

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW MISCELLANEOUS APPLICATION
NO. E403 OF 2025

MWAURA KELVIN KARUGAEX- PARTE APPLICANT
VERSUS
DIRECTORATE OF PUBLIC PROSECUTIONS...1ST RESPONDENT
DIRECTORATE OF CRIMINAL
INVESTIGATIONS..... 2ND RESPONDENT
HONOURABLE ATTORNEY GENERAL.....3RD RESPONDENT
CHIEF MAGISTRATES COURT
NAIROBI.....4TH RESPONDENT

JUDGEMENT

1. The application that comes up for determination is the Application dated 27th November,2025 wherein the applicant seeks for orders: -
 - 1) THAT an Order of Certiorari do issue, to remove to this Honourable Court the charge sheet and proceedings in Criminal case E1107/2023 Republic Vs KELVIN KARUGA MWAURAfor purposes of quashing the same.
 - 2) THAT an Order of Prohibition do issue to prohibit the Respondents from proceeding with the hearing of Criminal case E1107/2023 Republic Vs KELVIN KARUGA MWAURA.

3) THAT an Order of Mandamus do issue Compelling the Respondents to terminate Criminal case E1107/2023 Republic Vs KELVIN KARUGA MWAURA.

4) That the costs of the application be provided for.

THE APPLICANT'S CASE

2. It is his case that on 11th September 2023, Geoffrey Kiarie wrote to the Nairobi County investigations officer a complaint titled ‘complaint of threats to life and cyber bullying against the Applicant. This prompted the officer named, a Mr. Vincent Kokeno of DCI regional Headquarters to write to the Director General Communications Authority of Kenya “Requesting for information around the registered owners of email addresses mwaurakelvin6@gmail.com and Geoffrey.kiariek@gmail.com and that there be retrieved chats as on the 5th November 2022 and as from 1st July 2023 to 12th September 2023 from the stated emails.
3. Mr. Ezra Koech prepared a certificate under Section 65(8) as read with Section 106 b (4) of the Evidence Act dated 21st September 2023 to the effect that on 21st September 2023 he retrieved and analyzed email communication between the following email accounts: Kelvin MwauraMwaurakelvin6@gmail.com and Geoffrey Kiariejoivohoo@gmail.com and generated a digital forensic report 48_NBI/AREA from the analyzed email communication.
4. On 20th September 2023 Geoffrey Kiarie signed a consent to search digital media submitting his email account joivohoo@gmail.com and not

Geoffrey.kiariek@gmail.com as per the letter dated 15th September 2023 , by Mr. Vincent Kokeno of DCI regional Headquarters to the Director General Communications Authority of Kenya “Requesting for information on email address” in which letter, he requested to be provided with particulars of the registered owners of email addresses mwaurakelvin6@gmail.com and Geoffrey.kiariek@gmail.com and not Joivohoo@gmail.com.

5. It is the Applicant's case that the consent to search digital media dated 20th September 2023 indicates that he consented to have his email address joivohoo@gmail.com, and emails received from Mwaura Kelvin of email address Mwaurakelvin6@gmail.com for the period between 9th February 2022 to September 2023, which is not what the letter dated 15th September 2023, by Mr. Vincent Kokeno of DCI regional Headquarters addressed to the Director General Communications Authority of Kenya “Requesting for information on email address” on particulars of the registered owners of email addresses mwaurakelvin6@gmail.com and Geoffrey.kiariek@gmail.com was about and also it was not about retrieved chats as on the 5th November 2022 and as from 1st July 2023 to 12th September 2023 from the stated emails.
6. It is his case that the investigations therefore failed to appreciate that Geoffrey Kiarie Kuria has two email addresses namely, joivohoo@gmail.com and Geoffreykiariek@gmail.com and he intentionally misled the investigators as to which of his two emails was the subject of his complaint against Mwaura Kelvin from his email address Mwaurakelvin6@gmail.com and had they searched chats from

Mwaurakelvin6@gmail.com to Geoffreykiariek@gmail.com as per the letter dated 15th September 2023, by Mr. Vincent Kokeno to the Director General Communications Authority of Kenya on the subject dates being 5th November 2022 and as from 1st July 2023 to 12th September 2023, and for the period between 9th February 2022 to September 2023, they would have discovered that the Applicant had sent offensive emails to Mwaurakelvin6@gmail.com as well which would not have led the Applicant to be charged at all.

