Republic v Equity Bank Kenya Limited; Okoiti (Ex parte Applicant) (Judicial Review Application E016 of 2026) [2026] KEHC 2371 (KLR) (Judicial Review) (2 March 2026) (Ruling)

Neutral citation: [2026] KEHC 2371 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

JUDICIAL REVIEW

JUDICIAL REVIEW APPLICATION E016 OF 2026

RE ABURILI, J

MARCH 2, 2026

BETWEEN

REPUBLIC ..... APPLICANT

AND

EQUITY BANK KENYA LIMITED ..... RESPONDENT

AND

PAUL MAKOKHA OKOITI ..... EX PARTE APPLICANT

RULING

1. The chamber summons dated 21st January 2026 is supported by the statutory statement and affidavit sworn by the applicant herein Pau Makokha Okoiti on the even date. The applicant seeks leave of this Court to apply for judicial review remedy of mandamus to compel the respondent Bank to give to the exparte applicant a certified copy of a cheque of Kshs 355,000 the property of Equity Bank Kenya that the applicant attempted to steal on the 1st day of December, 2011 at Equity Bank Harambee Avenue Branch Nairobi that was deposited into the Business Account No. 12502974298 at Equity Bank Kenya.

2. The applicant also prays for leave to apply for mandamus to compel the Respondent Bank to give to the applicant a certified copy of the deposit slip that deposited Barclays Bank of Kenya Ltd Cheque No. 101361 of Kshs 355,000 into the Business Account No. 12502974298 at Equity Bank Kenya and that cots be in the cause.

3. The application is predicated on the grounds that without this information, the applicant is unable to act in any way, in which his arrest and prosecution by the defendant in court was executed; that some

decisions injurious to the applicant were never brought to his attention; that the law must be followed to the letter and documents that were used to arrest the applicant and prosecute him cannot be denied.

4. The application is further supported by an affidavit sworn by the applicant on 21st January 2026 and a statutory statement. He annexes to his affidavit copies of the cheque in issue, the charge sheet and notice issued to the respondent demanding for the said cheque, he claims that his right under Article 35 of *the Constitution* to access information is guaranteed and that unless the orders sought are granted, he will lose justice and be prejudiced since his arrest was unlawful while the respondent has nothing to lose.

5. The application was not respondent to by the respondent despite service upon it as evidenced by the receiving stamp on 23rd January 2026 as per the affidavit of service of Julius Musomba sworn on 27th January 2026.

6. The applicant made brief oral submissions on 17/2/2026 in support of his application stating that the criminal case was withdrawn from court.

Analysis and determination

7. I have considered the application as filed and argued in brief and the issue for determination is whether the applicant has made out a prima facie arguable case to warrant a grant of leave to apply for substantive mandamus orders.

8. The threshold for the grant of leave was pronounced by the Court of Appeal in Mirugi Kariuki v Attorney General Civil Appeal No. 70 of 1991 [1990-1994] EA 156; [1992] KLR 8 as follows:

> " It is wrong in law for the Court to attempt an assessment of the sufficiency of an applicant's interests without regard to the matter of his complaint. If he fails to show, when he applies for leave, a prima facie case, on reasonable grounds for believing that there has been a failure of public duty, the Court would be in error if it granted leave. The curb represented by the need for the applicant to show, when he seeks leave to apply, that he has a case, is an essential protection against abuse of the legal process. It enables the Court to prevent abuse by busybodies, cranks and other mischief-makers... In this appeal, the issue is whether the appellant in his application for leave to apply for orders of certiorari and mandamus demonstrated to the High Court a prima facie case for the grant of those orders. Clearly, once breach of the rules of natural justice was alleged, the exercise of discretion by the Attorney General under section 11(1) of the Act was brought into question. Without a rebuttal to these allegations, the appellant certainly disclosed a prima facie case. For that, he should have been granted leave to apply for the orders sought."

