

THE REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAJIADO

CRIMINAL REVISION APPLICATION NO E027 OF 2025

THE OFFICE OF THE DIRECTOR OF PUBLIC

PROSECUTIONSAPPLICANT

VERSUS

JACKSON SIMEL NKARU PARTERU1ST RESPONDENT

HON. ROSELYNE OGANYO, THE CHIEF MAGISTRATE, KAJIADO

LAW COURTS2ND RESPONDENT

FRANCIS NG'ANG'A MUNDIA.....1ST INTERESTED PARTY

ISAAC GATHUNGU WANJOHI.....2ND INTERESTED PARTY

RULING

1. The amended Notice of Motion dated 5th May, 2025 (hereafter the motion) by the Office of the Director of Public Prosecutions (ODPP and hereafter the Applicant), invokes Articles 165(6), 157(10) of the Constitution and Section 6 of the ODPP Act, and seeks that:
 - i. The summons issued on 27th November 2024 by the Chief Magistrates Court in **Kajiado MCCR No. E1276 of 2023** issued

against **Ms. Vera Omollo Hamisi**, Assistant Director of Public Prosecutions and Head of the ODPP Lands and Environment Division (to appear on 17.03.2025) ... be declared as having been issued irregularly, unlawfully and in abuse of court process and the same be set aside.

- ii. The summons re-issued on 17th March, 2025 by the Chief Magistrates Court in **Kajiado MCCR No. E 1276 of 2023** issued against **Ms. Vera Omollo Hamisi**, Assistant Director of Public Prosecutions and Head of the ODPP Lands and Environment Division (to appear on 26th March, 2025) be declared as having been issued irregularly, unlawfully and in abuse of court process and the same be set aside.
- iii. The warrant of arrest issued against **Ms. Vera Omollo Hamisi** in Chief Magistrates Court in **Kajiado CMCCR No. E1276 of 2023** on 26th March, 2025 are an affront to the exercise of the State Powers of prosecution and an abuse of the court process and the same be lifted and/or set aside.

- iv. The order issued by the Chief Magistrate in **CMCR Kajiado CMCCR No. E1276 of 2023**, requiring **Ms. Vera Omollo, ADPP**, to be cross examined be set aside/vacated.
2. The motion was supported by the grounds on its face as amplified in the affidavit sworn by **Viviane Kambaga**, an Assistant Director of Public Prosecutions and in-charge Kajiado County. Setting out the background of the matter, she deposed that **Jackson Simel Nkaru Parteru** (hereafter the 1st Respondent) was charged in **Kajiado CMCR No. E1276 of 2023** (hereafter the subject case) with offences relating to obtaining land registration by false pretences and that summons had initially been issued in the subject case against **Ms. Vera Omollo** on 27th November 2024, prompting the filing of a High Court revision application; that in the pendency of the said revision application, the summons were re-issued on 17th March 2025 requiring **Ms. Vera Omollo** to appear for cross-examination on 26.03.2025 regarding the decision by the Director of Public Prosecutions (hereafter the DPP) to lay the charges in the subject case as well as a prior High Court decision.

3. Further that pursuant to the summons, the deponent appeared in court on 26th March 2025 holding brief for **Ms. Omollo**, who was unavailable due to a medical situation, and was ready to proceed with the cross-examination on behalf of the DPP. Asserting that the decision to charge dated 13th June 2024 had been made by the DPP and merely communicated by **Ms. Omollo** in her official capacity under delegated authority, and not in her personal capacity, the deponent asserts that **Ms. Omollo** had acted lawfully and professionally within the scope of delegated prosecutorial powers.
4. The deponent further asserted that the subject proceedings before the Magistrate's Court were improperly instituted, as that court lacked jurisdiction to question or supervise the exercise of the constitutional mandate of the DPP or to interrogate decisions of the High Court. Consequently, requiring **Ms. Omollo** or even a High Court Judge to account before the Magistrate's Court was legally untenable and an exercise in futility.
5. Additionally, it is stated that despite **Ms. Omollo** being represented on 27th March 2025 by competent counsel holding brief, the trial court refused without justification, to allow the proceedings to

continue. It was contended that no prejudice would have been caused had the trial court allowed counsel holding brief to proceed. The deponent contends that the issuance of summons and subsequent warrants of arrest by the Magistrate's court against a senior prosecution official amount to an affront to the independence of a constitutional office and an abuse of the process of the court. Moreover, compelling **Ms. Omollo** to testify on internal ODPP communication and with police would violate legal privilege.

6. The deponent asserts that the challenge to the DPP's decision to charge was brought before a court lacking jurisdiction, and that the trial court's only option was to "down its tools." Further taking issue with the trial court's subsequent ruling for failing to consider the prosecution arguments concerning delegated authority and proper representation. Finally, the deponent avers that the summons and resultant warrant of arrest issued against **Ms. Omollo** was unlawful and constituted an abuse of the process of the court, and seeks revision and setting aside of the ruling of 26th March 2025.
7. The motion was opposed through the replying affidavit of the 1st Respondent. He asserted that the motion is defective and misleading.

He cited the fact that the contested DPP's letter dated 13th June 2024 was authored by **Ms. Vera Omollo** as justification for issuance of summons requiring her to attend court for purposes of clarification.

