REPUBLIC OF KENYA

IN THE HIGH OF KENYA

AT MERU

PETITION NO.E024 OF 2021

IN THE MATTER OF ARTICLES 2, 10, 19, 20, 22(1), 23, 25(c),

27, 47, 48, 50(1)(2a & e),258(1) & 259(1b) OF THE CONSTITUTION

IN THE MATTER OF ALLEGED VIOLATION AND THREATS TO

ARTICLES 50(2)(a) (d) (e), 159(2)(a) (b) (e) and 160(1) OF THE CONSTITUTION

IN THE MATTER OF THE ABUSE OF THE RIGHT TO A FAIR TRIAL,

JUDICIAL AUTHORITY AND INDEPENDENCE OF THE JUDICIARY

BETWEEN

PRISCILLA GATHONI.....1ST PETITIONER

WILLIAM KIRINYA.....2ND PETITIONER

HENRY MWORIA.....3RD PETITIONER

JOSEPH MUTHAMIA MACHIANI.....4TH PETITIONER

JOHN MARETE.....5TH PETITIONER

VERSUS

CATHERINE MWENDWA MWIRIGI.....1ST RESPONDENT

THE CHIEF MAGISTRATE MERU LAW COURTS.....2ND RESPONDENT

THE HON. ATTORNEY GENERAL.....3RD RESPONDENT

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS.....INTERESTED PARTY

JUDGMENT

The Petition

1. The petitioners filed a petition dated 29th October 2021 seeking reliefs as follows:

a) A declaration that the act by the 2nd respondent to recuse himself and transfer the matter to another court is unlawful, unconstitutional and, therefore, invalid.

b) A declaration that the criminal proceedings in Meru CMCC Criminal case No. 189 of 2019; Republic versus William Kirinya and 4 others were conducted in a manner that violated the petitioners' right to a fair trial.

c) A declaration that the continued tactical delays of the criminal trial of the petitioners in Meru CMCC Criminal Case No. 189 of 2019 cajoled by the complainant is a blatant violation of the petitioners right to a fair trial.

d) A declaration that proceeding with Meru CMCC Criminal Case No. 189 of 2019 would be in violation of the petitioners' right to a fair trial.

e) An order terminating and/or quashing the criminal proceedings in Meru CMCC Criminal Case No. 189 of 2019; Republic versus William Kirinya and 4 others and acquitting the accused persons.

f) An order that the costs of this suit be borne by the 1st respondent.

g) *Any other relief the court may deem just to grant.*

2. The facts relied upon are set out in the petition at paragraph 23 – 37 as follows:

"E. FACTS RELIED UPON

23. The petitioners are the accused persons in Meru CMCC Criminal case No. 189 of 2019; Republic versus William Kirinya and 4 others and the respondent the complainant therein.

24. The petitioners took plea on 24th January 2019 and the criminal proceedings proceeded for hearing on diverse dates on 14thAugust 2020, 31stAugust 2020, 7th October 2020 and 19th October 2020 and two prosecution witnesses had testified.

25. The 1st respondent wrote a myriad of letters addressed to the judicial service commission, the chief magistrate meru, the office of director of public prosecutions and the directorate of criminal investigations Nairobi seeking to take over and wrest control over the prosecutor and the trial magistrate on the manner of the prosecution of the matter and how the said hearing were to be conducted by the Honourable court.

26. The 1st respondent made an application for the trial magistrate handling the matter and the prosecutor prosecuting the criminal proceedings to recuse himself on account of bias which application was dismissed as the same was intended to delay conclusion of the matter and influence the court to determine the case in her favour.

27. The 1st respondent lodged an appeal to the subject decision which was dismissed by the appellate court and the same was returned for hearing by the trial court on merit without an further delay.

28. The 1st respondent with the sole purpose of derailing the conclusion of the matter and influencing the trial court decision wrote a letter dated 11th August 2021 addressed to the 1st interested party, the 2nd respondent and the Judicial service commission seeking it to supervise the trial court proceedings to ensure a guilty convict is reached against the petitioners.

