

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**JUDICIAL REVIEW APPLICATION No. E391 OF 2025**

**IN THE MATTER OF:           ARTICLES 10,23,47,48,50,157 AND 165  
OF THE CONSTITUTION OF KENYA  
2010**

**AND**

**IN THE MATTER OF:           SECTIONS 3,4,5,7,8,9,11 AND 12 OF THE  
FAIR ADMINISTRATIVE ACT NO. 4 OF  
2015**

**AND**

**IN THE MATTER OF:           FAIR           ADMINISTRATIVE           ACT  
(JUDICIAL   REVIEW   PROCEDURE  
RULES 2024 (SAVE FOR RULES  
5,6,7,11(4),27(3)   AND   33   WHOSE  
OPERATIONS HAVE BEEN STAYED BY  
THE HIGH COURT)**

**AND**

**IN THE MATTER OF:           THE DECISION AND/OR FAILURE AND  
OR REFUSAL AND OR DELAY BY THE  
DIRECTOR OF PUBLIC PROSECUTIONS  
TO MAKE AND COMMUNICATE A  
LAWFUL AND REASONABLE DECISION  
AND TO INSTITUTE AND OR PROGRESS  
CRIMINAL PROCEEDINGS IN RESPECT  
OF COMPLAINTS RELATING TO THE  
OPERATIONS OF AFRICA PLANTATION  
CAPITAL MANAGEMENT LIMITED  
AFRICA PLANTATION CAPITAL  
MANAGEMENT LIMITED**

**BETWEEN**

**LUKAS GRUENER .....1<sup>ST</sup> APPLICANT**

ISAAC MURANIRA.....	2 <sup>ND</sup> APPLICANT
CHARLOTTE KAMUGISHA.....	3 <sup>RD</sup> APPLICANT
BEATRICE BYAKUTAGA .....	4 <sup>TH</sup> APPLICANT
BUJARA ROBERT .....	5 <sup>TH</sup> APPLICANT
ASIIMWE ROBERT .....	6 <sup>TH</sup> APPLICANT
HARVEY ENGUKE B. SMITH .....	7 <sup>TH</sup> APPLICANT
ROSEBEL MUSINGUZI.....	8 <sup>TH</sup> APPLICANT
AYEBAZIBWE BENARD TIINAABO.....	9 <sup>TH</sup> APPLICANT
MUCUNGUZI ALBERT .....	10 <sup>TH</sup> APPLICANT
MOSES EMODU .....	11 <sup>TH</sup> APPLICANT
MOSES MOGULU.....	12 <sup>TH</sup> APPLICANT
ANNET NATOLOO KAWESA.....	13 <sup>TH</sup> APPLICANT
LYDIA NANKYA .....	14 <sup>TH</sup> APPLICANT
RHONA MUYISE KABIITE .....	15 <sup>TH</sup> APPLICANT
MACLEAN NATUGAS .....	16 <sup>TH</sup> APPLICANT
NDUATI.....	17 <sup>TH</sup> APPLICANT
JARED ADAMBA .....	18 <sup>TH</sup> APPLICANT

**VERSUS**

**DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT**

**JUDGMENT**

1. The Originating Motion dated 3<sup>rd</sup> December, 2025 seeks the following orders:

- a. *A declaration do issue that the Respondent’s failure, refusal and/or inordinate delay to make and communicate a lawful, reasonable and procedurally fair decision on whether to institute criminal proceedings*

*in relation to the complaints lodged by the Applicants against Africa Plantation Capital and Africa Plantation Capital Management Limited, notwithstanding the approval for prosecution by the Directorate of Criminal Investigations, violates the Applicants' rights under Articles 27, 47, 48 and 50 of the Constitution and Sections 3, 4, 5 and 7 of the Fair Administrative Action Act, 2015.*

*b. A **declaration** do issue that the Respondent's continued failure and/or refusal and/or inordinate delay to take appropriate prosecutorial action, and to give the Applicants written reasons therefor, is unlawful, unreasonable, procedurally unfair and contrary to Articles 10 and 157 of the Constitution and Sections 4, 6, 7, 8 and 9 of the Fair Administrative Action Act.*

*c. An **order of mandamus** do issue compelling the Respondent, within a period to be fixed by this Honourable Court, to:*

*a. consider in good faith, and in strict accordance with the Constitution and the Fair Administrative Action Act, the investigation file relating to the Applicants' complaints against Africa Plantation Capital and Africa Plantation Capital Management Limited, received from the Directorate of Criminal Investigations;*