8. He takes the position that no proper decision capable of review has been made against the Applicant, and hence the Applicant had no basis for seeking revision orders. Moreover, he asserted that **Ms. Vera Omollo** did not swear any affidavit before the trial court to justify setting aside the impugned summons or warrant of arrest, and hence the present application is speculative and does not demonstrate how the Applicant is prejudiced.
9. The deponent cited the prosecution failure to proceed during the proceedings before the Magistrate's Court despite being given opportunity, as leading to the issuance of the impugned warrant of arrest. He disputed the claim that Ms. Omollo's absence before the court was justified, arguing that no sufficient explanation was provided despite the prosecution having notice of the hearing dates.
10. On the substance of the dispute, the deponent outlined the history of the land parcel in controversy, that is, **Kajiado/Kaputiei North/3169** (hereafter the subject property), asserting that it was

lawfully owned by **Francis Nganga Mundia** (the 1st Interested Party and complainant named in the 3rd count in the subject case) and that the criminal charges against him were unfounded. Citing in his favour previous judicial pronouncements, including a judgment by **Nyakundi J** in **Misc. Application No. 49 of 2018** (hereafter the miscellaneous cause) wherein **Isaac Gathungu Wanjohi** (the complainant in the 2nd count in the subject case) and the 2nd Interested Party herein, sought revocation of the grant of letters of administration and confirmed grant in **Kajiado PM's Succession Cause No. 44 of 2005 In the Matter of the Estate of Nkaru Ntekee (deceased)** (hereafter the succession cause).

11. In the 1st Respondent's view, the above decision settled the ownership dispute in respect of the subject property and found no proof of fraud on his part. Therefore, he takes the position that the subject criminal case was improperly brought with the aim of revisiting issues already determined by the High Court. With a view to giving an advantage to the 2nd Interested Party in a parallel civil dispute, having lost the challenge lodged before **Nyakundi J** in respect of the subject property` .

12. He further contended that the 1st Interested Party herein is not a legitimate complainant in the subject case having never lodged a formal complaint, and thus the charges in the subject case were without proper basis. He asserted further that the DPP's decision to lay charges against him had ignored material facts and prior judicial determinations, and complained that the said prosecution conduct was oppressive.
13. He defended the summons and warrant of arrest by the Magistrate's Court as issued with jurisdiction, the prosecution counsel having failed to attend court. Thus, contending that the Applicant has improperly invoked the High Court's supervisory jurisdiction to interfere with lawful proceedings of the lower court.
14. In conclusion, he dismissed the motion by the DPP as lacking merit, an abuse of the court process, and intended to shield the prosecution from accountability. The court was therefore urged to dismiss the motion and allow the criminal proceedings before the Magistrate's Court to proceed to their logical conclusion.
15. On his part, the 1st Interested Party opposed the motion by way of his replying affidavit dated 29th July, 2025. Contending that he was

the registered proprietor of subject property and the complainant named (in count no. 3) in the subject case; and that he holds a valid and subsisting title deed to the subject property, the legally recognized proof of ownership, which title has never been cancelled or revoked. In support of his claim to ownership, he cited official records, including a certificate of official search and a certified copy of the green card, both indicating that the subject property is registered in his name.

16. He stated that as the registered owner, he had instructed his advocates to notify the DPP and the trial court that his name and property should not be referenced in criminal proceedings. He averred that he had neither lodged a complaint regarding the subject property against the accused person in the subject case, nor authorised the institution of criminal proceedings, and hence expressly disclaimed any complaint against the accused in the subject case.

17. He faulted the decision by the DPP to proceed with the charges in question naming him as a complainant, as contrary to the factual position and without his participation. Further taking issue with the

contents of the DPP's letter dated 13th June 2024, whose contents he dismissed as inconsistent with the official records held at the Lands Office. Thus, he supported the trial court's issuance of summons to **Ms. Vera Omollo** as proper, and asserted that the subsequent warrant of arrest was issued consequent to disobedience of the summons by the subject. He contends that the ODPP lacked the *locus standi* to challenge those orders, not being directly affected by the decision sought to be reviewed.

18. In conclusion, the deponent asserted that the motion by the ODPP is incompetent, lacks legal basis, and is an abuse of the process of the court. He therefore urged the court to dismiss it and uphold the impugned proceedings.

19. **Hon. Roselyne Oganyo, Chief Magistrate, Kajiado** named as the 2nd Respondent and **Isaac Gathungu Wanjohi**, named as the 2nd Interested Party did not participate in the motion.

Submissions

20. Pursuant to directions issued by the court, the parties filed their respective submissions. The Applicant's submissions are dated 30th July, 2025 (erroneously entitled "Respondent's" submissions). Against

the stated factual background the submissions presented legal arguments in opposition to the impugned actions by the trial court and in supporting the ODPP's position.

21. The submissions highlight the multiple revision applications arising from summons issued against **Ms. Vera Omollo**, requiring her to appear before the trial court. And that an earlier revision application had been pending before the High Court when the trial court proceeded to issue fresh summons, rendering the earlier proceedings otiose, and prompting the present amended motion.

22. Asserting that the impugned summons issued against **Ms. Vera Omollo** were intended to compel her to explain the ODPP's letter dated 13th June 2024 and a prior High Court decision, counsel for the Applicant argued that the ODPP's decision was a corporate, and constitutional decision made under Article 157 of the Constitution. Rather than a personal decision attributable to **Ms. Vera Omollo**, and consequently, requiring her personal attendance was improper, especially because **Ms. Kambaga**, another prosecution counsel, was present on 26.03.2025 and ready to proceed on behalf of the ODPP.

23. On the question whether a prosecutor is compellable in the same manner as a witness, counsel referred to Section 150 of the Criminal Procedure Code and Section 79 of the Witness Protection Act. Arguing that **Ms. Omollo** did not qualify as a witness, neither having recorded any statement as a witness, nor having personal knowledge of the facts in issue. Thus, no legal basis was laid to demonstrate that her evidence was essential to the just determination of the case, and therefore the summons were unjustified.

24. Further, contesting the jurisdiction of the magistrate's court to interrogate or question the constitutional mandate of the DPP, counsel asserted that under Article 157 of the Constitution, the DPP exercises independent prosecutorial powers and is not subject to direction or control by any person or authority. And that any challenge to the exercise of those powers, including allegations of abuse of process, ought to be laid before the High Court, not the subordinate court.

