

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT THIKA
JUDICIAL REVIEW & HUMAN RIGHTS DIVISION
MISCELLANEOUS APPLICATION NO. E021 OF 2025

**IN THE MATTER OF: ARTICLES 27, 40, 47, 48, 49, 50,
157 AND 244 OF THE
CONSTITUTION OF KENYA 2010**

AND

**IN THE MATTER OF: SECTION 8 AND 9 OF THE LAW
REFORM ACT (CAP 26 OF THE
LAWS OF KENYA) AND ORDER 53
OF THE CIVIL PROCEDURE RULES,
2010**

AND

**IN THE MATTER OF: THREATENED ARREST,
DETENTION & INTENDED
PROSECUTION OF THE *EX PARTE*
APPLICANTS**

AND

**IN THE MATTER OF: AN APPLICATION FOR LEAVE TO
INSTITUTE PROCEEDINGS IN THE
NATURE OF JUDICIAL REVIEW**

BETWEEN

**PATRICK WAIRIMA WANDAKA.....1ST EX PARTE
APPLICANT**

**MICHAEL MUNGAI NGUGI.....2ND EX PARTE
APPLICANT**

**FIDELIS MUNDIA KINUTHIA.....3RD EX PARTE
APPLICANT**

VERSUS

**THE DIRECTOR
DIRECTORATE CRIMINAL INVESTIGATIONS...1ST
RESPONDENT**

**DIRECTOR OF PUBLIC PROSECUTIONS.....2ND
RESPONDENT**

AND

**MICHAEL KAMAU MUIRURI.....INTERESTED
PARTY**

R U L I N G

Brief Facts

1. By a Notice of Motion dated 23rd July 2025, the ex parte applicant seeks the following orders:-

a) An order of certiorari be issued to quash the decision of the 1st respondent to arrest, charge and/or prosecute the applicants on

allegations related to unfair sharing of proceeds from the sale of LR. No. THIKA MUNICIPALITY BLOCK 18/119 previously registered in the name Chakwa Foundation Group by its members.

b) An order of prohibition to quash the decision of the 1st respondent, his agents and/or employees from arresting, detaining, charging, arraigning in court and/or prosecuting the applicants on allegations related to unfair sharing of proceeds from the sale of LR No. THIKA MUNICIPALITY BLOCK 18/119 previously registered in the name of Chakwa Foundation by its members.

2. The 1st respondent and interested party opposed the application and filed Replying Affidavits dated 4th December 2025 and 3rd November 2025 respectively.

The Applicants' Case

3. The applicants state that they were officials of Chakwa Foundation Group that was duly registered under the Ministry of Social services of Thika subcounty. Chakwa Foundation Group sold LR. No. THIKA MUNICIPALITY 18/119 previously registered in its name to one Joseph

Kuria Muhia and shared proceeds of the sale to all of its members proportionate to their shares and dividends in the group.

4. The applicants state that the interested party acknowledged to have received Kshs. 250,000/- out of the sale proceeds and also proportionate to his share of contribution and dividends in the group however he was dissatisfied with the sum of Kshs. 250,000/- given to him and lodged a complaint at the 1st respondent's offices at Thika alleging that they had defrauded him and he wanted more money. The applicants state that they were summoned at Thika DCI Offices and they were threatened to be locked up if they did not pay the interested party an extra Kshs. 250,000/- on 24th June 2025.
5. The applicants state that they bowed down to the threats and intimidation of the 1st respondent and contributed amongst themselves Kshs. 250,000/- to secure their liberty and freedom. The 1st respondent through an officer Kamwangi attached to DCI office, Thika declined to receive the said monies through bank or Mpesa transaction and insisted that the said sum be brought at their offices in cash for and on behalf of the interested party by officers of the respondent. the applicants further state that the 1st respondent and the interested party have demanded an extra Kshs. 750,000/- as a condition for

dropping the complaint against them before 1st July 2025, failure to which, they will face arrest and detention.

6. The applicants aver that the circumstances leading to the interested party lodging a complaint with the 1st respondent are purely civil in nature arising from a disagreement in the formula of sharing proceeds of sale among the members of Chakwa Foundation Group which transaction does not warrant intervention of the respondent

in execution of their criminal and prosecutorial mandate. The applicants further state that the 1st respondent has since embarked on harassing, intimidating and threatening them with arrest and prosecution in the event that they do not pay the interested party an extra Kshs. 750,000/- without any justification.