7. It is his case that the investigating officer, SGT Peter Mugangai phoned the Applicant sometime in November 2023 and asked if he could be able to bring the printout of offensive emails sent to him on his email address mwaurakelvin6@gmail.com by the complainant via his email address Geoffrey.kiariek@gmail.com, to which he said he would.
8. Unfortunately, the said Investigating officer instead and immediately disregard them indicating that he had already forwarded the file to the ODPP with his recommendations, thereby denying the Applicant an opportunity to be heard and thus failing to take into account matters which he ought to have taken into account, and he was undoubtedly biased, and the decision so to do was taken with an ulterior motive or purpose calculated to prejudice the legal rights of the Applicant.
9. It is his case that the way the investigations were conducted coupled with the refusal to take into account or neglect to take into account matters which they ought to take into account, such as the fact of the existence of offensive emails from the complainant Geoffrey Kiarie Kuria to the

Applicant via the complainant's email address Geoffrey.kiariek@gmail.com," and the decision to charge the Applicant were unreasonable, ultra vires, biased, procedurally unfair, irrational, unreasonable so much that no reasonable authority could have come to it.

10. He argues that the investigating officer, SGT Peter Mugangai acted on the direction of a person or body not authorized or empowered by any written law to give such directions, that is, the complainant, and the administrative action or decision was made in bad faith to settle personal scores by the said Geoffrey Kiarie Kuria and therefore the decision to prefer charges against the Applicant herein was made in abuse of power.
11. Further, that irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision as such a decision was in defiance of logic and acceptable moral standards.
12. According to the Applicant procedural impropriety is when there is a failure to act fairly on the part of the decision-making authority in the process of taking a decision, and the unfairness may be in non-observance of the Rules of Natural Justice or to act with procedural fairness towards one to be affected by the decision.
13. The Applicant contends that there is no definition in the Computer Misuse and Cybercrimes Act 2018, of the words used and thus, the

question arises as to what amounts to a message that is ‘grossly offensive’, ‘indecent’ obscene’ or ‘menacing character’”. Similarly, he posed the question as to who determines which message causes ‘annoyance’, ‘inconvenience’, ‘needless ‘anxiety’”, since no definition is offered in the computer misuse and cybercrimes Act 2018. Therefore, the meaning of these words is left to the subjective interpretation of the Court, which means that the words are so wide and vague that their meaning will depend on the subjective interpretation of each judicial officer seized of a matter. Further, that the provisions are so vague, broad and uncertain that individuals such as the Applicant do not know the parameters within which their communication falls, and the provisions therefore offend against the rule requiring certainty in legislation that creates criminal offences.

14. The Applicant contends that the contents of the charge sheet in Criminal Case no.E1107/2023, on the particulars of offence, ends with a sentence or reads ***“knowing it to be false and to maliciously injure MR. Geoffrey Kiarie Kuria’s reputation as a person”*** does not capture any offence known in law, because the Computer misuse and Cybercrimes Act 2018 reads as follows;

“27(1) A person who, individually or with other persons, willfully communicates, either directly or indirectly, with another person or anyone known to that person, commits an offence, if they know or ought to know that their conduct —

*(a) is likely to cause those persons apprehension or fear of violence to them or damage or loss on that persons' property; or
(b) detrimentally affects that person; or (c) is in whole or part, of an indecent or grossly offensive nature and affects the person.”*

15. It is further his case that the particulars of offence do not disclose a location of the committal of the offence and neither does it state the type of equipment/device that was used, and its other details, such as serial number, used to commit the alleged offence.
16. Moreso, that this is because, as the state, they have all the power to conduct investigations such as to ascertain this. That the interpretation of these offences is left to the state to determine the truthfulness of any information shared by citizens.
17. Further, that a statute that uses the word ‘likely’ and ‘detrimentally affects’ cannot pass constitutional muster as it leaves so much discretion to the enforcement agencies.
18. It is the Applicants’ case that simple interpretation of the provision, is that, what amounts to cyber harassment depends on the subjective interpretation of the police and the state at large, and this provision is vague and unjust and leaves large discretion which poses a potential threat to freedom of expression on the internet.
19. The Applicant contends that what constitutes an offence is unpredictable and gives the law enforcer the discretion to pick and choose what

qualifies as offensive and it gives the law enforcement unfettered discretion to punish unpopular or critical protected expression.