25. Additionally, it was submitted that the DPP is permitted to delegate authority to subordinate officers, hence **Ms. Omollo's** role

in communicating the decision to charge was lawful and within that delegated authority. Therefore her summoning by the subordinate court to personally explain the decision amounted to subjecting the DPP's constitutional office to improper control. Additionally, the letter dated 13th June 2024 being classified as confidential communication between the ODPP and investigative authorities, was inadmissible as evidence in the trial.

26. Concerning the warrant of arrest against **Ms. Omollo**, the Applicant, argued that it was irregularly issued. Because officers of the ODPP enjoy immunity from personal liability for acts done in good faith in the execution of their duties, and in this case no violation of court summons happened, a prosecuting counsel from the ODPP having appeared in court asserting readiness to proceed. In that regard, the trial court was faulted for failing to allow representation of **Ms. Omollo** by another prosecution counsel and for issuing a warrant of arrest without sufficient justification.

27. Finally, on the matter of jurisdiction and remedies, the Applicant's counsel submitted that challenges to prosecutorial decisions fall within the ambit of judicial review under the Fair

Administrative Actions Act or under the Constitution and ought to be lodged and heard in the High Court. Whereas the merits of the criminal case ought to be determined through trial or appeal after evidence is tested. The Appellant therefore urged the High Court to call for the lower court record, declare the summons and warrant of arrest irregular, and set aside the impugned orders of the trial court.

28. The 1st Respondent's submissions are dated 27th June, 2025.

The 1st Respondent takes the position that the motion fails the threshold for revision under Section 362 of the Criminal Procedure Code. Relying on **Prosecutor v Stephen Lesinko [2018] eKLR**, the 1st Respondent submitted that revision is only warranted on grounds of illegality, impropriety, or material irregularity, none of which have been demonstrated by the Applicant. Nor has the Applicant demonstrated the prejudice suffered as a result of the summons or warrant of arrest issued against **Ms. Vera Omollo**.

29. Defending the impugned summons as lawful and within the discretion of the trial of the court, counsel for the 1st Respondent asserted that courts are empowered to summon any person whose evidence may assist in resolving a matter. And that the Applicant has

misrepresented the circumstances leading to the summons, whereas prosecution counsel had initially sought the trial court's intervention to compel **Ms. Omollo** to attend and clarify matters arising from her letter. And that **Ms. Omollo** repeatedly failed to attend court as required, despite being granted ample opportunity, hence the issuance of the warrant of arrest.

30. In counsel's view, **Ms. Omollo's** failure to comply with court summons amounted to contempt of court, and the court properly exercised its powers upon finding her explanations for absence unsatisfactory. A raft of authorities emphasizing the importance of upholding the rule of law as manifested through obedience of court orders and accountability of public officers, were cited in this regard. Including **Law Society of Kenya v Inspector General of Police & others (Petition E436 of 2024) [2024] KEHC 10566 (KLR) (9 September 2024) (Ruling)** and **Dr. Fred Matiang'i & another v Miguna Miguna & Others (2018) eKLR**.

31. The 1st Respondent in resisting the Applicant's claim that the ODPP's letter dated 13th June 2024 was confidential, argued that the letter was in fact a response to earlier correspondence by the 1st

Interested Party's advocates and had been shared with all parties in the matter. Thus, the contents of the letter were properly before the trial court and liable for interrogation. Moreover, pointing out that the 1st Interested Party had consistently denied making any complaint in respect of the subject case, a fact disregarded by the prosecution.

32. On broader legal principles, the 1st Respondent submitted that while courts are generally slow to interfere with prosecutorial discretion, they reserve the power to intervene. Especially where a prosecution lacks a proper factual or legal foundation or amounts to an abuse of process. Relying on decisions in various authorities cited in the case of **Philomena Mbete Mwilu vs Director of Public Prosecutions & Others (2019) eKLR**, counsel argued that judicial review may extend beyond process to examine whether there was a reasonable basis for prosecution, particularly where criminal proceedings are brought oppressively or without sufficient evidence.

33. Finally, the 1st Respondent reiterated that **Ms. Omollo** as the author of the impugned letter was the most appropriate person to explain its contents. And the absence of sufficient explanation for her refusal through non-attendance to be examined raises legitimate

concerns. The court was therefore urged to find that the summons and warrant of arrest were lawful and properly issued, and to dismiss the motion with costs.

Analysis and Determination

34. The Court has carefully considered the motion, the rival affidavit material, as well as submissions by the parties. The basic facts leading to the motion are uncontested. In brief, the 1st Respondent alongside one **Simon Moloma Nkaru** had in September 2015 obtained a grant and certificate of confirmation of grant in the succession cause, pursuant to which the subject property vested jointly in them. In November 2015, the subject property was registered in the name of the 1st Interested Party who claimed to have acquired it at an alleged purchase price of Kes. 67,000,000/- odd.

35. In 2018 however the 2nd Interested Party filed the miscellaneous cause seeking to revoke the grant and confirmed grant issued in the succession cause, on the basis *inter alia* that he held a

valid title to the subject property, having acquired it from the deceased in the succession cause, vide a sale agreement executed in 1993. By a judgment delivered on 26.02.2019, **Nyakundi J** found *inter alia* that the 2nd Interested Party had failed to demonstrate his asserted purchaser's interest. However, having found that the impugned grant and confirmed grant were issued without jurisdiction by the subordinate court, the learned Judge ordered both revoked, and proceeded to issue a fresh grant as well as confirmed grant in favour of the 1st Respondent and **Simon Moloma Nkaru**.

36. That judgment did not mark the end of litigation, however as it appears that an appeal from the decision is currently pending before the Court of Appeal, in addition to the suit earlier instituted in the Environment and Land Court (ELC) by the 1st Interested Party against the 2nd Interested Party, namely, **Kajiado ELC Civil No. 502 of 2017 (Formerly Machakos ELC No. 178 of 2016) Francis Nganga Mundia v Isaac Gathungu Wanjohi & 3 Others**.

