



**Lococo & 2 others v The Director of Public Prosecutions & 10 others;
Rafiki Resort Management Limited & another (Interested Parties) (Petition
E006 of 2024) [2025] KEHC 5049 (KLR) (25 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5049 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
PETITION E006 OF 2024
M THANDE, J
APRIL 25, 2025**

BETWEEN

**DANIELE LOCOCO 1ST PETITIONER
MASSIMO NATIVI 2ND PETITIONER
RAFIKI LIMITED 3RD PETITIONER**

AND

**THE DIRECTOR OF PUBLIC PROSECUTIONS 1ST RESPONDENT
INSPECTOR GENERAL OF POLICE 2ND RESPONDENT
DIRECTOR OF CRIMINAL INVESTIGATIONS 3RD RESPONDENT
DAVID K. SIELE 4TH RESPONDENT
COSIMO ARMENO MODUGNO 5TH RESPONDENT
MARIA GRAZIA MOSCONE 6TH RESPONDENT
FIORENZO GIROLA 7TH RESPONDENT
ROSY TETTAMANTI 8TH RESPONDENT
RITA NAPPO 9TH RESPONDENT
SENIOR RESIDENT MAGISTRATE, KILIFI 10TH RESPONDENT
THE ATTORNEY GENERAL 11TH RESPONDENT**

AND

**RAFIKI RESORT MANAGEMENT LIMITED INTERESTED PARTY
THE LAW SOCIETY OF KENYA INTERESTED PARTY**



RULING

1. The Petitioner filed a Petition dated 31.5.24 against the Respondents, seeking a raft of reliefs, in respect of criminal charges against the 1st and 2nd Petitioners relating to sale of villas in Rafiki Village on Plot No. Kilifi/Jimba/1544. Contemporaneously with the Petition, the Petitioners filed an Application of even date seeking the following orders:
 - a. Spent.
 - b. Pending the hearing and determination of this application the Court be pleased to prohibit the 1st Respondent from continued prosecution of the 1st and 2nd Petitioners in Kilifi Senior Principal Magistrate Criminal Case No. 328 of 2024.
 - c. Pending the hearing and determination of this Petition the Court be pleased to prohibit the 1st Respondent from continued prosecution of the 1st and 2nd Petitioners in Kilifi Senior Principal Magistrate Criminal Case No. 328 of 2024.
 - d. Pending the hearing and determination of this application the Court be pleased to prohibit the 10th Respondent and any other magistrate from hearing any criminal proceedings against the Petitioners arising from any complaint by the 5th, 6th, 7th, 8th and 9th Respondents on the sale of any Villa at Rafiki Village, Watamu.
 - e. Pending the hearing and determination of this Petition the Court be pleased to prohibit the 10th Respondent and any other magistrate from hearing any criminal proceedings against the Petitioners arising from any complaint by the 5th, 6th, 7th, 8th and 9th Respondents on the sale of any Villa at Rafiki Village, Watamu.
 - f. Pending the hearing and determination of this application the Court be pleased to prohibit the 2nd, 3rd and 4th Respondents and their officers from any further criminal investigations of the Petitioners on any matter arising from the sale and occupation of any Villa at Rafiki Village, Watamu.
 - g. Pending the hearing and determination of this Petition the Court be pleased to prohibit the 2nd, 3rd, and 4th Respondents and their officers from any further criminal investigations of the Petitioners on any matter arising from the sale and occupation of any Villa at Rafiki Village, Watamu.
 - h. Pending the hearing and determination of this application and of the Petition the Court be pleased to restrain the 5th Respondent from directing the 1st, 2nd, 3rd and 4th Respondents in the manner in which they should exercise their statutory and constitutional functions and from interfering with the independence of state organs in the Republic of Kenya.
 - i. Pending the hearing and determination of this application the Court be pleased to restrain and prohibit the 1st, 2nd, 3rd, and 4th Respondents from taking or complying with any orders and directions from the 5th Respondent with regard to the discharge of their constitutional and statutory functions.
 - j. Pending the hearing and determination of this Petition the Court be pleased to restrain and prohibit the 1st, 2nd, 3rd and 4th Respondents from taking or complying with any orders and



directions from the 5th Respondent with regard to the discharge of their constitutional and statutory functions.