29. The letter sought to review the appellate court decision directing the matter do proceed for hearing by the initial magistrate and further to intimidate the trial magistrate handling the matter to recuse himself and delay the conclusion of the matter.

30. That upon receipt of the said letter which was addressed to the trial magistrate employer and the interested party the trial magistrate succumbed to the intimidations of the 1st respondent and via a ruling delivered on 27th September 2021 recused himself and transferred the matter to another court which matter has not been fixed for hearing to date and the same is at imminent risk of procrastinating further.

31. The 1st respondent actions are akin of purposively punishing the petitioners at all costs even prior to a guilty conviction being reached and the said acts have succeeded as the Honourable court succumbed to her threats despite the appellate court restraining the same.

32. The petitioners have now fallen victims of the said untoward acts of the 1st respondent and their constitutional right to have the criminal proceedings be heard and concluded without unreasonable delay have been infringed upon by the respondents."

3. A Notice of Motion under Certificate of Urgency contemporaneously with a petition dated 29/10/2021 stay of the proceedings in subject proceedings MERU CHIEF MAGISTRATE CRIMINAL CASE NO. 189 OF 2019; REPUBLIC VERSUS WILLIAM KIRINYA AND 4 OTHERS until the petition was heard and determined, was subsumed in the Petition by order of the court made on 25/11/2021 to allow the expedited hearing of the main petition.

4. The Petition and Notice of Motion were supported by the supporting affidavit of Priscilla Gathoni, the 1st petitioner sworn on 29th October 2021 deponing the relevant facts. She avers that she is the 5th accused person in Meru CMCC Criminal Case No. 189 of 2019; Republic versus William Kirinya & 4 others and the 1st respondent is the complainant. On 24/1/2019 she and the other accused persons took plea and the hearing of that criminal case commenced on diverse dates between August, 2020 to October, 2020. The 1st respondent wrote a myriad of letters to the Judicial Service Commission, the 2nd respondent, the interested party and the Director of Criminal Investigations,

Nairobi, seeking to wrest control over the prosecutor and the trial magistrate on how the hearing was being conducted. The 1st respondent further wrote several letters to the Teachers Service Commission, the deponent's employer, which culminated into her interdiction, despite having not been found guilty. The 1st respondent applied through her advocate for recusal of trial magistrate on an allegation of bias, which application was dismissed on 12/3/2021. Dissatisfied with the said dismissal, the 1st respondent lodged an appeal, which was equally dismissed by the appellate court. In a rather unexpected turn of events, the 1st respondent, with the sole purpose of derailing the matter even further, wrote to the 2nd respondent, the interested party and the Judicial Service Commission, to pressurize the trial magistrate to recuse himself. The trial magistrate yielded to the intimidations, recused himself and transferred the matter to another court for disposal.

5. She avers that the independence of the 2nd respondent in making its decisions as guaranteed in Article 160(1) of the Constitution has been infringed, as the transfer of the matter was done at the behest of the 1st respondent. It is in the interest of justice that this application and the petition be heard on priority basis to avert the impugned acts of the 1st respondent, who is out to ensure a conviction of the petitioners at all costs by intimidating the honourable court.

The Petitioners' case

6. The 1st respondent instituted Meru CMCC Criminal case No.189 of 2019 against the petitioners. After taking plea on 24/1/2019, the matter was heard on diverse dates between August, 2020 to October, 2020. The 1st respondent wrote numerous letters to the Judicial Service Commission, the 2nd respondent, the interested party and the Directorate of Criminal Investigations, questioning the manner in which the matter was being heard. Following the dismissal of an application by 1st respondent for the trial magistrate to recuse himself, she unsuccessfully appealed against that decision. The 1st respondent then wrote to the 1st interested party, the 2nd respondent and the Judicial Service Commission on 11/8/2021, seeking review of the appellate court's decision and also intimidate the trial magistrate to recuse himself. The trial magistrate upon receipt of the said letter vide a ruling delivered on 27/9/2021 recused himself and transferred the matter to another court for determination.

