

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
JUDICIAL REVIEW DIVISION
JUDICIAL REVIEW APPLICATION NO. E408 OF 2025
IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW
ORDERS OF PROHIBITION AND CERTIORARI

AND

**IN THE MATTER OF ARTICLES 2 (1) AND (2), 10, 19, 20, 21, 22, 23,
25(a) AND (c), 29 (d), 47 and 157 (11) AND 159 OF THE CONSTITUTION
OF KENYA, 2010.**

AND

**IN THE MATTER OF SECTIONS 4 (1), (2) AND (3), 6, 7, AND 9 (1) OF
THE FAIR ADMINISTRATIVE ACTION ACT, NO. 4 OF 2015.**

AND

**IN THE MATTER OF SECTION 4 AND 5 OF THE OFFICE OF THE
DIRECTOR OF PUBLIC PROSECUTIONS ACT, CAP 6B.**

AND

**IN THE MATTER OF CHAPTER 3 OF THE OFFICE OF THE
DIRECTOR OF PUBLIC PROSECUTION GUIDELINES ON THE
DECISION TO CHARGE, 2019.**

AND

**IN THE MATTER OF ORDER 53 OF THE CIVIL PROCEDURE
RULES, 2010.**

AND

**IN THE MATTER OF SECTIONS 8 AND 9 OF THE LAW REFORM
ACT, CAP 26 LAWS OF KENYA.**

AND

**IN THE MATTER OF THE DECISION BY THE OFFICE OF THE
DIRECTOR OF PUBLIC PROSECUTIONS TO CHARGE COLLINS**

JUMA ALOO

-BETWEEN-

THE REPUBLIC
APPLICANT

-VERSUS-

THE OFFICE OF THE DIRECTOR
OF PUBLIC PROSECUTIONS **1ST**
RESPONDENT

INSPECTOR GENERAL OF POLICE **2ND**
RESPONDENT

-AND-

CHARLES BLAKE **INTERESTED**
PARTY

**COLLINS JUMA ALOOEX-PARTE
APPLICANT**

JUDGMENT

1. Vide Notice of Motion dated **11th December 2025** filed pursuant to leave of this Court granted on 8th December 2025 in **HCJRMISC/E164 of 2025** **Collins Juma Aloo vs. ODPP & Others** and premised on **Order 53 Rule 3 of the Civil Procedure Rules, Section 8 and 9 of the Law Reform Act** and all other enabling provisions of the law, the *ex-parte* Applicant seeks the

following ORDERS: -

(1) THAT this Honourable Court be pleased to grant Judicial Review Order of CERTIORARI to bring into this Honourable Court and quash the decision by the 1st Respondent to charge the ex-parte Applicant in relation to the complaint by the Interested Party on allegations of conspiracy to defraud and/or obtaining money by false pretences and/or money laundering and/or other related offences under Kahawa Police Station Occurrence Book 77/19/11/2025 and Police Case No. 121/312/2025.

(2) THAT this Honourable Court be pleased to grant a Judicial Review Order of PROHIBITION to prohibit and prevent the Respondent or other persons/state actors acting at their behest from arresting, detaining, charging and/or prosecuting the ex-parte Applicant or otherwise in relation to the complaint by the

Interested Party on allegations of Conspiracy to Defraud and/or obtaining money by false pretences and/or money laundering and/or other related offences under Kahawa Police Station Occurrence Book 77/19/11/2025 and Police Case No. 121/312/2025.

(3) THAT this Honourable Court be pleased to issue such further orders and/or reliefs as it may deem just and expedient.

(4) THAT costs of this Application be awarded to the Applicant.

2. The Application is anchored on the grounds on the face of it, the Statutory Statement and Verifying Affidavit dated 4th December 2025 filed at the leave stage and the Supporting Affidavit of the *ex-parte* Applicant sworn on 10th December 2025.
3. The *ex-parte* applicant deposes that he was made aware through media outlets of the proceedings in ***Kahawa MCCR/E125 of 2025 Republic vs. David Onyango Ochanda and Others*** in relation to a complaint lodge by the Interested Party herein on allegations of Conspiracy to Defraud and/or obtaining money by false pretences and/or money laundering and/or other related offences under Kahawa Police Station Occurrence Book 77/19/11/2025 and Police Case No. 121/312/2025.
4. That as a consequence, the said charges led to a manhunt against him with Stop Orders issued to Immigration Authorities in different countries where he conducts business operations, including Dubai in the United Arab

Emirates, directing his interception and arrest should he attempt to traverse borders.

