



Boyturun v Office of the Director of Public Prosecution & 3 others (Judicial Review Application E007 of 2026) [2026] KEHC 2553 (KLR) (Judicial Review) (25 February 2026) (Ruling)

Neutral citation: [2026] KEHC 2553 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW APPLICATION E007 OF 2026
RE ABURILI, J
FEBRUARY 25, 2026**

BETWEEN

BULENT MEHMET BOYTORUN APPLICANT

AND

**THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTION 1ST
RESPONDENT**

THE DIRECTOR OF CRIMINAL INVESTIGATION 2ND RESPONDENT

THE CHIEF MAGISTRATE, MILIMANI LAW COURTS 3RD RESPONDENT

AND

BIDCO AFRICA LIMITED INTERESTED PARTY

RULING

1. The Chamber Summons dated 13th January 2026, which is verified by an affidavit sworn by the Applicant Bulent Mehmet Boytorun on even date seeks the following orders:
 - a. Spent.
 - b. That the time for applying for orders of Certiorari be enlarged and/or extended and the Applicant be granted leave to apply for the said order of Certiorari.
 - c. That the Applicant be and is hereby granted leave to apply for a Judicial Review Order of Certiorari to move this Honourable Court to quash the impugned decision of the 1st Respondent to prosecute the Applicant in Milimani Criminal Case No. E034 of 2025 Republic vs Bulent Mehmet Boytorun & 2 Others, instituted vide a Charge Sheet dated 21st January 2025.



- d. That the Applicant be and is hereby granted leave to apply for a Judicial Review Order of Prohibition to move this Honourable Court to restrain the 1st and 2nd Respondent or anyone claiming under or pursuant to its authority from arresting, charging or proceeding with the prosecution of the Applicant in Milimani Criminal Case No. E034 of 2025 Republic vs Bulent Mehmet Boytorun & 2 Others.
 - e. That the leave so granted under prayer (2) & (3) above do operate as stay of the proceedings in Milimani Criminal Case No. E034 of 2025 Republic vs Bulent Mehmet Boytorun & 2 Others pending the hearing and determination of the judicial review proceedings herein.
 - f. That this Honourable Court do grant any other relief as it may deem fit in the interest of justice.
 - g. That costs of the Application be provided for.
2. The grounds upon which the application is predicated are that the applicant is currently facing criminal proceedings in Milimani Criminal Case No. E034 of 2025; Republic vs Bulent Mehmet Boytorun & 2 Others, where he has been charged with the offence of Conspiracy to Defraud contrary to Section 317 of the Penal Code, instituted vide a Charge Sheet dated 21st January 2025.
 3. According to the applicant, the impugned decision by the 1st Respondent to charge the Applicant constitutes a manifest abuse of the criminal justice system, and that the dispute is purely commercial in nature, arising from a Trade Finance Support Agreement dated 23rd May 2023 between the Interested Party and Bee n Bee Kenya Limited, where Bee n Bee Kenya Limited received and agreed to convert a sum of KES 102,437,500 to USD 745,000 by 24th May 2023, however that owing to disruptions caused by a third-party supplier, Bee n Bee Kenya Limited was only able to remit USD 295,000 to the Interested Party, constituting partial performance.
 4. The Agreement, under Clause 7 is said to have contained a binding arbitration clause which the Interested Party pursued and which culminated in an arbitral award issued on 11th February 2025. The award is said to have been adopted by the court in HCOMMMISC No. E022 of 2025: Bidco Africa Limited v Bee N Bee (KE) Limited.
 5. The Applicant contends that the dispute giving rise to the criminal proceedings is purely commercial and was conclusively resolved through an arbitral award, with no evidence of deceit or false representation to justify prosecution. He argues that the Interested Party, having obtained the award and initiated enforcement proceedings, is improperly using the criminal process to recover a civil debt despite available mechanisms under the *Civil Procedure Act*.
 6. The Applicant asserts that the prosecution violates his rights under Articles 28, 29(a), and 47 of *the Constitution* and offends Article 157(11) by serving an ulterior commercial purpose rather than the public interest or the administration of justice. He states that he invoked the 1st Respondent's mandate under Article 157(6)(c) of *the Constitution* and Section 87(a) of the Criminal Procedure Code to discontinue prosecution, formally seeking withdrawal of the charges vide a letter dated 29th May 2025. The request it is urged was declined vide a letter dated 27th November 2025, with the 1st Respondent indicating that withdrawal would only be considered upon full payment of the arbitral award.
 7. The Applicant maintains that this demonstrates the criminal process is being used to compel repayment by Bee n Bee Kenya Limited, and that his cause of action for judicial review crystallized on 27th November 2025, rendering any delay in seeking leave to apply for certiorari reasonable.