- k. Pending the hearing and determination of this application and for purposes of facilitating the fair hearing and determination of this Petition, the Court be pleased to direct the 1st, 2nd, 3rd and 4th Respondents to explain on oath why they cannot arrest, charge and prosecute the 5th Respondent for practising law in Kenya without the necessary qualification under the provisions of the *Advocates Act* in spite of the request by the Law Society of Kenya to do so.
 - l. The Court be pleased to direct that the Petition be heard and determined on priority basis.
 - m. The costs of this application be provided for.
2. The grounds upon which the Application is premised are contained in the Application and in the supporting affidavit sworn by the 1st Petitioner on even date. The Petitioners' case is that the 1-4th Respondents conspired to arrest, charge and prosecute the Petitioners in Kilifi Senior Principal Magistrate's Criminal Case No. 506 of 2023 and to obtain unlawful and fraudulent warrants of arrest. Upon learning of the true facts, the 1st Respondent withdrew that case under Section 87(a) of the *Criminal Procedure Code*. Thereafter, the 1st Respondent purported to review the decision to withdraw and directed reinstatement of criminal proceedings. The 1st and 2nd Petitioners were subsequently arrested, charged and held in remand on the directions by the 1st Respondent acting under the control of the 4th and 5th Respondents, for purposes of compelling the Petitioners to settle civil disputes with the 7th and 9th Respondents.
 3. It is the Petitioners' contention that the 1st - 4th Respondents are acting on the directions, instructions and orders of the 5th Respondent, an Italian who is not an advocate of this Court. They urged that those Respondents should be prohibited from receiving orders from the foreigner and the foreigner himself ought to be restrained from capturing state organs in Kenya, to protect the integrity of the state organs established by *the Constitution* and the law.
 4. The Petitioners further contend that the criminal proceedings in Kilifi Senior Principal Magistrate's Criminal Case No. 328 of 2024 (the criminal case) against the 1st and 2nd Petitioners are founded on the allegation that they received money by false pretences to wit, the grant of leases to the 7th and 9th Respondents yet those Respondents were given possession of the villas after they executed the leases. They have however refused to execute Deed of Rectification to register the leases. The Petitioners had explained to DCI Watamu and to the in charge of prosecution at Malindi that the delay in registering the leases was caused by the requirement by the Land Registrar to obtain a change of user. The DCI Watamu accepted that explanation and determined that there was no offence. Consequently, the 6th-9th Respondents filed civil suits. After they were unable to conclude the civil suits to their satisfaction, the said Respondents enlisted the services of the 5th Respondent who, using his influence over the 1st - 4th Respondents re-opened investigations at Kilifi and Kiambu Road Nairobi and directed them to commence criminal proceedings at Kilifi even though the property concerned is in Watamu. The Petitioners argue that there is no reason why any alleged offence in Watamu could not be prosecuted at Malindi where there are magistrates' courts.
 5. The Petitioners further assert that 1st Respondent's decision to charge is for the purpose of compelling them to register leases in favour of the 7th and 9th Respondents. However, that the said Respondents do not wish to have the leases registered and have filed suits in the Magistrate's Court at Mombasa and Malindi to recover the purchase price while occupying and using the villas. Further that the 1st - 4th Respondents in their decision to investigate, arrest, charge and prosecute the Petitioners with obtaining



money by false pretences is malicious and they failed to consider that the agreements for the sale of leasehold interest in the villas to the 6th - 9th Respondents were completed when the necessary leases were executed by all parties and those Respondents were given possession and remain in possession of the villas. The criminal investigations and proceedings were thus commenced to compel the Petitioners to settle those civil suits.

