

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ELC JUDICIAL REVIEW APPLICATION NO. E060 OF 2025**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO**  
**APPLY FOR JUDICIAL REVIEW ORDERS OF CERTIORARI**

**BETWEEN**

**DAVIS NATHAN CHELOGOI .....**

**APPLICANT**

**VERSUS**

**OFFICE OF THE DIRECTOR OF**  
**PUBLIC PROSECUTIONS ..... 1<sup>ST</sup>**

**RESPONDENT**

**DIRECTOR OF CRIMINAL**  
**INVESTIGATIONS ..... 2<sup>ND</sup>**

**RESPONDENT**

**AND**

**ASHOK RUPSHI SHAH ..... 1<sup>ST</sup> INTERESTED**  
**PARTY**

**HITENKUMAR AMRITLAL RAJA ..... 2<sup>ND</sup> INTERESTED**  
**PARTY**

**JUDGMENT**

1. Vide a Chamber Summons dated 1<sup>st</sup> August, 2025, the Ex-parte Applicant seeks the following reliefs:

- i. That leave is granted to the Ex-parte Applicant to apply for orders of Certiorari and Prohibition as set out in the Statement of Facts accompanying this application for leave to wit:***

- a. An Order of Certiorari to bring into this Honourable Court and quash the decision of the 1<sup>st</sup> Respondent as contained in the Letter REF ODPP/HQ/CAM/13/1771 dated 24<sup>th</sup> July 2025 authorising and directing the 2<sup>nd</sup> Respondent to arrest, charge and or institute criminal proceedings against any person including the Applicant and his employees found in occupation of the all that parcel of land known as LR 18485 IR 232908 or LR 18485 IR 64011 Loresho Lower Kabete Nairobi with the offense of Forcible Detainer contrary to Section 91 of the Penal Code and Trespass with intent to commit an offence contrary to Section 51 of the Trespass Act;**
- b. An Order of Prohibition directed at the 1<sup>st</sup> Respondent or through officers' subordinate to him, prohibiting him from charging, instituting criminal proceedings or carrying out any further criminal proceedings of the Applicant his employees, representatives or assigns in occupation of all that parcel of land known LR 18485 IR 232908 or LR 18485 IR 64011 Loresho Lower Kabete Nairobi on the basis of the impugned decision of the 1<sup>st</sup> Respondent in the letter Letter REF ODPP/HQ/CAM/13/1771 dated 24<sup>th</sup> July 2025;**

- c. An Order of Prohibition directed at the 2<sup>nd</sup> Respondent or through officers' subordinate to him, prohibiting him from effecting any eviction of the Applicant his employees, representatives or assigns in occupation of all that parcel of land known LR 18485 IR 232908 or LR 18485 IR 64011 Loresho Lower Kabete Nairobi on the basis of the impugned decision of the 1<sup>st</sup> Respondent in the letter Letter REF ODPP/HQ/CAM/13/1771 dated 24<sup>th</sup> July 2025;***
- ii. That the leave granted shall operate as a stay of the 1<sup>st</sup> Respondent's decision as contained in the Letter REF ODPP/HQ/CAM/13/1771 dated 24<sup>th</sup> July 2025 directing the 2<sup>nd</sup> Respondent to arrest, charge, institute criminal proceedings and evict against any person including the Applicant and his employees found in occupation of the all that parcel of land known as LR 18485 IR 232908 or LR 18485 IR 64011 Loresho Lower Kabete Nairobi with the offense of Forcible Detainer contrary to section 91 of the Penal Code and Trespass with intent to commit an offence contrary to section 51 of the Trespass Act.***
- iii. That the costs of the application for leave and stay shall abide the final determination of the application for judicial review.***

2. The Summons is premised on the grounds set out therein, the statutory statement and, on the facts, deponed to in the verifying affidavit of the Ex-parte Applicant, Davis Nathan Chelogoi (*hereinafter Applicant*), who deponed that he is the registered proprietor of all that parcel of land known as L.R. No. 18485 (IR 232908), also referred to as Nairobi Block 80/44-72, situated along Lower Kabete Road, Nairobi.
3. He states that sometime in 2023, the Interested Party filed an application in **Milimani ELC No. 312 of 2009 - Ashok Rupshi Shah & Another v Jacob Juma & 3 Others**, seeking his eviction from the suit property on the basis of an alleged competing title, namely L.R. No. 18485 IR 64011 and that the application was dismissed on 22<sup>nd</sup> April 2024, thereby allowing him to remain in occupation and possession of the property, a decision which, he avers, has neither been appealed nor reviewed.
4. The Applicant deposed that on the same date, 22<sup>nd</sup> April 2024, the Environment and Land Court in **ELC No. E070 of 2023 Davis Nathan Chelogoi v Ashok Rupshi Shah & 3 Others** issued status quo orders directing, *inter-alia*, that he remains in occupation of the suit property pending determination of the suit and that he does not undertake logging, construction or destructive activities and that the 3<sup>rd</sup> and 4<sup>th</sup> Defendants were restrained from altering land records relating to L.R. No. 18485 IR 64011 or IR 232908.