7. The 1st respondent's actions are akin to purposively punish the petitioners at all costs even prior to a conviction being reached. They allege that they have now fallen victims of the said untoward acts of the 1st respondent and their rights under Articles 50(2) and 159(2) of the Constitution to have the criminal proceedings heard and concluded without unreasonable delay have been infringed. They allege that their rights under Article 50(2) to be presumed innocent until proven guilty have been infringed by the 1st respondent, who has prevailed in influencing the court's decision through a back door process, and they are apprehensive that the 2nd respondent will reach a guilty verdict to their prejudice, without having accorded them a right to a fair trial, owing to the undue pressure and intimidation exerted by the 1st respondent. They allege that the 1st respondent has also succeeded in her quest to delay the conclusion of this matter, as they have been interdicted at the 1st respondent's behest, who wants the case to start de-novo or be tried by someone more likely to decide in her favour. They fault the 2nd respondent for failing to respect, uphold and defend the Constitution without fear, favour or ill will, thereby scuttling their course of justice. They allege that the criminal proceedings have been compromised as the only pending outcome will be favourable to the 1st respondent to their detriment. They allege that the 2nd respondent's independence while making decisions as guaranteed under Article 160(1) of the Constitution has been infringed, as the transfer of the matter was under the control of the 1st respondent.

8. The honourable court is enjoined to move with speed to protect the rule of law and constitutionalism in general, by voiding the criminal proceedings herein, as they are being carried in violation of the petitioners' rights to a fair trial. They allege that their right to be heard by an open and impartial tribunal under Article 50(1) of the Constitution has been violated, since the 1st respondent has been afforded the whim to forum shop with intention to choose a favourable court to correct her mistakes during the hearing, hence delaying the conclusion of the trial. They accuse the 1st respondent of micromanaging both the 2nd respondent and the prosecutor in exercise of their constitutional duties and even if the trial goes on, the only thing the 1st respondent will accept is a conviction, hence jeopardizing their right to a fair trial. They contend that their right under Article 50(2)(e) of the Constitution to have the trial begin and conclude without unreasonable delay has been infringed, as the matter has already been transferred to another court to start de-novo. They aver that the 1st respondent is seeking to sit as the complainant, the court, the prosecutor and the appellate court, to the prejudice of their constitutional rights to a fair trial, impartial court and to be heard without unreasonable delay.

9. The petitioners submitted in writing and orally through their counsel Mr. Munene and Mr. Mutuma that after two of the prosecution witnesses had testified, the defence laid bare various inconsistencies in the prosecution's case, which prompted the 1st respondent to tactfully improvise delay tactics to ensure the matter continuously dragged in court. They submitted that the recusal of the 2nd respondent infringed on their right to fair hearing as enshrined under Article 50 of the Constitution. They submitted that their rights to a fair trial and to have the criminal proceedings begin and conclude without unreasonable delay cannot be suspended owing to the datum that they are the accused persons. They relied on **Hon. Christopher Odhiambo Karan v David Ouma Ochieng & 2 others(2018)eKLR** quoted in **Cyrus Shakhalanga Khwa Jirongo v Soy Developers Ltd & 9 others(2021)eKLR**, where the Supreme Court discussed the significance, distinctive meaning, scope and implication of the right to a fair trial. They also relied on **Peter George Anthony Costa v Attorney General & Anor (2013) eKLR**, where the court in quashing a criminal prosecution against the petitioner expressed itself thus, **" the process of the court must be used properly, honestly and in good faith, and must not be abused."**

10. They submitted that the 1st respondent's desire to have a protracted drawn out litigation against them was aided by the 2nd respondent's recusal, hence delaying the conclusion of the trial. They submitted that under Article 160 of the Constitution, the courts were enjoined to exercise and exhibit independence from control and directions of any party and to do justice to all irrespective of their status. They cited the Judicial Code of Conduct where the grounds for recusal of a judge are prescribed. They faulted the trial court for recusing itself even after the appellate court had found that there was no basis whatsoever for the same. They submitted that their right to a fair hearing had been infringed, as the 2nd respondent had failed in its obligation under Article 159(2d) of the Constitution, to protect their rights to have a trial commence and conclude without unreasonable delay. They submitted that the rights of a victim do not supersede those of the accused or public interest and cited **Joseph Lendrix Waswa v Republic (2020)eKLR**, where the Supreme Court held that, **"while the victim of a crime can participate at any stage of the proceedings as deemed appropriate by the trial judge, a victim or his legal representative**