37. More recently however, the 1st Respondent was on 17.10.2023 charged jointly with another or others not before the court, in **Kajiado CM's Criminal Case No. 1276 of 2023** (the subject case)

with four counts. The offences in the four counts relate to the subject property, and are, **Obtaining land registration by false pretence contrary to Section 320 of the Penal Code** (relating to the 2015 transmission of the subject property to himself and co-beneficiary); **Conspiracy to defraud contrary to Section 317 of the Penal Code** (relating to the 2015 transmission against the interests of the 2nd Interested Party); **Obtaining money by false pretences contrary to Section 313 of the Penal Code** (relating to the sale of the subject property to the 1st Interested Party); and **Obtaining land registration (by false pretence) contrary to Section 320 of the Penal Code** (relating to his procurement of title to the subject property in 2015). This being the subject case from which the instant application emanates, the court found it apposite to contextualise the application by setting out the relevant proceedings as contained in the lower court record.

38. The hearing of the subject case had been set for 21.02.2024. However, the record of the lower court record shows that the hearing was adjourned ahead of that date on 12.02.2024, as instructions from the ODPP had not been received concerning an earlier

intimation by counsel on 5.02.2024 of the intention by his client, the 1st Interested Party to withdraw the 3rd count above. On grounds that his client had never recorded a complaint regarding the subject case and that he had written a letter to the ODPP seeking review of the case. Subsequently, the subject case was mentioned on 26.02.2024, 28.02.2024 and 3.05.2024, the trial court having been informed by the prosecution that the file had been forwarded to the ODPP Headquarters in Nairobi for instructions. Eventually on 15.07.2024, it was intimated that the DPP's directions "*on the way forward*" had been received. The case was therefore scheduled for mention on 21.08.2024.

39. By the said next mention date there were two new developments in the matter. First, the prosecution referred to a letter directing the Directorate of Criminal Investigation Kajjado to carry out further investigations, while on his part, the 1st Respondent had filed an application dated 20.08.2024. The application sought several declaratory orders *inter alia* to the effect that, the trial court as a court subordinate to the High Court was bound by the pronouncements of **Nyakundi J** in the miscellaneous cause,

including the finding that the 1st Interested Party was the duly registered owner of the subject property; that the 1st Interested Party was not a complainant in the subject case; and consequently that appropriate directions be given pursuant to Section 89(5) of the Criminal Procedure Code (CPC). Under that provision, a magistrate is empowered to refuse to admit a complaint or formal charge if he/she forms an opinion that the complaint or formal charge does not disclose an offence.

40. The trial court, while giving directions on the filing of responses and submissions on the application and a mention date of 2.10.2024 in that regard, equally reserved a future mention date of 6.11.2024 for purposes of confirming instructions from the ODPP regarding the proposed withdrawal of the 3rd count. This far, the 1st Interested Party pressed his assertions that he had not made a complaint in relation to the subject case and intention to withdraw the 3rd count against the Accused person, the 1st Respondent herein. The application dated 20.08.2024 was essentially to the same purport. It is the proceedings taken subsequent to the filing of the application dated 20.08.2024 that resulted in the revision application now before

this court. The court must determine whether the revision application is merited.

41. The motion before the court invokes Article 165(6), 157(10) and Section 5(3) and 6 of the ODPP Act. The court's supervisory jurisdiction over subordinate courts and any person, body or authority exercising a judicial or quasi-judicial function is derived from the Article 165 (6) and (7) of the Constitution, while Section 362 and 364 of the CPC specifically provide for the power of revision donated to the High Court in respect of criminal proceedings in the subordinate court. The former provides as follows: -

“(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but over a superior court.

(7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any

direction it considers appropriate to ensure the fair administration of justice”.

42. On the other hand, Section 362 of the CPC provides that : -
- “The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of any such subordinate court”.**

43. The Court of Appeal in the case of **Amuno v Republic (2025) KECA 1617 (KLR)** observed with regard to the Sections 362 and 364 of the CPC that:

“In view of the above, it is patent that the powers of revision under Section 362 of the CPC are invoked to enable the court satisfy itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any subordinate Court. Therefore, if the Subordinate court’s decision is wanting in its

correctness, legality or propriety or the proceedings are irregular, the High Court will no doubt step in and correct the same. It follows that if no such situation arises, then the High Court cannot purport to exercise those powers therein and revise a lawful, legal and regularly issued order of the trial court.”

44. The provisions of Article 165(6) and (7) of the Constitution and Sections 362 to 367 of the CPC were considered by the Court of Appeal in **Simiyu vs Nyakongo & Anor. (2023) KECA 66 (KLR)**, which was an appeal from a criminal revision decision in the High Court. The Court of Appeal considered the jurisdiction of the High Court under the foregoing provisions, and stated as follows:

“Before we deal with the issues that arise in this appeal, let us first consider whether the jurisdiction of the High Court donated under Section 362 to 367 of the CPC, can be equated to the jurisdiction prescribed under Article 165 (6) & (7) of the Constitution.

Mativo, J. (as he then was) in the persuasive authority in the case of Rana Auto Selections Ltd & 2 others v

Kenya Revenue Authority & another (Judicial Review Application 9 of 2020) [2021] KEHC 323 (KLR) had this to say about the purpose and application of supervisory jurisdiction of the High Court:

'Supervisory jurisdiction refers to the power of superior courts of general superintendence over all subordinate courts. Through supervisory jurisdiction, superior courts aim to keep subordinate courts within their prescribed sphere and prevent usurpation. In order to exercise such control, the power is conferred on superior courts to issue the necessary and appropriate writs. This power of superintendence is conferred by article 165 (6) of the Constitution. As was pointed out by Harries, C.J. in Dalmia Jain Airways Ltd. v Sukumar Mukherjee 1953 SC 58, this power is to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors. This power involves a duty on the High Court to keep the inferior

courts and tribunals within the bounds of their authority and to see that they do what their duty requires and that they do it in a legal manner. But this power does not vest the High Court with any unlimited prerogative to correct all species of hardship or wrong decisions made within the limits of the jurisdiction of the Court or Tribunal. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principle of law or justice, where grave injustice would be done unless the High Court interferes. As the Supreme Court of India stated unless there is grave miscarriage of justice or flagrant violation of law calling for intervention, it is not for the High Court under article 165 (6) of the Constitution to interfere.”