5. In issuing the said order, it was deposed, the court was cognizant of the fact that it was undisputed as between the parties that he had been in continued occupation and possession of the suit land for over 28 years and was as at 22<sup>nd</sup> April, 2024 still in possession.
6. He explains that the Interested Party subsequently lodged an appeal, **Civil Application No. 207 of 2024- Ashok Rupshi Shah & Another v Davis Nathan Chelogoi & 3 Others**, in which the Court of Appeal stayed the status quo orders pending appeal but did not issue any eviction orders against him. In his view, both the Environment and Land Court and the Court of Appeal affirmed his continued occupation of the suit property.
7. The Applicant further avers that he maintains employees on the property, namely, Jared Bitoyo, Martin Komol, Alex Chepkombe, Sabironke, Justine Otomwa, Caleb Kipsang and Arymad and that on 31<sup>st</sup> July 2025, at about 4:00 a.m, he received a call from one of them, Martin Komol, informing him that officers from the Nairobi Area Regional Criminal Investigation Office had entered the property and arrested him.
8. Upon visiting the site, he deposed, he learned that the 2<sup>nd</sup> Respondent was acting on a directive contained in a letter dated 24<sup>th</sup> July 2025 (Ref. ODPP/HQ/CAM/13/1771), instructing that all persons in occupation of the land be charged with forcible detainer contrary to **Section 91** of the **Penal Code** and trespass with intent to commit an offence contrary to **Section 51** of the **Trespass Act**.

9. He asserts that in issuing the impugned directive, the 1<sup>st</sup> Respondent failed to consider the rulings delivered on 22<sup>nd</sup> April 2024 in both **ELC No. 312 of 2009** and **ELC No. E070 of 2023**, which permitted him to remain in occupation, and further disregarded the fact that the Court of Appeal had not issued any eviction orders despite staying the status quo orders.
10. He contends that the 2<sup>nd</sup> Respondent conducted investigations based solely on the Interested Party's account, without summoning him or affording him an opportunity to present his own version or documentary evidence.
11. According to the Applicant, the directive to arrest and prosecute persons occupying the property was *ultra vires*, irrational and unreasonable, and amounted to an indirect eviction without a court order. He contends that the Respondents acted in disregard of binding court decisions and in breach of natural justice and procedural fairness, rendering the decision *Wednesbury* unreasonable.
12. He further maintains that, absent the court's intervention, he and his employees risk unlawful removal from the suit property through the misuse of criminal proceedings despite there being no lawful eviction order.
13. The 1<sup>st</sup> Respondent filed grounds of opposition dated 4<sup>th</sup> October 2025, contending, *inter alia*, that the Applicant has not satisfied the legal threshold for the grant of the reliefs sought. It was asserted that the Applicant lacks

locus standi to seek leave, as he is not the subject of the impugned decision contained in the letter Ref. ODPP/HQ/CAM/13/1771, and therefore has no sufficient interest capable of grounding the present proceedings.

- 14.** Further, that the Applicant has not provided any factual nor legal basis for the issuance of any conservatory orders against, nor for the stay of, the impugned decision; and that the application is founded on illegally obtained evidence whose authenticity and source the Applicant cannot and has not vouched for, and can therefore not be sustained on the said basis.
- 15.** It was urged that the decision to charge the suspects was the result of an independent review of the resultant inquiry file from the investigations by the 2<sup>nd</sup> Respondent, which review was guided by, and undertaken in accordance with, the Constitution, the relevant statutes and the Office of the Director of Public Prosecutions (ODPP) Decision to Charge Guidelines, 2019, and was therefore neither ultra vires, irrational, unreasonable, nor in any way unfair as alleged by the ex parte Applicant.
- 16.** He explained that criminal prosecutions, where merited as in the instant case, are at the core of rule of law and governance and should not be whimsically halted at the instigation of the suspects of crime, who would otherwise have an opportunity to defend themselves before the trial court.

- 17.** The 1<sup>st</sup> Respondent contends that the application is founded on a misapprehension of the law, arguing that the existence of parallel civil proceedings does not bar the institution of criminal charges and that the present application is calculated to derail or delay the intended prosecution, and is therefore vexatious, frivolous and an abuse of the court process.
- 18.** According to the 1<sup>st</sup> Respondent, the matters raised involve contested factual issues which are more appropriately tested and determined before the trial court rather than through judicial review proceedings.
- 19.** Additionally, the 1<sup>st</sup> Respondent denied that any directive was issued to evict the Applicant or any other person, terming such allegations a misrepresentation of fact. It was argued that entertaining the application would amount to unjustified interference with the constitutional and statutory mandates of the investigative and prosecutorial authorities, and would improperly encroach upon the jurisdiction of the subordinate court seized of the intended criminal proceedings.
- 20.** In response to the Motion, the 2<sup>nd</sup> Respondent, through Detective Sergeant Nicolaus Osuri Otieno, No. 80936 stationed at the Directorate of Criminal Investigations (DCI) Headquarters, swore a replying affidavit dated 6<sup>th</sup> October 2025.
- 21.** He deponed that he is one of the investigating officers handling the subject matter, and therefore competent to

respond to the issues raised. He explained that the functions of the 2<sup>nd</sup> Respondent under **Section 35** of the **National Police Service Act**, includes the collection and provision of criminal intelligence; investigation of serious crimes; maintenance of law and order; detection and prevention of crime; apprehension of offenders; maintenance of criminal records; and conduct of forensic analysis.