*b. make a reasoned decision on whether or not to institute criminal proceedings against the persons and entities implicated therein; and*

- c. *communicate in writing to the Applicants and/or their advocates the said decision and the reasons therefor.*
- d. ***In the alternative and without prejudice to prayer 3 above***, an order of mandamus do issue compelling the Respondent, within a period to be fixed by this Honourable Court, to institute and/or cause to be instituted appropriate criminal proceedings against the persons and entities implicated in the said investigation file, and thereafter to keep the Applicants reasonably informed, in writing, of the progress of such proceedings.
- e. **An order** do issue directing the Respondent to put in place and to implement a clear and time-bound communication framework with the Applicants and/or their advocates regarding the progress and status of the matter referenced as **ODPP/HQ/CAM2/4431**, including the stage of review, any decision taken and the court before which any proceedings are to be filed.
- f. **General damages and/or appropriate compensation**, as the Court shall deem just, for violation of the Applicants' rights to fair administrative action and access to justice.
- g. **Costs** of and incidental to these proceedings be borne by the Respondent.
- h. **Such further or other orders** as this Honourable Court shall deem fit and just to grant in the circumstances.

2. The Motion is based on the grounds on the face thereof and an affidavit in support sworn by the 1<sup>st</sup> applicant Lucas Gruener on behalf of the other applicants on 3<sup>rd</sup> December, 2025 and annexures thereto.
3. The Applicants state that they invested substantial sums of money in Africa Plantation Capital and Africa Plantation Capital Management Limited (APC) under investment schemes promoted and managed by those entities. Over time, however, they began to suspect that the schemes were not legitimate and that their funds had been misappropriated.
4. As a result, the Applicants lodged formal complaints with the Directorate of Criminal Investigations (DCI). The DCI carried out investigations into the affairs of the APC entities and their directors and officers. According to the Applicants, upon completion of those investigations, the DCI approved the institution of criminal proceedings and forwarded the investigation file for prosecutorial consideration.
5. The Applicants contend that once the file reached the Respondent, the Respondent was constitutionally and statutorily required to review the evidence, make a prosecutorial decision, and communicate that decision to the complainants. However, despite the passage of several months, the Respondent did not issue any written decision or provide reasons regarding the status of the matter.

6. The Applicants state that through their advocates they made several attempts to obtain clarification from the Respondent. In particular, they met senior officers at the offices of the Respondent on 9th October 2025, during which they were informed that the file was still under review and were assured that an update would be provided by 18th October 2025. The Applicants state that this assurance was not honoured, as no decision, written reasons, or formal status update was communicated thereafter. They therefore remained uncertain as to whether criminal proceedings would be instituted, declined, or deferred.
7. It is this continued administrative inaction that led the Applicants to approach this Honourable Court through judicial review proceedings, seeking to enforce their right to fair administrative action and to compel the Respondent to discharge its constitutional and statutory mandate.

#### **The Respondent's response**

8. The Respondent filed Grounds of Opposition dated 12<sup>th</sup> January, 2026.
9. The Respondent opposes the Application on the basis that it is premature, misconceived, and an abuse of the court process. That the Applicants have approached the Court before the prosecutorial review process within the Office of the Director of Public Prosecutions (ODPP) has been completed. According to the Respondent, judicial review is not intended to supervise or

manage an ongoing internal prosecutorial process that has not yet culminated in a final decision.

10. The Respondent further maintains that it is under no legal obligation to indicate the court in which charges would be filed before a decision to prosecute has been made. That the identification of the appropriate trial court only arises after a charging decision has been reached. The Applicants' claim that failure to specify the trial court amounts to unlawful administrative action is therefore said to be legally unsustainable.

11. With respect to the delay alleged by the Applicants, the Respondent states that the time taken is reasonable given the scale and complexity of the matter. From the pleadings, the dispute involves multiple complainants, significant documentary evidence, transnational elements, and several potential suspects. The Respondent argues that such matters require careful and thorough prosecutorial review in order to ensure that any eventual charges are properly framed and supported by adequate evidence. In those circumstances, the time taken cannot, without more, be equated to inaction or failure to perform a duty.

12. The Respondent also rejects the allegation that it has remained inactive. It states that the investigation file was received, assigned for review, and that engagement with the Applicants' advocates has taken place. These steps, in the Respondent's view, demonstrate that the matter is under active consideration and that the prosecutorial process is ongoing.