45. With regard to the provisions of Sections 362 and 364 of the Criminal Procedure Code, the Court of Appeal proceeded to express the following view:

“ We now make reference to the persuasive judgment delivered by the Indian Apex Court in the case of Krishnan and Another v Krishnaveni and ano {1997} 4 SCC 241. The Court extensively interpreted the relevant provisions of the Indian Criminal Procedure Code, [which are quite similar to our own CPC, Sections 362 to 364 on the revisionary power of the High Court, and made the following observations:

‘It is seen that exercise of the revisional power by the High Court is to call for the records of any inferior Criminal Court and to examine the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court and to pass appropriate orders.Section 397 gives powers to the High Court to call for the records as also suo motu power under Section 401 to exercise the revisional power on the grounds mentioned therein, i.e., to examine the correctness, legality or propriety of any finding, sentence or order, recorded or passed and as to the regularity of any proceedings of such

inferior Court, and to dispose of the revision in the manner indicated under Section 401 of the Code. The revisional power of the High Court merely conserves the power of the High Court to see that justice is done in accordance with the recognized rules of criminal jurisprudence and that its subordinates Courts do not exceed the jurisdiction or abuse the power vested in them under the Code or to prevent abuse of the process of the inferior Criminal Courts or to prevent miscarriage of justice.

The object of Section 483 and the purpose behind conferring the revisional power under Section 397 read with Section 401, upon the High Court is to invest continuous supervisory jurisdiction so as to prevent miscarriage of justice or to correct irregularity of the procedure or to meet out justice.The power of the High Court, therefore, is very wide. However, High Court must exercise such power sparingly and cautiouslyHowever, when the High Court notices that there has been failure of justice or misuse of

judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/incorrectness committed by inferior Criminal Court in its juridical process or illegality of sentence or order." (Emphasis added)."

46. The Court of Appeal concluded by stating that:

'Undoubtedly the High Court's power of revision under the provisions of Sections 362 and 364 of the CPC, and indeed under the entire spectrum of Sections 362 to 367 of the CPC, are limited to finding, sentence or order recorded or passed by a subordinate court, other than an order of acquittal. The provisions are clear that the High Court in exercise of the power of revision, may call for the record which has been reported for orders, or which otherwise comes to its knowledge. The High Court's attention could be drawn through any medium including social media. That means that in the exercise of the power of revision, the High Court could also act suo motu. It is therefore safe to say that no formal

mode of approaching the Court or of drawing the Court's attention is required or is necessary before the revision process can be invoked. The power of revision is limited to examination of the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.

47. In juxtaposing the limited power of revision above against the wide spectrum of the supervisory powers donated to the High Court under Articles 165(6) and (7) the Court of Appeal had this to say:

'It is worth noting that under article 165 (6) of the Constitution takes a completely different approach and confers a supervisory jurisdiction on the High Court, not only over subordinate courts but is exercised over any tribunal, person, body or authority exercising a judicial or quasi-judicial function. The only rider is that the High Court cannot exercise the supervisory power over a superior court. This jurisdiction is also not limited to

criminal proceedings only but covers proceedings of civil nature. Further it is not limited to the High Court satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court, but in addition to the powers under the CPC, the Constitution has expanded the scope of the High Court's power to "make any order, or give any direction it considers appropriate to ensure the fair administration of justice". So that if the High Court in the exercise of its supervisory jurisdiction calls for a record and finds that there was an unfairness in the administration of justice by the subordinate court, body or tribunal the High Court may intervene even if there may be no other challenge to the proceedings, order or sentence, whichever is the case".

48. Thus, the supervisory power of this court under Article 165(6) of the Constitution as invoked here by the Applicant not only subsumes, but surpasses its limited revisionary power under Section

362 of the CPC. There are several complaints raised in the motion by the ODPP with regard to the impugned proceedings, but the key thrust of the Applicant's complaint is that the trial court in summoning **Ms. Vera Omollo**, an Assistant Director of Public Prosecutions, to explain the contents of the letter dated 13.06.2024 communicating the decision to charge, improperly assumed jurisdiction to interrogate the decision to charge by the DPP. Indeed, in this court's view the motion by the ODPP stands or falls on the question whether the trial court was clothed with the requisite jurisdiction to entertain the proceedings leading to the impugned orders.

49. The ODPP is established as an independent office under Article 157 of the Constitution and the ODPP Act. For the purposes of this case, the pertinent sub-articles of Article 157 of the Constitution provide as follows: -

(1) There is established the office of Director of Public Prosecutions.

(2)

(3)

(4) The Director of Public Prosecutions shall have power to direct the Inspector-General of the National Police Service to investigate any information or allegation of criminal conduct and the Inspector-General shall comply with any such direction.

(5)

(6) The Director of Public Prosecutions shall exercise State powers of prosecution and may—

(a) institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed;

(b) take over and continue any criminal proceedings commenced in any court (other than a court martial) that have been instituted or undertaken by another person or authority, with the permission of the person or authority; and

(c) subject to clause (7) and (8), discontinue at any stage before judgment is delivered any

criminal proceedings instituted by the Director of Public Prosecutions or taken over by the Director of Public Prosecutions under paragraph (b).

(7)

(8) The Director of Public Prosecutions may not discontinue a prosecution without the permission of the court.

(9) The powers of the Director of Public Prosecutions may be exercised in person or by subordinate officers acting in accordance with general or special instructions.

(10) The Director of Public Prosecutions shall not require the consent of any person or authority for the commencement of criminal proceedings and in the exercise of his or her powers or functions, shall not be under the direction or control of any person or authority.