22. He added that the 2<sup>nd</sup> Respondent is mandated to execute directions issued by the Director of Public Prosecutions pursuant to **Article 157(4)** of the **Constitution**, coordinate Interpol affairs, investigate matters referred by the Independent Police Oversight Authority, and perform any other functions conferred by written law.
23. He stated that at the onset, the Applicant has failed to disclose that he had previously attempted to obtain similar court orders in **Miscellaneous Criminal Application No. E479 of 2023** and **Miscellaneous Criminal Application No. E007 of 2023**, which orders were not granted and is as such abusing court process.
24. He explained that the 2<sup>nd</sup> Respondent has been conducting investigations into the authenticity of the Applicant's title to L.R. No. 18485 (I.R. No. 232908), and that preliminary findings indicate that the title was allegedly fraudulently obtained, there being another title over the same parcel registered in the names of the Interested Parties., and that as a result of those investigations, the Applicant was charged in **Milimani Criminal Case No. E1137 of 2023**

**-Republic vs Davis Nathan Chelogoi & Andrew Aseri Kirungu.**

- 25.** The deponent further stated that the said criminal proceedings are already underway and that a total of nineteen prosecution witnesses, drawn from current and former officials of the State Department for Lands and Physical Planning, including officers from Surveys of Kenya, the Director of Land Administration, and the Chief Land Registrar's office have testified.
- 26.** He averred that the decision to charge the Applicant was grounded on evidence gathered during investigations, including findings that the Applicant's letter of allotment was forged.
- 27.** It was deposed that according to the investigations, the allotment required acceptance and payment within thirty days, yet registration was purportedly procured nearly twenty-five years later despite official records showing that the land had already been registered in favour of Liney Company Limited and was therefore unavailable for allocation.
- 28.** It was also noted that the correspondence reference appearing on the allotment related to an unrelated planning file titled "Proposed Lions Club International Office Plot," and that the Applicant purported to accept the allocation through a letter dated 13<sup>th</sup> February 1992, almost three years before the alleged allocation.

29. Further, that the court in **Nairobi ELC No. 312 of 2009 - Ashok Rupshi Shah & Hitenkumar Amritlal Raja v Jacob Juma & Others** vide the judgment of 28<sup>th</sup> July 2022; and decree of 17<sup>th</sup> January 2023, alongside a State Department of Lands decision dated 10<sup>th</sup> August 2023 have all determined that the 1<sup>st</sup> Interested Party is the legitimate owner of the suit property.
30. The deponent maintained that the Applicant lacks locus standi to challenge the ODPP letter dated 24<sup>th</sup> July 2025 because the impugned decision concerned prosecution of his employee, Martin Kipng'ania Komol, vide the Charge Sheet in **Milimani Criminal Case No. E402 of 2025** and the Applicant is neither an accused nor a suspect in DCI Inquiry File No. 113/2025.
31. He further deponed that the Applicant failed to disclose the existence of **Constitutional Petition No. E155 of 2024**, which raises similar issues, and contended that the Applicant lacks authority to litigate on behalf of his employees in the absence of proper mandate.
32. On the advice of Counsel, he asserted that the present application does not meet the requisite legal threshold, maintaining that the Respondents were acting strictly within their constitutional and statutory mandates. He characterised the summons as mala fides, particularly in light of prior judicial determinations on ownership of the suit property and the advanced stage of the ongoing criminal proceedings.

- 33.** Opposing the summons, the 1<sup>st</sup> Interested Party, Mr. Ashok Rupshi Shah, swore a replying affidavit on 6<sup>th</sup> October, 2025. He deponed that he and the 2<sup>nd</sup> Interested Party are the bona fide legal and registered proprietors of the property known as L.R. No. 18485 I.R 64011 or L.R. No. 18485 I.R 232908 (now Nairobi Block 80/44-72).
- 34.** He further deposed, on advice of Counsel, that the application has been filed in the wrong forum as it challenges a prosecutorial decision to charge, a matter falling within the jurisdiction of the High Court rather than this court exercising jurisdiction under **Article 162(2)** of the **Constitution**.
- 35.** According to him, **Section 13** of the **Environment and Land Court Act** does not confer jurisdiction upon this court to interrogate decisions to institute criminal proceedings; that the Applicant has not been arrested or charged with the offences of forcible detainer or trespass, as he was not present on the suit property when the alleged trespassers were arrested, and that the impugned ODPP letter would not apply to the Applicant unless he intended to trespass or interfere with the lawful owners' enjoyment of the property.
- 36.** He added, again on advice of Counsel, that there is no vicarious liability for the offence of trespass under the Trespass Act, the Act applying only to the individuals alleged to have committed the offence. In his view, it is therefore absurd for the Applicant to seek to quash a decision to prosecute individuals who had invaded the

property without licence, arguing that the Director of Public Prosecutions was acting within constitutional mandate under **Article 157(6)**.

- 37.** Mr Shah maintained that the Applicant has no legal or beneficial interest in the suit property and faces no real danger of arrest or prosecution; that the judgment delivered on 28<sup>th</sup> July, 2022 in **Milimani ELC No. 312 of 2009**, declared him and the 2<sup>nd</sup> Interested Party, the bona fide legal owners of the suit property and that although the Applicant was later joined in those proceedings and sought to set aside the judgment, that application was dismissed.
- 38.** It was deposed by the Interested Party that the Applicant filed a separate suit in **ELC E070 of 2023**, in which orders were granted placing him in possession, but that the Court of Appeal, by a ruling dated 11<sup>th</sup> October 2024 in **Civil Application No. E207 of 2024**, intervened and stayed the aforesaid ruling.
- 39.** The deponent maintained that the Applicant has no legal or beneficial right to remain on the property and has made several attempts through multiple applications in **ELC No. 312 of 2009** to circumvent the Court of Appeal's ruling by seeking reinstatement on the land.
- 40.** He further deposed that the Applicant had previously been charged in 2023 with several offences, including conspiracy to defraud, forcible detainer, forgery, uttering a forged document, obtaining registration of land by pretence and abuse of office and that any further charges

would only arise if the Applicant unlawfully trespassed onto the property.

