

THE REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW DIVISION
JR. APPLICATION NO. E231 OF 2024

REPUBLIC

APPLICANT

VS

OSORO KENNEDY OMWOYO.....EX-PARTE APPLICANT

AND

THE INSPECTOR GENERAL OF POLICE..... 1ST RESPONDENT
DIRECTORATE OF CRIMINAL INVESTIGATIONS

.....2ND RESPONDENT
SUB-COUNTY, DIRECTORATE OF CRIMINAL INVESTIGATIONS

-KASARANI3RD RESPONDENT

AND

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTION
.....**INTERESTED PARTY**

RULING

- 1.** The Exparte Applicant moved this court through the Notice of Motion dated 19th June, 2025.
- 2.** In responding to the Application, the Respondents opposed the Application through a Replying Affidavit sworn and drawn by PC Benjamin Wangila and dated 8th July,2025.
- 3.** When the matter came up for hearing on March 2026 the Applicants’ counsel raised an issue to the effect that a police constable cannot

draw and swear a Replying Affidavit to support the office of the Director of Public Prosecution's case. On her part, counsel for the Attorney General held the view that there was nothing wrong with that.

4. She submitted that the reason why the police constable swore the impugned affidavit was because at the time the complaint was lodged, the office of the Director Public Prosecution did not seize of the case.
5. The office of the director of public prosecutions on his part was of the view that it was not proper for that to happen.
6. Article 157 of the Constitution established the Office of the Director of Public Prosecutions as an independent office that was previously under the office of the Attorney General.
7. The Attorney General is not in charge of criminal proceedings in Kenya.
8. The Constitution of Kenya, 2010 completely altered and anchored the social setting of the Government and its institution. It created room for the Bill of rights, state organs, Commissions and made provisions for the independent offices of the ODPP and The Attorney General.
9. Unlike the repealed Constitution today's Constitution seeks to institute social change and reform, through values such as social justice, equality, devolution, human rights, rule of law, freedom and democracy.

- 10.** This defined the clear identification and the realignment of duties and obligations within the Government offices.
- 11.** The Constitution of Kenya, 2010 through the power of the people
- 12.** Under Article 1 created three arms of the Government.
- 13.** In order to realize the new order, the constitution placed the duty to protect, promote and fulfil the Constitution on all persons and state organs under Article 3 and 20.
- 14.** The Courts were placed at the center of safeguarding the democratic values of the people with the High Court being given unlimited civil and criminal jurisdiction under article 165(3)(d) of the Constitution.
- 15.** The High Court attends to all the cases that raise the issues of threats, infringement and violation of the Bill of rights as guaranteed under Article 4 of the Constitution under Article 165.
- 16.** The Office of the Director of Public Prosecution is now an Independent office distinct from the Attorney General's office while the Court has a duty to protect all institutions and offices created by the Constitution from infringement on their mandate including that of the DPP.
- 17.** It is not in dispute that the PC is not an advocate of Kenya he is clearly not acting in person and he is not under the AGs office.
- 18.** Counsel for the Respondent told the court that the Attorney General instructed the said PC Benjamin Wangila to swear the Replying

Affidavit because as at the time of filing the replying affidavit the Director of Public Prosecution had not taken any action.

19. This is legally not tenable.
20. The court further notes that the said Affidavit was drawn by PC wangila
21. A Replying Affidavit that is sworn and drawn for the purposes of being used in a pending court case that has a criminal component or case against the ODPP is supposed to be drawn by and or on the ODPP's instructions and not the Attorney General.
22. The Affidavit of PC Benjamin Wangila sits on quicksand is unconstitutionally and the same is hereby struck out.

Dated, signed and delivered at Nairobi this 24th day of March, 2026.

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**J. CHIGITI (SC)
JUDGE**