does not have the mandate to prosecute crimes on behalf of the DPP. A victim cannot and does not wear the hat of a secondary prosecutor." They submitted that the 1st respondent, having abused her participatory rights cannot seek accommodation under the Victim Protection Act and urged the court to interpret the Constitution and statutory provisions in a liberal and progressive manner in accordance with Articles 259(1), 259(3), 10, 19, 20 and 21 of the Constitution. They submitted that the constitutional court has an obligation to ensure the accused person's rights to have the trial commence and conclude without unreasonable delay are guaranteed as was held by the Supreme Court in the **Joseph Lendrix Waswa's case (supra).** They submitted that the right to a fair trial is sanctified and insulated from derogation under Article 25(3) of the Constitution, and the recusal of the trial magistrate and the subsequent appointment of another would prolong the effective hearing of the matter. To buttress that argument, they placed reliance on **Republic v Attorney General & 3 others Ex parte Kamlesh Mansukhlal Damji Pattni(2013)eKLR**, where the court stated that, **"it cannot be gainsaid that Article 50(2((e) of the Constitution is not limited to the commencement of the trial but also applies to the conclusion thereof."** They beseeched the court to quash the criminal proceedings in Meru Criminal Case No. 189 of 2019 without fear or favour in order to curtail the continued conduct by the respondents, which is in blatant violation of their right to a fair trial.

The 1st respondent's case

11. The 1st respondent opposed the application and the petition through her replying affidavits sworn on 15/11/2021 and 7/12/2021. She terms the application and the petition together with the annextures thereon as blatant lies and misrepresentation of facts meant to mislead the court and impede the victims from realizing their right to a fair trial under Article 50 of the Constitution. She contends that the petitioners, who are facing various criminal charges in CMCCR No.189 of 2019, are interfering with the proceedings herein by targeting witnesses, as they are out on bail. She contends that Articles 27, 50(1), (7) & (9) of the Constitution together with sections 3 and 4(a) of the Victim Protection Act recognizes and gives effect to the right of the victims of a crime to participate in proceedings to ensure fair hearing. She contends that she applied for recusal of the trial magistrate after she noticed that the trial was being conducted unfairly, as one of the witnesses, who was only conversant with Kimeru, was compelled to testify in Kiswahili. She contends that it is her role as a victim in a criminal trial to assist the court, just as it is the role of the government to ensure the victim's rights to access justice, fair treatment, restitution, compensation and assistance are complied with as recognized in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985). She faults the trial court for failing to cultivate a process that inspires the trust of both the victim and the accused persons, as the court is also handling Meru CMCR No. 659 of 2019, where she is the accused person. She contends that unless the application and the petition are dismissed, she together with other affected persons will suffer irreparable loss, as justice delayed is justice denied.

12. The 1st respondent submitted in oral and written submissions that both the Constitution and the Victim Protection Act recognize the victim's rights to be involved during the trial. She relied on **Attorney General's Reference (No.3 of 1999) [2001] 2 AC 91[118]** where Lord Steyn observed that, **"there must be fairness to all sides. In a criminal case this requires the court to consider a triangulation of interests. It also involves taking into account the position of the accused, the victim and his or her family, and the public."**

13. In justifying the recusal of the trial magistrate from this case, she cited **Re Estate of Gitere Kahura (Deceased) (2019)eKLR**, where the principles and grounds upon which a judicial officer may recuse himself were set out. She submitted that the trial magistrate failed to stand the test of impartially as stipulated under regulation 9 of the Judicial Code of Conduct and the Court of Appeal case of **Philip K. Tunoi & another v. Judicial Service Commission & anor (2016) eKLR**, when he displayed animosity towards the victim and the witnesses in open court. She submitted that, since the petition was brought in bad faith with an intention of denying justice, it ought to be dismissed with costs.