- 41.** He made reference to the ODPP's letter, which stated that "unidentified persons" had invaded the suit property, and asserted that the decision to prosecute such individuals was necessary to deter unlawful occupation and to safeguard the Interested Parties' proprietary interests. The 1<sup>st</sup> Interested Party denied that the impugned letter was being used as an eviction order, terming that allegation false and misleading.
- 42.** According to him, the directive was not intended to effect removal from the land but rather to protect property rights guaranteed under **Article 40** of the **Constitution**. Consequently, he urged the court to dismiss the motion terming it as yet another attempt to deprive him and the 2<sup>nd</sup> Interested Party of their constitutional right to property.
- 43.** Mr Chelogoi, the Ex parte Applicant, filed a further affidavit dated 22<sup>nd</sup> October 2025 in which he contested the Respondents' and the 1<sup>st</sup> Interested Party's assertion that this court lacks jurisdiction, describing that position as misconceived, legally untenable and bad in law.
- 44.** He maintained that this court is properly vested with jurisdiction to grant the reliefs sought, including orders of certiorari, particularly where the impugned decisions of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents relate directly to matters of land and environment and allegedly constitute an abuse of the court process.

45. He stated that on 31<sup>st</sup> July 2025, the 2<sup>nd</sup> Respondent, acting on the directions in the impugned letter, conducted a raid on the suit property resembling a commando-style operation during which several of his workers who were lawfully on the premises were arrested.
46. It is clear, he maintained, that the 1<sup>st</sup> Respondent has been used as a ruse to invoke the criminal justice system in order to circumvent the jurisdiction of the Environment and Land Court, which is already seized of the dispute and is actively determining the authenticity of two competing titles held by the Interested Party and himself and in an attempt to evict him.
47. He reaffirmed that he is the registered owner of L.R. No. 18485 (I.R. 232908) and has been in continuous and uninterrupted possession and occupation of the property since 1995, enjoying quiet and exclusive use. He stated that the suit property is subject to competing claims, with two parallel titles in existence: L.R. No. 18485 (I.R. 232908) registered in his name, and L.R. No. 18485 (I.R. 64011) registered in the name of the Interested Party.
48. He explained that while the dispute over the property was on-going in the ELC and Court of Appeal, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, in December 2023 instituted criminal proceedings against him in **Milimani Criminal Case No. E1137 of 2023 -Republic vs Davis Nathan Chelogoi & Andrew Aseri Kirungu**, alleging that he had fraudulently procured title to the suit property. He reiterated that no court has issued eviction orders against him.

- 49.** The Applicant deponed that he has been advised by his advocates that judicial review concerns the decision-making process rather than merits, and that the court will consider whether the decision-maker acted within jurisdiction, whether persons affected were afforded a fair hearing, and whether relevant factors were considered and irrelevant ones ignored.
- 50.** He concluded that the decision of 24<sup>th</sup> July 2025 was ultra vires, violated natural justice, and misused the criminal justice system to determine issues of occupation and title pending before the ELC and the Court of Appeal, and that without the court's intervention, he faced imminent prejudice through unlawful dispossession.

### **Submissions**

- 51.** The Applicant filed written submissions dated 25<sup>th</sup> October 2025. Counsel argued that this court is vested with jurisdiction under **Article 162(2)(b)** of the **Constitution** and **Section 13(2)** of the **Environment and Land Court Act** to grant the reliefs sought. In particular, reference was made to ***Magon & Another v Office of the Director of Public Prosecutions & 2 Others (Judicial Review 1 of 2023) [2024] KEELC 6498 (KLR)***.
- 52.** Counsel submitted that the parties have been in a long-standing ownership dispute over L.R. No. 18485 I.R. 64011 / L.R. No. 18485 I.R. 232908 in Loresho, Nairobi, where parallel titles exist, one in the name of the Applicant and the other in the name of the Interested Party and that the

dispute is pending before several fora, including **ELC Case No. E070 of 2023, ELC Case No. 312 of 2009, Civil Appeal No. 700 of 2024**, and is also connected to **Milimani Criminal Case No. E1137 of 2023**.

53. Counsel submitted that the ruling delivered on 22<sup>nd</sup> April 2024 in **Ashok Rupshi Shah & Another vs Jacob Juma & 3 Others, Nairobi ELC No. 312 of 2009** dismissed an eviction application and recognised the Applicant as being in occupation, holding that it would be unjust to evict a party who had not been heard in separate proceedings and that the ruling, which remains unchallenged, conferred sufficient interest upon the Applicant to challenge the letter dated 24<sup>th</sup> July 2025 directing the arrest of persons occupying the land.
54. Counsel argued that the directive directly affects occupation and therefore falls within this court's supervisory jurisdiction over decisions impacting land use and possession.
55. On the threshold for leave, Counsel relied on ***Republic vs Kenya Revenue Authority Commissioner Ex Parte Keycorp Reals Advisory Limited [2019] eKLR***, which cited ***Meixner & Another vs Attorney General [2005] KLR 189***, for the proposition that an applicant must demonstrate sufficient interest, an arguable case with a reasonable chance of success, and that the impugned decision arises from a public law function.

