

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**ANTI- CORRUPTION AND ECONOMIC CRIMES DIVISION**  
**MISC. APPLICATION NO. E045 OF 2025**

**PERMINUS  
KAMAU.....APPLICANT**

**MUIRURI**

**VERSUS**

**THE DIRECTOR OF PUBLIC PROSECUTIONS.....1<sup>ST</sup>  
RESPONDENT**  
**THE CHIEF MAGISTRATE- VOI LAW COURTS.....2<sup>ND</sup>  
RESPONDENT**  
**ETHICS AND ANTI-CORRUPTION COMMISSION.....3<sup>RD</sup>  
RESPONDENT**

**RULING**

**1.** The applicant herein has moved this court by way of the Chamber Summons dated the 6<sup>th</sup> October, 2025 which is premised on the grounds set out on the body of the same and supported by the annexed affidavit sworn by the applicant, on the even date. Through the application, the applicant has sought the following Orders;

**1) Spent.**

**2) THAT pending the hearing and determination of this application inter partes; this Honourable court be pleased to issue a temporary stay of the intended arraignment and plea taking in Republic v Perminus Muiruri Kamau, scheduled for 7<sup>th</sup> October, 2025 or any subsequent date.**

**3) THAT pending the hearing and determination of the Applicant's request for review of the decision to charge, made vide his advocates' letter dated 3<sup>rd</sup> October 2025 (annexed as "PMK-1"), this Honourable court be pleased to issue an order prohibiting the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents from arraigning, charging or taking plea from the Applicant in relation to the intended charge of conspiracy to commit an offence of corruption.**

**4) THAT this Honourable court be pleased to issue such further or other orders as may meet the ends of justice.**

**5) That the costs of this application be provided for.**

2. The applicant's case is that he is a serving Police Constable (Service Number 111947) who had been approved for arraignment on an alleged Charge of Conspiracy to commit an **Offence of Corruption Contrary to Section 47A (3) of the Anti- Corruption and Economic Crimes Act, 2003.**
3. He avers that the intended prosecution is founded on insufficient, tenuous and inadmissible evidence that fails to disclose any nexus between him and the alleged corrupt act. That the applicant has vide a letter dated the 3<sup>rd</sup> October, 2025, requested the 1<sup>st</sup> respondent to recall and review the recommendation to charge him in accordance with Clause 12 of the ODPP Guidelines on the Decision to Charge (2019).
4. The applicant contends that proceeding with plea taking prior to the conclusion of such review will render his review request nugatory

and expose him to irreparable prejudice, including automatic interdiction, reputational harm and professional ruin. Further, that the decision to approve the charge is irrational, unreasonable and disproportionate contrary to **Articles 47 and 157 (11)** of the **Constitution** and **Sections 4 and 5 (4)** of the **ODDP Act**, which enjoins the DPP to act fairly, in the public interest and to avoid abuse of process.

5. He contends that his actions were within the scope of his lawful duties as a police officer, and there is no evidence of any direct communication, meeting or receipt of benefit linking him to the alleged bribery incident. That under **Article 236(b)** of the **Constitution**, Public Officers are protected from victimization and removal from office without due process, and the DPP ought to give him a benefit of doubt where evidence is tenuous to avoid oppressive prosecution.

6. The 1<sup>st</sup> respondent filed Grounds of Opposition dated the 28<sup>th</sup> October, 2025, as follows;

1) That under **Article 157 (6), (10) and (11)** of the **Constitution**, the 1<sup>st</sup> respondent is constitutionally empowered to institute and undertake criminal proceedings against any person, before any court, in respect of any offence alleged to have been committed.