The 2nd and 3rd respondent's case

14. The 2nd and 3rd respondents also filed grounds of opposition to the application and the petition on 22/11/2021 and 7/12/2021 respectively. The grounds are that the application and the petition are an abuse of the court process and meritless, as it is solely the discretion of a magistrate to recuse himself/herself from a case, and his/her decision should not be influenced by anybody or institution including superior court of record. Here, the magistrate gave credible grounds for recusing himself, as complaints had been raised with the Judicial Service Commission about his conduct. They accuse the petitioners of basically delaying the wheels of justice, as they want to interfere with the independence of a judicial officer by forcing him to handle their case. They further accuse the petitioners of not having exhausted other remedies available to them before filing the petition and forum shopping for a magistrate to hear and determine their criminal case. They contend that the Attorney General has no role to play in criminal matters as per Article 156(4b) of the Constitution.

15. The Counsel for the 2nd and 3rd Respondents, Mr. Njeru Mugambi, made oral submissions urging their Grounds of Opposition dated 22/11/2021 emphasizing the validity of the discretion of the trial court to recuse itself, and it would be an interference with the independence of the judicial officer to compel him to handle the case from which he had already disqualified himself. It was reasoned that since the 1st respondent had written a letter of complaint against eh judicial officer to his employer the JSC, it would not be fair to compel him to proceed with the trial.

The interested party's case

16. The interested party opposed the application by grounds of opposition dated 22/11/2021. Those grounds are that the trial magistrate already recused himself and the same was due for relocation to another court on 24/11/2021; the application is incompetent, meritless, an abuse of the court process and cannot be entertained by the court, as it is misleading, full of half-truths and it does not disclose any special/peculiar circumstances to warrant grant of the orders sought; and the 1st respondent is entitled to a fair hearing as per Article 50(1) of the Constitution.

17. In highlighting the grounds of opposition Prosecution Counsel, Mr. Chelule set up the doctrine of exhaustion and urged that the remedy of the petitioners in an appeal from the decision to recuse, and the order for acquittal prayed for in the Petition was not properly founded.

Issues for Determination

18. The questions before the court are –

a. whether the court will stay or terminate the prosecution of the applicants in the Criminal proceedings before the **Chief Magistrates Court Criminal Case no. 189 of 2019** on the ground that the fair trial is not possible in the matter on account of alleged interference by the complainant, the 1st respondent in the case;

b. The right of and extent of participation in a trial court by, the complainant in a criminal case;

c. The correct procedure for seeking, and the propriety of, recusal of the trial court, on account of letters of complaint sent out to the Presiding Officer's employer; and

d. In consequence, what remedies are available for the presiding officer who is under attack by a complainant in a criminal case and for the accused whose trial is interfered with, and any sanctions for such interfering complainant.

Determination

The right of and extent of participation in a trial court by, the complainant in a criminal case

19. At the Outset, the court accepts the position urged by the 1st respondent as to the need in criminal cases to give effect to the tripartite interests of the accused, the victim and the public as held in as well as the international principles of access to justice set out in ***Universal Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985)***, Article 6 whereof provides as follows:

"6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:

(a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;

(b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;

(c) Providing proper assistance to victims throughout the legal process;

(d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

(e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims."

20. The participation of victims in criminal processes is expressly delimited in Article 6 (b) within-

"*(b) Allowing the views and concerns of victims to be presented and considered* ***at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system***"

21. IN Kenya, the rights of a victim in the trial process are domesticated and set out in section 9 of the Victim Protection Act as follows:

9. (1) A victim has a right to-

(a) be present at their trial either in person or through a representative of their choice;

(b) have the trial begin and conclude without unreasonable delay;

(c) give their views in any plea bargaining;

(d) have any dispute that can be resolved by the application of law decided in a fair hearing before a competent authority or, where appropriate, another independent and impartial tribunal or body established by law;

(e) be informed in advance of the evidence the prosecution and defence intends to rely on, and to have reasonable access to that evidence;

(f) have the assistance of an interpreter provided by the State where the victim cannot understand the language used at the trial; and

(g) be informed of the charge which the offender is facing in sufficient details.

(2) Where the personal interests of a victim have been affected, the Court shall-

(a) permit the victim's views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court; and

(b) ensure that the victim's views and concerns are presented in a manner which is not-

(i) prejudicial to the rights of the accused; or

(ii) inconsistent with a fair and impartial trial.

