



**Republic & another v Director of Public Prosecution & another (Judicial Review Application E002 of 2025) [2026] KEHC 6237 (KLR) (12 May 2026) (Ruling)**

Neutral citation: [2026] KEHC 6237 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BOMET  
JUDICIAL REVIEW APPLICATION E002 OF 2025**

**JK NG'ARNG'AR, J**

**MAY 12, 2026**

**IN THE MATTER OF AN APPLICATION BY MATTHEW KITUR  
RONO FOR JUDICIAL REVIEW**

**AND**

**IN THE MATTER OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF SOTIK SENIOR PRINCIPAL  
MAGISTRATE'S COURT NO. 1001 OF 2024**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**MATTHEW KITUR RONO ..... EX PARTE APPLICANT**

**AND**

**DIRECTOR OF PUBLIC PROSECUTION ..... 1<sup>ST</sup> INTERESTED PARTY**

**ATTORNEY GENERAL OF KENYA ..... 2<sup>ND</sup> INTERESTED PARTY**

**RULING**

1. The Ex-parte Applicant filed a Chamber Summons Application dated 20<sup>th</sup> May 2025 which sought the following orders that: -
  - I. The Honourable Court may be pleased to enlarge time to apply for leave to file Judicial Review



- II. The Applicant be granted leave to apply for an order of Prohibition and Certiorari that is to say that the Office of the Director of Public Prosecution be prohibited from preferring or conducting prosecution of criminal charges against the Applicant in Sotik Principal Magistrate's Court Criminal Case Number 1001 of 2024 and the order of Certiorari to remove into the High Court to quash the order of the Director of Public Prosecution to institute criminal charges in Sotik Principal Magistrate's Court Criminal Case Number 1001 of 2024.
  - III. The grant of leave to operate as a stay of the said order in question made by the Director of Public Prosecution and or further proceedings until determination of the Application of Judicial Review.
2. The Application was brought under the provisions of Order 53 Rule 1, 4(2) and (4), Order 50 Rule 6 of the Civil Procedure Rules and the [Law Reform Act](#) and it was based on the grounds on the face of the Application and further by the Supporting Affidavit sworn by Matthew Kitur Rono on 20<sup>th</sup> May 2025.

### **The Ex-parte Applicant's case.**

3. The Ex-parte Applicant stated that he was the Petitioner/Respondent in Bomet High Court Succession Cause Number 37A of 2023. That the Objectors and DCI Sotik have preferred false criminal charges before Sotik Law Courts with the intention to scare or prevent him from pursuing justice in Bomet High Court Succession Cause Number 37A of 2023. The Ex-parte Applicant further stated that the complainants in the criminal case were the same parties in Bomet High Court Succession Cause Number 37A of 2023.
4. It was the Ex-parte Applicant's case that the criminal charges were brought with malice and bad faith and breached the fundamental right to a fair hearing. That the criminal charges had been framed from issues that arose from Kericho High Court Citation No. 17/2015 and Kericho ELC No. 85 of 2013 which were finalized.
5. Through his written submissions dated 11<sup>th</sup> November 2025, the Ex-parte Applicant submitted that the DPP's decision to charge him violated the rules of natural justice. That he was not given an opportunity to respond to the Objector's allegations. The Ex-parte Applicant further submitted that the DPP's decision to charge was not absolute and had to conform to the principles of fairness, public interest and justice. He relied on section 4(3) of the [Fair Administrative Action Act](#) and Republic vs DPP & 2 others Ex-parte Kamani (2015) eKLR.
6. It was the Ex-parte's submission that the criminal charges stemmed from a civil dispute that was determined and finalized in Kericho ELC No. 85 of 2013 over land ownership. That Bomet High Court Succession Cause Number 37A of 2023 was still pending and the lodging of the criminal case was an abuse of the court process. It was the Ex-parte's further submission that the use of criminal process to reopen or influence ongoing civil proceedings was an abuse of the court process. He relied on Kuria & 3 others vs Attorney General (2002) 2 KLR.
7. The Ex-parte Applicant submitted that the timing and substance of the criminal charged revealed a clear intent to defeat the administration of justice. He relied on Republic v DPP & 2 others Ex-parte Chamanlal Vrajlal Kamani (2015) eKLR.