6. The Petitioners further contend that the 10th Respondent failed to notice that she had been forum shopped and ought not to have handled the matter that should have been filed at Malindi. Further that the 10th Respondent is acting under the control and directions of the 1st - 5th Respondents and the rulings and orders she continues to make are not in good faith or in the lawful performance of a judicial function. They stated that in her ruling on 29.5.24 the 10th Respondent stated that the 1st Respondent has full control of criminal proceedings thereby admitting that she has no control of those proceedings. Further that while reviewing bail terms the 10th Respondent ordered the 1st and 2nd Petitioners to share their itinerary with the 3rd and 4th Respondents and seek the permission of the 3rd Respondent to travel out of the country, yet she had already allowed the 1st and 2nd Petitioners to travel out of the country and had directed the release of their passports. The Petitioners thus argue that the 10th Respondent has subjected herself to the direction and control of the 1st, 3rd and 4th Respondents. As such, she will not be fair and just in hearing the matter and the Petitioners will not have a fair trial.
7. The Petitioners urged that unless the application is allowed as prayed they will suffer substantial loss and damage and a foreigner will continue controlling the 1st - 4th and 10th Respondents.
8. The 3rd and 4th Respondents opposed the Application vide a replying affidavit sworn on 28.8.24 by PC Phenix Oduya Onyango, HSC. He stated that the 4th Respondent is wrongly sued in his personal capacity as he is an officer working for the 3rd Respondent. The deponent denied all the allegations by the Petitioners in the Application and Petition. In particular, it was denied that the 1st - 4th Respondents are under the control of the 5th Respondent and no proof has been placed before the Court to support the allegation. It was stated that the 5th Respondent is a translator of the 6th and 7th Respondents who only understand the Italian language. It was further denied that the 10th Respondent was under the control of the 1st - 5th Respondents and this was not proved.
9. The deponent stated that investigations established that the Petitioners are Italian nationals and directors of the 3rd Petitioner were charged in Kilifi Criminal Case No. E506 of 2023 with the offences of obtaining by false pretence contrary to Section 313 of the *Penal Code* and conspiracy to defraud contrary to Section 317 of the *Penal Code*. As the Petitioners were out of the country at the time, a warrant of arrest was issued and they were arrested upon their return on 18.11.23 at Malindi airport. Following a review of the file, the charges were withdrawn whereupon the 5th Respondent wrote a letter of complaint to the DPP. The investigation file was forwarded to the Regional Coordinator ODPP Mombasa who upon review of the evidence, rescinded the decision to withdraw charges and directed that the Petitioners be charged. On 27.4.24, the Petitioners were arrested and charged in the criminal case.
10. It was further averred that the Petitioners connived by lying to the 6th and 9th Respondents that they were selling villas to them only for them to end up being made shareholders in a holding company without their knowledge and consent, instead of being issued with titles. It was added that the said Respondents are not in possession of the villas as alleged. Further that Muli & Ole Kina, the Petitioners' Advocates misled the ODPP Malindi by alleging that the case did not put into consideration the directions of the Lands Registrar, Kilifi on change of user of the suit property, yet there is no such requirement under the Registered *Land Act*. Additionally, that it was noted the decision to convert land



from freehold to leasehold was the preserve of the County Government and not the Lands Registrar as alleged by the Petitioners' counsel.

11. The deponent stated that the decision to charge the Petitioners in Kilifi Law Courts was not actuated by malice but was informed by the fact that they and their said counsel are seen to have an interest in Malindi Law Courts. Further that what is stated in the Application constitutes what will be the Petitioners' defence in the criminal case.
12. It is the 3rd and 4th Respondents' case that the actions of the 1st - 4th Respondents did not in any way violate the Petitioners' constitutional rights or Article 157(11) of *the Constitution*. Further that it has not been demonstrated that the Petitioners stand to suffer any prejudice if the criminal case were to proceed before the 10th Respondent. They urged that the Application and Petition be dismissed and that the criminal case be allowed to proceed to its logical conclusion.
13. Although directions were given for parties to file written submissions, only the Petitioners complied.
14. The Petitioners' case as I understand it is that they seek is fourfold. First, they seek prohibition of their prosecution in the criminal case or any other criminal proceedings arising from any complaint by the 5th - 9th Respondents on the sale of any villa at Rafiki Village, Watamu. Second, they seek prohibition of any further criminal investigations of the Petitioners on any matter arising from the sale and occupation of any villa at Rafiki Village, Watamu. Third, they seek orders restraining the 5th Respondent from directing the 1st - 4th Respondents in the manner in which they should exercise their statutory and constitutional functions and from interfering with the independence of state organs in the Republic of Kenya. They also seek orders restraining and prohibiting 1st - 4th Respondents from taking or complying with any orders and directions from the 5th Respondent with regard to the discharge of their constitutional and statutory functions. Lastly, they seek orders directing the 1st - 4th Respondents to explain on oath why they cannot arrest, charge and prosecute the 5th Respondent for practising law in Kenya without the necessary qualification under the provisions of the *Advocates Act* in spite of the request by the Law Society of Kenya to do so.
15. I will begin with the orders sought relating to the 5th Respondent. The Petitioners contend that the 5th Respondent has been giving orders and directions to the 1st - 4th Respondents on the discharge of their constitutional and statutory functions and that they have been complying.
16. The 1st - 4th Respondents draw their authority from *the Constitution* and the law. In exercise of this authority they are functionally independent. Article 157(6) of *the Constitution* vests state powers of prosecution on the 1st Respondent, which power is restated in Section 5 of the Office of Director of Public Prosecutions Act. In the discharge of its mandate, the 1st Respondent is required to do so without seeking the consent or direction from any person or authority. Under Article 157(10) the 1st Respondent shall not require the consent of any person or authority for the commencement of criminal proceedings and in the exercise of his or her powers or functions, shall not be under the direction or control of any person or authority.
17. The power of the 1st - 3rd Respondents, to investigate offences is derived from Article 245 of *the Constitution* and Section 35 of the *National Police Service Act*. Their independence is constitutionally insulated from any form of interference or directional command. Indeed, under Article 245(4), not even the cabinet secretary responsible for police services may give a direction to the Inspector-General of Police with respect to the investigation of any particular offence or offences or the enforcement of the law against any particular person or persons. It is only the 1st Respondent that has power under Article 157(4) to direct the Inspector-General of the National Police Service to investigate any information or allegation of criminal conduct and the Inspector-General shall comply with any such direction.



