

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
JUDICIAL REVIEW DIVISION
JUDICIAL REVIEW MISC APPLICATION NO. E038 OF 2026

BETWEEN

HARILAL DHANJI VELJI PATEL.....1ST APPLICANT
GOPAL DHANJI VELJI PATEL.....2ND APPLICANT
RATANBEN GOPAL DHANJI PATEL.....3RD APPLICANT
TERRAZO ENTERPRISES LIMITED.....4TH APPLICANT

VERSUS

DIRECTOR OF CRIMINAL INVESTIGATIONS.....1ST
RESPONDENT
DIRECTOR OF PUBLIC PROSECUTIONS.....2ND
RESPONDENT

AND

TAIPAN PROPERTY MANAGEMENT
LIMITED.....INTERESTED PARTY

RULING ON INTERIM STAY

1. The Chamber Summons dated 9th March 2026 seeks leave of Court to apply for judicial review orders of certiorari and prohibition, challenging the decision of the respondents herein to charge the applicants with the offence of forgery as shown by the annexed charge sheet filed in **Milimani CM Cr Case No. E060 of 2026 in Republic v Harilal Dhanji Velji Patel and 3 others**. The applicants also pray that the leave so granted do operate as stay of prosecution.

2. The application was filed under certificate of urgency upon which this court gave directions for effecting of service upon the respondents and the interested party and for further directions today.
3. When parties appeared through their respective counsel, the respondents' and the interested party's counsel submitted that they had been served late, only on Friday hence they had not filed replying affidavits which they intended to file in response to the application for leave and stay.
4. This court has already given directions on the hearing of the application but allowed the parties to urge the prayer for an interim stay.
5. The applicants' counsel submitted that the 2nd to 4th respondents had not even recorded statements with the police hence the investigations were not complete and that the parties have a civil suit pending before the Machakos Environment and Land Court. That the procedure applied by the respondents in charging them is not proper hence the applicants should be protected from criminal process, by way of an interim relief.
6. Opposing the prayer for stay, the respondents and the interested party's counsel submitted that investigations were completed and charges already preferred against the applicants and that in the replying affidavit, they will comprehensively address the issue of recording of statements, only that they had been served late. Further, that no prejudice will be occasioned to the applicants if stay is not granted.

7. In a rejoinder, the applicants' counsel submitted that the applicants will suffer prejudice as their application will be rendered nugatory if they are allowed to take the plea. Further, that the criminal proceedings are being pushed to serve the interests of the interested party.

Determination

8. I have considered the application for stay as argued orally. The issue for determination is whether a stay pending the hearing and determination of the chamber summons for leave is warranted.

9. Order 53 of the Civil Procedure Rules provides that:

(1) No application for an order of mandamus, prohibition or certiorari shall be made unless leave therefor has been granted in accordance with this rule.

(2) An application for such leave as aforesaid shall be made ex parte to a judge in chambers, and shall be accompanied by a statement setting out the name and description of the applicants, the relief sought, and the grounds on which it is sought, and by affidavits verifying the facts relied on.

(3) The judge may, in granting leave, impose such terms as to costs and as to giving security as he thinks fit including cash deposit, bank guarantee or insurance bond from a reputable institution.

(4) 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:

Provided that where the circumstances so require, the judge may direct that the application be served for hearing inter partes before grant of leave.

Provided further that where the circumstances so require the judge may direct that the question of leave and whether grant of leave shall operate as stay may be heard and determined separately within seven days.

10. The applicants are due to take plea on 18th March, 2026. This Court on 10th March 2026 certified the matter as filed under certificate of urgency and directed the applicants to forthwith serve the respondents and the interested party for interpartes directions today. The court did not issue any conservatory orders.
11. The directions were posted on the CTS on 11th March 2026 but the applicants despite accessing the directions as posted, did not serve the other parties until 13th March 2026 which was a Friday and therefore the other parties have not had sufficient time to file replying affidavits to challenge the application for leave and stay.
12. The decision whether or not to grant a stay pursuant to leave is an exercise of judicial discretion, and that discretion must be exercised judiciously.

13. In **Mirugi Kariuki Vs. Attorney General Civil Appeal No.70 of 1991** [1990-1994] EA 156; [1992] KLR 8 the court held that:

“The decision whether or not to grant a stay pursuant to leave is no doubt an exercise of judicial discretion and that discretion like any other judicial discretion must be exercised judiciously.

*The circumstances under which the Court may grant an order that the grant of leave do operate as a stay of the proceedings in question until the determination of the application, or until the judge orders otherwise is now settled. Where the decision sought to be quashed has been implemented leave ought not to operate as a stay, as was held in **George Philip M Wekulo vs. The Law Society of Kenya & Another, Kakamega HCMISCA No. 29 of 2005.**”*

14. In these proceedings, the court did not grant leave as sought ex parte. It directed the applicants to serve the respondents and the interested party forthwith and appear today for further directions. The other parties have not had time to respond to the application as a whole save that the applicants was permitted to address the court on whether interim stay orders can issue.

15. From submissions by the parties’ counsel, I am not satisfied that a stay should issue at this stage before considering whether or not the leave sought is warranted in the first instance, since stay would be predicated on leave if granted by the court. In other words, the court has not yet determined

presence of a *prima facie* arguable case for in-depth investigations at the substantive stage.

16. The fact that there is imminent taking of plea by other applicants, where the 1st applicants has already taken plea in itself is not evidence of prejudice to the other applicants. Furthermore, the applicants can still seek for stay in the pending chamber summons for leave and in the event that the court is satisfied that the intended application may be rendered nugatory grant stay. Furthermore, there is no evidence that before the application for leave is heard and determined, the criminal trial will have been spent.

17. In the premises, I am not satisfied that the applicants will in any way be prejudiced if stay is not granted. The request for stay is declined at this stage but may be revisited during the hearing of the chamber summons for leave.

Dated, Signed and Delivered at Nairobi this 17th Day of March, 2026

**R.E. ABURILI
JUDGE**