13. The Respondent further contends that the Applicants' reliance on the doctrine of legitimate expectation is misplaced. While complainants may expect that their complaints will be fairly considered, such expectation does not extend to compelling the Respondent to prosecute, to do so within timelines determined by complainants, or to disclose internal prosecutorial deliberations before a decision is made.

14. The Respondent further contends that the orders of mandamus sought cannot issue in the circumstances. Mandamus is only available where a public authority has failed to perform a clear statutory duty. It cannot be used to compel the exercise of prosecutorial discretion in a particular manner, nor to require the Respondent to prosecute or designate a trial court before a charging decision has been made.

15. In addition, the Respondent argues that the Application is premature as it challenges a process that has not yet crystallised into a final decision. Judicial review, it is submitted, is ordinarily directed at completed administrative action capable of affecting legal rights. In the present case, the Respondent has not yet made a decision to charge, decline to charge, or take any other final prosecutorial action.

16. The Respondent further asserts that granting the orders sought would amount to undue interference with the constitutional independence of the Director of Public Prosecutions under Article 157 of the Constitution, contrary to the principle of separation of powers.

17. Finally, the Respondent maintains that the Applicants have alternative avenues through which they may seek clarification or engagement with the ODPP, including internal administrative processes. In the Respondent's view, the Applicants have prematurely resorted to judicial review to challenge the pace of the prosecutorial process rather than to demonstrate any illegality, irrationality, or procedural impropriety on the part of the Respondent.

18. For these reasons, the Respondent urges this Court to find that the Application is premature and legally unsustainable.

### **Submissions**

#### **Applicants' submissions**

19. The applicants filed submissions framing the issues for determination as follows:

#### **Whether the Respondent's Grounds of Opposition were filed out of time**

20. The Applicants submit that the Respondent's Grounds of Opposition were filed outside the timelines set by the Court and are therefore incompetent. That when the Court issued directions on 10 December 2025, it expressly noted that these proceedings are time-bound under section 8 of the Fair Administrative Action Act and that this court further directed that Order 50 of the Civil Procedure Rules on computation and enlargement of time would not apply.

21. That the Respondent was served with the Originating Motion and the Court's directions on 11 December 2025. Consequently, any response ought to have been filed within seven days, that is by 18 December 2025. However, the Respondent filed its Grounds of Opposition dated 12 January 2026, well after the prescribed timeline and without seeking leave of the Court.
22. The applicants urged this court to invoke Rule 25(1)(a) of the Fair Administrative Action Rules, 2024, which empowers this Court to strike out any pleading filed in breach of the Act or the Court's directions. The Applicants therefore submit that the Respondent's Grounds of Opposition fall squarely within this provision.
23. The Applicants rely on the **Supreme Court decision in *Nicholas Kiptoo Arap Korir Salat v IEBC & 7 Others***, where the Court held that where timelines are prescribed by law, a party must first obtain extension of time before taking the relevant procedural step and that a document filed outside the prescribed time without leave is therefore incompetent.
24. Similarly, they cite the **Court of Appeal in *Karurie v Kamau (Civil Appeal (Application) E134 of 2021) [2025] KECA 366*** which emphasised that compliance with timelines is an essential element of orderly case management and that documents filed outside prescribed timelines may properly be struck out.

25. The Applicants therefore urge this Court to strike out the Respondent's Grounds of Opposition and proceed to determine the matter on the basis of the uncontroverted affidavit evidence on record.

***Whether the Respondent's delay violates Article 47 and the Fair Administrative Action Act***

26. The Applicants submit that the Respondent has unreasonably delayed making and communicating a prosecutorial decision, in violation of the Applicants' constitutional right to fair administrative action. That following their complaint against Africa Plantation Capital and Africa Plantation Capital Management Limited, investigations were carried out by the DCI the Directorate of Criminal Investigations (DCI) WHICH completed its inquiries and forwarded the investigation file to the Office of the Director of Public Prosecutions (ODPP) by letter dated 13 May 2025 for prosecutorial consideration.

27. That despite receiving the file, the Respondent has not communicated any prosecutorial decision. The Applicants made several follow-ups through correspondence and engagement. A meeting was held with ODPP officers on **9 October 2025**, during which the Applicants were assured that an update would be provided by 18 October 2025. However, no update, written decision, or written reasons have been provided to date.

