



**Republic v Chief Magistrate, Wanguru & another; Kinywa & another  
(Interested Parties); Moh (Ex parte Applicant) (Judicial Review  
E009 of 2024) [2025] KEHC 9210 (KLR) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9210 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
JUDICIAL REVIEW E009 OF 2024  
EM MURIITHI, J  
JUNE 30, 2025**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE CHIEF MAGISTRATE, WANGURU ..... 1<sup>ST</sup> RESPONDENT**

**DIRECTOR OF PUBLIC PROSECUTION ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**JAQUELINE CHRISTY AKINYI KINYWA ..... INTERESTED PARTY**

**LEAHNJERI NJIRU ..... INTERESTED PARTY**

**AND**

**ISSADIN GABANE MOH ..... EX PARTE APPLICANT**

**JUDGMENT**

1. The Court has considered the application for judicial review orders of Certiorari and Prohibition herein, the responses by the Respondent and Interested Parties and the respective written submissions by the parties.
2. The High Court as a Constitutional Court and the Judicial Review Court has authority under Article 165 (6) to review the proceedings of a trial court in terms that:

“(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.”



3. The object of the supervisory jurisdiction is, as alluded in the sub-Article (7) setting the power to call for the subordinate court's record and make any order or give any direction it considers appropriate, "to ensure the fair administration of justice."
4. Although the present application seeks judicial review primarily against the 2<sup>nd</sup> Respondent for his decision to charge, as an administrative action, the existence of the criminal proceedings before the 1<sup>st</sup> respondent trial court, in consequence of the decision to charge, imports the jurisdiction under Article 165 (6) and (7) of the Constitution.
5. The circumstances of this case, where there is already before the trial court an application for withdrawal of the criminal charges and termination of the prosecution, which application was made before the court before the filing of this Judicial review application and only formalized on the direction of the trial court on 24/11/2024, and being based on the same grounds of existence of similar trial before the Milimani Court, Nairobi and being aimed at the same result, the withdrawal or termination of the criminal charges subject of this judicial review proceedings, the Court in accordance with the principle of supervisory jurisdiction considers that there exists a reasonable cause for its intervention.
6. In this case, when the prior application (it is not correct that the application to withdraw the charges was made after the filing of this judicial review application as urged by the applicant as the application was first made orally on 24/11/2024) for withdrawal of the criminal case is approved, the object of this application seeking enforcement of constitutional jurisdiction under Article 165 (6) of the Constitution shall have been achieved.
7. The principal constitutional issue raised by the Applicant as set out in this judicial review application is that the substance of the charges before the trial court herein have been previously filed against him before another court, and that is the same basis on which the DPP wishes to withdraw the criminal charges in the pending application before the trial court.
8. As shown in the trial Court Record of 21/11/2024, the application for withdrawal of the Charges was made and in a ruling on the same date, the Court deferred consideration of the application as follows:

“Ruling Court:

I have considered the application by the prosecution as well as the submissions by the defence counsel for Jacqueline, the accused Jacqueline and the complainant Leah.

I note that warrant of arrest in this matter were issued way back on 22/11/2024. The accused has not bothered to attend court despite the matter having been listed for mention severally. Today the prosecution is applying to withdraw the matter in the absence of the accused who has disobeyed this court's order to attend court as required. The Investigating Officer has not also attended today to explain why he has not availed the accused. I therefore make the following orders as court orders are not made in vain:

1. That before any direction and or orders are given with regard to the withdrawal, the accused must appear in court on the next date the court will set.
2. Summon to issue to the DCIO Mwea East to avail the accused.
3. That the prosecutor should file and serve a formal application for withdrawal on all parties concerned including the complainant herein and the accused in *CR E758 of 2023* one Jacqueline Christy Akinyi.



4. That the said application to be filed and served within 3 days. The respondent will have 3 days to file and serve their response

Mention for direction on 11/12/2024.

Warrant of arrest to accused are extended”

Hon F. Mutuku- PM

21/11/2024”

9. Although the applicant may achieve the same result of termination of the criminal trial through the application by the DPP seeking termination of the Charge based on the principle of double jeopardy, (whether or not applicable *stricto sensu*), the constitutional court cannot suffer the rights of an applicant to be held in abeyance to wait for the trial Court to address the applicant’s situation at the hearing of the application to withdraw the charges. The applicant is entitled to a fair trial, a right which is not liable to limitation, in terms of Article 25 (c) of the *Constitution* and it should not therefore be put on hold to await the appearance of the applicant before the trial court.
10. The apparent concern by the trial court that the Prosecution was seeking to withdraw the charges before the applicant had presented himself for plea and a warrant of arrest had been issued against him is valid. However, in the circumstances of this case, where the applicant had secured anticipatory bail pending arrest, which the applicant might, rightly or wrongly, have thought it prevented the issuance of a warrant off arrest, and in view of the effect of the new charges on the right of the accused to a fair trial, the rule of practice and procedural requirement that an accused pleads to a charge to commence the proceedings in a case before an application to withdraw, or other application in the proceedings may be taken, must be subjugated to the greater constitutional directive under Article 20 (2), (3) and (4) of the *Constitution* that “Every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom; that in applying a provision of the Bill of Rights,  
“a court shall
  - (a) develop the law to the extent that it does not give effect to a right or fundamental freedom; and
  - (b) adopt the interpretation that most favours the enforcement of a right or fundamental freedom” and that in interpreting the Bill of Rights,  
“a court, tribunal or other authority shall promote
    - (a) the values that underlie an open and democratic society based on human dignity, equality, equity and freedom and
    - (b) the spirit, purport and objects of the Bill of Rights.”
11. The applicant should not have been charged with a second criminal charge based on the same facts before two different courts. Such prosecution is oppressive on the accused and it is an abuse of the criminal process. It would also appear clear that is improperly aimed at harassing the applicant into submission, in view of the criminal case pending at Milimani and the civil suit between the parties on the same subject matter.



## **Orders**

12. Accordingly, for the reasons set out above, the Application for orders of judicial review is granted as prayed.
13. The full reasons for the decision in this judgment shall be given and published on the Court Tracking System on 7/7/2025.

Order accordingly.

**DATED AND DELIVERED ON THIS 30<sup>TH</sup> DAY OF JUNE 2025.**

**EDWARD M. MURIITHI**

**JUDGE**

Appearances:

Mr. Wanyanga for the Applicant.

Mr. Mamba for the DPP.

Mr. Kamau for the 1<sup>st</sup> Interested Party

Ms. Ngumbao for the 2<sup>nd</sup> Interested Party.