20. The provisions of the law must be lawful in a sense that they are not arbitrary, and that they should make adequate safeguards against arbitrary decisions and provide effective controls against abuse by those in authority.
21. He further argues that a restrictive measure/provision is said to have a chilling effect when the right holders are intimidated into not exercising their constitutionally protected right or freedom due to the threat of criminal sanctions. The right to reputation would be protected by civil damages and secondly, is the impact of hefty disproportionate fines and imprisonment on freedom of expression which would make the citizens choose to remain silent to avoid these criminal sanctions.
22. The imposition of criminal sanctions is not proportional has received global acceptance, and that imposition of a criminal conviction to restrict freedom of expression is enough to violate the proportionality principle, and that the imposition of imprisonment should not be considered an option when limiting freedom of expression.
23. Additionally, that criminal defamation is unconstitutional on the basis that criminal sanctions are inappropriate as civil remedies are sufficient.

24. The Applicants' case it is clear that its resultant effect has been to instill fear and submission among the people. Any alleged discomfort or displeasure with a publication could have been addressed by less restrictive means, such as a civil suit for defamation, other than blanket curtailment of a fundamental right.
25. The impugned section is unconstitutional, considering that even though its purpose was to control/limit use of obscenities in communication, its effect has been to infringe on the freedom of expression guaranteed by the Constitution. He argues that the shift of the burden of proof from the state to the Applicant herein, lacks constitutional underpinning and indeed ignores the express provisions of Article 24(3) of the constitution.

THE 3RD AND 4TH RESPONDENTS' GROUNDS OF OPPOSITION

26. The 3rd and 4th Respondents oppose the application vide a Grounds of Opposition dated 2nd February 2026 on the following grounds; -
 - 1) That the Application is premature, incompetent, misplaced and an abuse of the Court process.
 - 2) That Judicial Review proceedings are special proceedings and as such this court does not have the jurisdiction to make a determination in this matter. The Ex parte Applicants ought to have filed a constitutional petition for infringement of his constitutional rights.

- 3) That the Applicant in essence, seeks that this Honourable court directs a Public Officer to exercise or not to exercise his /her statutory discretion in a particular manner hence usurping the 3rd Respondent's Authority.
- 4) That the Application offends Article 160(5) of the Constitution as read together with Section 6 of the Judicature Act.
- 5) That the 3rd Respondent acted within the principles of the law as a neutral arbiter based on facts presented to the court by the 1st and 2nd Respondents.
- 6) That the Application is a waste of judicial time as the Applicant is entitled to pursue favorable avenues for compensation on malicious prosecution should proceedings in Criminal Case No. E1107 of 2023 – R VERSUS KELVIN KARUGA MWAURA turn out to be unmerited.
- 7) That the Application is a fallacy and ought to be dismissed with costs.

27. The Applicant in response to the grounds of opposition argues that the Grounds of Opposition are an abuse of the Court process and they offend the principle of Res Judicata because they are an exact replica of other pleadings bearing the same title “**Grounds of Opposition**” dated 28th March 2024 in **MISCJR E039/2024 Mwaura Kelvin Karuga Vs State Law**, of which this Court made a Ruling on the question of leave on 25th November 2025 in the Ex-parte Applicant's favour.

28. According to him, it is very telling that the Office of the Director of Public Prosecutions ODPP, the 1st Respondent herein and Directorate of Criminal Investigations, 2nd Respondent have never filed any document nor participated in these proceedings the reason being, it is clear that something gravely wrong happened to me the Ex-parte Applicant because the Interested party was able to buy them off and caused them to bring Criminal Proceedings against him purely on a personal disagreement basis. That the material before the Court is such that there is no reasonable explanation as to the extent of abuse of power on their part, they cannot explain themselves, and therefore they connived to have the interested Party reply and participate in these proceedings, whereas that is their Constitutional duty.

29. Further to the above, that it is very telling that the interested party took the trouble to hire an Advocate, Patrick Kungu Gikwa to contest this Judicial Review matter, and it is in these proceedings that he went out of his way to say things that he did not say to the Police in the initial Complaint that caused him to be charged in Criminal case E1107/2023 Rep-Vs Kelvin Karuga Mwaura, and that is the demonstration/illustration he was looking for, to show the Court that the Respondents acted on the whims of the interested party, and that is why they did not do any investigation as they simply were used as a weapon against him at the behest of the said Geoffrey Kiarie Kuria.