(11) In exercising the powers conferred by this Article, the Director of Public Prosecutions shall have regard to the public interest, the interests of the administration of

justice and the need to prevent and avoid abuse of the legal process.

(12)

50. Article 157(10) of the Constitution guarantees the independence of the Office of the Director of Public Prosecutions, providing that the DPP shall not require the consent of any person or authority for the commencement of criminal proceedings and shall not be under the direction or control of any person or authority. This constitutional safeguard is intended to insulate the exercise of prosecutorial powers from external interference, including from the judiciary, except where such intervention is exercised within constitutionally sanctioned mechanisms such as judicial review or constitutional petitions.

51. An attempt has been made here by the 1st Respondent and the 1st Interested Party to cast Ms. **Vera Omollo** as a separate individual and distinct from the ODPP or DPP, as well as her actions. The reason why such a position is untenable is found in the contents of the letter in contention (it was written on behalf of the DPP); as viewed in light of the provisions of Article 157 (9) of the

Constitution, Sections 22 and 29 of the ODPP Act; and the representations by the same two counsel above leading to the impugned summons and the purpose thereof, as will become evident.

52. That being said, the record of the trial court shows that up until 21.08.2024, the 1st Interested Party and the 1st Respondent (by his application dated 20.08.2024) were essentially seeking the withdrawal and or rejection of the 3rd count, and or all the charges before the trial court. On grounds inter alia that the 1st Interested Party, had disclaimed having made any complaint regarding the charges while the 1st Respondent relied on the finding in judgment of **Nyakundi J** in the miscellaneous cause that there was no proof of fraud on his part as had been alleged by the 2nd Interested Party, the complainant in the 2nd count. The directions by the trial court on 21.08.2024 therefore related to the application dated 20.08.2024 and the pending issue of the intended withdrawal of the 3rd count.

53. However, by the next scheduled mention on 2.10.2024 the 1st Respondent and 1st Interested Party had become aware of the letter dated 13.06.2024 by **Ms. Vera Omollo** (hereafter the letter in

contention), while apparently no response had been received by the 1st Interested Party to his letter to the DPP dated 31.01.2024, mentioned in earlier proceedings, and seeking review of the case. The letter in contention is marked as annexure **FNM 8** to the 1st Interested Party's replying affidavit before this court, dated 29th July, 2025. It is written on the letter head of the ODPP, Nairobi and deserves reproduction here in full:

"Ref: ODPP/HQ/CAM/13/850

Date: 13th June, 2024

The SCCIO,

Directorate of Criminal Investigations,

Kajiado Central, P.O BOX 6

KAJIADO.

**RE: ODPP/KJD/05/VOL1/13 REQUEST FOR REVIEW OF
DECISION TO CHARGE IN CR CASE NO. 1276 OF 2023; R VS
JACKSON KARU PARTETU**

This office called for this duplicate file upon receipt of a letter dated 31st January 2024, from Murage, Juma & company advocates acting on behalf of Francis Nganga Mundia requesting the Director of Public Prosecutions to review the decision to charge the accused person.

The file was placed before the Director of Public Prosecutions who upon independent review of the complaint, came to the finding that the decision to charge the accused person is supported by sufficient evidence on record.

The DPP found that the late Nkaru ole Ntekese, who is the initial owner of the subject property had sold the subject land to Isaack Gathungu Wanjohi a decade before he passed on and a title issued thereof.

It was further noted that the accused person Jackson Nkaru Partetu in cahoots with his brother E2. Simon Moloma Nkaru jointly obtained registration of the title to the land through transmission, an act which was based on misrepresentation of facts and fraud.

The DPP noted that Simon Moloma Nkaru was not charged, and no proper reason has been advanced as to why he was not charged yet he signed the impugned transfer that gave rise to the title in the name of Francis Mundia (the complainant herein). E1 and E2 did not have a good title and could not have passed title to the complainant herein.

The DPP has further directed that Irene Njambi Kamau - Lands Registrar to record a statement under change (sic) and caution on the fraudulent transfer.

Consequently, The DPP has directed that E2. Simon Moloma Nkaru be charged jointly with Jackson Nkaru Parteru (the accused person)

before court with the same offence and the matter to proceed to its logical conclusion.

The duplicate inquiry file is hereby returned.

(signed)

VERA OMOLLO HAMISI

HEAD, LANDS AND ENVIRONMENT DIVISION,

FOR: DIRECTOR OF PUBLIC PROSECUTIONS.

Encl: Duplicate inquiry file. Copy to: Ms. Wang'ele Mary Inyuma Head, ODPP Kajiado County P.O. Box 646 - 01100, KAJIADO."

54. This letter speaks for itself and essentially communicated the decision of the ODPP, upon reviewing the available evidence, not only to proceed with the prosecution already underway in the subject case in respect of the 1st Respondent , but also to charge **Simon Moloma Nkaru** as his co-accused. Moreover, directions were given to the investigator to record a charge and caution statement from a named land registrar *"on the fraudulent transfer"*.

55. According to proceedings before the trial court on 2.10.2024, the letter in contention was introduced as an annexure to the replying affidavit filed by the 2nd Interested Party in response to the application dated 20.08.2024. It is apparent that henceforth, the

tenor of the proceedings before the trial court transmuted from matters properly raised before the trial court, namely, the request by the 1st Interested Party for the ODPP to review the case and allow him to withdraw the complaint in the 3rd count, and the allied 1st Respondent's application dated 20.08.2024, the merits thereof notwithstanding. To the declared and unmistakable intention, by the 1st Respondent and 1st Interested Party, who were evidently aggrieved by the decision of the ODPP as conveyed via the letter in contention (matters also canvassed in material before this court), to challenge the DPP's decision. Hence the demand by the 1st Respondent and 1st Interested Party before the lower court to cross-examine the author, **Ms. Vera Omollo** on its contents.

