Black's Law Dictionary defines a court to include the following:  
“  
“3. A tribunal constituted to administer justice; especially a government body organized for public administration of justice at the time and place proscribed by law; usually consisting of one or more judges who sit to adjudicate disputes...  
4 the judge or judges who sit on such a tribunal. “
  7. My understanding, therefore, is that the court, as used in section 80 of the *Civil Procedure Act*, refers to the judge who made the decision, in this case, Ngaah, J. The application dated 27th January 2026 is not predicated on the discovery of new or important evidence or on the existence of a clerical or arithmetical error. Under Order 45, rule 2(1) of the Civil Procedure Rules, such an application ought to be canvassed before the judge who made the decision, unless that judge is no longer attached to the station.
  8. There is no doubt that Ngaah, J, is still attached to the Mombasa High Court and that he is still the presiding judge. He is absent on leave and will resume his sitting on 10<sup>th</sup> March 2026.
  9. Order 45 rule 2 (3) of the Civil Procedure Rules states that:  
“If the judge who passed the decree or made the order is still attached to the court but is precluded by absence or other cause for a period of 3 months next after the application for review is lodged, the application may be heard by such other judge as the Chief Justice may designate.”
  10. Three months have not lapsed since the impugned decision was made. This court has not been appointed by the Chief Justice to hear the review application. Given the contested nature of the matter, only the judge who discharged the orders should consider the review application. I agree with the interested parties' and the respondent's submissions that it would be improper for this particular judge to hear and determine the application dated 27th January 2026.



11. Although it has been stated that the applicant will suffer prejudice if the plea taking is allowed to proceed, I do not think that justifies what might amount to judicial overreach or the assumption of jurisdiction by craft.
12. That being the case, I uphold the preliminary objection. I am unable to consider the application dated 27th January 2026 on the merits. The application must await the judge's return. Under those circumstances, I order that the application dated 27th January 2026 be mentioned before Ngaah J on 24th March 2026 for directions on its disposal.
13. It is so ordered.

**DATED AND SIGNED IN MOMBASA, THIS 2<sup>ND</sup> DAY OF FEBRUARY, 2026. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.**

**GREGORY MUTAI**

**JUDGE**

In the presence of: -

Mr Wamotsa for the Applicant;

Mrs Otieno, holding brief for Dr Aoko, for the 2<sup>nd</sup> Interested Party;

Mrs Otieno, holding brief for Ms Wanjiku, for the 1<sup>st</sup> Interested Party;

Ms Mbevi for the 2<sup>nd</sup> Respondent; and

Ms Bancy – Court Assistant.