5. He avers that the above decision and directive is premised on the erroneous assertion that he is a director of **Toureg Insurance Agency Limited**, one of the companies involved in the criminal case, which he denies being affiliated to whether as a director or shareholder, to warrant any inclusion into the alleged charges.
6. The *ex-parte* Applicant further deposes that he is engaged in lawful businesses and is apprehensive that at any time and place, he might be arrested and detained based on false and unverified or misleading information connecting him to the said offences which he neither committed nor had the capacity to influence their commission.
7. It is his case that the Respondents' decision to arrest, detain and charge him on the basis of being a director of Toureg Insurance Agency is grounded on a grave misapprehension of facts, mistaken identity and unverified information which will subject him to unlawful arrest, detention, reputational harm and violation of his fundamental rights and freedoms in manifest error and abuse of the criminal justice process.

Responses

8. The 1st and 2nd Respondents jointly filed Grounds of Opposition in response to the Application dated 26th January 2026 contending that the *ex-parte* Applicant did not adduce any evidence to demonstrate that there was

an intention or decision to charge and prosecute him. The Respondents denied instituting any charges against the Applicant under any penal laws in accordance with **Article 157 of the Constitution** to warrant the orders being sought and also contend that the *ex-parte* Applicant has not taken any steps to write a complaint letter to the 1st Respondent raising the issues that are being brought before the Court, with a view to having the decision to charge reviewed in line with the doctrine of exhaustion.

9. They stated that **Section 24 of the National Police Service Act** mandates the police to investigate any complaint lodged before them to determine whether or not a criminal offence has been committed. That in the premises, the *ex-parte* Applicant has not persuaded the Court to believe that he is raising serious issues for the Court's determination and the same should be dismissed with costs for want of merit.
10. The Respondents also filed a joint **Replying Affidavit dated 9th February 2026**, in response to the Application sworn by No. 86630 CPL. Brian Musau, a police officer working with the Directorate of Criminal Investigations at the Economic and Commercial Crimes Unit in Nairobi County, in his capacity as the Investigating Officer in the matter. He avers that on 14th February 2025, the Interested Party in this case who was the complainant, one Charles Blake Stinger, a USA resident lodged a complaint to the DCI office alleging a case of conspiracy to defraud him, impersonation amongst other related offences and stated that the *ex-parte*

Applicant was a consultant at Toureg Insurance Agency which actively participated in the crimes.

11. He deposes that the Interested Party entered into an Insurance Contract with Toureg Insurance Agency vide premium invoice No. TIB/01906/24 on 19th June 2024 to obtain a life insurance cover as collateral for a loan in the sum of USD 500 Million, and was then issued with a Continental Assurance Policy Document No. CA/02/030724/2024 after making full payment of USD 602,899 via RTGS transfer, but he never received the life insurance cover or the loan as promised.
12. CPL. Musau further depones that they conducted investigations and forwarded the file to the Office of the Director of Public Prosecutions for perusal and directions where it was established that the facts had met the threshold for a criminal charge and prosecution of the suspects, hence the filing of the criminal case at Kahawa Chief Magistrate's Court in MCCR E125 of 2025.
13. It is their evidence that after the decision to charge was made, the Office of the Director of Public Prosecutions in its letter dated 21st October 2025 made the *ex-parte* Applicant a prosecution witness and not a suspect as is alleged in his application and supporting affidavit. That further, the *ex-parte* Applicant has not been called upon to take a plea in respect of the subject matter before this Court or any other court and that the

Investigating officer is not aware of the allegations of the world-wide manhunt and Stop Orders as alleged.

14. It is further averred that the *ex-parte* Applicant has not raised any issues of illegality or procedural impropriety to warrant the court's attention and that the Verifying Affidavit filed in support of the Application for leave ought to have been witnessed by a Notaries Public since he claimed to be out of the country on 4th December 2025 when he swore the same.
15. Additionally, that the Court should find that the *ex-parte* Applicant's Supporting Affidavit is incurably defective since it is alleged that it was deponed in Nairobi yet he was outside this Court's jurisdiction. He urged the Court to find the allegations as lacking in merit, legal reasoning and dismiss the entire Application with costs.

Further affidavit

16. In a rejoinder, the *ex-parte* Applicant filed a further Affidavit dated 15th February 2026 in which he stated that he signed the supporting affidavit to the present Application while still in the country and hence the need for a only a Commissioner for Oaths to attest the same, while the Verifying Affidavit in the Application for leave was signed electronically in the online presence of his advocate and therefore, there was no need for him to be present physically before the Commissioner for Oaths. That as such, there was no need to have the same notarized again in Dubai since it was

not the subject of the current Application before the Court as the Application for leave has been spent.