56. Thus, on 2.10.2024, upon confirming that his client had filed a response to the application dated 20.08.2024, this is how counsel for the 1st Interested Party proceeded to address the trial court:

“(W)e have been consistent that we have never filed a complaint against the Accused person. In Isaac Wanjohi’s (2nd Interested Party) affidavit, he has annexed a letter dated 13th June 2024 by Vera Omollo

Hamisi. I will need that individual to come for cross-examination. The intention is to investigate a High Court Judge. It refers to confirmation of grant and judgment stated 26.02.2019 of Justice Nyakundi, that it was obtained through fraud and misrepresentation”

57. When the court prosecutor stated that the application was premature, counsel for the 1st Interested Party responded as follows:

” Vera is a public officer. I am calling her in that capacity. We cannot interrogate the judicial authority of a High Court Judge...it is to protect judges...independence of Judiciary”.

58. The trial court issued directions that the investigating officer file a response to the motion dated 20.08.2024, while deferring the issue of cross-examination pending filing of responses to the application. The matter was scheduled for further mention on 27.11.2024. On that date, counsel for the 1st Respondent revisited the matter of cross-examination of **Ms. Vera Omollo** and was supported by counsel for the 1st Interested Party who seemingly taking issue with

the grounds of objection filed by the prosecution to the application dated 20.08.2024 stated :

“No one in the prosecution or in the investigative arm is willing to take oath and take responsibility for what is in that letter. I reiterate my request that under Section 150 CPC this officer (vera) be summoned. Justice will only be canvassed if this officer is summoned.

A decision is made by a High Court and an officer from DPP disagrees with it and charges one of the parties based on same decision. I wish to invite press that judges are now subject to DPP who determines when fraud is done in proceedings and judgments”

59. Objecting to the application the prosecuting counsel stated that the letter in contention had been addressed to the Sub- County Criminal Investigations Officer (SSCIO) under Article 157 of the Constitution.

60. On his part, counsel for the 1st Respondent faulted the reference in the letter in contention to the 1st Interested Party as a complainant before stating that :

“The question is where did Ms. Vera get (the 1st Interested Party) to make him a complainant? Ms. Vera says the transmission was through fraud. That touches on the judgment of Judge Nyakundi ..a judgment of a superior court.. But Vera says it was through fraud . We need her to come and state to court how she arrived at that position whereas she never participated in the proceedings.....DPP has not filed a replying affidavit to deny Francis Mundia (1st Interested Party) is not the registered owner of the property as found by Justice Nyakundi. Vera Amollo(sic) seems to be sitting as an ELC Court and seems to confer ownership.....Mr. Juma’s client (1st Interested Party) consistently has said he has not filed any complaints against the Accused (1st Respondent). On what basis are these charges filed? Only Ms. Vera Amollo(sic) can come and explain”.

61. Pausing here, it should by now have become obvious to the trial court that the counsel for the 1st Interested Party and the 1st Respondent were angling for an opportunity to interrogate before it the decision of the ODPP as contained in the letter in contention. The

trial court seemingly missed the red flags indicating that the proceedings had gone off course to a realm reserved for a different forum. Despite the protest by prosecuting counsel that the letter was written pursuant to Article 157 of the Constitution, the trial court thereafter proceeded to issue summons for 17.03.2025 ***"to Author of the letter dated 13th June 2024 to come to court and be cross-examined on its contents therein"***.

62. Given these events the assertions by the 1st Respondent before this court that the motion before it was speculative cannot stand. The said Respondent and the 1st Interested Party by their addresses in the lower court made no secret of their intentions for seeking the summoning of **Ms. Vera Omollo**, thus evidently the proceedings had taken on a new dimension.

63. On the 17th March 2025, the date set for cross-examination of **Ms. Vera Omollo**, the trial court was informed that the regular court prosecutor was unwell, that **Ms. Vera Omollo** was not in attendance and that a revision application had been filed by the prosecution in the High Court. Despite strong appeals by counsel for the 1st Respondent and 1st Interested Party, the trial court declined to issue

a warrant of arrest against **Ms. Vera Omollo** as the court could not confirm that summons had indeed been served on her.

64. The matter was further adjourned to 26.03.2025 for cross-examination of Ms. Vera Omollo and summons were reissued in that regard. A copy of the summons requiring attendance dated 17.03.2025 and addressed to **Vera Omollo Hamisi** requiring her attendance on 26.03.2025 is on the record. The stated purpose for the required attendance is to ***"Explain the contents of the letter dated 13th June 2024 and judgment of Justice Nyakundi dated 26th February 2019"***. The court having reviewed the relevant proceedings of the trial court did not find any order requiring **Ms. Vera Omollo** to *"explain"* the judgment of **Justice Nyakundi**, presumably in the miscellaneous cause.

65. It is not clear how and why the additional reference to Justice Nyakundi's judgment which had been repeatedly mentioned by counsel for the 1st Respondent and 1st Interested Party, found its way into the copy of summons issued. What is evident from the circumstances and history of proceedings in the subject case and pending application dated 20.08.2024, is that the reference to the

decision of Nyakundi J of 26.02.2019 was loaded with insinuation concerning the propriety of the decision of the ODPP to lay criminal charges against the 1st Respondent.

66. Be that as it may, on 26.03.2025 **Ms. Viviane Kambaga** an Assistant Director of Public Prosecutions appeared before the trial court and stated concerning the letter in contention that it was written under delegated authority and not in **Ms. Vera Omollo's** personal capacity, and was intended to convey the state's decision to institute charges. Further that paragraph 2 thereof explained how the decision to charge was arrived at, all in exercise of the DPP's mandate pursuant to Article 157 of the Constitution and Section 5(3) of the ODPP Act. She took the position that the proper forum for any challenge to the decision of the ODPP was the High Court and not the subordinate court. Stating that **Ms. Vera Omollo** was unwell , she said she was in attendance in her capacity as the representative of the DPP, in response to the summons issued.