30. That Geoffrey Kiarie Kuria's elder brother, Peter Kuria called the Applicant and told him that indeed he wouldn't believe the amount his brother Geoffrey Kiarie Kuria and some other family members had given

the police to hurt him, which happened shortly thereafter. Geoffrey Kiarie was the Applicant's Client and best friend for several years and they fell out because he discovered that he has a personality disorder and he is Vexatious Litigant.

31. That he had a fight with his 1st wife Sophia Njau, who he beat up in 2017, and sued her for child custody of their girl child of tender years at Milimani Children's Court so that he could cause her emotional turmoil. That when he went to serve her Court orders in Kikuyu, she hit him with a stone, and he caused her to be charged with Assault at Kikuyu Law Courts. Geoffrey Kiarie Kuria instructed the Applicant to "watch brief for him" and paid Court attendance fees of Kshs 3,000 to ensure he finished her completely, so as to satisfy his ego.
32. That his 2nd wife Jerusha Kamau was also beaten at his house in 2021 because he told the Applicant she refused to be intimate with him as she had recently gotten their 2nd born child Eliud. She left the next day with their kids and he reported her to the Children's Office in Njiru, and she was summoned and humiliated. That he wrote a letter to the Directorate of Criminal investigations using the Applicant's law firm's letterhead telling them that she had lied to a public officer (Njiru Children's office) that he had kicked her while pregnant, which is actually true, and he even paid for a scan which he came with the results to the office celebrating because he had evaded justice, as the scan did not show evidence of assault.

33. It is the Applicant's case that the complainant wrote a message Jerusha Kamau's father telling him that his wife was running a secret hardware and construction material business behind his back, so as to cause her parents not have peace but conflict in their house. That every house he has ever been a Tenant, for example in Ongata Rongai, BuruBuru and Kenol, he has always taken the Landlord to the Rent Restriction Tribunal, and every business partner he has ever engaged with has also landed in Court.
34. The Applicant averred that he acted for him in that matter whereby, he only paid him Kshs.11,000 but when he sued him for fees at Kajiado High Court in 2023, he hired Patrick Kungu Gikwa to ensure he was cheated out of his fees. The Court awarded him Kshs. 87,000 but they only paid him Kshs. 36,000. That the Applicant represented him at Makadara law Courts in Criminal case 486/2019 **Republic Vs Geoffrey Kiarie Kuria** where he had been charged for assaulting his elder brother which was the 3rd criminal case that he knows of where he had been charged with this and that offence, but because they are distributing a vast estate, they are able to buy their freedom or cost other people their dignity and liberties. That the case was taxed at Kshs. 124,675/= which he paid after a long struggle and meaningless legal maneuvers on the part of his advocate.
35. He deponed that the complainant suffers from a Narcissistic Personality syndrome and before they parted ways in 2021, he was the only friend the complainant had. He argues that the complainant disconnected him during a virtual hearing in Criminal case E054/2021 Republic Vs Joseph

Njogu & Anor(Kiambu High Court Murder) a pro bono matter the Applicant was assigned to by the High Court Kiambu in his presence, and that is where problems started up to date.

36. He deponed that his files were in a building owned by their late father's Estate, so he did not want to fight him at their family property, and that is how the files landed at Patrick Kungu Gikwa's desk, where they swiftly filed Notice of Change of Advocates so that his fees could disappear. That he managed to fight them in court through Taxation where he has recovered Kshs. 2,034,000 since 2022 and that even right now, there is another matter arising from an Anticipatory bail application matter he did for him in 2020 which was taxed on 17th December 2025 at Kshs.244,145/.

37. Further, that his brother Bernard Njoroge Waititu, who is a witness in Criminal case E1107/2023 Rep-Vs Kelvin Karuga Mwaura, has written three postdated Cheques of Kshs. 27,000 each for his part, but Geoffrey Kiarie Kuria and his mother have not paid him.