17. It is his deposition that if indeed there was no intention of his arrest as alleged by the Respondents in their Replying Affidavit, then there would be no need of putting Stop Orders across various countries with the intention of detaining him, and equally that they should now not oppose the orders sought.
18. He deposes that his intended arrest and prosecution over the alleged offences must have a factual basis and that there was no evidence adduced by the Respondents showing that the Interested Party who was the complainant had ever interacted with him in any capacity. As such, that there was no factual basis for their decision to arrest and charge him and subsequently prosecute him.
19. It is his case that the Respondents are abusing their powers of law enforcement and prosecution to harass, intimidate, oppress, inconvenience and persecute him without any justification and reiterates that he is neither a director nor a shareholder of the said Toureg Insurance Agency.
20. The parties took directions before this Court to canvass the Application by way of written submissions which are both now properly on Record.

Submissions

21. The *ex-parte* Applicant's submissions are dated **15th February 2026**. Counsel for the *ex-parte* applicant isolated one issue for determination being: ***whether the decision to arrest and charge the ex-parte Applicant is lawful and whether the same conforms to the constitutional and statutory dictates of criminal law and the criminal justice system*** and submits that there is no factual or legal basis for the Respondent's action to arrest, charge and prosecute the *ex-parte* Applicant because the complaint made by the Interested Party does not in any way incriminate the *ex-parte* Applicant on any criminal conduct or interactions with the said Interested party in his business dealings.
22. Counsel cites **Article 157 of the Constitution** and **Section 6 of the Office of the Director of Public Prosecutions Act** in appreciating the autonomy of the 1st Respondent's office alongside **Articles 244 and 245 of the Constitution** which provide similar autonomy for the 2nd Respondent and its officers but states that, the exercise of such authority must be governed by constitutional principles and values and where there is an abuse, the court ought to intervene and stop such injustice. Counsel cites the case of **Thuita Mwangi & 2 others vs. Ethics and Anti-Corruption Commission and 3 Others [2013] eKLR** in support.
23. Counsel also cites the case of **Republic vs. Director of Public Prosecutions & Another, John Ngugi Kabogo (Interested Party) Ex Parte Harrison Wangoro Mwangi & Another [2020] eKLR** where

Mativo J. (as he then was) extensively discussed the powers of the court to intervene and stop investigations and/or prosecutions in certain circumstances and ***Chumo vs. Boit & 4 Others, Judicial Review No. 5 of 2022 (2023) KEHC 25693 (KLR)*** in support of the powers of the court to stop investigations and prosecution.

24. It is submitted that the decision to charge must be based on some form of evidence, otherwise it becomes unlawful as held in the case of ***Shamsher Kenya Ltd vs. Director of Public Prosecutions 2 Others (2018) eKLR*** and that in the present case, the Respondents did not adduce any evidence that informed their decision to arrest and charge the *ex-parte* Applicant. He submits that the Respondents' actions were an abuse of the court process and referred to the case of ***Julius Meme vs. Republic & Another (2004) eKLR*** in explaining what amounts to an abuse of the court's process.
25. Counsel urges the Court to find that the Respondents' actions to arrest, charge and prosecute the *ex-parte* Applicant were unlawful, arbitrary, malicious, whimsical and unreasonable and it was in the interests of justice that the Application be allowed and prayers sought be granted.
26. The Respondents filed joint submissions dated **27th February 2026** in which Learned Prosecution Counsel Mr. Achochi submits that the Respondents were exercising their powers under **Article 157 of the Constitution of Kenya** and **Section 24 of the National Police Service Act** and that there was no decision to charge and prosecute the *ex-parte*

Applicant, but instead he had been set aside as a state witness in exercise of the same powers under the Constitution and the Act. He reiterated that this position was averred by the Investigation Officer in his Affidavit of 9th February 2026 and asserts that the orders of Certiorari sought should only be granted where the Court finds that in doing so, the Respondent acted in excess of its jurisdiction.

27. It is further submitted that the Judicial Review Orders of Certiorari and Prohibition cannot be granted in this case because the *ex-parte* Applicant has not demonstrated how the decision to make him a state witness is tainted with illegality, irrationality or procedural impropriety. The case of **Pastoli vs. Kabale District Local Government Canal & Others (2008) 2EA** was cited in support of where Judicial Review remedies could apply. They urged the Court to dismiss the Application for want of merit.

Analysis and Determination

28. I have considered the application and the opposition thereto. The only issue for my determination is whether the Application has merit and whether the prayers sought should be granted by this Court.
29. The decision to prosecute a person for criminal charges vests solely on the Office of the Director of Public Prosecutions while that of investigations of complaints or alleged criminal conduct is vested in the Office of the Inspector General of Police and its officers. **Article 157** of the Constitution

establishes the Office of Director of Public Prosecution and provides as follows:

Director of Public Prosecutions.

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

(2) The Director of Public Prosecutions shall be nominated and, with the approval of the National Assembly, appointed by the President.

(3) The qualifications for appointment as Director of Public Prosecutions are the same as for the appointment as a judge of the High Court.

(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) The Director of Public Prosecutions shall hold office for a term of eight years and shall not be eligible for re-appointment.

