



REPUBLIC OF KENYA



**KENYA LAW**  
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**Bundu Rovers v Attorney General & 3 others (Application 2 of 2022)  
[2025] KEHC 1180 (KLR) (Judicial Review) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1180 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
APPLICATION 2 OF 2022  
JM CHIGITI, J  
FEBRUARY 27, 2025**

**BETWEEN**

**BUNDU ROVERS ..... APPLICANT**

**AND**

**ATTORNEY GENERAL ..... 1<sup>ST</sup> RESPONDENT**

**THE NATIONAL POLICE SERVICE ..... 2<sup>ND</sup> RESPONDENT**

**THE DIRECTOR OF PUBLIC PROSECUTION ..... 3<sup>RD</sup> RESPONDENT**

**NATIONAL TRANSPORT AND SAFETY AUTHORITY ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

**Applicant's Case;**

1. The application before this Court is the Chamber Summons dated 11<sup>th</sup> November, 2022. The application is brought Pursuant to Order 53 rules 1 and 2 of the Civil Procedure Rules 2010. It seeks the following orders:
  1. Spent
  2. That leave be and is hereby granted to apply for Judicial Review orders of: -
    - a. An Order of Certiorari to quash the directive dated 28<sup>th</sup> October 2022 from the National Police Service order restricting the use of modified illumination lights, red lights, flashing lights, opaque rear lights amongst others by private vehicles.
    - b. An Order of Prohibition be issued restraining the 2nd, 3rd, 4th and 5th Respondents by themselves, their employees, servants and or agents or other person (s) claiming



through or under them from acting under their directions and control from taking steps, actions and measures to enforce the orders contained in the National Police Service Directive dated 28th October 2022.

- c. Declaration that Tinted Windows, Bullbars, Spot-Lights and Large Rims are legally allowed for privately driven and owned vehicles.
3. That grant of leave operates as a stay to the directive.
4. That service be substituted to be effected through publication in a daily newspaper of national circulation.
5. That costs of this Application be provided for.
2. The application is supported by the Verifying Affidavit of one Rikki Ponno Agudah sworn on even date and a statutory statement dated 26<sup>th</sup> February, 2024.
3. The Applicant 'BUNDU ROVERS' is an exclusive club comprising of owners of 4x4 vehicles in the Republic of Kenya.
4. It is the Applicant's case that members of its club are being constantly harassed and arrested by the 2<sup>nd</sup> and 4<sup>th</sup> Respondents for having Tinted Windows, Bullbars, Spot- Lights and Large Rims on privately owned vehicles the members of the Applicant club are being arrested, charged and fined by the Respondents on a charge that is not captured in the Laws of Kenya.
5. The Application was premised on the grounds that the Traffic Act of Kenya, Cap 403, does not restrict the use of modified illumination lights, red lights, flashing lights, opaque rear lights amongst others by private vehicles.
6. The Applicant argues that a directive was issued dated 28<sup>th</sup> October 2022 from the National Police Service restricting the use of modified illumination lights, red lights, flashing lights, opaque rear lights amongst others by private vehicles.
7. It is its case that the directive issued has no legal backing. The Respondents herein can only arrest, charge and fine its members of based on a charge recognized by law.
8. According to them, the 3rd Respondent has been charging the Applicants in Court and having them fined for having Tinted Windows, Bullbars, Spot-Lights and Large Rims on privately owned vehicles.
9. The Applicant contends that one cannot be charged on a non-existent law. The Traffic Act in Kenya does not ban Tinted Windows, Bullbars, Spot-Lights and Large Rims on privately owned vehicles.
10. The applicant canvassed its application by written submissions dated 22<sup>nd</sup> October, 2024.
11. It is submitted that directive was issued placing reliance on sections of the Traffic Act (cap. 403 Law of Kenya) that do not touch on privately owned vehicles. In that regard, it is being wrongfully applied to private vehicle owners.
12. According to them the following maxims apply by dint of article 2(5) of the Constitution of Kenya that states; "The general rules of international law shall form part of the law of Kenya".
  - a. The maxim nullum crimen sine lege certa (no crime without a precise law);
  - b. The maxim nullum poena sine lege (no punishment without law); and



- c. The maxim nullum crimen sine lege (no crime without law)
13. Reliance is placed in the case of *Aids Law Project v Attorney General & 3 others* [2015] eKLR relied on the decision in *Kokkinakis vs. Greece* 3/1992/348/421 which stated;
- “...the principle that only the law can define a crime and prescribe a penalty (nullum crimen, nulla poena sine lege) and the principle that the criminal law must not be extensively construed to an accused's detriment, for instance by analogy; it follows from this that an offence must be clearly defined in law. This condition is satisfied where the individual can know from the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it, what acts and omissions will make him liable.”
14. It is also their submission that the Respondents are acting ultra vires and from an illegal directive.
15. In *Republic v Land Registrar Kajiado North District & 6 Others Ex-Parte Irene Naipanoi Montet* [2014] eKLR the Court stated;
- “...that 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.”
16. It is its case that a person cannot or should not face criminal punishment except for an act that was criminalized by law before he/she performed the act. Criminal acts should not be ambiguous in context of existing laws.