(3) The victim's views and concerns referred to in subsection (2) may be presented by the legal representative acting on their behalf.

22. The scope of participation of a victim in criminal trial has been discussed in two leading decisions respectively of the Court of Appeal and the Supreme Court of Kenya. In the Court of Appeal decision of ***I P Veronica Gitahi & another v Republic*** [2016] eKLR, the Court (Makhandia, Ouko (as he then was) and M'Inoti, JJA) traced the genesis of the developments in law on victim participation in criminal trial and held:

> ***"****Over the years the only practice known in a criminal trial where a victim or a victim's family would participate in a trial was through an advocate watching brief, only as a passive observer, with no right of audience and could only communicate with the court through the prosecutor. The practice was based on the fact that the victim in a criminal trial is a third party, the case being between the State and the accused person (or the appellant). There is no debate, however, that a victim's advocate can be just as important to them as defense counsel is to the accused person. It has been argued that by allowing the victims to participate in a trial they would run roughshod over the accused person's right to a fair trial, prolong proceedings, increase expense and hinder the prosecutor's ability to conduct a focused prosecution. As a result of these arguments, historically victims have been relegated to one role only-that of witnesses in trials.*
>
> *In recent decades, however, in countries with civil law traditions as opposed to those with common law lineage, the victims are fully involved in criminal proceedings. The common law system jurisdictions have been slow in embracing victim participation due to the adversarial nature of the system, where the prosecution and defence make zealous presentations of their respective cases to the trial court and where the Judge (or Magistrate) only acts as a referee, mediating the process. Victims in the common law system, as witnesses, are limited to their testimony and can participate only through the prosecutor or only when called upon to articulate or provide 'impact assessment' statements during sentencing phase. (**See part IXA**, Criminal Procedure Code)*
>
> *In contrast in courts within the civil law system judges are generally permitted to supervise the compilation of the evidence to which the accused person is expected to respond at the trial. Unlike the relatively passive role of the common law Judge, the system in the civil law tradition is inquisitorial, with the judge actively controlling the trial's direction. In a system based on such tradition victims tend to play a more central role, for instance, by presenting any evidence they may have over and above that brought by the prosecution, cross-examine witnesses and make closing statements.*
>
> *In recent times debate has commenced generally, on the question of the victim's right to participate in criminal trials, especially those conducted in international tribunals and courts. This move has been seen as essential to the legitimacy and effectiveness of the proceedings in the tribunal or court. It is based on the appreciation of the importance of victims' contribution to criminal investigations, judicial processes and decision-making, all of which can enhance the quality of criminal trials and willingness of the citizenry to accept outcomes from the courts.*
>
> *Under the Rome Statute for example, victims before the International Criminal Court (ICC) are granted far-reaching rights, as compared to the ad hoc Tribunals for Rwanda and the former Yugoslavia. Under **Article 68 (3)** of the Rome Statute victims are granted the right to be heard on issues affecting their personal interest. Victims who have been accepted by the court are entitled, during the proceedings, to be informed of all the relevant developments in the case, to have legal representation, to make statements at the beginning and end of the proceedings, present their views regarding investigations, charges and to put questions to witnesses, including the accused person.*
>
> *It is against this backdrop that the recent developments in the law of victim protection in Kenya ought to be seen.*
>
> ***Articles 2 (5)** and **50 (7)** and **(9)** of the Constitution of Kenya, 2010 heralded a new dawn. Apart from enjoining the courts to apply general rules of international law, the Constitution also mandates the courts, in the interest of justice, to allow an intermediary to assist a complainant (or an accused person) to communicate with the court, while requiring Parliament to enact appropriate law to provide for the protection, rights and welfare of victims of offences. That law, the Victim Protection Act was enacted in 2014. By its **section 2**, a victim is defined to include, any natural person who suffers injury, loss or damage as a consequence of an offence, a definition wide enough to include the deceased's mother and uncle who are represented by Mr. Ndubi in this appeal. It also defines a "victim representative" to mean an individual designated by a victim or appointed by the court to act in the best interest of the victim. Mr. Ndubi having been appointed by the family of the deceased fits this definition.*
>
> *The Act further provides the parameters of the victim's representative's participation in the trial. The victim's views and concerns may be presented in court at any stage of the proceedings as may be determined to be appropriate by the court. Those views and concerns may be presented by the victim himself or herself or by a "legal representative" acting in the victim's behalf, at the stage of plea-bargaining, bail hearing and sentencing, as far as possible to be heard before any decision affecting him or her is taken; to be accorded legal and social services of his or her own choice, and if the victim is vulnerable, to be given these services at the State's expense, and to make a victim impact statement at the stage of sentencing. These rights must however not be prejudicial to the rights of the accused person or be inconsistent with a fair and impartial trial. See **sections 20** and **21**."***

