



**Republic v Chief Magistrates Court at Kibera & 3 others; Wanjiku
& another (Exparte Applicants) (Judicial Review Application
E003 of 2024) [2025] KEHC 514 (KLR) (27 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 514 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
JUDICIAL REVIEW APPLICATION E003 OF 2024
DR KAVEDZA, J
JANUARY 27, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

THE CHIEF MAGISTRATES COURT AT KIBERA 1ST RESPONDENT

THE DIRECTOR OF PUBLIC PROSECUTIONS 2ND RESPONDENT

THE OCS LANG'ATA POLICE STATION 3RD RESPONDENT

MAHDI MONENI 4TH RESPONDENT

AND

SAKINA WANJIKU EXPARTE APPLICANT

RAMIN JOFRI EXPARTE APPLICANT

RULING

1. Vide an application dated 11th November 2024 and filed on 12th November 2024, the Ex-parte applicants moved this court seeking orders that:
 - a. Spent
 - b. The Honourable Court be pleased to grant the Ex-parte applicants leave to apply for the following Orders: -
 - i. Leave be granted to the ex-parte applicants to apply for judicial review orders to wit, to issue, to remove to the High Court and quash the decision of the said court to admit charges and to continue further criminal proceedings in Kibera Chief Magistrates



Court Criminal Case No. MCCR E1671 of 2023 Republic vs Sakina Wanjiku and Ramin Jorfi for issuing bad cheque contrary to section 316 (A)(C) of the Penal Code, Cap 63 of the Laws of Kenya.

- ii. Leave be granted to the Ex-parte Applicants to apply for an order of prohibition directed at the Chief Magistrates Court at Kibera prohibiting the said court from continuing with further criminal proceedings at Kibera Chief Magistrates Court Criminal Case No. MCCR E1671 of 2023 Republic vs Sakina Wanjiku and Ramin Jorfi for issuing bad cheque contrary to section 316 (A)(C) of the Penal Code, Cap 63 of the Laws of Kenya.
 - iii. The leave granted to operate as stay of any further criminal proceedings at Kibera Chief Magistrates Court Criminal Case No. MCCR E1671 of 2023 Republic vs Sakina Wanjiku and Ramin Jorfi for purported offences of issuing bad cheque contrary to section 316 (A)(C) of the Penal Code, Cap 63 of the Laws of Kenya until the determination of this application and the reliefs sought
- c. Costs of the application.
2. The said application is brought under Order 53 of the Civil Procedure Rules and is supported by the Verifying Affidavits sworn by the Ex-parte applicant, and a Statement thereof.
 3. The crux of this application is that the subject matter of the criminal proceedings before the subordinate court arises from a civil dispute under the Short-Term Partnership Agreement dated 11th July 2023, in which the Ex-parte Applicants agreed to pay the 4th Respondent Kshs. 2,000,000/=.
 4. The Ex-parte Applicants contend that they issued the 4th Respondent four (4) post-dated cheques to settle the amount. However, only one cheque for Kshs. 200,000/= was honoured.
 5. According to the charge sheet filed in the subordinate court, the Ex-parte Applicants face the following charges:
 - Count I: Jointly charged for issuing a dishonoured cheque (No. 000387) for Kshs. 950,000/=.
 - Count II: The 1st Ex-parte Applicant charged with issuing a dishonoured cheque (No. 000039) for Kshs. 500,000/=.
 - Count III: The 1st Ex-parte Applicant charged with issuing a dishonoured cheque (No. 000040) for Kshs. 500,000/=.
 - Count IV: The 1st Ex-parte Applicant charged with issuing a dishonoured cheque (No. 000041) for Kshs. 800,000/=.
 6. The 1st Ex-parte Applicant asserts that on 26th September 2023, she advised the 4th Respondent not to deposit the cheques due to insufficient funds, as evidenced by a screenshot of their communication (annexed as SK-3 in her Verifying Affidavit).
 7. Despite this advice, the 4th Respondent deposited the cheques, prompting the Ex-parte Applicants to instruct their bank to stop payment. As of the filing of this application, there is no evidence that the 4th Respondent has been paid the outstanding amount. Consequently, the Ex-parte Applicants were arrested and charged.
 8. The Ex-parte Applicants assert that the criminal proceedings are malicious and intended to embarrass and harass them.