9. The purpose of seeking leave therefore is to determine whether there is prima facie case that would warrant the hearing of the judicial review application to determine whether the orders sought should be granted.

10. Other parameters for grant of leave include, whether the court has jurisdiction to hear and determine the intended application, in the case of mandamus, whether there is a public duty imposed by statute or common law to compel a public body or official to perform a duty that they have refused or failed to perform. The applicant must also demonstrate that he has a substantial or sufficient legal Interest or locus standi in the demand for performance of that public duty. Additionally, the application for leave must typically be made promptly meaning, the applicant should not be guilty of unreasonable delay or laches.

11. Further, the purpose of the leave stage is to prevent the time of the court from being wasted by busybodies or by those seeking to delay administrative action.

12. Finally, the court, must have jurisdiction to entertain the substantive motion as intended. Under this rubric, the *Fair Administrative Action Act* at section 9, though not couched in absolute terms, mandates that internal review or appeal mechanisms provided for in law before approaching the Court through judicial review and therefore the court may decline jurisdiction to entertain judicial review proceedings unless it is satisfied and on application for exemption, that there is no other alternative or adequate remedy available to the applicant.

13. What is not part of the yardstick for leave is that at the leave stage, the court is not concerned with the final merits of the decision, but rather with the process leading to it, save where the applicant claims violation of constitutional rights. However, where the court finds at the leave stage that it would be an academic exercise to grant leave, there being no arguable case, for reasons of mootness, laches, non-exhaustion of alternative dispute resolution mechanisms, lack of jurisdiction and or lack of locus standi and in the case of mandamus, that no public or statutory duty exists to warrant grant of leave to apply, the court will not grant leave.

14. In this case, the applicant claims that in 2011, he was jointly charged with others with the offences of forgery of a document namely,a Barclays Bank Leaf No. 10361, stealing a Barclays Bank Leaf No. 10361 valued at Kshs 100 the property of Muraya and Wachira Advocates and attempted stealing of Kshs 355,000 the property of Equity Bank Limited. This is evidenced from the charge sheet annexed to the affidavit in support of the application for leave.

15. In his submission, he asserts that the charges were withdrawn against him hence the case did not proceed to merit hearing.

16. On 8th December, 2025, the applicant wrote to the Managing Director, Equity Bank Kenya demanding for release to him of a certified copy of deposit slip that deposited the above-named cheque and his demand was pursuant to Article 35 of *the Constitution* and *Access to Information Act*.

17. From 2/12/2011 when the criminal charges were instituted against the applicant herein, to 8th December, 2025 when he was demanding for certified copies of the cheque leaf and the deposit slip, is nearly 13 years.

18. The question is whether that claim would be sustainable in law and whether any public duty existed on the respondent to keep the cheque leaf and deposit slip and to avail it to the applicant as demanded.

19. Article 35 of *the Constitution* guarantees every citizen the right to access information held by the state and information held by another person and required for the exercise of or protection of any right or fundamental freedom. This Article is replicated in section 4 of the *Access to Information Act*.

20. On the other hand, the Commission on Administrative Action Act is empowered by the Act to oversight and enforce the Act.

21. Under section 14 of the *Access to Information Act* on review of decisions, by the Commission, it provides that:

    1. Subject to subsection (2), an applicant may apply in writing to the Commission requesting a review of any of the following decisions of a public entity or private body in relation to a request for access to information—

        (a) a) a decision refusing to grant access to the information applied for;

(b) a decision granting access to information in edited form;

(c) a decision purporting to grant access, but not actually granting the access in accordance with an application;

(d) a decision to defer providing the access to information;

(e) a decision relating to imposition of a fee or the amount of the fee;

(f) a decision relating to the remission of a prescribed application fee;

(g) decision to grant access to information only to a specified person; or

(h) decision refusing to correct, update or annotate a record of personal information in accordance with an application made under section 13.

(2) An application under subsection (1) shall be made within thirty days, or such further period as the Commission may allow, from the day on which the decision is notified to the applicant.