### **Response**

8. The 1<sup>st</sup> Interested Party filed its grounds of opposition dated 1<sup>st</sup> July 2025 and stated that the Application was frivolous and was intended to shield the Ex-parte Applicant from facing justice in the criminal case pending before Sotik Law Courts.



9. It was the 1<sup>st</sup> Interested Party case that the Ex-parte's proprietary interest in Kericho/Kaitet/281 was determined by Kericho ELC Number 85/2013 and no appeal against the decision had been lodged. That the Ex-parte Applicant continued to interfere and forcibly deprive the property from its rightful owners. It was the 1<sup>st</sup> Interested Party's case that the Ex-parte Applicant was properly charged before Sotik Law Courts.
10. The 1<sup>st</sup> Interested Party stated that the Ex-parte Applicant had not demonstrated that he will not be granted a fair trial to warrant interference in the criminal case by this court. The 1<sup>st</sup> Interested Party further stated that the Ex-parte Applicant had failed to show that the criminal charges against him were brought with malice and illegal. That the Judicial Review proceedings was not an avenue to ventilate issues raised in the criminal proceedings.
11. Through its written submissions dated 5<sup>th</sup> November 2025, the 1<sup>st</sup> Interested Party submitted that the Ex-parte Applicant had failed to show how the decision to charge him was based on bad motive. That the fact that there was a civil matter touching on the same subject was not a basis for interfering with the decision to charge or prefer criminal charges. They relied on section 193A of the Penal Code. The 1<sup>st</sup> Interested Party further submitted that the Ex-parte Applicant continued to interfere and forcibly deprive the property from its rightful owners.
12. I have gone through the Chamber Summons Application dated 20<sup>th</sup> May 2025, the Grounds of Opposition dated 1<sup>st</sup> July 2025, the Ex-parte Applicant's written submissions dated 11<sup>th</sup> November 2025 and the 1<sup>st</sup> Interested Party's written submissions dated 5<sup>th</sup> November 2025. The only issue for my determination was whether the Application has merit.
13. Judicial Review has evolved overtime as was described the courts in *Judicial Service Commission & another v Njora* [2021] KECA 366 (KLR) where the Court of Appeal held: -

“The Constitution of Kenya, 2010, changed the fundamental underpinnings of judicial review from the common law as codified in the Law Reform Act to article 22(3)(f) of the Constitution which recognized judicial review as an appropriate relief for human rights violations. Superior courts in Kenya had spoken with near unanimity that the existing constitutional and statutory landscape called for a more robust application of judicial review to include, in appropriate cases, a merit review of the impugned decision.”
14. Similarly, in *Dande & 3 others v Inspector General, National Police Service & 5 others* (Petition 6 (E007), 4 (E005) & 8 (E010) of 2022 (Consolidated)) [2023] the Supreme Court of Kenya held: -

“The entrenchment of judicial review under the Constitution of Kenya, 2010 elevated it to a substantive and justiciable right under the Constitution. Accordingly, judicial review was no longer a strict administrative law remedy but also a constitutional fundamental right enshrined in the Constitution. Thus, article 47 of the Constitution provided that every person had a right to an administrative action that was expeditious, efficient, lawful, reasonable and procedurally fair.”
15. When discussing whether or not to grant leave to file Judicial Review, the court in *Republic v Busia Municipality Land Disputes Tribunal; Wandera* (Sued as the Leg. Rep. of the Estate of Ali Awala



Angaroi) (Interested Party); Jamoco Management Committee & 2 others (Exparte) [2023] KEELC 18617 (KLR) held: -

“At this stage, however, all that I am required to confirm is that the Ex-parte Applicants have set out a case fit for further hearing or whether their case is in fact frivolous, defective or an abuse of the process of this Court as alleged by the Respondents in their grounds of opposition. In other words, is the Applicants’ case justiciable? At this stage, I am not required to delve into the strength or otherwise of the parties respective cases.”

16. Similarly, in *Kaanzo v Inspector General of Police & 2 others; Stanley (Interested Party)* [2022] KEHC 11588 (KLR), the court held: -

“.....in such an application, an applicant has to demonstrate a prima facie case with probability of success.....”