- 2)** That the 1<sup>st</sup> respondent exercises its power independently and shall not require the consent of any person or authority, nor be under the direction or control of any person, in making the decision to charge or prosecute, save that he must be guided by public interest, interests of the administration of justice, and the need to prevent abuse of legal process.
- 3)** That whether or not there exist sufficient evidence to sustain the charge is a matter to be tested before the trial court through the ordinary criminal process, not through a Constitutional Petition or Judicial review process.
- 4)** That the applicant's arguments on "lack of communication" or absence of a bribe amount to defences that should be raised at the trial, is not a bar to prosecution.
- 5)** That the applicant has already invoked **Section 5(4) (e)** of the ODDP Act and requested an internal review of the decision to charge and the DPP has a discretion to consider such request administratively.
- 6)** That the existence of that administrative process does not, however, operate as an automatic stay of prosecution, nor does it oust the jurisdiction of the criminal process.

**7)** That the applicant has not demonstrated any violation, threat, or infringement of his rights under **Article 47 or 50** of the Constitution.

**7.** The 3<sup>rd</sup> respondent filed a replying affidavit sworn by VINCENT AYAN, on the 18<sup>th</sup> November, 2025. The deponent who is an investigator with the 3<sup>rd</sup> respondent avers that, by virtue of **Article 79 and 252(2) (a) (d)** of the **Constitution**, the **Anti-Corruption and Economic Crimes Act, Section 11 (1) (d)** of the **Ethics and Anti-Corruption Commission Act**, it is within the legal mandate of the 3<sup>rd</sup> respondent to investigate allegations of Corruption and Economic Crimes in respect to State and Public Officers. That in undertaking its mandate, the 3<sup>rd</sup> respondent has constitutional, functional and operational independence under **Article 249 (2) (b)** of the **Constitution** and **Section 28** of the **Ethics and Anti-Corruption Commission Act**.

**8.** That pursuant to that mandate, the 3<sup>rd</sup> respondent conducted investigations vide inquiry file ECC/OPS/INQ/29/2023 into allegations that between 28<sup>th</sup> March, and 27<sup>th</sup> April, 2023, being public officers employed by the National Police Service Commission as police officers, the applicant conspired to commit a corruption offence namely, bribery, by requesting for a financial advantage of Ksh. 400,000 from Eliud Otieno Okumu in order to permit him to continue

his construction on un surveyed Kenya Railways Land in Taveta station.

- 9.** The 3<sup>rd</sup> respondent contended that sometime in the year 2012, the complainant reported to it that, as his contractor was putting up a project for women empowerment in Taita Taveta town, he called him and informed him that he had been approached by a security officer working with Kenya Railways, Voi, accompanied by the applicant of mobile number 0722319021 who wanted to arrest him for not having approval documents that allowed him to build on Kenya Railways land. The complainant further alleged that the contractor gave the Security Officer and the applicant a bribe of Ksh. 40,000 to avoid being arrested.
- 10.** That through numerous phone conversations between the complainant and the security officer through Safaricom line number 0717378928, a meeting was planned in order to discuss on the way forward and after some few weeks, the complainant and the security officer met at Ambassador Hotel in Nairobi CBD. Further, that upon perusal of the approval documents, the security Officer informed the complainant that the documents were not genuine and that he was supposed to part with a bribe of Ksh. 400,000 in order to be allowed to continue with the construction,

which money, the Security Officer said was to be shared amongst Kenya Railways Officials in Mombasa and Nairobi.

- 11.** That, eventually, a series of meetings took place between the complainant and the Security Officer and the suspect received Ksh. 200,000 treated money and a recorded conversation revealed that the bribe was to be shared between the Security Officer and the applicant herein. Further, that the 3<sup>rd</sup> respondent's investigations established that the Security Officer was in constant communication with the applicant, and from the communication, it was evident that the two were conspiring to demand the bribe, which they were intending to share amongst themselves.
- 12.** The 3<sup>rd</sup> respondent avers that from the interview and recorded statement from Sgt. Fred Wanjala Mwandiki, the in-charge DCI Voi station, he stated that Kenya Railways did not report or request the DCI to conduct the investigations of the land in question. That he also provided the 3<sup>rd</sup> respondent with certified copies of OB extract for 28<sup>th</sup> March 2023 which clearly indicated that the applicant had not been officially booked to be on duty in Taveta contrary to what he had alleged.
- 13.** That following the outcome of the investigations, the 3<sup>rd</sup> respondent made recommendations to charge the applicant with the offence of conspiracy to commit an offence of corruption, and

the same was allowed, resulting to the 1<sup>st</sup> respondent's preferring criminal charges against the applicant and another, and therefore, his application to defer the plea-taking is misguided and misconceived, and intended to impede the constitutional, functional and operational independence of the 3<sup>rd</sup> respondent.