9. None of the Respondents filed a response to the application before court. Consequently, the Ex-parte applicants filed written submissions dated 9th December in support of the application.

Analysis and determination

10. After careful consideration of the Ex-parte Chamber Summons, the Statutory Statement and Verifying Affidavits sworn by the Ex-parte applicants, the only issue for consideration is whether the Ex-parte applicants have met the threshold for grant of leave to commence Judicial Review proceedings and whether such leave should operate as stay of the criminal proceedings before the lower court.
11. In regards to the question as to whether the Ex-parte applicants have met the threshold for grant of leave, I am persuaded by the holding in *Republic vs County Council of Kwale & another Ex parte Kondo & 57 others, Mombasa HC Misc. Application No. 384 of 1996* where Justice Waki (as he then was) when considering the essence of seeking leave stated as follows:
- “... is to eliminate at an early stage any applications for judicial review which are either frivolous, vexatious or hopeless and secondly to ensure that the application is only allowed to proceed to substantive hearing if the Court is satisfied that there is a case for further consideration. The requirement that leave must be obtained before making an application for judicial review is designed to prevent the time of the Court being wasted by busy bodies with misguided or trivial complaints or administrative error, and to remove the uncertainty in which public offices and authorities might be left as to whether they could safely proceed with administrative action while proceedings for judicial review of it were actually pending even though misconceived.” (See also *IRC v National Federation of Self-Employed and Small Businesses Ltd* (1982) 617, (1981) 2 ALL ER 93)
12. Mativo J, (as he then was) in *Republic v Kenya Revenue Authority Commissioner Ex Parte Keycorp Reals Advisory Limited* [2019] eKLR stated,
- “At the leave stage, the Applicant has the burden of demonstrating that the decision is illegal, unfair and irrational. The Applicant must persuade the Court that the application raises a serious issue. This is a low threshold. A serious issue is demonstrated if the Judge believes that the Applicant has raised an arguable issue that can only be resolved by a full hearing of the judicial review application. If the Court is not persuaded as aforesaid, leave will be denied and the matter proceeds no further.”
13. For context, the Ex-parte applicants are challenging the decisional independence of the 2nd Respondent to institute and undertake criminal proceedings against them. It is noteworthy that under Article 157(10) of *the Constitution* the Office of the Director of Public Prosecution is a constitutional independent office that is not subject to the direction or control of any person in the exercise of the prosecutorial functions.
14. It is only in the clearest cases that under Article 157(11) that the Court would intervene in the exercise of this power and where it is shown that the prosecution is not being done in public interest, does not further the administration of justice or that the prosecution is an abuse of the legal process.
15. The concerns raised by the Ex-parte applicants do not, fall within the constitutional caveat under Article 157(11) of *the Constitution*.



16. The Court of Appeal in *Director of Public Prosecutions v Martin Mina & 4 others* (2017) eKLR, stated that,

“it is not “the duty of the High Court ... to evaluate the sufficiency of the evidence in the envisaged criminal proceedings, that is the function of the trial Court, or the High Court in a criminal appeal. A Judicial Review Court should not usurp the functions of a trial court, except in the clearest of the cases.” Whether or not the evidence would be sufficient for making the decision to prosecute the petitioner will be answered by the trial court and not this court.”

17. From the material placed before court by the Ex-parte applicants, it is not disputed that the subject Cheques were dated 26/07/2023, 27/09/2023 and 2/10/2023. Save for stating that the Ex-parte applicants informed the 4th Respondent not to bank the Cheques, nothing has been placed before this court to show that the said Cheques have since been honoured. The Ex-parte applicants have not, in the least, demonstrated that they have, for more than one (1) year replaced the bad cheques, which form the substratum of the criminal case against them.

18. On the basis of the foregoing, I am not satisfied that the Ex-parte applicants have met the threshold for invoking this court’s judicial review jurisdiction to halt the criminal proceedings in the magistrates’ court.

19. For the foregoing reasons, I find that the issue of whether the leave should operate as stay falls by the wayside.

20. Accordingly, the Chamber Summons application dated 11th November 2024 is hereby dismissed with no orders as to costs.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 27TH DAY OF JANUARY 2025.

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D. KAVEDZA

JUDGE

In the presence of:

