

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

JUDICIAL REVIEW APPLICATION NO. E003 OF 2025

IN THE MATTER OF AN APPLICATION BY LEONARD KIBET

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 CAUSE NO. E011 OF 2025

BETWEEN

REPUBLIC APPLICANT

AND

LEONARD KIBET RONO 1ST EX-PARTE

APPLICANT

**CAROLINE CHEPKOECH MUTAI2ND EX-PARTE
APPLICANT**

**ERICK KIPKIRUI MUTAI 3RD EX-PARTE
APPLICANT**

ELIJAH KIPRONO MUTAI 4TH EX-PARTE APPLICANT

VERSUS

DIRECTOR OF PUBLIC

PROSECUTION1ST INTERESTED PARTY

ATTORNEY GENERAL OF

KENYA2ND INTERESTED PART

RULING

1. The Ex-parte Applicant filed a Chamber Summons Application dated 20th May 2025 which sought the following orders that: -

- I. 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 conducting prosecution of criminal charges against the Applicant in Sotik Principal Magistrate's Court Criminal Case Number E414 of 2025 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 E414 of 2025.
- II. 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 the order of Prohibition and Certiorari.

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 20th May 2025.

The 1st Ex-parte Applicant's case.

3. The 1st Ex-parte Applicant stated that his later grandmother, Bornes Chemosit and Philip Chumo exchanged land parcel numbers KERICHO/CHEOEN/410 and KERICHO/CHEOEN/654 respectively around 40 years ago. That a dispute arose when his grandmother died and his late father was sued in Bomet Principal Magistrate's Court and later in the Kericho High Court. The 1st Ex-parte Applicant further stated that the case was currently active in court as Kericho ELC Number 1 of 2023.
4. It was the 1st Ex-parte's case that after the exchange of the parcels of land, his grandmother and father lived on KERICHO/CHEOEN/654 while Philip Chumo lived on KERICHO/CHEOEN/410. That together with his siblings, they were born and raised on KERICHO/CHEOEN/654. It was the

1st Ex-parte's further case that KERICHO/CHESOEN/410 and KERICHO/CHESOEN/654 were 12 kms apart.

5. The 1st Ex-parte Applicant stated that they were arrested by DCI Bomet on the 1st Interested Party's direction. That the complainants in the Sotik criminal case were the same parties in the Kericho ELC matter. The 1st Ex-parte Applicant further stated that the Plaintiff in the Kericho ELC matter was using the DCI to charge them with a criminal offence yet the issues were being handled in Kericho ELC Number 1 of 2023. That the criminal case was being used to scare them from pursuing their rights.

6. Through his written submissions dated 11th November 2025, the 1st 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 1st 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.**

7. It was the 1st Ex-parte's submission that the criminal charges stemmed from a civil dispute that was determined and finalized in Kericho ELC No. E001 of 2023 over land ownership. That the Kericho ELC matter was still pending and the lodging of the criminal case was an abuse of the court process. It was the 1st 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.**

8. The 1st 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

9. The 1st Interested Party through No. 111536 PC Victor Juma filed its Replying Affidavit dated 25th June 2025 and stated that the Ex-parte Applicants alongside Weldon Kipngetich Mutai were charged with the offence of forcible detainer contrary to section 91 of the Penal Code. That they had forcibly taken over possession of KERICHO/CHESOEN/654, the property of Philip Chumo (deceased). The 1st Interested Party further stated that the Ex-parte Applicants entered the said parcel after their grandmother, Bornes Chemosit and Philip Chumo (deceased) had entered into a verbal agreement to exchange their parcels of land being KERICHO/CHESOEN/409 and KERICHO/CHESOEN/654.

10. It was the 1st Interested Party's case that after the exchange in the year 2006, Bornes Chemosit and her daughter in law (Elizabeth Langat) relocated from KERICHO/CHESOEN/409 to

KERICHO/CHESOEN/654 leaving behind her other daughter in law (Racheal Langat) residing on KERICH0/CHESOEN/409. It was the 1st Interested Party's further case that after the exchange, no initiative was done to subdivide, transfer or issue title deeds.

11.The 1st Interested Party stated that in the year 2011, David Langat closed the access road denying Philip Chumo access to his parcel known as KERICH0/CHESOEN/409 and thereafter fenced off the entire parcel known as KERICH0/CHESOEN/409/ That David Langat chased him claiming the entire parcel belonged to Bornes Chepkemoi.

12.It was the 1st Interested Party' case that Philip Chumo (deceased) filed ELC Number 9 of 2012 at the Principal Magistrate's Court in Bomet where Judgment was delivered and a declaration issued cancelling the exchange of the KERICH0/CHESOEN/409 and KERICH0/CHESOEN/654. That in the year 2016, David Langat fraudulently through

succession transfer KERICH0/CHESOEN/409 to his name and later subdivided it into two portions known as KERICH0/CHESOEN/3083 and KERICH0/CHESOEN/3084. It was the 1st Interested Party's further case that David Langat and his wife retained KERICH0/CHESOEN/3083.

13. The 1st Interested Party stated that KERICH0/CHESOEN/654 was registered in the name of Philip Chumo (deceased) as the first owner. That it was not reasonably possible for there to be an exchange between KERICH0/CHESOEN/410 and KERICH0/CHESOEN/654 as claimed by the Ex-parte Applicants as the two properties belonged to Philip Chumo (deceased). The 1st Interested Party further stated that the present Application did not disclose any reason to warrant this court's interference with the criminal case.

14. I have gone through the Chamber Summons Application dated 20th May 2025, the Replying Affidavit dated 25th June 2025 and the 1st Ex-parte Applicant's written submissions

dated 11th November 2025. The only issue for my determination was whether the Application has merit.

15. 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.”

16. 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.”

17. 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 infact 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 justifiable? At this stage, I am not required to delve into the strength or otherwise of the parties respective cases.”

18. 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.....”

19. The 1st Ex-parte Applicant's case that the criminal charges were lodged with the aim of defeating Kericho ELC Number E001 of 2023.

20. The Ex-parte Applicant had to demonstrate that he had a *prima facie* case with a strong probability of success. Having gone through the record, the heart of the dispute was the ownership of parcels of land known as KERICHO/CHEOEN/410 and KERICHO/CHEOEN/654. It goes without saying that this court lacks the requisite jurisdiction to look into the issues surrounding KERICHO/CHEOEN/410 and KERICHO/CHEOEN/654 even at a *prima facie* level.

21. In any event, I agree with the 1st Respondent 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.

22. 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.”

23. 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.”

24. Additionally, the 1st Ex-parte Applicant had to demonstrate that the 1st Interested Party’s 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.”

25. 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.”

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

27. In the end, it is my finding that the Chamber Summons dated 20th 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 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 Rono for the Applicant

Siele/Susan (Court Assistants).

ORIGINAL