**14.** The 2<sup>nd</sup> respondent did not file any response to the application.

**15.** The application was disposed of by way of written submissions.

### **Applicant's Submissions**

**16.** According to the applicant, proceeding with plea taking before the conclusion of the invoked review, renders the statutory safeguard provided in **Section 5(4) (e)** of the **ODDP Act**, and **Clause 12 of the ODDP Decision to charge Guidelines, 2019**, nugatory, and thereby violates **Articles 47 and 157 (11)** of the **Constitution**.

**17.** He has submitted that Under **Article 165 (6)** and **(7)** of the Constitution, the High court is empowered to exercise supervisory jurisdiction over subordinate courts and bodies exercising judicial or quasi-judicial authority to ensure that the power is exercised lawfully, rationally and procedurally fairly. Reliance was placed on the case of **Republic vs Director of Public Prosecutions & another. Exparte Patrick Ogola Onyango (2016) eKLR**.

- 18.** He avers that prosecutorial discretion is not absolute as the same is qualified under **Article 157 (10)** which obliges the 1<sup>st</sup> respondent to have regard to public interest, the interest of administration of justice, and the need to prevent abuse of the legal process. Reliance was placed on the case of **Diamond Hasham Lalji & another vs Attorney General & 4 others (2018) eKLR** and that of **William S.K Ruto & another vs Attorney General (2010) eKLR**.
- 19.** The applicant contends that the decision to charge is an administrative action amenable to **Article 47** of the **Constitution** and **Section 4** of the **Fair Administrative Actions Act**, which should be subjected to the test of lawfulness, reasonableness and procedural fairness. The case of **Dry Associates Limited vs Capital Markets Authority & another** was relied on.
- 20.** That the scheduling of plea while a Statutory review of the decision to charge remains pending obliges the DPP to consider and determine requests for review of its decision, and proceeding with plea-taking before the conclusion of that review defeats the very purpose of the safeguard and renders it illusory. Reliance was placed on the case of **Suchan Investments Limited Vs Ministry Of National Heritage & Culture (2016) eKLR** and that of

**Republic vs Kenya Revenue Authority ex parte Yaya Towers limited (2008) eKLR.**

- 21.** That the ODPP Guidelines issued pursuant to statutory authority create a legitimate expectation that once a review is properly invoked, it will be undertaken meaningfully and prior to the taking of irreversible steps. In that regard, the applicant relied on the cases of **Communication Commission of Kenya & 5 others vs Royal Media Services Limited & 5 others eKLR** and that of **Keroche Industries limited vs Kenya Revenue Authority & 5 others (2007) eKLR.**
- 22.** The applicant has submitted that once the plea is taken before the review process is completed, he will suffer irreversible prejudice as this will trigger interdiction under the National Police Service disciplinary framework.
- 23.** That the applicant has established a prima facie case through demonstrable arguable violation of Article 47 occasioned by the nullification of a pending statutory review. That irreparable prejudice has been shown through the immediate and enduring professional consequences attendant with interdiction. Further, that the relief sought is modest, proportionate and time-bound and that what the applicant is seeking is a short deferment of plea-taking to allow the 1<sup>st</sup> respondent to conclude the review process.

**24.** He avers that the application herein challenges the procedural sequencing adopted by the respondents whereby plea-taking is pursued notwithstanding the pendency of review, but the same does not challenge the legality of investigations, sufficiency of evidence or the constitutional mandate of the 1<sup>st</sup> respondent. That, allowing the applicant a brief opportunity to conclude an already-invoked review process before plea-taking promotes transparency, accountability and institutional integrity without shielding the applicant from eventual trial should the review so determine.