18. Given the stringent constitutional and statutory safeguards of the independence of the 1st - 4th Respondents, it is inconceivable that they can subject themselves to instructions or directions from any person, least of all foreigner in the person of the 5th Respondent. The allegations by the Petitioners in this regard, which are not in any event supported by evidence, are rejected.
19. As regards the claim that the 5th Respondent has been practising law in Kenya without a practising certificate, my view is that it is within the mandate of the 2nd Interested Party to pursue this matter with the relevant Respondents.
20. I now turn to the prayers for an order of prohibition of the Petitioners' prosecution in the criminal case or any criminal proceedings as well as investigation arising from any complaint by the 5th - 9th Respondents on the sale of any villa at Rafiki Village, Watamu. These will be considered together given their conceptual similarities.
21. The prosecution of the Petitioners arises from the sale by the 3rd Petitioner to the 6th - 9th Respondents of villas in Rafiki Village. The Petitioners claim that the delay in registration of the leases in respect of the units purchased by the said Respondents was caused by the requirement of the Land Registrar, Kilifi for change of user of the suit property and that this requirement was communicated after inordinate delay. They further claim that this was explained to the said Respondents who were also informed that the change of user process had commenced. The 9th Respondent proceeded to file Mombasa CM ELC Case No. 669 of 2022 Rita Nappo v Rafiki Limited, Masimo Nativi and Daniele Lococo, seeking a declaration that the contracts were null and void and a refund of the purchase price. Also filed are Civil Appeal No. E050 of 2020 Rafiki Limited, Masimo Nativi and Daniele Lococo v Rita Nappo and Civil Appeal No. 53 of 2022 Rita Nappo v Rafiki Limited, Masimo Nativi and Daniele Lococo. Also filed are Malindi CM ELC No. 236 and 237 of 2022 as well as Malindi ELC Appeal Nos. 22,23,24 and 25 of 2022.
22. This dispute also led to the prosecution of the Petitioners in the criminal case. It is the Petitioners' case that the prosecution is malicious and a means by the 7th and 9th Respondents to get an upper hand in the civil cases. They now seek conservatory orders prohibiting their prosecution and further investigations against them.
23. Article 23 of *the Constitution* has conferred upon this Court, the authority to uphold and enforce the Bill of Rights and grant appropriate relief as follows:
 1. The High Court has jurisdiction, in accordance with Article 165, to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.
 2. ...
 3. In any proceedings brought under Article 22, a court may grant appropriate relief, including--
 - (a) a declaration of rights;
 - (b) an injunction;
 - (c) a conservatory order;
 - (d) a declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights and is not justified under Article 24;
 - (e) an order for compensation; and



(f) an order of judicial review.

24. A conservatory order is one of the appropriate reliefs available to a party who alleges and proves denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights. The purpose of conservatory orders is to preserve the substratum of a petition before court, pending the hearing and determination of the same. Rule 23 of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013* provides that despite any provision to the contrary, a Judge before whom a petition is presented shall hear and determine an application for conservatory or interim orders.
25. The threshold for the grant of conservatory orders was established by the Supreme Court in the case of *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others* [2014] eKLR as follows:
- (86) “Conservatory orders” bear a more decided public-law connotation: for these are orders to facilitate ordered functioning within public agencies, as well as to uphold the adjudicatory authority of the Court, in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private-party issues as “the prospects of irreparable harm” occurring during the pendency of a case; or “high probability of success” in the supplicant’s case for orders of stay. Conservatory orders, consequently, should be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes.
- (87) The issue before us, therefore, is whether this is a proper case where the interlocutory reliefs sought by the applicant should be granted. The principles to be considered before a Court of law may grant stay of execution have been crystallized through a long line of judicial authorities at the High Court and Court of Appeal. Before a Court grants an order for stay of execution, the appellant, or intending appellant, must satisfy the Court that:
- (i) the appeal or intended appeal is arguable and not frivolous; and that
- (ii) unless the order of stay sought is granted, the appeal or intended appeal, were it to eventually succeed, would be rendered nugatory.
- (88) These principles continue to hold sway not only at the lower Courts, but in this Court as well. However, in the context of *the Constitution* of Kenya, 2010, a third condition may be added, namely:
- (iii) that it is in the public interest that the order of stay be granted.
- (89) This third condition is dictated by the expanded scope of the Bill of Rights, and the public-spiritedness that run through *the Constitution*.
26. A party seeking conservatory orders must demonstrate to the Court that first, the petition is arguable and not frivolous. Second that unless the orders sought are granted, the suit, were it to succeed, would be rendered nugatory. Though linked to injunctions in private party matters, these 2 limbs are also applicable in public law. The Supreme Court added the third test in the context of *the Constitution*, namely, that it is in the public interest that the orders sought are granted.
27. The prayers that the Petitioners seek herein are that pending the hearing and determination of the Petition, the Court suspends the proceedings in the criminal case against them. They further seek that the 1-4th Respondents be prohibited from further investigating the Petitioners on issues arising from any complaint by the 5th - 9th Respondents on the sale of any villa at Rafiki Village, Watamu.



28. It is well settled that constitutional and statutory bodies such as the 1st -3rd Respondents herein, must be given the space to discharge their mandate and to exercise their discretion in doing so. A court will only intervene where it is demonstrated that such institution or organ in question has acted ultra vires or in breach of *the Constitution* or the law. This was the holding of Ngugi, J. (as she then was) in the case of *Kipoki Oreu Tasur v Inspector General Of Police & 5 others* [2014] eKLR. The learned Judge stated:

The criminal justice system is a critical pillar of our society. It is underpinned by *the Constitution*, and its proper functioning is at the core of the rule of law and administration of justice. It is imperative, in order to strengthen the rule of law and good order in society, that it be allowed to function as it should, with no interference from any quarter, or restraint from the superior Courts, except in the clearest of circumstances in which violation of the fundamental rights of individuals facing trial is demonstrated.

29. Additionally, stay of proceedings is a serious judicial action that inevitably interferes with the right of a litigant to conduct his litigation. It undermines the right of access to justice, right to be heard without delay and overall, right to fair trial. The discretion to stay proceedings should therefore be exercised cautiously and only in cases where the Court is satisfied that proceedings ought not to be allowed to continue.

30. In the case of *Katangi Developers Limited v Prafula Enterprises Limited & another* [2018] eKLR, the Court of Appeal stated as follows:

“What is in issue before us is simply an application for stay of proceedings under Rule 5(2) (b) of the Court Rules. As noted in Halsbury’s Laws of England 4th edition volume 37 at paragraph 330:

“the stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and, therefore, the Courts general practice is that a stay of proceedings should not be imposed unless the proceedings beyond all reasonable doubt ought not to be allowed to continue”.

31. The Petitioners challenge the constitutionality and legality of actions of the Respondents and more specifically, the propriety of the criminal proceedings against them. They contend that the purpose of the charges against them is to compel them to settle civil disputes with the 7th and 9th Respondents. They seek that the charges be halted. At this preliminary stage, the Court may only examine and evaluate the material placed before it, to determine whether the Petitioners have made out a prima facie case to warrant grant of conservatory orders.

32. In the case of *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] eKLR, the Court of Appeal defined a prima facie case to mean:

4. A prima facie case in a civil application includes but is not confined to a “genuine and arguable case.” It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.



