



Office of the Director of Public Prosecutions v Director of Criminal Investigation; Mavuti (Exparte Applicant) (Judicial Review E004 of 2024) [2025] KEHC 9082 (KLR) (26 June 2025) (Ruling)

Neutral citation: [2025] KEHC 9082 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
JUDICIAL REVIEW E004 OF 2024
EN MAINA, J
JUNE 26, 2025**

BETWEEN

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS APPLICANT

AND

DIRECTOR OF CRIMINAL INVESTIGATION RESPONDENT

AND

MAGDALINE NDILA MAVUTI EXPARTE APPLICANT

RULING

1. What is before me for ruling is the 1st Respondent’s application in the Notice of Motion dated 6th December 2024.
2. The application is expressed to be brought under Articles 3, 10, 19, 20, 24, 25, 35, 50(4) and 157 of the Constitution and seeks orders to strike out and expunge from the record the Respondent’s (sic) Notice of Motion dated 26th March 2024, the supporting affidavit sworn on 26th March 2024, the annexures thereto, and the further affidavit dated 16th September 2024 together with the annexures thereto. The application also seeks to have the Respondent’s application dated 26th March 2024 struck out with no orders as to costs.
3. The gravamen of the application as can be discerned from the grounds on the face thereof and in the supporting affidavit of Makena Kaburu, prosecution Counsel, is that the annexures are confidential documents which were obtained illegally and in clear violation of the 1st Respondent’s right to privacy under Article 31(d) of the Constitution of Kenya; the 1st Respondent ability to give adequate judicious consideration to a matter concerning which no final decision has been taken and which remains the subject of active consideration and that their continued presence in the court record will result in undue prejudice to the Applicants. Further that the documents include sensitive information which is



protected under the [Access to Information Act](#); that their inclusion is malicious and intended to damage the 1st Respondent's) image in the legal proceedings. It is also averred that expunging the documents will advance the expeditious disposal of the case and will not prejudice the Ex-parte Applicant and that the 1st Respondent will rely on the said annexures in prosecuting their case. Lastly, that it is in the interest of justice that the dignity of the court and its decisional independence be jealously guarded to avoid erosion of public confidence in the justice system.

4. The application which is vehemently opposed by the Exparte Applicant/Respondent through her affidavit sworn on 13th January 2025 but supported by the interested parties was canvassed by way of written submissions. I have carefully considered the application, the rival submissions, the cases cited and the law.
5. The application sought to be expunged is the Notice of Motion dated 26th March 2024 filed pursuant to leave granted by Rayola Judge on 29th February 2024. (It is instructive that similar leave had been obtained from Muigai Judge on the same date). By the said application, the Exparte Applicant/Respondent was seeking to quash the decision of the 1st Respondent/applicant to withdraw a case where she was a complainant being Mavoko CMCCR.942 of 2022. That application attached and impugned the annexures herein sought to be expunged. The documents were also annexed to the chamber summons filed to seek leave to bring judicial review proceedings. I have perused the said documents and in my view the same are not confidential records. The same are largely Memos exchanged between the officers in charge of investigation and prosecution of criminal offences. They have nothing upon them to indicate that they are confidential.
6. In the premises, the application by the Respondent is not merited and it is dismissed but this application being in the nature of criminal proceedings there shall be no order for costs.

Orders accordingly.

RULING SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 26TH DAY OF JUNE, 2025.

E. N. MAINA

JUDGE

In the presence of:

Ms Kaburu for Applicant/Respondent

Mr. Mwangale for the Exparte Applicant/Respondent

Ms Maina for Mr. Wandati for the interested parties

Geoffrey - Court Assistant

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