### **1<sup>st</sup> Respondent's Submissions**

- 25.** The respondent identified two issues for determination;
- a)** Whether the 1<sup>st</sup> respondent acted within the Constitutional and Statutory powers in approving the charges.
  - b)** Whether the applicant has demonstrated violation of his Constitutional rights
- 26.** The respondent submitted that in exercising its powers under **Article 157** of the **Constitution**, it has the independence to institute, take over and continue or discontinue proceedings at any stage before judgement is delivered in any criminal proceedings, and that, the criminal case against the applicant is in line with that mandate, having reviewed the evidence gathered by the 3<sup>rd</sup>

respondent. Reliance was placed on the case of **Yunus Abdul Rubi & 2 others vs Director of Public Prosecutions & 2 others (2016) KEHC 4146 (KLR)** and that of **Justus Mwenda Kathenge Vs Director of Public Prosecutions and 2 others, Petition No. 372 of 2013.**

**27.** The respondent avers that the applicant is inviting the court to delve into merits of the criminal case, the accuracy and correctness of the evidence to be adduced which is the mandate of the trial court. That issues raised in the present application should form part of the applicant's defence before the trial court and that the applicant is presumed innocent until proven guilty, and there is constitutional safeguard underpinned by various statutes to ensure that he is accorded a fair trial. Reliance was placed on the case of **Justus Mwenda (supra).**

**28.** It avers that **Section 5(4) (e)** of the **ODDP Act** does not confer any legal right to suspend any ongoing criminal proceedings but it is only meant to facilitate internal checks and accountability within the Office, but cannot override the Constitutional mandate of the DPP. That, allowing review requests to operate as an automatic bar to prosecution would encourage abuse of process, cause undue delay and promote forum shopping.

- 29.** In response to the contention by the applicant that taking of plea will result in reputational harm, and psychological distress, it was submitted that the interdiction arises from the applicable police regulations and not from any decision by the DPP to charge, and therefore, the 1<sup>st</sup> respondent cannot be held responsible for consequences stemming from the applicant's employment framework.
- 30.** The respondent has submitted that the applicant has not demonstrated any violation of his Constitutional rights as alleged. That **Article 47** of the **Constitution** does not oblige the 1<sup>st</sup> respondent to invite suspects to respond before a decision to charge is made, and that, the investigative process itself satisfies the requirements of fair administrative action, while the trial court safeguards the right to a fair trial under **Article 50** of the **Constitution**.

### **3<sup>rd</sup> Respondent's Submissions**

- 31.** The respondent identified two issues for determination as follows;
- a) Whether the institution of the criminal case is a violation of the Petitioner's constitutional right?***
  - b) Whether the court can halt criminal proceedings?***

**32.** The respondent submitted that the applicant has not alleged any illegality, procedural unfairness, bias, abuse of power and unreasonableness on the part of the respondents, and as such, the application is an abuse of the court process brought with a sole aim of circumventing the criminal justice system. Reliance was placed on the cases of;

**a) *Raymond Kipchichir Cheruiyot & another vs Republic (2021) eKLR.***

**b) *Samson Kabuthiuri Akotha vs Ethics and Anti-Corruption Commission & 5 others (2022) eKLR.***

**c) *Republic vs CS, Incharge of Internal Security & 3 others Exparte -Jean Eleanor Margaritis Otto Misc. Appl. No 271 of 2015.***

**d) *Ronald Leposo Musengi vs Director of Public Prosecutions & 3 others (2015) eKLR cited in the case of Jago vs District court (NSW) 106.***

**e) *Kipoki Oreu Tasur vs Inspector General of police & 5 others (2014) eKLR.***

**33.** It was further submitted that the Petitioner's application is premised on the allegation that the intended prosecution is founded on insufficient evidence that fails to disclose any nexus between the applicant and the alleged corrupt act, but the 3<sup>rd</sup> respondent in its replying affidavit has demonstrated by way of documentary evidence, the charge sheet, and further averments, the findings of the investigations on the applicant's culpability.