(3) The Commission may, on its own initiative or upon request by any person, review a decision by a public entity refusing to publish information that it is required to publish under this Act.

(4) The procedure for submitting a request for a review by the Commission shall be the same as the procedure for lodging complaints with the Commission stipulated under section 22 of this Act or as prescribed by the Commission.

22. Sections 8 and 9 of the *Access to Information Act* set out a very detailed mechanism for making a written request to the relevant public entity, the timelines within which the request is to be processed and the procedure to be followed in the event of refusal. Section 23 (3) further vests jurisdiction in the High Court in an appellate capacity where a person is aggrieved by a decision of the Commission on Administrative Justice regarding access to information.

23. Under the aforesaid provisions, a person seeking information must make a formal request to the relevant public entity or private body; await a response within the statutory timeline, ordinarily 21 days; where dissatisfied, lodge a complaint with the Commission on Administrative Justice, which Commission is vested with investigative and enforcement powers, including the power to order disclosure of information.

24. Section 22 of the *Access to Information Act* provides for the procedure of inquiring into complaints lodged with the Commission while section 23 provides for powers of the Commission which include:

23. Powers of the Commission

(1) In the performance of its functions under this Act, the Commission shall have the power to—

(a) issue summonses or other orders requiring the attendance of any person before the Commission and the production of any document or record relevant to any investigation by the Commission;

(b) question any person in respect of any subject matter under investigation before the Commission; and

(c) require any person to disclose any information within such person's knowledge relevant to any investigation by the Commission.

(2) The Commission may, if satisfied that there has been an infringement of the provisions of this Act, order—

(a) the release of any information withheld unlawfully;

(b) a recommendation for the payment of compensation; or

(c) any other lawful remedy or redress.

25. From the above provisions, any person seeking to access information from an entity must first apply in writing and seek for that information from the concerned entity, upon which the entity shall provide the information required unless exempted under the Act. Where the entity refuses to give the information, an aggrieved party may seek for review of the decision to decline access, to the Commission.

26. It is important to note that a decision refusing to grant access and a failure to make a decision to grant or not to grant is one and the same, under the *Fair Administrative Action Act* for reasons that section 2 of the *Fair Administrative Action Act* defines failure as follows:

> " failure", in relation to the taking of a decision, includes a refusal to take the decision."

27. In the instant case, the information sought is supply of a certified copy of a cheque leaf and a deposit slip for the year 2011, allegedly banked at the respondent's bank and which were subject of a criminal case instituted in court against the applicant and 2 others for forgery, stealing and attempted stealing.

28. The applicant wrote to the bank seeking to be supplied with the stated documents which were subject of the criminal proceedings and there seem to be no answer from the respondent. There is no evidence that the applicant wrote to the Commission on Administrative Justice, which is empowered under *Access to Information Act*, to enforce provisions of the Act and therefore the Right to accessing information.

29. Additionally, the respondent not being a state entity, the applicant has to demonstrate that the information sought is for exercise or enforcement of his rights or fundamental freedoms. There is nothing on record to show which rights or fundamental freedoms the applicant wants to exercise or enforce using the deposit slip and cheque leaf deposited in the respondent BANK, nearly 13 years later.

30. In the Edwin Dande case, SC. Petition No. 6 (E007) of 2022 Consolidated with Petitions No. 4(E005) & 8 (E010) of 2022, in the judgment rendered on 16th Day of June 2023, the Supreme Court had this to say in resolving the issue of access to information:

> " (116) In the instant case, we are concerned about the information held by a private body-BAAM-and which the appellants seek allegedly for the protection of rights enshrined under *the Constitution*. In that context, we must note that under Article 35(1) (b) of *the Constitution*, the right to access to information is not unlimited because a requester must, as a prerequisite, establish that he or she wishes to exercise or protect a right and that access to the record is required in order to exercise or protect that right.
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> (117) This was the position taken by the court in Rev. Timothy Njoya v. Attorney General & Another [2014] eKLR where the learned judge stated as follows:
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> "While it is crystal clear to me that one would enforce the provisions of
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> Article 35(1] (b] where such information is required for the exercise or

protection of a fundamental right and freedom, in the present Petition, the Petitioner has not stated what fundamental right or freedom he intends to protect or exercise were he to be given the information he is seeking."