- 56.** It was urged that the applicable threshold for grant of leave had been satisfied, Counsel maintaining that the Office of the Director of Public Prosecutions, as a public body exercising statutory authority, is amenable to judicial review where its decisions allegedly impact proprietary interests in land.
- 57.** It was submitted that the Applicant has locus standi, having been in lawful occupation and possession pursuant to subsisting court rulings at the time the impugned directive was issued and that the prejudice crystallised on 31<sup>st</sup> July 2025 when officers of the 2<sup>nd</sup> Respondent conducted a raid on the suit property and arrested persons present, including the Applicant's employees.
- 58.** On whether an arguable case exists, Counsel argued that the impugned decision was ultra vires, irrational and in breach of natural justice. Finally, Counsel submitted that the Investigation Report in Inquiry File No. 133 of 2025 dated 15<sup>th</sup> July 2025 demonstrated that the impugned decision was made without affording the Applicant an opportunity to be heard, despite the Respondents being aware of ongoing litigation.
- 59.** The directive, it was submitted, sanctioned mass arrests amounting to a de facto eviction and represented a misuse of the criminal justice process to achieve removal from the land, thereby circumventing the proper adjudicative role of the Environment and Land Court.

- 60.** The 1<sup>st</sup> Respondent filed submissions dated 11<sup>th</sup> November 2025. Counsel asserted that the Applicant lacks sufficient interest, as the impugned decision concerns unnamed suspects found in occupation of the property and not the Applicant personally.
- 61.** Counsel argued that although **Article 258** of the **Constitution** permits institution of proceedings in certain instances, the Applicant has not demonstrated that he is acting in the public interest or in a representative capacity. Reliance was placed on *Mumo Matemu vs Trusted Society of Human Rights Alliance & 5 Others (Civil Appeal No. 290 of 2012) [2013] KECA 445 (KLR)*, where the Court of Appeal cautioned against proceedings brought for personal or collateral purposes under the guise of public interest litigation.
- 62.** Counsel further submitted that the existence of parallel land disputes before the Environment and Land Court and the Court of Appeal as referenced does not bar criminal proceedings. Invoking **Section 193A** of the **Criminal Procedure Code**, Counsel maintained that civil litigation cannot be used as a shield against prosecution.
- 63.** The 1<sup>st</sup> Respondent also challenged the admissibility of the impugned letter, arguing that the Applicant failed to disclose its source and relied on material allegedly obtained unlawfully. Counsel cited **Order 19 rule 3** of the **Civil Procedure Rules**, **Section 8** of the **Access to Information Act** and **Article 50(4)** of the **Constitution**, submitting that illegally obtained evidence is inadmissible.

64. Reliance was placed on the case of **Njonjo Mue & Another vs Chairperson of Independent Electoral and Boundaries Commission & 3 Others (Presidential Election Petition 4 of 2017) [2017] KESC 45 (KLR)** and **Okiya Omtatah Okoiti & 2 Others vs Attorney General & 4 Others (Civil Appeal 13 of 2015) [2020]eKLR.**
65. It was further argued that the application rests on controverted facts, particularly the allegation that the ODPP directed eviction, which the 1<sup>st</sup> Respondent denies. Counsel submitted that judicial review is not suited to resolving disputed factual issues and relied on **Praxidis Namoni Saisi & 7 Others vs Director of Public Prosecutions (Petition Nos. 39 & 40 of 2019) [2023] KESC 6 (KLR)**, where the Supreme Court warned against converting judicial review into a merits-based inquiry or appellate process.
66. Finally, Counsel maintained that the threshold for leave had not been met, submitting that prohibition cannot issue to restrain acts already undertaken and that the decision to charge falls within the constitutional mandate of the Director of Public Prosecutions under **Article 157(6)**. Reliance was placed on **Benson Khwatenge Wafula vs Director of Public Prosecutions & 3 Others (SC Petition E045 of 2024) [2025] KESC 46 (KLR).**
67. The 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties filed written submissions dated 24<sup>th</sup> November 2025. Counsel submitted that the

present application seeks to quash a decision made pursuant to **Article 157(6)** of the **Constitution** and **Section 5 of the Office of the Director of Public Prosecutions Act** and therefore falls outside the jurisdiction of this court under **Article 162(2)(b)** of the **Constitution** and **Section 13** of the **Environment and Land Court Act**.

68. Reliance was placed on *Karisa Chengo & 2 Others vs Republic [2015] KECA 756 (KLR)* and *Republic v Chengo & 2 Others (Petition No. 5 of 2015) [2017] KESC 15 (KLR)*, where the superior courts emphasised that specialised courts cannot assume jurisdiction reserved to the High Court in criminal matters.
69. Counsel also cited *Muchanga Investments Ltd vs Habenga Holdings Ltd & 12 Others [2015] KESC 8045*, submitting that courts ought not to delve into the merits of ongoing criminal processes.
70. On locus standi, Counsel submitted that the Applicant is not an aggrieved party under **Section 7** of the **Fair Administrative Action Act** because he was neither investigated, arrested nor charged pursuant to the impugned decision; that the Applicant is improperly litigating on behalf of another person capable of acting in his own name. Reliance in this regard was placed on *Mureithi & 2 Others (for Mbari ya Murathimi Clan) vs Attorney General & 5 Others, Nairobi HCMCA No. 158 of 2005 [2006] 1 KLR 443.*

71. On the threshold for leave, Counsel submitted that the Applicant has not demonstrated an arguable case fit for further investigation. Reliance was placed on **Republic vs County Council of Kwale & Another; Kondo & 57 Others (Ex parte) (Miscellaneous Civil Application No. 384 of 1996) [1998] KEHC 2 (KLR)**, which cited **R vs Inland Revenue Commissioners ex parte National Federation of Self-Employed and Small Businesses Ltd [1982] AC** 617, for the principle that leave is intended to filter out frivolous or hopeless claims.
72. Counsel argued that implementation of the impugned decision has already occurred and that the individual concerned has been charged, rendering the prayers for stay or prohibition overtaken by events.