Replying Affidavit

8. The Interested Party filed a replying Affidavit sworn on 10th February 2026 by Vimal Shah. The Interested Party states that, through its director responsible for daily operations, a complaint was lodged with the Directorate of Criminal Investigations following interactions with the Applicant and his co-accused that culminated in Milimani Criminal Case No. E034 of 2025, and that the decision to investigate and charge was independently made by the relevant authorities. It avers that on or about 18th May 2023, the Applicant and his associates approached the director who had known Mr. Nicholas Alexander Nesbitt for a while and induced him to enter into a Trade Finance Agreement dated 23rd May 2023 on behalf of the Interested Party.
9. That pursuant to the agreement, Kshs.102,437,500 was deposited into Bee N Bee (K) Ltd.'s account in exchange for an expected transfer of USD 745,000, which the Interested Party contends formed part of a fraudulent scheme as after defrauding the Interested Party the Applicant and Mr. Bulent Boyturn formed another company BNX Partners that transacts in the same kind of business as Bee N Bee (K) Ltd. The said amount, it is urged was to be deposited after the signing of the agreement, that is on 24th May 2023.
10. The Interested Party denies any conspiracy, coercion, or influence over the 1st and 2nd Respondents and maintains that the Applicant's assertions amount to a defence that can be properly be ventilated before the trial court. Further that the 1st and 2nd Respondents exercising their constitutional and statutory mandates, arrived at the decision to charge the various accused persons, and that this court should exercise judicial restraint and not interfere with the independent workings of the 1st and 2nd Respondent.
11. It asserts that criminal and civil proceedings may run concurrently. It further contends that public interest and victims' rights favour allowing the prosecution to proceed, alleges that the Applicant absconded after being granted bail, and characterises the application as frivolous, vexatious, and an abuse of process warranting dismissal with costs.

Submissions

12. The application was canvassed by way of oral submissions made before the court on 11th February 2026. Ms. Ndambuki counsel for the Applicant during the oral highlights reiterated the contents of the application. She relied on the case of Republic vs. ODPP & 2 Others ex parte Saisi [2016] eKLR and R vs ODPP & 5 Others ex parte Silvia Wairimu Njuguna where the courts are said to have held that the judiciary has to protect against abuse of power by public authorities.
13. In response Mr. Torotwa counsel for the Interested Party submitted that there was a similar matter before the court (Chigiti J) filed by the co-accused being JR E144/2025 Nicholas Alexander Nesbit vs DCI & 5 Others that was due for a mention to take a Ruling date.
14. He further submitted that plea was taken in March 2025 by the co-accused and it is close to one year, and therefore the applicant has slept on his rights as is evident from the late filing of these proceedings contrary to Order 53 Rule 2 of the Civil Procedure Rules.
15. On the annexed letter from the 1st Respondent declining the withdrawal of charges, counsel submitted that the Office of the Director Public Prosecutions is an independent office, and that the court should safeguard independence of that office and promote the principles of constitutionalism.
16. In response Ms. Ndambuki submitted that the applicant first engaged the 1st Respondent under Section 9(2) of the [Fair Administrative Action Act](#). She also stated that the Applicant had left the



country on other business but that he was preparing to return to Kenya to deal with this matter since he cannot do business without clearing himself.

17. Ms. Ndambuki contended that criminal proceedings cannot be used to compel performance in a civil debt and that the Applicant is only a director of a company. Further, that the applicant is not a party to the suit in JR E144/2025 and therefore he cannot speak on its progress.