38. He averred that before he came to the scene as their Advocate, there were other advocates, and from the research he has done, they all went through the same tribulations. Notably, there was a Mr. Kihara Ndiba who in 2019 the Applicant was acting against in various matters. He filed the Petition for Grant of Letters of Administration of their late father's Estate, Eliud Njoroge Kuria sometime after he died in 2010, and when they did not settle his fees, he taxed them and the award was

Kshs.900,000. That the Taxing Master, said in his ruling, that since Succession had not been completed he was only entitled to receive Kshs.450,000. When Succession was completed, and he sought to be paid the remaining Kshs.450,000 they promptly hired Patrick Kungu Gikwa to fight it. The Court said that Mr. Kihara Ndiba had stayed a long time without claiming these fees and that is how he lost Kshs.450,000.

39. It is considered in view of the Grounds of Opposition by the 3rd and 4th Respondents are cosmetic and they did not take into account all these facts and further, that the other Respondents did not and don't know the extent to which the interested party and his family have violated his Fundamental rights and freedoms through their constant bickering and playing one person against the other.

40. According to the Applicant, there are other lawyers as well who have been subjected to such evil schemes such as Mr. Gaita Advocate, Nderitu Waturu advocate, and Nyambura Shani.

THE 3RD AND 4TH RESPONDENT'S SUBMISSIONS

41. The Respondents identified the following issues for determination

- 1) Whether the application violates the principle of judicial immunity of a sitting judge.
- 2) Whether the court should grant the judicial review orders sought.

42. On Whether the application violates on the principles of judicial immunity of a sitting judge, Counsel cited the provisions of Article 160(5) of the Constitution and Section 6 of the Judicature Act. He placed reliance on the case of Maina Gitonga versus Catherine Nyawira Maina and Another [2015] eKLR and the case of Michael Osundwa Sakwa versus the Chief Justice and the President of the Supreme Court of Kenya and 5 others [2016] eKLR. Counsel urged that the 4th Respondent acted within the ambit of his jurisdiction in discharge of his judicial duty and the allegation against the Respondents are trivial and frivolous. The 4th Respondent relies on the case of Republic vs Commissioner of Customs Services ex parte Africa K-Link International Limited (2012) eKLR in this regard.

43. In conclusion, the Respondents submitted that they carried out statutory duties in accordance with the law and that section 6 of the Judicature Act protects it for any act done in the course of its judicial duty. That judicial review proceedings cannot be used to restrain or stop statutory bodies or public officers from lawful exercise of power within their statutory mandates as the ex-parte Applicant seeks to in this matter and that the same lacks merit and the court should not embarrass itself by entertaining this application.

44. The 4th Respondent is a neutral arbiter who makes judgment out of the presentation of facts tabled before the court by the 1st Respondent. They placed reliance on the case of Republic v Director of Public Prosecutions & another; Nyaga & another (Interested Parties); Kanyi (Exparte

Applicant) [2024] KEHC 825 (KLR), Kuria & 3 Others vs. Attorney General [2002] 2 KLR 69 and Judicial Review Application No 8 of 2017, Republic v Director of Public Prosecutions & 2 Others Ex Parte Edwin Harold Dayan Dande & 3 Others, and submitted that the Respondents' actions have not infringed on the ex-parte Applicant's rights and further, he has not demonstrated before this court why the Respondents should be barred from exercising their official duty in this matter.

45. The Respondents further submit that even if the criminal proceedings in Milimani Chief Magistrates Criminal Case No. E1107 of 2023 are unmerited, there exists an avenue for compensation on malicious prosecution. They placed reliance on the case of Republic v Inspector General of police & 2 others ex-parte Jimi Richard Wanjigi (2019) eKLR and further urged that if it turns out that the proceedings were unwarranted, there exists an avenue for compensation for malicious prosecution and that because of this the power of quashing or prohibiting is used sparingly.

46. They submit, that the Court in judicial review cannot convert itself as a trial court and determine the merit of the intended or continuing criminal trial or prosecution.

47. It was the Interested Party's submission in this regard that it is the trial court with the mandate to determine the sufficiency of a charge or otherwise, and is the correct court to do so.

Analysis and determination:

48. The following issues arise for determination

- 1) Whether the application has merit
- 2) Who shall bear costs.