The 1st Respondent's Case

7. The 1st respondent states that the applicants and the interested party were members of Chakwa Foundation Group which comprised of several members. On 14th May 2025, the interested party lodged a formal complaint at their offices vide OB No. 65/14/05/2025 and stated that despite having contributed the highest amongst the members, he received a lesser share that was not commensurate to his contributions.
8. The 1st respondent states that they commenced their investigations and discovered that Chakwa Foundation

group decided to purchase LR No. THIKA MUNICIPALITY BLOCK 18/119 in the year 1998, from the members contributions at Kshs. 40,000/-. They further disposed off the said property to the highest bidder who paid Kshs. 5,800,000/- which was to be shared among the twelve members depending on their contribution ratio. The 1st respondent states that they discovered that the interested party was not involved or invited to the various group meetings and he was therefore not given a chance to give his views on the sharing of the proceeds.

9. The 1st respondent states that during its investigations, they learnt that during the sharing of the proceeds, the list included five more members who were related to the applicants and they benefited yet they were not officially legitimate members of the group and further the alleged expenses as captured were inflated and were never captured in any minutes and had no supporting documents. The 1st respondent further states that they discovered that on 28th March 2024, the 1st applicant had contacted the interested party with a view to forward his bank details and upon questioning why, he was informed that the parcel of land acquired by the group had been sold and members were sharing the proceeds whereupon the interested party forwarded and upon checking his account, he had received Kshs. 250,000/- which prompted him to confirm the criteria used to allocate each person's share however the same was not forthcoming.

10. The 1st respondent states that upon unveiling the said mischiefs, they summoned the applicants on 24th June 2025 to go to their offices for further interrogation together with the interested party. The applicants agreed that what they did was irregular and improper in light of the documents they had in their custody containing convoluted records whereby they pleaded with the interested party not to proceed with the criminal charges and they further agreed to pay him a further Kshs. 500,000/- and on the said day they intimated that they were going to look for the money.

11. The 1st respondent states that the applicants requested for time to go outside the office with the interested party and discuss since they were related and hailed from the same area which was not opposed, only for the interested party to come back and confirm that he had been paid Kshs. 250,000/= . The parties agreed to go back to the DCI officer on 27th June 2025 to further follow up on the resolution of the dispute. The applicants thereafter proceeded to court and filed the instant application.

The Interested Party's Case

12. The interested party states that he is a member of Chakwa Foundation Group since its inception and has made contributions as required. He states that in the year 1987, the group purchased land parcel THIKA MUNICIPALITY BLOCK 18/119 and the applicants herein

were appointed officials and registered as trustees on the group. The interested party avers that the applicants illegally and without the consent of the members sold the suit land without consulting the other members. Further, the chairman called and requested for his account number and proceeded to deposit Kshs. 250,000/- and informed him that they had sold the suit land.

13. The interested party states that he further inquired into the matter and realized that there was no consent to sell the suit land and that there was an issue with two members prompting him to take up the matter with the police. The interested party further states that he reported the matter on 14th May 2025 and the matter was allocated

to the DCI officers Thika West to investigate under OB No. 65/14/05/2025.

14. The interested party states that the applicants were released unconditionally and that the parties agreed to meet on 24th June 2025 at the DCIO offices in Thika. Later, the parties met whereas the applicants pleaded with him not to proceed with the criminal charges and they agreed to pay him a further Kshs. 500,000/- making it a total of Kshs. 750,000/-. The applicants promised to look for the money. The applicants returned at a later date with Kshs. 250,000/- which was handed over by the group Chairman to the Interested Party in the presence of two officials. The interested party further states that the applicants called

him earlier to propose a settlement of Kshs. 500,000/- and not Kshs. 750,000/- as was claimed by the Interested Party. The applicant paid Ksh.500,000 and were left with a balance of Kshs. 250,000/- which they promised to pay on 27th June 2025.

15. The applicants filed a Further Affidavit dated 10th December 2025 and states that the interested party became a dormant member of Chakwa Foundation after he stopped attending meetings for reasons better known to him for over 15 years prior to the sale of the suit land and sharing of proceeds. Further the interested party isolated himself from Chakwa Foundation affairs and stopped further contribution as per the group's constitution explaining why he was never captured in the numerous group's minutes produced by the respondents.