**34.** That, following the said investigations, the 1<sup>st</sup> respondent in exercise of its prosecutorial powers, and after reviewing the evidence, was satisfied that a criminal offence has been committed and preferred charges against the applicant and another. That the discretion given to the 1<sup>st</sup> respondent to undertake investigations and prosecute criminal offences is not to be taken for granted or lightly interfered with, and must be properly exercised. Reliance was placed on the case of;

***a) George Joshua Okungu & another vs The Chief Magistrate's court, Nairobi & another, Petition No. 227 of 2009 (2014) eKLR.***

***b) Republic Vs Grace Wangari Bunyi (sued as the Administrator of the Estate of the late Obadiah Kuirabunyi) & 7 others exparte Moses Kirruti & 28 others (2018).***

***c) Pauline Adhiambo Raget vs Director of Public Prosecutions and 5 others (2016) eKLR.***

**35.** It was further submitted that the Petitioner having not proved any malice on the part of the respondents, the Petition herein is only aimed at circumventing the trial and getting this court to sit and determine issues for the trial court without giving the trial court the benefit of considering all the evidence collected by the 3<sup>rd</sup> respondent in the course of its investigations.

**36.** On whether this court can halt criminal proceedings, the respondent relied on Petition number E006 of 2021 in which the court dismissed a similar application.

### **Analysis and Determination**

**37.** The court has considered the application and the supporting affidavit, and all the material that was placed before it, including the written submissions.

**38.** The only issue for determination is whether the 1<sup>st</sup> respondent acted within its Constitutional and Statutory powers in approving the charges against the applicant.

**39.** The applicant herein, together with one Stanley Omondi Owuor were scheduled to take plea before the Chief Magistrate's court at Voi on the 7<sup>th</sup> October, 2025 for the offence of conspiracy to commit an offence of corruption contrary to **Section 47 (A) (3)** as read with **Section 48** of the **Anti-Corruption and Economic Crimes Act No. 3 of 2003**.

**40.** On the 6<sup>th</sup> of October, 2025, he moved the court under certificate of urgency seeking a temporary stay of the intended arraignment and plea-taking pending the inter-partes hearing of the application herein, which orders the court granted.

- 41.** The applicant's case is that the intended prosecution is founded on insufficient, tenuous and inadmissible evidence that fails to disclose any nexus between him and the alleged corrupt act.
- 42.** It is also his case that, vide a letter dated the 3<sup>rd</sup> October, 2025, he requested the 1<sup>st</sup> respondent to recall and review the recommendation to charge him in accordance with **Clause 47** of the **ODDP Guidelines on the Decision to charge (2019)**. He has argued that proceeding with plea-taking prior with the conclusion of such review will render his review request nugatory and expose him to irreparable prejudice, including automatic interdiction, reputational harm and professional ruin.
- 43.** The 3<sup>rd</sup> respondent filed a very detailed replying affidavit on its mandate, and as the investigative agency, in respect to the charge that the 1<sup>st</sup> respondent intend to prefer against the applicant, and in particular, paragraph 6. The contents of the said paragraph, prima facie, connects the applicant with the offence that the 1<sup>st</sup> respondent intends to charge him with, that of conspiracy to commit an offence of corruption. This is not to say that he is guilty of the said offence, but the investigations by the 3<sup>rd</sup> respondent must have informed the decision to charge the applicant.
- 44.** I note that the applicant has not denied by way of a further affidavit the allegations levelled against him by the 3<sup>rd</sup> respondent.

Though he avers that the intended prosecution is founded on insufficient and inadmissible evidence, he did not find it necessary or important to counter the averments in the 3<sup>rd</sup> respondents replying affidavit.

**45.** The applicant has relied on the **Section 5 (4)(e)** of the **ODDP Act** and **Clause 12** of the **ODPP Decision to Charge Guidelines, 2019** in support of his application.

**46.** As submitted by the 1<sup>st</sup> respondent, the 1<sup>st</sup> respondent is constitutionally empowered to institute and undertake criminal proceedings against any person before any court in respect of any offence alleged to have been committed. In exercising this power, the 1<sup>st</sup> respondent shall not require the consent of any person or authority, nor under the direction or control of any person, in making the decision to charge or prosecute, save that he must be guided by public interest, interest in the administration of justice and the need to prevent abuse of legal process.