Whether the application has merit

49. The Applicant was charged with the offence of Cyber Harassment contrary to section 27(1) (c) as read with section 27(2) of the Computer Misuse and Cyber Crime Act. The court has looked at the manner in which the investigations were conducted and arrived at a logical conclusion that the decision to charge the Applicant was predicated on an inaccurate process.
50. The email that contained the information that forms the basis of the charge was not taken into consideration before charging the Applicant. The investigating officer was aware of the lapse. He reached out to the Applicant to request for the relevant information. Before the Applicant could furnish him with the said information, he forwarded the investigations findings to the ODPP who consequently proceeded to charge the Applicant with the offence that the Applicant faces at the trial court. This generates an inference of malice on the part of the investigating officers. The investigation report cannot be said to be complete or accurate.
51. The fact that there was a process that was being followed right from the time the complaint was lodged by the Applicant demonstrates that the Respondents knew that they had a duty to ensure that due process was followed to the letter. This created a legitimate expectation in the

Applicant's mind that the investigations would be above board. In demonstrating his willingness to support the investigations, the Applicant even went ahead to furnish the investigating officer with the material that would have helped the investigating officer to arrive at the correct investigations report. This lapse definitely culminated in a flawed decision to charge the Applicant.

52. **In the case of *Francis Bahikirwe Muntu and others v Kyambogo University, High Court, Kampala, Miscellaneous Application Number 643 of 2005 (UR)*** the court held;

“Illegality is when the decision-making authority commits an error of law in the process of taking the decision or making the act, the subject of the complaint. Acting without Jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances of illegality....

Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards: Re An Application by Bukoba Gymkhana Club [1963] EA 478 at page 479 paragraph “E”.

Procedural impropriety is when there is failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere

and observe procedural rules expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision. (Al-Mehdawi v Secretary of State for the Home Department [1990] AC 876).”

53. In the case of Republic v Attorney General & 4 others Ex-parte Diamond Hashim Lalji and Ahmed Hasham Lalji [2014] eKLR it was stated that:

“Judicial review applications do not deal with the merits of the case but only with the process. In other words, judicial review only determines whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision the decision maker took into account relevant matters or did take into account irrelevant matters. It follows that where an Applicant brings judicial review proceedings with a view to determining contested matters of facts and in effect urges the Court to determine the merits of two or more different versions presented by the parties the Court would not have jurisdiction in a judicial review proceeding to determine such a matter and will leave the parties to resort to the normal forums where such matters ought to be resolved.

The Court in judicial review proceedings is mainly concerned with the question of fairness to the Applicant in the institution and continuation of the criminal proceedings and once the Court is satisfied that the same are bona fides and that the same are being

conducted in a fair manner, the High Court ought not to usurp the jurisdiction of the trial Court and trespass onto the arena of trial by determining the sufficiency or otherwise of the evidence to be presented against the Applicant.

Where, however, it is clear that there is no evidence at all or that the prosecution's evidence even if were to be correct would not disclose any offence known to law, to allow the criminal proceedings to continue would amount to the Court abetting abuse of the Court process by the prosecution.”

54. It is this court's finding that the investigating officer acted recklessly to the Applicants prejudice. He did not act with fairness to the Applicant in the institution and continuation of the criminal proceedings.

55. The investigating officer failed to take into consideration very important information and details thus arriving at an illegal conclusion. The foregoing amounted to a procedural impropriety which vitiates the prosecution at the trial court which cannot stand. The Respondent's conduct is tainted with a fundamental Procedural impropriety since they failed to act fairly in the process of taking a decision.

56. The court takes judicial notice of the fact that legality of Section 27(1) (c) and Section 27(2) of the Computer Misuse and Cyber Crime Act was not part of the pleadings.

57. This court is satisfied that the Applicant has proven its case.

Costs;

58. The **Supreme Court in the case of *Jasbir Singh Rai & Others vs. Tarlochan Rai & Others*** observed that;

“In the classic common law style, the courts have to proceed on a case by case basis, to identify "good reasons" for such a departure. An examination of evolving practices on this question shows that, as an example, matters in the domain of public interest litigation tend to be exempted from award of costs...”

Disposition;

59. The Applicant is successful in the application as a result of which he is entitled to costs and I so hold.

Order;

The application is allowed with costs to the Applicant.

It is so ordered.

**Dated, signed and delivered this 30th Day of April 2026 virtually
in Eldoret.**

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J. CHIGITI (SC)

JUDGE