28. The Applicants argue that this prolonged silence amounts to administrative action by omission, which is reviewable under the Fair Administrative Action Act.
29. They rely on Article 47 of the Constitution which guarantees every person the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair, as well as the right to written reasons where their rights are affected. These principles are reinforced by sections 4 and 7 of the Fair Administrative Action Act, which allow judicial review where there is unreasonable delay or failure to act.
30. The Applicants rely on the **Court of Appeal decision in Kenya Revenue Authority v Bharat General Agency (Civil Appeal 73 of 2020) [2023] KECA 630 (KLR)**, where the Court emphasised that Article 47 guarantees both expeditious administrative action and written reasons. They also cite **Parbat Siyani Construction Ltd v Kenyatta International Convention Centre, (Petition E397 of 2021) [2025] KEHC 2778 (KLR)**, where the High Court held that failure to act promptly and failure to provide written reasons violate Article 47.
31. While acknowledging the independence of the ODPP under Article 157, the Applicants emphasise that they are not asking the Court to dictate whether to prosecute. Rather, they seek an order requiring the Respondent to exercise its constitutional mandate and communicate its decision.

32.They therefore submit that the Respondent’s prolonged silence constitutes unreasonable delay and failure to act, contrary to Article 47 of the Constitution and the Fair Administrative Action Act.

***Whether the Court should grant the reliefs sought***

33.The Applicants submit that the reliefs sought fall squarely within the powers granted to this Court under section 11 of the Fair Administrative Action Act and the Constitution.

34.First, the Applicants seek declaratory relief confirming that the Respondent’s delay and failure to communicate a prosecutorial decision violates their constitutional rights. Such declarations are expressly permitted under section 11 of the Act and Article 23 of the Constitution.

35.Second, the Applicants seek an order of mandamus compelling the Respondent to perform its public duty. They rely on Section 11 of the Act which empowers the Court to compel administrators to take a decision and provide written reasons. The Applicants emphasise that this order would not interfere with prosecutorial discretion but would simply require the ODPP to make and communicate a decision.

36.Third, the Applicants request an order directing the Respondent to establish a clear and time-bound communication framework, so as to ensure transparency and accountability in similar situations.

37.Fourth, the Applicants seek general damages for violation of their constitutional rights. Section 11 of the Act and Article 23(3)(e) of the

Constitution permit the Court to award compensation where fundamental rights have been infringed. The Applicants propose a global sum of **Kshs 10,000,000**, relying on appellate authority such as **Imanyara v Attorney General**, where substantial damages were awarded for breaches of constitutional rights.

38. Finally, the Applicants seek costs of the proceedings, submitting that the Respondent's prolonged inaction forced them to approach the Court for redress.

39. In summary, the Applicants contend that the Respondent's failure to make and communicate a prosecutorial decision within a reasonable time violates the Constitution and the Fair Administrative Action Act. They therefore urge the Court to grant the declaratory orders, mandamus, damages and other appropriate reliefs necessary to vindicate their rights.

#### **The Respondent's Submissions**

40. The respondent filed written submissions and framed the following issues for determination:

1. Whether the Director of Public Prosecutions (DPP) is under a legal duty to prosecute, provide timelines, designate a trial court, or give reasons before completing prosecutorial review.

2. Whether the delay complained of amounts to unlawful administrative action under **Article 47 of the Constitution** and the **Fair Administrative Action Act**.

3. Whether the Court can grant orders of mandamus in the circumstances of the case.

41. On the Constitutional and Statutory Framework, the Respondent submits that the Director of Public Prosecutions is an independent constitutional office established under Article 157 of the Constitution. Under Article 157(10), the DPP exercises prosecutorial powers independently and is not subject to the direction or control of any person or authority. That although Article 157(11) requires the DPP to consider public interest, the administration of justice, and the prevention of abuse of the legal process, it does not impose any legal obligation on the DPP to prosecute a matter, provide timelines, or report to complainants upon receiving an investigation file.

42. Similarly, that the Office of the Director of Public Prosecutions Act confirms that the decision whether to prosecute is discretionary, and that not every investigation must result in prosecution.

43. The Respondent further argues that the Fair Administrative Action Act applies only where a clear administrative decision has been made. It does not allow courts to supervise internal deliberative processes or compel anticipated decisions that have not yet been reached.

***Whether the Respondent has a duty to prosecute or communicate a decision***

44. The Respondent argues that the Applicants' case is based on a misunderstanding of the law. That the Applicants appear to assume that once the Directorate of Criminal Investigations (DCI) recommends prosecution, the DPP must either prosecute or explain why it will not do so within a specific timeframe.