#### **1<sup>st</sup> and 2<sup>nd</sup> Respondents' Case;**

17. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents oppose the Application through a Grounds of Opposition dated 27<sup>th</sup> February 2024. They contended that:
1. The Application is premature, incompetent, misplaced and an abuse of the Court process
  2. This court has no jurisdiction to make a determination in this matter.
  3. The application is fatally defective as it offends the mandatory provisions of Order 53 Rule 2 of the Civil Procedure Rules, 2010.
  4. The Respondents have acted within the principles of the law and Judicial Review proceedings cannot be used to restrain or stop statutory bodies or public officers from lawful exercise of power within their statutory mandates.
  5. If granted, the orders sought in the application will undermine the investigatory functions of the 2<sup>nd</sup> Respondents provided for under Section 24(e) of the *National Police Service Act*, No. 11A of 2011, thereby crippling the criminal justice system.
  6. The applicant has failed to show how the acts complained of are tainted with illegality, irrationality and procedural impropriety.
18. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed their written submissions dated 15<sup>th</sup> July, 2024.
19. It is their submission that, 2<sup>nd</sup> Respondents acted within its mandate as prescribed in Section 24 and Article 243 & 244 of *the Constitution*.



20. Article 244(1) provides for the objectives of the National Police Service (as established under *National Police Service Act* No. 11 of 2011.) as follows:

The National Police Service shall—

- a. strive for the highest standards of professionalism and discipline among its members;
- b. prevent corruption and promote and practice transparency and accountability;
- c. comply with constitutional standards of human rights and fundamental freedoms;
- d. train staff to the highest possible standards of competence and integrity and to respect human rights and fundamental freedoms and dignity; and
- e. foster and promote relationships with the broader society.

21. Section 24 of the *National Police Service Act* No. 21 of 2011 provides for the functions of the respondents as follows:

“24. The functions of the Kenya Police Service shall be the— provision of assistance to the public when in need; maintenance of law and order; preservation of peace; protection of life and property; investigation of crimes; collection of criminal intelligence; prevention and detection of crime; apprehension of offenders; enforcement of all laws and regulations with which it is charged; and performance of any other duties that may be prescribed by the Inspector- General under this Act or any other written law from time to time.

22. It is their submission that Article 245 provides that the Inspector General of the National Police Service shall implement or enforce directives from the Cabinet Secretary with respect to any matter of policy:

“(4) The Cabinet secretary responsible for police services may lawfully give a direction to the Inspector-General with respect to any matter of policy for the National Police Service, but no person may give a direction to the Inspector-General with respect to—(a) the investigation of any particular offence or offences;

(b) the enforcement of the law against any particular person or persons; or...”

23. They argue that the application before this honorable court is incompetent and ought to be disallowed for reasons that it interrogates the legality of directives passed by the 2<sup>nd</sup> respondent and if the reliefs are granted as sought, they will undermine the investigatory functions of the 2<sup>nd</sup> respondents provided for under Section 24(e) of the *National Police Service Act* No. 11A of 2011, thereby crippling the Criminal Justice System.



24. It is submitted that this court’s supervisory jurisdiction is limited to judicial review matters grounds of which ought to be limited to illegality, impropriety and irrationality of administrative action. Further, Judicial Review proceedings are excluded from the operation of the *Civil Procedure Act*, Section 3 of the *Civil Procedure Act* CAP 21 provides that: -

“In the absence of any specific provision to the contrary, nothing in this Act shall limit or otherwise affect any special jurisdiction or power conferred, or any special form or procedure prescribed, by or under any other law for the time being in force.”

25. It is further submitted that the application before this court is fatally defective as the same arose from a decision that was passed by the respondents on 28<sup>th</sup> October, 2022, one year has elapsed since the act relating to the application before court occurred. This application thus offends the provisions of Order 53 Rule 2 of the Civil Procedure Rules, 2010. Order 53 Rule 2 provides that:

“Leave shall not be granted to apply for an order of certiorari to remove any judgment, order, decree, conviction or other proceeding for the purpose of its being quashed, unless the application for leave is made not later than six months after the date of the proceeding or such shorter period as may be prescribed by any Act; and where the proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.”

26. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents argue that Section 8 and 9 of the *Law Reform Act*, Cap 26 Laws of Kenya and procedure as stipulated in Order 53 of the Civil Procedure Rules does not provide for extension of time within which the Six months can be enlarged or extended, this application is thus an abuse of court process and incompetent hence it should be dismissed with costs to the respondents.

### **3<sup>rd</sup> Respondent’s case;**

27. The 3<sup>rd</sup> Respondent oppose the Application through a Grounds of Opposition dated 9<sup>th</sup> December, 2022. It thereby contended that:

1. The 3<sup>rd</sup> respondent operates under article 157 of *the Constitution*, 2010.
2. The applicant has not demonstrated to this court of the existence of directives of the 3<sup>rd</sup> Respondent to the inspector General of Police to have the privately-owned motor vehicles fitted with tinted windows, Bullbars, Spot- Lights, and large Rims investigated and owners charged.
3. The applicant has not demonstrated to this court of the existence of the impugned directives as to the use of tinted windows, Bullbars, Spot- Lights, and large Rims on privately owned cars.
4. The applicant has not demonstrated to this court as to whether he owns any vehicles and if so, if its Vehicles are fitted with tinted windows, Bullbars, Spot-Lights, and large Rims.
5. Section 24 of the *National Police Service Act* mandates the police to investigate any complaint brought to their attention in order to determine whether a criminal offence has been committed.
6. It is in the public interest that complaints made to the police are investigated and the perpetrators of crimes are charged and prosecuted.



7. Granting of leave sought by the applicant to file Judicial Proceedings for orders of Certiorari and that of prohibition will be in vain since the 3<sup>rd</sup> respondent has neither directed investigations nor made decision to charge the applicant or its servants.
  8. The orders sought are not tenable against the Respondent as the Petitioner has not shown how the 3<sup>rd</sup> Respondent will infringe on the petitioner's constitutional rights if the orders sought are not granted.
  9. The Application does not disclose a cause of action against the 3<sup>rd</sup> Respondent as the orders sought cannot be executed against the 3<sup>rd</sup> respondent since he has not exercised the constitutional mandate under article 157 of *the Constitution* of Kenya, 2010, against the applicant.
28. The 3<sup>rd</sup> Respondent filed its written submissions dated 22<sup>nd</sup> October, 2024.
  29. It is the 3<sup>rd</sup> Respondent's submission that applicant has not demonstrated to this court of the existence of its purported directives to the inspector General of Police to have the privately-owned motor vehicles fitted with tinted windows, Bullbars, Spot-Lights, and large Rims investigated and owners charged.
  30. It is argued that applicant's application for orders of Certiorari and that of prohibition will be in vain since the 3<sup>rd</sup> respondent has neither directed investigations nor made decision to charge the applicant or its servants nor not demonstrated how the 3<sup>rd</sup> respondent is likely to abuse the court process.
  31. Reliance is placed in the case of *Kuria & others versus AG* [2002] 2 KLR 69, the High Court held.
 

“An order of prohibition should be granted where there is an abuse of the process of the court, which will have the effect of stopping the prosecution already commenced. A prerogative order is an order of a serious nature and cannot and should not be granted lightly. There should be concrete grounds for supposing that continued prosecution of a criminal case manifests an abuse of the judicial procedure, much that the public interest could be best served by the staying of the prosecution”
  32. It is the 3<sup>rd</sup> Respondent's case that application discloses no cause of action as against it as the orders sought cannot be executed against it since he has not exercised the constitutional mandate under article 157 of *the Constitution* of Kenya, 2010, against the applicant as such the Application is without merit and should be dismissed with costs.

### **Analysis and Determination;**

33. In *Mombasa HCMCA No. 384 of 1996 Republic v County Council of Kwale & Another, Exparte Kondo and 57 others* it was held that:
 

“The purpose of application for leave to apply for Judicial Review is firstly to eliminate at an early stage any applications for Judicial Review which are either frivolous, vexatious or hopeless and secondly to ensure that the applicant is only allowed to proceed to substantive hearing if the court is satisfied that there is a case fit 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 officers and authorities might be left as to whether they could safely proceed with the administrative action while proceedings for Judicial Review of it were actually pending even though misconceived...Leave may only be granted therefore if on the material available



before the court the court is of the view, without going into the matter in depth, that there is an arguable case for granting the relief claimed by the applicant the test being whether there is a case fit for further investigation at a full inter partes hearing of the substantive application for judicial review. It is an exercise of the court's discretion but as always it has to be exercised Judicially”.