16. The applicants aver that the interested party had 5% of the total shares in the group which was equivalent to Kshs. 250,000/- of the proceeds out of the land sale which monies he acknowledged to have received. The applicants further state that the proceeds out of a land sale have never been shared to members who are not part of Chakwa Foundation Group as alleged by the respondent. Further, the additional names of individuals of Chakwa Foundation Group are close family members of the applicants only included in fulfilment of the minimum required number of members of registration of the group in the year 2015 as was directed by the Social

Development Department at Kamwangi where the group was registered.

17. Parties put in written submissions.

The Applicants' Submissions.

18. The applicants submit that the dispute emanates from a disagreement of sharing proceeds of a land sale and they already paid the interested party Kshs. 500,000/- out of the disputed Kshs. 700,000/-. The applicants further submit that the said disagreement constitute a classic civil suit for resolution in civil proceedings and not in criminal law. The applicants refer to the cases of **Samuel Roro Gicheru & Another vs OCS Nanyuki Police Station & Another [2015] KEHC 1786 (KLR)** and **Ex parte Jared Benson Kangwana High Court Misc. 446 of 1995** and submits that courts have consistently held that criminal processes should not be invoked to settle civil disputes or advance private civil claims.

19. Relying on the cases of **Floriculture International Limited High Court Misc. 144 of 1997** and **Republic vs Chief Magistrate's Court at Mombasa ex parte Ganjee & Another** (no citation given), the applicants submit that the actions by the 2nd respondent amount to oppression and are aimed at punishing them for actions that could adequately be addressed through available civil remedies. Further the interested party has taken unfair advantage in getting an extra Kshs. 250,000/- contrary to

the existing formula for sharing proceeds. The applicants submit that the alleged conduct of demanding cash by the 2nd respondent on behalf of the interested party and conditioning liberty on such payment raises prima facie case of extortion.

The 1st Respondent's Submissions

20. The 1st respondent submits that their actions were lawful, constitutional and squarely within its statutory mandate pursuant to Section 52(1) of the National Police Service Act. Further, Section 35 of the National Police Service Act mandates the DCI to investigate complaints of a criminal nature once lodged. The 1st respondent submits that following the interested party's formal complaint, investigations revealed massive irregularities, inconsistencies in the membership records and the distribution of proceeds from the sale of the subject land which reasonably justified further inquiry and summoning of the applicants for clarification and to shed light on the lodged complaint.

21. The 1st respondent submits that the existence of a parallel civil remedy does not oust or fetter its criminal investigative mandate, particularly where allegations disclose possible criminal conduct. The applicants voluntarily engaged with the interested party, admitted to having altered the list of beneficiaries/active members and proceeded to negotiate and make a partial payment out of

their own discussions outside the office. The 1st respondent submits that it did not threaten, detain or compel the applicants to make any payments.

22. The 1st respondent submits that the application is premature as the applicants have not demonstrated that they have been charged or that any decision to prosecute has been made by the 2nd respondent. The 1st respondent refers to the cases of **Republic vs Inspector General of Police & 2 Others; Shivachi & 2 Others (Interested Parties); Malonza & Another (ex parte applicants) [2024] KEHC 160 (KLR)** and **Lalchand Fulchand Shah vs Investments & Mortgages Bank Limited & 5 Others [2018] eKLR** and submits that courts have consistently held that judicial interference with investigations should be exercised sparingly.

23. The 1st respondent submits that the applicants have failed to place before the court any evidence demonstrating that they were arrested, detained or charged before any court of law. Thus in the absence of such evidence, the prayers seeking to quash or prohibit arrest, detention or prosecution are speculative and premature.

Further, the prayers seeking to restrain or quash any decision to charge or prosecute the applicants are fundamentally premature,

misconceived as the constitutional mandate to institute and undertake criminal prosecutions lies exclusively with the 2nd respondent pursuant to Article 157 of the Constitution.

The Law

24. The parameters of judicial review jurisdiction were stipulated in the **Uganda case of Pastoli vs Kabale District Local Government Council & Others (2008) 2 EA 300** thus:-

In order to succeed in an application for judicial review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety: See Council of Civil Service Union vs Minister for the Civil Service [1985] AC 2 and also Francis Bahikirwe Muntu & Others vs Kyambogo University High Court Kampala Miscellaneous Application Number 643 of 2005 (UR)

Illegality is when the decision making authority commits an error of law in the process of taking the decision or making the act, 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.