67. Counsel representing the 1st Respondent and 1st Interested Party on their part insisted that it was **Ms. Vera Omollo**, who had been summoned for cross-examination. Further, asserting that no

good reason had been offered for her absence, they urged the court to find that she had deliberately absented herself and to issue a warrant of arrest. Despite the prosecution pointing out that **Ms. Omollo** had neither recorded a statement as a witness nor written the letter in her personal capacity, and Ms. Kambaga's readiness to step into Ms. Vera's shoes, the trial court having found that Ms. Vera Omollo had deliberately avoided the court, proceeded to issue a warrant of arrest against her.

68. Under Section 150 of the CPC cited by counsel for the 1st Interested Party while seeking summons against Ms. Vera, a trial court may call or summon any person *as a witness*, or examine any person in attendance though not summoned as a witness, or recall and re-examine a person already examined, and the court shall summon and examine or recall and re-examine any such person *if his evidence appears to it essential to the just decision of the case*. However, from the outlined circumstances of this case, the contents of the letter in contention, the submissions by the 1st Respondent and 1st Interested Party in seeking summons, and the purpose stated in

the summons, Ms. **Vera Omollo** did not qualify as any of the persons contemplated by the section.

69. She had not sworn an affidavit in connection with the subject case, and was neither being called as a witness, investigator or as a person whose evidence was essential for the just determination of the case. She was being summoned for the sole purpose of being cross-examined regarding the decision of the ODPP as conveyed in the letter in contention, or in the words of counsel for the 1st Respondent on 27.11.2024 before the trial court, to answer the question: ***On what basis are these charges filed?*** And this, after the ODPP had evidently rejected overtures by the 1st Interested Party to review the case and allow withdrawal of the complaint.

70. The court order summoning Ms. Vera Omollo did not cite any provision, and none exists in the Constitution, CPC, or the Magistrates' Court Act, to vest the subordinate court with power to summon the DPP to justify his decision to lay criminal charges before it. Nor to conduct proceedings whose purport, as was evident in the subject case, is to challenge the exercise of the independent mandate of the ODPP under Article 157 of the Constitution.

71. Indeed, the submissions of the 1st Respondent citing the case of **Mbete Mwilu** (supra) and other cases before the High Court appear to be an indirect concession of this position. Even in cases where the discretion to summon a person such as an investigator may be exercised in a criminal trial, such exercise must align with the Constitution and the law, and especially avoid encroaching upon constitutional functions of other state organs.

72. Under Section 150 of the CPC the reserved power of a trial court to summon persons as witnesses or other necessary persons is a discretionary power, ordinarily exercised by the trial court in its own motion, rather than at the instance of a party. This power cannot be invoked in the subordinate court by a party aggrieved by the ODPP's decision to lay charges, as happened in the subject case, with the declared aim of interrogating or challenging the DPP's decision to charge, or to compel the DPP to justify such decision .

73. Not only would such a scenario amount to judicial overreach but it would also portend an attempt at indirect control or supervision of a constitutionally independent office, and ultimately violation of Article 157(10) of the Constitution. Given the circumstances of the

subject case, the trial court ought to have recognised the request for cross-examination of **Ms. Vera Omollo** before it for what it was; a trojan horse, intended to pierce the ODPP's constitutional shield of independence before the wrong forum.

74. That said, the court reiterates the undisputed principle that it is essential for the maintenance of the rule of law and good order that the authority and dignity of the courts is upheld at all times, especially through compliance with court orders. It is therefore commendable that despite taking issue with the summons issued by the trial court, the ODPP dispatched a senior officer in the same rank as Ms. Vera Omollo to attend the court on 26.03.2025 to represent the ODPP by "*stepping into the shoes*" of **Ms. Vera Omollo** who was said to be unwell. The latter assertion was disputed by counsel for the 1st Respondent and 1st Interested Party who demanded the attendance of **Ms. Vera Omollo** however, and the court proceeded to issue a warrant of arrest for **Ms. Vera Omollo** .

75. Be that as it may, the propriety or otherwise of a prosecutorial decision is not a matter to be canvassed through the testimony of a prosecuting counsel before a subordinate court, but rather through

an appropriate challenge before a court of competent jurisdiction. A party aggrieved by a decision by the ODPP to lay charges which in his view was not reasonably made is entitled inter alia to file a challenge by way of a constitutional petition or judicial review application before the High Court which is vested with the jurisdiction to entertain such proceeding pursuant to Article 165 of the Constitution.

76. As held in **Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 others [2012] eKLR** a court's jurisdiction flows from either the Constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.
77. In the result, the Court finds that the trial court acted without jurisdiction in entertaining and granting the prayer by the 1st Respondent and the 1st Interested Party for the issuance of summons against **Ms. Vera Omollo** for the purposes stated in the summons and the subsequent warrant of arrest. Consequently, the impugned proceedings and resultant orders are null and void, and of no effect.

78. In **Owners of Motor Vessel "Lilian" v Caltex Oil (Kenya) Ltd (1989) KLR Nyarangi JA** (as he then was)

famously stated that:-

"Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. Before I part with this aspect of the appeal, I refer to the following passage which will show that what I have already said is consistent with authority:

"By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and

matters of which the particular court has cognisance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given"

See Words and Phrases Legally defined – Volume 3: I – N Page 113".

79. Similarly in this case, the trial court erroneously assumed jurisdiction it did not possess, and the resultant impugned orders against **Ms. Vera Omollo** amount to nothing. It is so declared. The court, having today been notified of recent developments in the subject case, directs that the lower court file be remitted back to the subordinate court. It is so ordered.

DELIVERED AND SIGNED ELECTRONICALLY AT KAJIADO ON THIS 2ND DAY OF APRIL 2026.



C.MEOLI

JUDGE

In the presence of:

For the Applicant: Ms. Kivali

For the 1st Respondent: Mr. Odhiambo

For the 2nd Respondent: N/A

For the 1st Interested Party: Mr. Irungu h/b for Mr. Murage

For the 2nd Interested Party: N/A

C/A: Lepatei