33. In the case of *Free Kenya Initiative & 6 others v Independent Electoral & Boundaries Commission & 4 others; Kenya National Commission on Human Rights (Interested party)* [2022] eKLR, Mrima, J. stated:

“ 32. In sum, therefore, in determining whether a matter discloses a prima-facie case, a Court must look at the case as a whole. It must weigh, albeit preliminarily, the pleadings, the factual basis, the respective parties’ positions, the remedies sought and the law. In so doing, a Constitutional Court must be guided by Articles 22(1) and 258(1) of *the Constitution* which provisions are on the right to institute Court proceedings whenever a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened or the when *the Constitution* has been contravened, or is threatened with contravention.”

34. I have considered all the issues raised by the Petitioners concerning the institution of the criminal proceedings against them. I am keenly aware I cannot at this stage delve into the merits of the case which must await the full hearing of the Petition. Suffice it to say however, the petition raises critical issues, namely, whether the issues arising from any complaint by the 5th - 9th Respondents on the sale of any villa at Rafiki Village, Watamu should be the subject of criminal investigations and charges or civil proceedings, is critical; whether the decision to charge the Petitioners in Kilifi and not Malindi over an offence allegedly committed in Watamu is fair and whether the continued investigations and prosecution of the Petitioners will result in violation of their constitutional rights. There is also the question as to whether the 1st -4th Respondents exercised their mandate in line with the law. These are matters that can only be dealt with at the main hearing of the Petition. In light of the foregoing, I have no difficulty in finding that the Petitioners have established a prima facie case with a probability of success.

35. Further, since the main Petition is pending, I must caution myself not to make definite and final findings on the issues raised, before parties have been heard substantively, which would prejudice the main suit. In this regard, I follow the reasoning of Ibrahim, J. (as he then was) in the case of *Muslims for Human Rights (Muhuri) & 2 others v Attorney General & 2 Others* [2011 eKLR where he stated:

“The court must be careful for it not to reach final conclusions and to make final findings. By the time the application is decided, all the parties must still have the ability and flexibility to prosecute their cases or present their defences without prejudice. There must be no conclusivity or finality arising that will or may operate adversely vis- a-vis the case of either parties. This principle is similar to that in temporary at or interlocutory injunctions in civil matters.

This is a cardinal principle and happily makes my function and work here much easier despite walking a tight legal rope that I could easily lose balance with the slightest slip due to any laxity or being carried away by the passion or zeal of persuasion of any one side.”

36. It is clear from the cited authority that at this stage, the court must resist the temptation to make any conclusive findings of fact or law on the matter before it.



37. In *Prasul Jayantilal Shab v Republic; Joseph Karuoro Claudio (Interested Party)* [2022] eKLR, Odunga, J. (as he then was) considered a similar case and in granting conservatory orders stated:

“57. In the premises, I find that it is only just to temporarily hold further proceedings in the criminal case in abeyance so as to avoid a situation where the Applicant might lose his liberty when the subject matter’s status is yet to be determined and this Court is yet to determine the propriety of the criminal proceedings.”

38. I concur with the learned Judge. The propriety of the criminal proceedings in question is yet to be determined. Further given the nature of the matter herein, I find that if the substratum of the Petition is not preserved by having in place conservatory orders, there is imminent danger of rendering the Petition nugatory and a mere academic exercise, as the investigations and criminal case will have proceeded. Indeed, a determination in favour of the Petitioners will be of no use to them if in the meantime, they are subjected to the investigations and criminal proceedings under challenge. It is therefore necessary that the said proceedings be stayed pending the hearing and determination of the Petition.

39. Accordingly, I do allow the Application dated 31.5.24 on the following terms:

1. Pending the hearing and determination of this Petition the Court hereby prohibits the 1st Respondent from continued prosecution of the 1st and 2nd Petitioners in Kilifi Senior Principal Magistrate Criminal Case No. 328 of 2024.
2. Pending the hearing and determination of this Petition the Court hereby prohibits the 2nd, 3rd, and 4th Respondents and their officers from any further criminal investigations of the Petitioners on any matter arising from the sale and occupation of any villa at Rafiki Village, Watamu
3. All other prayers are declined.

DATED SIGNED AND DELIVERED IN MALINDI THIS 25TH DAY OF APRIL 2025

.....

M. THANDE

JUDGE