(118) Further, in M&G Media Ltd and Others v 2010 FIFA World Cup Organising Committee South Africa Ltd and Another 2011 (5) SA 163 (GSJ) the South Gauteng High Court observed as follows:

"[145] Following the dualistic scheme in s. 32(1)(a) and (b) of *the Constitution*, PAIA provides that if access is sought to a record held by a public body, access must be provided as a matter of right, unless a valid ground of refusal is advanced.

(146) By contrast, if access is sought to a record held by a private body, the requester must establish that he or she requires access to the record in order to exercise or protect a right. Once this has been shown, the requester has a right of access to the records, which may be defeated by a valid ground of refusal."

31. Additionally, any suit for malicious prosecution or false imprisonment or even defamation of character that the applicant may have intended to institute against his accusers is already statute barred and therefore the applicant herein will be acting in vain.

32. More importantly, is the question of whether, nearly 13 years after the fact, the respondent Bank is expected to be keeping custody of the said documents.

33. The respondent is a private entity, a Limited Liability Company and regulated by Central Bank of Kenya, and is governed by other Financial Laws among them, Proceeds of Crime and Money Laundering Act (POCAMLA).

34. Regulation 42 of the Proceeds of Crime and Money Laundering Act Regulations, 2023 provides for record keeping and the period within which a bank may keep records for customers. This regulation is applicable to all banking institutions and the Central Bank, from time to rime, issues circulars to Financial Institutions reminding them of their statutory obligations under the provisions of POCAMLA and Regulations made thereunder. Regulation 42 stipulates as follows:

42. Record keeping

(1) A reporting institution shall ensure that it maintains and keeps records of all transaction, both domestic and international, for a minimum period of seven years from the date the relevant business or transaction was completed or following the termination of an account or business relationship.

(2) A reporting institution shall ensure that it keeps all records obtained through customer due diligence measures such as copies or records of official documents like passports, identification cards or similar documents, account files and business correspondence including the results of any analysis undertaken such as inquiries to establish the background and purpose of complex, unusual, large transactions for the period specified in subregulation (1).

(3) Where the transaction involves a negotiable instrument other than currency, the name of the drawer of the instrument, the name of the institution on which it was drawn, the name of the payee if any, the amount and date of the instrument, the number if any of the instrument and details of any endorsements appearing on the instrument shall be retained.

(4) The record keeping requirements under these Regulations are made without prejudice to any other records required to be kept by or under any other written law.

(5) A reporting institution shall ensure that all customer due diligence information and transaction records under the Act and these regulations shall, as and when required be made available swiftly to domestic competent authorities upon appropriate authority.

35. As earlier stated, the applicant is seeking information regarding a cheque leaf and deposit slip from the respondent Bank, now, which is 13 years later. In the Regulations made under the Proceeds of Crime and money Laundering Act, it provides for 7 years minimum for keeping of records. There is nothing to demonstrate that the information sought now, that it was necessary for the respondent to preserve it for more than 13 years of the date when the applicant is said to have stolen, attempted to steal or forged. That information and any other intended cause of action is stale.

36. In the circumstances, I am not satisfied that the applicant's intended substantive motion is arguable. I find the application for leave to be an academic exercise and not intended to yield any meaningful outcome.

37. Accordingly, the application dated 21st January, 2026 is found to be devoid of merit. It is hereby dismissed with no orders as to costs.

38. This file is closed.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 2ND DAY OF MARCH, 2026

R.E. ABURILI

JUDGE