Procedural impropriety is when there is failure to act fairly 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 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.

25. The role of different players in the criminal process was recognised in **Republic vs Commissioner of Police & Another ex parte Michael Monari & Another [2012] eKLR** where it was held that:-

The police have a duty to investigate on any complaint once a complaint is made. Indeed the police would be failing in their constitutional mandate to detect and prevent crime. The police only need to establish reasonable suspicion before preferring charges. The rest is left to the trial court. The predominant reason for the institution of the criminal case cannot therefore be said to have been

the vindication of the criminal justice. As long as the prosecution and those charged with the responsibility of making the decisions to charge act in a reasonable manner, the High Court would be reluctant to intervene.

26. In the instant case, the Interested Party lodged a formal complaint at the 1st respondent's offices vide OB No. 65/14/05/2025 to the tune that he and a group of 72 members bought a parcel of land being LR. No. THIKA MUNICIPALITY 18/118 and the other members sold the said parcel without his consent. The 1st respondent conducted its investigations and found that the interested party was a member of Chakwa Foundation Group which at the time consisted of twelve members and they held various meetings to dispose off the suit parcel to the highest bidder who paid Kshs. 5,800,000/-. A sale agreement dated 26th January 2024 was produced by both parties to that effect. From the record, both parties are in agreement that the interested party was paid Kshs. 250,000/- on 13th February 2024 according to his alleged share in the group. Furthermore, it is not disputed that the 1st respondent summoned the applicants to their offices on 24th June 2025 to respond to the allegations made by the interested party. The point of divergence is that the applicants allege that the 1st respondent harassed and intimidated them to pay Kshs. 250,000/- to them for onward transmission to the Interested Party whereas the 1st respondent and the interested party state that the applicants and the interested party stepped outside to try

and resolve the matter between themselves and after a while the Interested Party went back and informed the 1st respondent that he had been paid Kshs. 250,000/-. From the record, there is evidence that the 1st applicant withdrew Kshs. 200,000/- on the said day from his bank account and the interested party confirmed that he was paid the sum of Kshs. 250,000/-. The applicants complaint against the 1st respondent

Is that they were harassed and intimidated to give the officers cash. The court can only ascertain that the money was paid to the Interested Party which is admitted by the parties.

27. It is noted that the applicants have not been charged with any offence by the respondents. Nor have they been arrested. The applicants' claim that the 1st respondent gave the applicants a precondition that if they did not pay Kshs. 750,000/- to facilitate dropping of the complaint before 1st July 2025 they would be arrested and detained. This threat by the 1st respondent whether real or perceived is not a decision that can be challenged in judicial review proceedings. It is also noted that the 2nd respondent has not instituted any criminal proceedings against the applicants to date. It is evident that the matter taken up by the 1st respondent is purely of civil nature and ought to have been resolved by the parties under civil law as members of the Chakwa Foundation who may be aggrieved by the conduct or acts of the applicants. The Interested Party seems to have involved the 1st

respondent with a view of recovering his share of the proceeds of sale faster than it would take through by filing civil proceedings in court. The 1st respondent office ought not to have involved itself in the matter and gone further to threaten the applicants with arrest and detention in the event that they failed to give the Interested Party his share of the proceeds of sale of the land. The failure of a member or official of a registered group to give another member their share of sale proceeds is an issue of civil nature not criminal, in my view.

28. The purpose of Judicial Review proceedings is designed as an oversight judicial process by the High Court on administrative actions for the lawfulness that focuses on procedure and not merit. In this case, the 1st respondent had not made a decision to charge the applicants and neither had the 2nd respondent been involved in approval of any criminal charges against the ex parte applicants herein. As such, judicial review proceedings are not applicable until such a time that the respondents have made a decision that affects the applicants.
29. I find that these proceedings are premature and as such, are misconceived and not properly before the court.
30. Consequently, I strike out these proceedings with no order as to costs.
31. It is hereby so ordered.

***RULING DELIVERED VIRTUALLY, DATED AND SIGNED
AT THIKA THIS 30TH DAY OF APRIL 2026.***

**F. MUCHEMI
JUDGE**