### **Analysis and Determination**

73. Having considered the summons, responses and submissions, the issues that arise for determination are:
- i. *Whether this court has jurisdiction to entertain the summons?*
  - ii. *Whether the Applicant has the requisite locus to institute these proceedings?*
  - iii. *Whether the present summons constitutes an abuse of the process of the court?*
  - iv. *Whether this court should grant the applicant leave to file for judicial review orders? And if so?*
  - v. *Whether leave should operate as stay?*

74. The Applicant has approached this court primarily seeking leave to institute judicial review proceedings against the Respondents to bring into the court and quash the 1<sup>st</sup> Respondents' decision vide the letter of 24<sup>th</sup> July, 2025 directed at the 2<sup>nd</sup> Respondent to charge persons in occupation of L.R 18485 IR 64011 or L.R 18485 L.R 232908 with the offences of forcible detainer contrary to **Section 91** of the **Penal Code** and trespass with the intent to commit a crime and for the leave to act as stay.

75. The Respondents, supported by the Interested Parties assert that this court does not have jurisdiction to grant the relief sought. This will be the court's first port of call. It is trite that jurisdiction is everything. Indeed, as aptly captured in the locus classicus case of *Owners of Motor Vessel 'Lillian S' vs Caltex Oil (Kenya) Limited [1989] KLR 1:*

*“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”*

76. The Supreme Court in *In the Matter of the Interim Independent Electoral Commission (Constitutional Application No. 2 of 2011) [2011] KESC 1 (KLR)* reaffirmed that jurisdiction is strictly derived from the

Constitution, statute and binding precedent, and cannot be assumed by judicial interpretation. Citing **Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Limited [1989] KLR 1**, the court emphasised that jurisdiction must be determined at the earliest opportunity because, without it, a court lacks power to take any further step.

77. The broad jurisdiction of this court is donated by **Article 162(2)** of the **Constitution of Kenya** which provides that:

***“Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to- (b) the environment and the use and occupation of, and title to, land...”***

78. Pursuant to the constitutional mandate above Parliament enacted the Environment and Land Court Act, No 19 of 2011. At **Section 13(2)**, the Act provides that:

***“In exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the Court shall have power to hear and determine disputes— (a)relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;(b)relating to compulsory acquisition of land (c)relating to land administration and management;(d)relating to public, private and community land and contracts, choses in action or other***

***instruments granting any enforceable interests in land; and (e)any other dispute relating to environment and land.”***

- 79.** This court is also empowered to determine claims alleging the denial, violation, or threat to the constitutional right to a clean and healthy environment under **Articles 42, 69, and 70** of the **Constitution**. In addition, the court has the mandate to exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the court.
- 80.** In **Republic vs Chengo & 2 Others (Petition No. 5 of 2015) [2017] KESC 15 (KLR) (26 May 2017)**, the Supreme Court affirmed that the Environment and Land Court (ELC), Employment and Labour Relations Court (ELRC) and the High Court are courts of equal status but distinct jurisdiction.
- 81.** The court explained that **Article 162** of the **Constitution** created specialised superior courts to promote expertise, and none of these courts has supervisory authority over the others. Although they share equal hierarchical rank, each exercises a *sui generis* mandate defined by the Constitution and statute, meaning that the High Court cannot determine matters reserved for the ELC or ELRC, and likewise the specialised courts cannot assume jurisdiction reserved for the High Court.

- 82.** As aforesaid, the Applicant has approached this court in its judicial review jurisdiction, seeking leave to commence proceedings for orders of certiorari and prohibition against the decision contained in the letter Ref. ODPP/HQ/CAM/13/1771 dated 24<sup>th</sup> July 2025.
- 83.** The objection taken by the Respondents and the Interested Party is that, because the impugned decision concerns the institution of criminal proceedings, the matter falls exclusively within the province of the High Court and is therefore outside this court's mandate.
- 84.** Having keenly considered the matter, this court is not persuaded that jurisdiction is ousted merely because the impugned administrative action is anchored in the criminal justice system. Jurisdiction is determined by the "predominant issue" presented for adjudication, and by the substance of the dispute rather than the form in which relief is framed.
- 85.** Here, the impugned directive is expressly tied to occupation of, and presence upon, the suit property-L.R. No. 18485 I.R. 64011 / L.R. No. 18485 I.R. 232908 and its implementation is alleged to result in the removal of persons from the land.
- 86.** In that sense, the decision complained of is not presented as a mere prosecutorial choice in the abstract, but as an administrative act said to bear directly upon the use, occupation and possessory enjoyment of land which is itself, and admittedly so, the subject of pending

proceedings before the Environment and Land Court and the Court of Appeal.