(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) If the discontinuance of any proceedings under clause (6) (c) takes place after the close of the prosecution's case, the defendant shall be acquitted.

(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) Parliament may enact legislation conferring powers of prosecution on authorities other than the Director of Public Prosecutions.

30. These duties of the ODPP are further encapsulated in **Section 5 of the Office of the Director of Public Prosecutions Act, Cap 6B** and the independence of the said office is restated at **section 6** as follows: -

6. Independence of the Director

Pursuant to Article 157(10) of the Constitution, the Director shall

—

(a) not require the consent of any person or authority for the commencement of criminal proceedings;

(b) not be under the direction or control of any person or authority in the exercise of his or her powers or functions under the Constitution, this Act or any other written law; and

(c) be subject only to the Constitution and the law.

31. On the other hand, **Section 24 of the National Police Service Act Cap. 84** entails investigation of crimes by the National Police Service under subsection (e). The question for this Court is whether the *ex-parte* Applicant in contending that he might be arrested and charged anytime based on the directives by the Respondents is in violation of his rights, is factual and whether it warrants this Court's intervention.

32. From the pleadings as filed by the *ex-parte* Applicant, he has only adduced evidence of a print out of Citizen Digital's website marked 'CAJ-1b' which from a cursory glance speaks to a wide-range search warrants issued by the Chief Magistrate's Court at Milimani over a probe entailing Kshs. 500,000,000/= in an international fraud scheme. The *ex-parte* Applicant is listed amongst the individuals linked to the alleged scandal.
33. I have considered the Respondent's Replying Affidavit in which CPL. Musau the Investigating Officer deposes that they had not made any decision to charge the *ex-parte* Applicant in the said case but had instead, vide a letter dated 21st October 2025, opted through the Office of the Director of Public Prosecutions, to enlist him as a state witness and not a suspect. This fact has not been controverted at all by the *ex-parte* Applicant.
34. Further, the Respondents deny having any knowledge of or giving Stop Orders at the Immigration desks of exit points in various countries, directing the immediate arrest and detention of the *ex-parte* Applicant should he be on transit into or out of Kenya. I have also found from my perusal of the attendant annexures filed by the *ex-parte* Applicant that there is indeed no credible evidence to prove the existence of the alleged stop orders. The allegations by the *ex-parte* applicants therefore remain mere allegations in this Court until proven. Under **Sections 107 -109 of the Evidence Act**, he who alleges must prove.

35. having found no proof of the allegations made by the ex parte applicant that there is any stop order or alleged stop order or any criminal charges levelled against him or any warrants of arrest issued against him, I find the notice of motion and prayers sought to be devoid of merit. I dismiss these claims as not factual and hold that the Respondents' position that they wanted to make him a state witness is uncontroverted.
36. Having determined this, I now consider whether the 1st Respondent acted *ultra vires* in converting the *ex-parte* Applicant into a state witness and not a suspect. The powers of the ODPP are clear under the Constitution and the Act as already outlined. It is upon the ODPP to review the totality of the evidence presented before it by the investigative agencies and subject the same to the two-stage or threshold test in deciding whether or not it wishes to proffer charges against a suspect.
37. In this case, the Investigating Officer was clear in the sworn affidavit that they were not intending to charge the *ex-parte* Applicant but merely wanted him as a witness, a fact that has remained uncontroverted. Not only was the Applicant's contention that there was an order to arrest, charge and prosecute him alongside Stop Orders at immigration authorities unproven, the same was also now moot, in view of the uncontroverted depositions by the investigating officer.
38. Further, I find that there is no evidence of any illegality, irrationality, procedural impropriety or excessive use or abuse of powers by the DPP

and the National Police Service as set out in the Constitution or the law, to warrant the orders sought. In the premises, the Application dated 11th December 2025, is devoid of any merit and the same is hereby dismissed.

39. Finally, on allegations by the respondents that the exparte applicant swore an affidavit from outside the country but that it was not notarised, I have read the applicant's affidavits and his rejoinder on the issue. I find that in this digital era, one can swear an affidavit virtually the same way they appear in court virtually, as long as there is live interaction with the Commissioner for Oaths online and one signs the affidavit in the presence of such Commissioner for Oaths. It is not lost to this Court that when Covid-19 struck, it is the long-distance attestation of affidavits that enabled parties to access justice. Were the Courts to strictly adhere to the procedural rules of physical appearance before the Commissioners for oaths or notaries public, many litigants would have suffered injustice in view of the restricted movement at that time. In the circumstances, I find no fault with the exparte applicant's affidavits as presented.
40. Having said all that, the application by the exparte applicant is dismissed.
41. Each party shall bear their own costs.
42. This file is closed.
43. Orders accordingly.

**Dated, Signed and Delivered virtually at Nairobi this 22nd Day of April,
2026**

**R.E. ABURILI
JUDGE**

ORIGINAL