

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW DIVISION
MISC.APPLICATION NO. E047 OF 2025

GEORGINA KAMENE NGUTHU EXPARTE APPLICANT

-VERSUS-

**THE DIRECTORATE OF CRIMINAL INVESTIGATIONS
..... 1ST RESPONDENT**

DIRECTOR OF PUBLIC PROSECUTIONS 2ND RESPONDENT

RULING

1. Through the application dated 17th April,2025 the applicant is seeking;

1) ...spent.

2) ...spent

3) An ORDER that the Applicant be granted leave to file a Judicial Review Application seeking for;

a) An ORDER OF CERTIORARI removing to this Honourable Court for purposes of quashing in its entirety, the decision of the Directorate of criminal Investigations in arresting and detaining the ex-parte applicant on 22nd April 2025.

b) An ORDER OF PROHIBITION restraining the 2nd Respondent from undertaking any steps in charging the

ex-parte applicant with the offense of obtaining money by false pretences.

c) A DECLARATION that the ex-parte applicant is no longer a director of MIROCI<MAN COMPANY LIMITED and that she is not aware of the operations of the aforementioned company.

d) Any other appropriate relief which the Honourable Court deems fit and just in the circumstances.

4) An ORDER that leave do operate as stay prohibiting the 1st and 2nd Respondent whether by themselves, their agents, or anybody acting on their behalf from arresting, detaining or charging the Ex-parte Applicant pending the hearing and determination of this application inter-parties.

5) The costs of this Application be provided for.

The Applicant's Case:

2. According to the applicant she is no longer the director of the company that the complainant has issues with.
3. She argues that she as demonstrates through the CR 12 of 3rd Respondent that she is not a director.
4. She is no longer signatory to the account since the year 2021. According to her, the decision to charge her is ill informed.
5. She argues that the intention behind charging her is driven by the motive to compel and assert pressure on the her to pay the debt.

The Respondent's Case;

6. The second respondent opposes the application through the Ground of opposition dated 7th May, 2025. It is its case that there is no decision to charge the applicant that has been arrived at by the second respondent and the investigation are ongoing.
7. It is the respondent case that investigations are yet to be completed and the applicant cannot stop the investigations from going on. It is a respondent case that in the circumstance the order so cannot be issued.
8. It is the 2nd Respondent's case that the fact that the complainant lodged a complaint of fraud cannot form the basis for court to stop the investigations from going on.
9. Reliance is placed in the case of **Republic -Versus- County Government of Kiambu Exparte Robert Gakuru & Another (2016) eKLR** where Justice G.V. Odunga quoted the Halsbury's Laws of England 4th Edn.Vol.1(1) para 12-page 270 which state;

“The remedies of quashing orders (formerly known as orders of certiorari), prohibition orders (formerly known as orders of prohibition), mandatory orders (formerly known as orders of mandamus) ...are all discretionary. The court has a wide discretion whether to grant relief at all and if so what form of relief to grant. In deciding whether to grant relief the court will take into account the conduct of the party applying, and consider whether it has not been such as to disentitle him to relief.....”

Analysis and determination:

Upon, looking at the application and their responses the court is of the opinion that the following other issues for determination;

- 1) Whether they orders so can be granted.
- 2) Who shall be at the cost.

Whether they orders so can be granted.

- 10.** In order for the court to grant the order for leave to initiate Judicial Review proceedings, the Applicant has to satisfy the court that its case is not frivolous vexatious or one that amounts to an abuse of the court.
- 11.** The court has looked at the application and noted that the applicant is seeking for orders of leave to initiate Judicial Review proceeding to quash the decision to charge her. However, the court notes that the applicant has not annexed the decision to charge in her application.
- 12.** The respondent informed the court that the decision to charge has not been arrived at. It is clear from the that indeed all that has happened is that the applicant has been summoned to go to the police station.
- 13.** Before investigations can be completed an accused person or a suspect, is supposed to be given an opportunity to present their case at the police station.
- 14.** A decision to charge an accused person cannot be made by the 2nd Respondent without the investigations being completed.

15. What this means is that the applicant is actually standing in the way of the completion of the investigations and she cannot have her cake and eat it.
16. She must allow the investigation to be completed so that the decision to charge her can be made.
17. The decision to charge an accused person is provided in Form 1 of the Office of The Director of Prosecution Act. The applicant has not furnished the court with that.
18. The applicant has put the cart before the horse. She is caught up by the doctrine of ripeness.
19. The best that the applicant can do is to assist the police to complete the investigations so that the 2nd Respondent can make an informed decision on whether or not to charge her.
20. The applicant has not made out a prima facie case that fits into the principles enunciated in the case of **Republic v County Council of Kwale & Another Ex Parte Kondo & 57 Others, Mombasa HCMCA No. 384 of 1996** it was held as follows:

“The purpose of application for leave to apply for judicial review is firstly to eliminate at an early stage any applications for judicial review which are either frivolous, vexatious or hopeless and secondly to ensure that the Applicant is only allowed to proceed to substantive hearing if the Court is satisfied that there is a case fit for further consideration. The requirement that leave must be obtained before making an

application for judicial review is designed to prevent the time of the court being wasted by busy bodies with misguided or trivial complaints or administrative error, and to remove the uncertainty in which public officers and authorities might be left as to whether they could safely proceed with administrative action while proceedings for judicial review of it were actually pending even though misconceived...Leave may only be granted therefore if on the material available the court is of the view, without going into the matter in depth, that there is an arguable case for granting the relief claimed by the Applicant the test being whether there is a case fit for further investigation at a full inter partes hearing of the substantive application for judicial review. It is an exercise of the court's discretion but as always it has to be exercised judicially”.

- 21.** Consequently, the court finds that the prayer for an ORDER that leave do operate as stay prohibiting the 1st and 2nd Respondent whether by themselves, their agents, or anybody acting on their behalf from arresting, detaining or charging the Ex-parte Applicant pending the hearing and determination of this application inter-parties cannot be granted given that the leave application has not been granted.

Cost;

- 22.** Costs will always follow the event in the case. This code finds that the applicant is going to shoulder the cost of the application.

Disposition;

23. The application has no merit.

Order;

The application is dismissed with cost.

Dated, signed and delivered at Nairobi this 19th day of February, 2026.

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**J. M. CHIGITI (SC)
JUDGE**