- 87.** This position finds persuasive support in **Okwaro vs Directorate of Criminal Investigations; Odero (Sued as the Chairman Kenya Secondary Schools Heads Association) (Interested Party) (Environment and Land Miscellaneous Application E038 of 2022) [2023] KEELC 398 (KLR) (2 February 2023) (Ruling)**, where the ELC found it had requisite jurisdiction to entertain a judicial review plea of prohibition to set aside a decision to institute criminal proceedings where the impugned criminal process was closely intertwined with competing claims to land and allegations of misuse of prosecutorial power in a pending land dispute.
- 88.** The court emphasised that the existence of criminal elements does not, without more, divest the ELC of jurisdiction where the predominant issue concerns occupation, ownership or possessory rights over land.
- 89.** The second issue to determine is whether the Applicant has the requisite *locus* to institute these proceedings? The Respondents and Interested Parties contend that the Applicant lacks *locus standi* on the basis that the impugned decision contained in the letter dated 24<sup>th</sup> July 2025 was directed at unidentified persons and, in particular, at one Martin Komol who has since been charged.

90. It is their position that the Applicant was neither investigated nor charged pursuant to the said directive and is therefore improperly litigating on behalf of third parties capable of pursuing their own remedies.
91. Locus standi, as defined in **Black's Law Dictionary**, refers to "the right to bring an action or to be heard in a given forum." The Court of Appeal in **Alfred Njau & Others vs City Council of Nairobi (1982) KAR 229** stated that to lack locus standi is to lack the right to appear or be heard, while in **Law Society of Kenya vs Commissioner of Lands & 2 Others [2001] KEHC 831 (KLR)** the court underscored that standing depends on demonstration of sufficient interest and legal capacity to invoke the court's jurisdiction. *Locus standi* is therefore a threshold issue going to the competence of a party to move the court.
92. Applying these principles to the present matter, the court notes from the material on record that the Applicant asserts continued occupation and possession of L.R. No. 18485 (I.R. 232908) / L.R. No. 18485 (I.R. 64011), and contends that the impugned directive directly precipitated arrests on the suit property and threatens his possessory rights pending determination of competing claims before this court and the Court of Appeal.
93. The Respondents contend that the impugned directive was not addressed to the Applicant personally. It is undisputed that the individual so far arrested pursuant to that directive is the Applicant's alleged employee.

- 94.** The impugned letter by the Director of Public Prosecutions dated 24<sup>th</sup> July, 2025 directed the Director of Criminal Investigations to apprehend and charge unidentified persons currently inhabiting and or occupying the subject parcel for the offence of forcible detainer and trespass.
- 95.** Although the Applicant is laying claim to the suit property in the ELC and the Court of Applicant, he has not placed before the court any evidence to show that he was actually inhabiting the suit land as at the time the impugned letter was authored. Indeed, the letter by the DPP did not refer specific persons that were supposed to be charged, least of all the Applicant.
- 96.** That being the case, I agree with the Respondents and the Interested Parties that the Applicant was neither investigated nor charged pursuant to the said directive of the DPP and is therefore improperly litigating on behalf of third parties capable of pursuing their own remedies.
- 97.** Consequently, this court is satisfied that the Applicant has not established a sufficient nexus between himself and the impugned administrative action of the DPP to justify the invocation of this court's jurisdiction at the leave stage. The objection on *locus standi* is therefore sustained.
- 98.** The third issue is whether the present summons constitute an abuse of court process. The Respondents and Interested Parties have alleged that the present Summons constitutes an abuse of the process of the court citing numerous matters seeking similar reliefs.

- 99.** In addressing that question, the court is guided by the principles articulated by the Court of Appeal in **Leitich vs Mwangi (Civil Appeal (Application) E147 of 2023) [2025] KECA 1279 (KLR)**, where abuse of process was described, with reference to **Black's Law Dictionary, 10<sup>th</sup> Edition**, as a departure from the proper, fair and reasonable use of the court's machinery.
- 100.** The Court of Appeal emphasised that abuse arises where judicial processes are invoked improperly or dishonestly, not for the genuine pursuit of justice but in a manner that causes prejudice to the opposing party or undermines the administration of justice.
- 101.** In **Patrick Macharia Nderitu vs Director of Public Prosecutions & 2 Others; Dovey Pharma Limited (Interested Party) [2020] eKLR**, the High Court identified a non-exhaustive list of situations that may amount to abuse of process, including multiplicity of suits on the same subject matter between the same parties, forum shopping, filing parallel proceedings seeking substantially similar relief, or re-litigating issues that have already been determined.
- 102.** The import of these authorities is that abuse of process is not established merely because a dispute gives rise to several proceedings across different fora. Rather, the court must interrogate whether the impugned process is duplicative, oppressive or calculated to achieve an ulterior advantage by misusing judicial procedures.

- 103.**Applying the foregoing principles to the present case, the court notes that the Respondents relied on the existence of **Misc Criminal Application No. E471 of 2023, Misc Criminal Application No. E007 of 2023, and Constitutional Petition No. E155 of 2024** to contend that the Applicant has engaged in multiplicity of proceedings seeking reliefs similar to what is sought here.
- 104.**However, upon careful scrutiny of the record, it is evident that those matters were directed at earlier criminal processes, particularly **Chief Magistrates Criminal Case No. E1137 of 2023-Republic v Davis Nathan Chelogoi & Another.**
- 105.**The summons presently before this court is anchored on the Director of Public Prosecutions' decision contained in the letter dated 24<sup>th</sup> July 2025, which is a subsequent administrative action alleged to have precipitated arrests on 31<sup>st</sup> July 2025 and to bear directly upon the Applicant's occupation and possession of the suit property.
- 106.**In those circumstances, the plea that the present summons constitutes an abuse on account of the previous aforementioned decisions is found to be unmerited.
- 107.**Although I have already found that the Applicant does not have the locus standi, for completeness, I will determine the issue of whether this court should grant the Applicant leave to file for the judicial review orders of certiorari and prohibition against the impugned decision contained in the letter of the DPP dated 24<sup>th</sup> July 2025.