Analysis and Determination

18. I have carefully considered the application together with the grounds advanced in support thereof, the response by the Interested Party and oral submissions by the respective parties' counsel. The issue for determination is whether the orders sought by the Applicant are merited.
19. At the outset, the validity of the Applicant's prayer for certiorari has been raised by the Applicant himself and has also been challenged by the Interested Party, with the Interested Party contending that the period for seeking the said order has since lapsed.
20. A brief chronology of the way events occurred is that the Applicant's company Bee N Bee (K) Ltd entered into a Trade Finance Agreement dated 23rd May 2023 with the Interested Party where the Interested Party was to deposit Kshs.102,437,500 into Bee N Bee (K) Ltd.'s account in exchange for an expected transfer of USD 745,000. However, according to the Applicant, due to disruptions caused by a third-party supplier, Bee n Bee Kenya Limited was only able to remit USD 295,000 to the Interested Party, constituting partial performance. This partial performance led to the Interested Party pursuing arbitration as was stipulated under Clause 7 of the agreement. The arbitration proceedings are said to have culminated in an arbitral award that was adopted as an order of the court in HCOMMMISC No. E022 of 2025: Bidco Africa Limited v Bee N Bee (KE) Limited.
21. The Applicant's case is that he is currently facing criminal proceedings in Milimani Criminal Case No. E034 of 2025; Republic vs Bulent Mehmet Boytorun & 2 Others, where he has been charged with the offence of Conspiracy to Defraud contrary to Section 317 of the Penal Code, instituted vide a Charge Sheet dated 21st January 2025.
22. It is also his case that he invoked the 1st Respondent's mandate under Article 157(6)(c) of *the Constitution* and Section 87(a) of the Criminal Procedure Code, and formally sought the withdrawal of the charges vide a letter dated 29th May 2025. That the request was declined vide a letter dated 27th November 2025, with the 1st Respondent indicating that the withdrawal would only be considered upon full payment of the arbitral award.
23. The Applicant maintains that this demonstrates that the criminal process is being used to compel repayment to Bee n Bee Kenya Limited, and that his cause of action for judicial review crystallized on 27th November 2025, rendering any delay in seeking leave to apply for certiorari reasonable.
24. From the material before the Court, the decision sought to be challenged is the refusal by the 1st Respondent, communicated vide the letter dated 27th November 2025, declining to discontinue the criminal proceedings unless the arbitral award was satisfied.
25. While criminal proceedings were instituted earlier, the Applicant's complaint in these judicial review proceedings is directed not at the institution of charges per se, but at the subsequent exercise of prosecutorial discretion in declining withdrawal. Ultimately, that refusal constitutes a distinct and identifiable administrative decision capable of review. In those circumstances, and without foreclosing the issue for determination at the substantive stage, the Court is satisfied that computing time from 27th November 2025 is accurate, and the application cannot be dismissed as time-barred at this stage.



26. Having resolved that preliminary issue, the Court turns to whether the application discloses an arguable case. The Court is not called upon to determine the merits of the competing positions but only whether further interrogation is warranted.
27. The Applicant's contention that prosecutorial discretion was exercised in a manner linked to satisfaction of a civil arbitral award raises legitimate questions as to whether the decision complained of is reviewable and whether irrelevant or extraneous considerations may have informed that discretion.
28. I am therefore satisfied, without engaging in an in-depth examination of the issues raised, that the application is neither frivolous nor devoid of merit. It raises arguable questions that are properly reserved for determination at the substantive stage.
29. Consequently, the Court finds that the threshold for the grant of leave to apply for the orders of certiorari and prohibition has been met.
30. The Substantive motion to be filed and served upon the Respondents and Interested Parties within 14 days of today in these Judicial Review file.
31. The applicants also pray that the leave so granted do operate as stay of the proceedings in Milimani Criminal Case No. E034 of 2025; Republic vs Bulent Mehmet Boytorun & 2 Others pending the hearing and determination of the judicial review proceedings herein. The prayer for stay is framed as follows:
 - e. That the leave so granted under prayer (2) & (3) above do operate as stay of the proceedings in Milimani Criminal Case No. E034 of 2025 Republic vs Bulent Mehmet Boytorun & 2 Others pending the hearing and determination of the judicial review proceedings herein.
32. Under Order 53 Rule 1 (4) of the Civil Procedure Rules:

"The grant of leave under this rule to apply for an order of prohibition or an order of certiorari shall, if the judge so directs, operate as a stay of the proceedings in question until the determination of the application, or until the judge orders otherwise."
33. Stay is intended to preserve the status quo and to prevent a situation where, should the applicant be successful in challenging the impugned decision, then he shall not be rendered a pious explorer in the judicial process. Stay also guarantees access to justice and the other constitutionally guaranteed rights including the right to be heard as stipulated in Article 50(1) of *the Constitution*.
34. In the exercise of its discretion, this Court grants a stay of the criminal proceedings pending the determination of this application as prayed in prayer 5 of the application, as the material before the Court discloses an arguable case raising questions as to whether the refusal to discontinue the proceedings constitutes a reviewable decision, and granting the stay preserves the status quo and prevents potential prejudice to the Applicant, without expressing any concluded view on the merits.
35. I therefore order that the leave so granted shall operate as stay of proceedings in Milimani Criminal Case No. E034 of 2025; Republic vs Bulent Mehmet Boytorun & 2 Others, until the judicial review proceedings are filed, heard and determined on merit. The said proceedings shall be fast tracked once filed.
36. I make no orders as to costs.
37. This file is closed.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF FEBRUARY, 2026



R.E. ABURILI
JUDGE