45. According to the Respondent, that proposition is incorrect because, a recommendation by the DCI is not binding on the DPP. Rather, it is only one factor in a broader prosecutorial assessment that includes evaluating the evidence, public interest, legal sufficiency of charges, jurisdictional considerations, and the need to avoid abuse of process.

46. The respondent relies on the case of **Republic v Attorney General & 4 Others ex parte Diamond Hashim Lalji**, where the Court of Appeal held that prosecutorial decisions may only be reviewed where there is illegality, bad faith, or abuse of process, and argues that the case affirmed that prosecutorial discretion includes the discretion not to prosecute or to defer prosecution.

47. The Respondent also argues that the Applicants have not alleged bad faith, malice, or improper motives. Their complaint, in the Respondent's view, amounts simply to dissatisfaction with the time taken to reach a decision.

48. The Respondent further submits that the Applicants' demand that the DPP identify the court in which charges will be filed is legally untenable. That the designation of a trial court can only occur after a charging decision has been made, and not before.

***Whether the alleged delay amounts to unlawful administrative action***

49. The Respondent disputes the Applicants' reliance on Article 47 of the Constitution **and the** Fair Administrative Action Act. It is argued that delay becomes legally actionable only where the law imposes a specific duty to act within a defined timeframe. According to the Respondent, no such statutory or constitutional timeline exists in relation to prosecutorial decisions.

50. The Respondent also points out that the matter under investigation is complex. That it involves multiple complainants, large financial losses, voluminous documentation, cross-border elements, and several potential suspects. Such matters, the Respondent contends, require careful and thorough review.

51. Relying on *Republic v Director of Public Prosecutions ex parte Victory Welding Works*, the Respondent submits that delay alone does not amount to illegality unless it is accompanied by bad faith, prejudice, or a clear failure to perform a legal duty.

52. The Respondent maintains that there has been no abdication of responsibility. The file was received, assigned, and is still under active

review, and that the Respondent has engaged with the Applicants' counsel during the process.

### ***Whether orders of mandamus can issue***

53. The Respondent submits that the Applicants seek several orders of mandamus, including orders compelling prosecution, compelling the Respondent to give timelines, and compelling the designation of a trial Court. However, the respondent argues that mandamus can only be issued where there is a clear legal duty that has not been performed. It cannot be used to dictate how a public authority should exercise its discretion. The Respondent relies on the Court of Appeal decision in **Kenya National Examinations Council v Republic ex parte Geoffrey Gathenji Njoroge, Civil Appeal No. 266 of 1996 [1997] eKLR** where it was held that mandamus can compel the performance of a duty but cannot direct the manner in which discretionary powers are exercised. According to the Respondent, compelling the DPP to prosecute or to set timelines would effectively amount to the Court interfering with prosecutorial independence and managing the internal affairs of a constitutional office.

### ***Ripeness and Separation of Powers***

54. The Respondent also argues that the application is premature. That Judicial review is intended to challenge decisions that have already been made, not

processes that are still ongoing. Relying on **Saisi & Others v Director of Public Prosecutions**, the Respondent submits that courts should avoid intervening in prosecutorial processes before a decision has crystallised. The Respondent warns that allowing such applications would encourage complainants to rush to court whenever investigations or prosecutorial review take time, thereby undermining the proper functioning of the criminal justice system.

55. The Respondent emphasises that separation of powers requires courts to supervise legality, not to manage the operational decisions of prosecutorial authorities.

56. In conclusion, the Respondent submits that the Applicants have not demonstrated illegality, irrationality, procedural impropriety, or abuse of power, which are the recognised grounds for judicial review. The Respondent argues that the Applicants are effectively asking the Court to manage and supervise prosecutorial decision-making, which would undermine the constitutional independence of the DPP. For these reasons, the Respondent urges this Court to find that the application is premature, legally misconceived, and an abuse of the court process, and to dismiss it.

### **Analysis and determination**

57. The Applicants' case is that they were defrauded in a complex investment scheme and they lodged complaints with the Directorate of Criminal

Investigations (DCI), against Africa Plantation Capital and Africa Plantation Capital Management Limited upon which the DCI conducted investigations and forwarded the file to the Respondent, the Director of Public Prosecutions (DPP), with a recommendation to prosecute certain suspects. Before any prosecutorial decision was made, the Applicants filed this judicial review application seeking declarations and orders to compel the DPP to prosecute, disclose the trial court and communicate a decision to the applicants.