17. From the record, the Ex-parte Applicant sought leave to file Judicial Review proceedings because in his view, the 1<sup>st</sup> Interested Party acted with malice when instituting criminal charges against him at Sotik Law Courts. It was the Ex-parte Applicant’s case that the criminal charges were lodged with the aim of defeating the succession cause currently in this court (Bomet High Court) in which he was the Petitioner.

18. The Ex-parte Applicant had to demonstrate that he had a prima facie case with a strong probability of success. At the heart of the dispute was the ownership of KERICHOK/KAITET/281. It goes without saying that this court lacks the requisite jurisdiction to look into the issues surrounding KERICHOK/KAITET/281 even at a prima facie level.

19. In any event, I agree with the 1<sup>st</sup> Interested Party that the law allowed concurrent criminal and civil proceedings. Section 193A of the Penal Code provides: -

Notwithstanding the provisions of any other written law, the fact that any matter in issue in any criminal proceedings is also directly or substantially in issue in any pending civil proceedings shall not be a ground for any stay, prohibition or delay of the criminal proceedings.

20. In *Jenaro Namu Njamumo v James Kinyua Mwobe* [2020] KEHC 386 (KLR), the court held: -

“The provision is mandatory and contemplates simultaneous and concurrent Civil and Criminal proceedings. In *Pet No. 232/2012 Teresia Wanjiku Mbau & Another –v- Director of Public Prosecution*. It was stated that: -

“The law however, is clear on this, the pendency of a civil matter is not a bar to criminal prosecution as Section 193A of the Criminal Procedure Code clearly contemplates simultaneous and concurrent Civil and Criminal Proceedings.”

There is therefore no law preventing the prosecution of the civil case simply because there is a pending criminal appeal whose outcome is yet to be known. Where the law has stated in express terms that the matter can proceed simultaneously and concurrently, there is no room for the court to exercise discretion. The applicant is seeking the discretion of this court to order stay of proceedings. Discretion can only be exercised based on evidence and in the interest of justice.”



21. Similarly, in Yuan v Directorate of Criminal Investigations (Nairobi Regional Office) & another [2025] KEHC 18261 (KLR), the court held: -

“This is not to say that this Court cannot quash criminal proceedings which are instituted to achieve a collateral purpose, but that concurrent criminal and civil proceedings per se do not render criminal investigations unlawful.”

22. Additionally, the Ex-parte Applicant had to demonstrate that the 1<sup>st</sup> Interested Party decision to charge was tainted with malice. The court in Republic & another v Director of Public Prosecution & 2 others (Interested Parties) [2021] KEHC 2886 (KLR) held: -

“The DPP has powers to decide on who to charge based on the evidence at hand. The DPP cannot be directed on who to charge and who not to charge. The law equally allows the DPP to discontinue prosecution if they find it necessary. As to whether the person charged is guilty or not, it is for the court to decide upon conducting a full trial.”

23. Similarly, the Court of Appeal in Communications Commission of Kenya v Office of the Director of Public Prosecutions & another [2018] KECA 631 (KLR) held that: -

“The decision whether or not to institute criminal proceedings is purely discretionary. That discretion must however be exercised by the DPP within the constitutional limits, that is, with regard to public interest, the interests of administration of justice and the need to prevent and avoid abuse of the legal process.”

24. Flowing from the above, it is my finding that the Ex-parte Applicant failed to demonstrate a prima facie case with a probability of success and further failed to demonstrate the 1<sup>st</sup> Interested Party’s decision to charge him as ultra vires. As I have already noted above, the existence of the criminal proceedings against the Ex-parte Applicant was not a bar to the succession proceedings before this court.

25. In the end, it is my finding that the Chamber Summons dated 20<sup>th</sup> May 2025 has no merit and is dismissed. There will be no orders as to costs.

**RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 12TH DAY OF MAY, 2026.**

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**HON. JULIUS K. NG’ARNG’AR**

**JUDGE**

Ruling delivered in the presence of:

Mr Magoma for the State

Mr J.K.Rono for the for the Applicant

Siele/Susan (Court Assistants)