**47.** In the case of George Joshua (supra), the court emphasized on the need for the courts to be cautious and not to usurp the constitutional mandate of the Director of Public prosecution in the following terms;

***“50. The law is that the court ought not to usurp the constitutional mandate of the DPP or the authority***

***charged with the prosecution of criminal offences to investigate and undertake prosecution in the exercise of the discretion conferred upon that office. The mere fact that the intended or ongoing criminal proceedings are in all likelihood bound to fail, it has been held time and again, is not a ground for halting those proceedings. That a Petitioner has a good defence in the criminal process is a ground that ought not to be relied upon by a court in order to halt criminal process undertaken bona fides since that defence is always open to the Petitioner in those proceedings. However, if the Petitioner demonstrates the intended or the ongoing criminal proceedings constitute an abuse of process and are being carried out in breach of or threatened breach of the Petitioner's Constitutional rights, the court will not hesitate in putting a halt to such proceedings''.***

**48.** In the case of **Republic vs Grace Wangari Bunyi (Supra)** the court had this to say about the discretion given to the DPP to undertake investigations and prosecution of criminal offences;

***“It is important to note that the discretion given to the DPP to undertake investigations and prosecute criminal offences is not to be taken for granted or lightly interfered with and must be properly exercised. In the same respect, the court ought not to usurp the constitutional and Statutory mandate of the DPP. The mere fact that there are high chances of success as regards the intended or ongoing criminal proceedings***

***does not count, it's not a ground for halting those proceedings....."***

**49.** Further, in the case of **Pauline Adhiambo Raget vs Director of Public prosecutions (supra)** the court held;

***"The court should not involve itself in a minute and detailed analysis of facts and evidence to determine whether or not a criminal offence has been committed to warrant a return of the decision to prosecute. That truly is the recluse (sic) of the 1<sup>st</sup> respondent and ultimately of the trial court. Even when the 1<sup>st</sup> respondent is of the independent view that the prosecution ought to be instituted, the trial court may still return a verdict of no case to answer. It is enough for the respondent to show that on the facts as investigated and returned, it is reasonable to conclude that an offence has been committed worthy of prosecution and worthy of closer interrogation by a court of law. The satisfaction must be with the 1<sup>st</sup> respondent and not this court sitting as a constitutional court over a constitutional question".***

**50.** The court has looked at **Section 5(4) (e)** of the **ODPP Act** and it reads;

***"The Director shall -  
review a decision to prosecute, or not to prosecute, any  
criminal offence."***

**51.** It is instructive to note that the Section or the Act has not stated under what circumstances a person who is the subject of the intended prosecution can move the court for such a review or the

threshold for the review application or the circumstances under which the review can be done/entertained. It is a very general provision which the applicant cannot exploit in support of his application. In any event, the same is a Statutory provision and it cannot override the Constitutional mandate of the DPP under **Article 157 (6) and (10)** of the **Constitution**. The applicant has not advanced any evidence before this court to prove that the DPP has acted against public interest, interests of administration of justice or has abused legal process.

- 52.** According to the Decision to charge Guidelines, the decision to charge requires an objective and independent analysis of the case. The standard required in making the decision is whether there is reasonable prospect of conviction and the prosecutor must consider key evidence and certain minimum requirements of a file.
- 53.** As I have stated herein above, and going by the contents of the replying affidavit by the 3<sup>rd</sup> respondent, I am satisfied that the respondents has shown that on the facts as investigated and returned, it is reasonable to conclude that an offence has been committed worthy of prosecution and worthy of closer interrogation by a court of law. The issues that the applicant has raised in the application herein will form part of his defence before the trial court.

**54.** In view of the foregoing and for the reasons I have given, I find that the application has no merits. The same is hereby dismissed.

**55.** It is so ordered.

Dated and signed at Nairobi this .....day of .....2026

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**L.M. NJUGUNA**  
**JUDGE**

Delivered and countersigned this 27<sup>th</sup> day of February 2026.

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**B.M. MUSYOKI**  
**JUDGE**