58. The DPP contends that these proceedings are premature and that it cannot be compelled to act in the manner sought by the applicants as it exercises its constitutional mandate under Article 157 of the Constitution independent of any other considerations but the law and public interest.

59. The issues for determination start with the late filing of grounds of opposition, before delving into the main substance of the application.

60. The applicants challenge the respondent's late filing of grounds of opposition and urge this court to strike them off. Although the filing occurred after the statutory and Court-directed deadline, this Court finds that the Applicants have not suffered any prejudice. The late filing did not prevent the Applicants from addressing the substance of the Respondent's position, nor did it hinder the Court from determining the application on its merits. Consequently, while procedurally irregular, the late filing is not fatal.

61. Onto the substantive issues, the central question is whether the Respondent has unlawfully delayed, acted in bad faith, or otherwise violated

constitutional and statutory provisions in considering whether to prosecute the suspects in the complaint lodged by the applicants.

62. It is undisputed that prosecutorial decisions constitute administrative action under Article 47 of the Constitution. However, such decisions enjoy special constitutional protection under Article 157, which guarantees the independence of the DPP in the exercise of prosecutorial discretion.

63. The evidence availed by the applicants in these proceedings show that the alleged fraudulent scheme is highly complex: it involves multiple complainants, voluminous documentation, cross-border elements and several potential accused persons.

64. The Respondent has explained that the file remains under active review and that there is no evidence before this Court that any delay is deliberate, mala fide, or intended to prejudice the Applicants. In these circumstances, the time taken to review the file cannot reasonably be characterized as unreasonable or unlawful.

65. Additionally, it is the view of this Court that the Applicants' claims under Articles 10, 22, 23, 27, 47, 48, 50, and 157 of the Constitution and sections 3, 4, 5, 7, 8, 9, 11 and 12 of the Fair Administrative Action Act, are therefore misplaced. Article 47 requires administrative action to be expeditious and reasonable, but context matters. A complex financial investigation cannot be expected to adhere to the same timelines as a straightforward case. No evidence has been presented of discrimination (Article 27), denial of access

to justice (Article 48), or infringement of fair hearing rights (Article 50). Similarly, Article 157(10) shields prosecutorial discretion from external interference and judicial review cannot be invoked to compel or dictate the manner or timing of the DPP's decision. Hurried decisions can easily lead to abuse of discretion and eventually, against the public interest where accused persons are set free and end up suing the state for damages.

66. The Applicants further seek an order of mandamus compelling the DPP to prosecute, to disclose the court of trial, and to communicate a decision. While mandamus may issue to compel the performance of a clear statutory duty, it cannot direct how discretionary powers are exercised. Here, there is no evidence that the Respondent has refused to act; as the investigations file is under active consideration. To compel a decision or to dictate the content of that decision would constitute impermissible judicial intrusion into a constitutionally protected function. Any obligation to provide written reasons arises only once a definitive prosecutorial decision has been made.

67. The Applicants further ask this Court to order the Respondent to set up a clear and time-bound communication system on the progress of the matter ODPP/HQ/CAM2/4431, to award general damages, and to order costs in their favor.

68. While this Court understands the Applicants' desire to be kept informed, it cannot tell the DPP exactly how to carry out his constitutional duties. Article 157(10) protects the DPP's independence, and requiring him to communicate

in a specific way, set deadlines, or disclose the trial court before a decision is made would amount to improper judicial interference.

69. Similarly, awarding damages or compensation would require proof that the DPP acted in bad faith, unlawfully, or unreasonably, which the Applicants have not shown. The evidence demonstrates that the file is actively under review, and no rights have been violated. For these reasons, the Court cannot grant the proposed orders, as doing so would overstep its authority and interfere with the DPP's constitutionally protected discretion.

70. In the circumstances, this Court finds and holds that:

1. The late filing of the Respondent's Grounds of Opposition, while procedurally irregular, did not prejudice the Applicants and is not fatal to the Respondent's case.
2. The Applicants have not demonstrated inordinate delay, mala fide conduct, or any violation of constitutional or statutory provisions.
3. There is no legal basis to grant the declarations or the order of mandamus sought.

71. In the end:

- i) The prayers for declarations are declined.
- ii) The order of mandamus is declined.

iii) The application is dismissed.

iv) Each party shall bear its own costs.

72. This file is closed.

73. Orders accordingly.

**Dated, Signed and Delivered at Nairobi this 4<sup>th</sup> Day of March, 2026**

**R.E. ABURILI**

**JUDGE**

ORIGINAL