- 108.** The application has been brought pursuant to the Law Reform Act and **Order 53 Rules 1(1) and (2)** of the **Civil Procedure Rules**, which require an applicant to obtain leave before commencing proceedings for prerogative orders.
- 109.** It is, however, necessary to situate that procedural requirement within the broader constitutional context. As the Supreme Court observed in *Dande & 3 Others v Inspector General, National Police Service & 5 Others [2023] KESC 40 (KLR)*, the entrenchment of judicial review under the Constitution of Kenya, 2010 transformed it from a purely common-law administrative remedy into a substantive constitutional right.
- 110.** Judicial review may therefore be pursued either through the traditional common-law framework or as a constitutional claim anchored in the Bill of Rights and the Fair Administrative Action Act.
- 111.** The Supreme Court further clarified that this constitutional evolution has resulted in a dual procedural pathway to judicial review, the applicable route being determined by the pleadings and procedure adopted at the commencement of proceedings. Indeed, had the matter been framed purely as a constitutional claim, leave would not have been necessary, as affirmed in *National Social Security Fund vs Sokomania Ltd & Another [2021]eKLR*.

- 112.** Having elected to proceed under **Order 53**, the Applicant is consequently bound by the procedural discipline attendant to that route, including the mandatory leave requirement. The court must therefore confine itself, at this preliminary stage, to the well-settled principles governing the grant of leave in judicial review proceedings under the common-law framework.
- 113.** Discussing the rationale and pre-requisites at the leave stage, Waki J. (as he then was) in **Republic v County Council of Kwale & Another ex parte Kondo & 57 Others (Mombasa HCMCA No. 384 of 1996)**, explained that the requirement for leave serves as a preliminary filter intended to eliminate frivolous, vexatious or hopeless claims at an early stage.
- 114.** In so doing, the court does not undertake an exhaustive interrogation of the merits but merely satisfies itself, on the material presented, that the applicant has disclosed an arguable case fit for further investigation at a substantive inter partes hearing.
- 115.** Leave therefore functions as a discretionary safeguard to protect judicial time and shield public authorities from misconceived challenges, and must always be exercised judicially.
- 116.** Similarly, in **Republic vs Kenya Revenue Authority Commissioner ex parte Keycorp Real Advisory Limited [2019] eKLR**, the court restated the core considerations at the leave stage. These include whether

the applicant demonstrates sufficient interest or locus standi; whether the impugned decision affects the applicant; whether an arguable case with a reasonable chance of success has been disclosed; whether the dispute raises a public law question grounded in the exercise of statutory or public power; and whether the decision under challenge emanates from a public body or authority exercising a public function.

**117.** The present summons seeks leave to challenge, by way of judicial review, the ODPP's letter Ref. ODPP/HQ/CAM/13/1771 dated 24<sup>th</sup> July 2025, which directed the arrest and prosecution of persons occupying the suit property. The reliefs sought are therefore directed at a decision of a public authority and arise squarely within the sphere of public law.

**118.** Although the court has already found under Issue Number 2 that the Applicant has demonstrated sufficient interest by virtue of the existing cases in the ELC and the Court of Appeal, the person who was found on the suit property and charged is his alleged employee and not himself.

**119.** The implementation of the letter by the DPP crystallised on 31<sup>st</sup> July 2025 when the Applicant's alleged employee was arrested on the land for forcible detainer and trespass. However, the said alleged employee has not challenged the decision of the DPP, neither has he been joined in these proceedings to explain the circumstances under which he was arrested.

**120.** The non - joinder of the person allegedly directly affected by the impugned decision of the DPP, which the Applicant is seeking to quash is fatal.

**121.** Although the Applicant contends that the directive by the DPP was issued and acted upon without due regard to the subsisting court processes and without affording him an opportunity to be heard or to present his documentation prior to the prosecutorial decision, there is no evidence to show that the decision of the DPP was to affect him directly, and secondly, that there is an existing court order by the ELC or the Court of Appeal barring the DCI from effecting the DPP's directive in view of the Court of Appeal directions staying the order of status quo that was issued by the ELC.

**122.** It is trite that Civil and Criminal matters can be prosecuted concurrently. Notwithstanding the pendency of the civil matters, and on the grounds enumerated above, it is the finding of the court that the Applicant has not shown an arguable case with a reasonable chance of success to grant him leave to commence judicial review proceedings under **Order 53 of the Civil Procedure Rules**.

**123.** For those reasons, the Chamber Summons application dated 1<sup>st</sup> August, 2025 is dismissed with costs.

**Dated, signed and delivered virtually in Nairobi this 5<sup>th</sup> day of March, 2026.**

**O. A. Angote**  
**Judge**

**In the presence of:**

Mr. Gachau for Mr. Mwangi for the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties

Ms Kioko for Mr. Assa for the Ex parte Applicant

Court Assistant: Tracy

ORIGINAL