34. In the case of Republic V Inspector of Police David Kimaiyo Exparte Akitch Okola 2014 KEHC 4014 (KLR) held thus:

“ 10. Rule 54A(1) of the Traffic Rules provides as follows: A person shall not drive or operate a public service vehicle that is fitted with tinted windows or tinted windscreen. [Underlining mine]. 11. It is clear from the above rule only public service vehicles are prohibited from being driven or operated when fitted with tinted windows or tinted windscreen. It is here however alleged that the Respondent in his impugned directive purported to prohibit all vehicles from being driven or operated when so fitted with tinted windows. The Respondent has not denied that this was in fact the effect of his directive. This Court has not been referred to any provision of the law which extended the prohibition under rule 54A (1) aforesaid to private vehicles. Without any such legal authority, the Respondent would no doubt have given directives without any legal basis. 12. This Court is no doubt aware of the rise in a spate of insecurity in this country in recent past and those may have been the circumstances which drove the Respondent to issue the impugned directive. That this is a serious matter was appreciated by Lenaola, J in *Modern Coach Express Limited vs. Attorney General & 3 Others* [2012] eKLR, a matter which bears marked resemblance to the instant case, when he pronounced himself as follows: “Safety is a prime consideration for any public vehicle owner and both the Minister and other organs of State have a general obligation to ensure the safety of passengers and if tinting of windows compromises that security, then promulgation of Law to restrict it cannot either be ultra vires Section 119 of the Act or any other Law. It is a matter of common notoriety that with terrorist threats abounding, public service vehicles are an attractive target and Rule 3 aforesaid was enacted to ensure that Law enforcers can see through public service vehicle windows and the minor inconvenience complained by the Petitioner cannot override the Law and the wider interests of public safety and security. Further, it is my understanding that the *Traffic Act* was enacted to ensure the general safety of the populace and that is why for example, regarding how windows should be designed and constructed, Rule 30 of the Traffic Rules provide that the design of windows should be such that the driver has a full view of the road and traffic ahead; that his view is not impeded and material with reflective properties should be avoided – see *David Gichuki Kariuki vs Commissioner of Police* (2008) eKLR. The reason for the enactment is obvious as is the reason for denying public service motor-vehicle owners the comfort of tinted windows on their motor-vehicles.”

...

15. A strict reading of Rule 54A of the Traffic Rules clearly shows that private vehicles were not brought within the ambit of the rule. To purport to bring the said vehicles within the ambit of the rule without amending the



same was obviously the wrong route to follow in an attempt to secure the country. The legislative delay together with its uncertainty may have tempted the Respondent to short circuit the procedure by issuing the said directive. However such remedies may sometimes turn out to be worse than the disease as on occasions they may be fatal and it is the duty of the Court to take remedial measures to ensure that the surgeon does not resort to a hacksaw in place of a scalpel.

...

17. Article 245(2)(b) of *the Constitution* empowers the Respondent to exercise command over the National Police Service and to perform any other functions prescribed by national legislation. The national legislation in question is no doubt the *National Police Service Act*, 2011. Section 10(1) of the said Act prescribes the functions of the Respondent and none of them expressly empower him to amend or vary the Traffic Rules. 18. In issuing the directive that all vehicles with tinted windows be impounded without making a distinction between public service vehicles and private ones, the Respondent obviously purported to exercise powers he did not have. The effect of such directive, I agree with the applicant was to amend the Traffic Rules in particular Rule 54A and expand the ambit and application of the said Rule. The Respondent had no such power under the law. In *Koinange Mbiu vs. Rex* [1951] LRK 130, it was held that Rules and byelaws made under statutory powers must not be unreasonable, nor in excess of statutory power nor repugnant to that statute nor to the general principles of law. In that case whereas section 4 of the Crop Production Ordinance Cap. 205 enabled the Governor in Council by subsidiary legislation to fix by name area or areas to which the rules for controlling and improving crop production and marketing were to be applicable, the Governor made rules relating to race and class in the community. The Court had no hesitation in declaring the same ultra vires. 19. In the result I have no hesitation in issuing which I hereby do an order of certiorari removing into this Court for the purposes of being quashed the Respondent's directive ordering private motor vehicles with tinted windows be impounded with immediate effect which directive is hereby quashed. I further prohibit the respondent whether by himself, his agents or persons acting under him from impounding private motor vehicles with tinted windows pursuant to the said directive or in any way effecting the same. The applicant is awarded the costs of this application. (emphasis mine)

35. It is this court's finding and I so hold that nothing will be achieved by granting leave as sought by the applicant given that the issues forming the cause of action herein have since been settled in the aforementioned judgment.

Order;

The application dated 11<sup>th</sup> November 2022 lacks merit and the same is hereby dismissed.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27<sup>TH</sup> DAY OF FEBRUARY, 2025**

**J. CHIGITI (SC)**

JUDGE