23. The Supreme Court of Kenya in ***Jospeh Lendrix Waswa v. R*** (2020) eKLR laid down the law as to extent of victim participation as relevant, as follows:

> **"**73. At this point, we feel compelled to make a few observations on the powers of the DPP. Article 157(1) of the Constitution establishes the office of DPP. The State's prosecutorial powers are vested in the DPP under Article 157 of the Constitution. That office, under sub-article 10, neither requires the consent of any person to institute criminal proceedings nor is it under the direction or control of any person or authority. These provisions are also replicated in Section 6 of the **Office of the Director of Public Prosecutions Act, 2013.** This office is the sole constitutional office with the powers to conduct criminal prosecutions.
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> 74. In interpreting how the DPP exercises his powers, *Lenaola J* (as he then was) in *Republic v Director of Public Prosecutions exparte Meridian Medical Centre Ltd* **& 7 Others Petition No. 363 of 2013** expressed himself as follows:
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> > *"I also agree with the submission of Mr. Kilukumi that the decision to prosecute is a quasi-judicial decision which should not be taken lightly given the penal consequences inherent in any criminal proceeding … There is also no doubt that the office of the DPP should exercise its mandate and discretionary power to prosecute within constitutional limits and the independence of his office."*
>
> 75. We agree with this view and adopt it as the correct position in law. We are of the view that the victim has no active role in the decision to prosecute, or the determination of the charge upon which the accused will finally be tried. This is the sole duty of the DPP. While the victim of a crime can participate at any stage of the proceedings as deemed appropriate by the trial Judge, a victim or his legal representative does not have the mandate to prosecute crimes on behalf of the DPP. The DPP must at all times retain control of, and supervision over the prosecution of the case. As such, the constitutional and statutory powers of the DPP to conduct the prosecution is not affected by the intervention of the victim in the process.
>
> 76. Additionally, a victim cannot and does not wear the hat of a *secondary prosecutor*. When victims present their views and concerns in accord with section 9(2) (a) of the VPA, victims are assisting the trial Judge to obtain a clear picture of what happened (to them) and how they suffered, which the Judge may decide to take into account. Victim participation should meaningfully contribute to the justice process. It must be noted, however, that this does not mean that the Court's judgment will follow the wishes of the victim. The trial Judge will, of course, take into account the law, facts, all the different interests, and concerns, including the rights of the defence and the interests of a fair trial to arrive at a sagacious decision.
>
> 77. Conscious that this is a novel area of law for our criminal justice system and recognizing our mandate, under Section 3 of the Supreme Court Act as the Court of final Judicial Authority, we are of the view that the following *guiding principles* will assist the trial Court when it is considering an application by a victim or his legal representative to participate in a trial and the manner and extent of the participation:
>
> > *a. The applicant must be a direct victim or such victim's legal representative in the case being tried by the Court;*
> >
> > *b. The Court should examine each case according to its special nature to determine if participation is appropriate, at the stage participation is applied for;*
> >
> > *c. The trial Judge must be satisfied that granting the victim participatory rights shall not occasion an undue delay in the proceedings;*
> >
> > *d. The victim's presentation should be strictly limited to "the views and concerns" of the victim in the matter granted participation;*
> >
> > *e. Victim participation must not be prejudicial to or inconsistent with the rights of the accused;*
> >
> > *f. The trial Judge may allow the victim or his legal representative to pose questions to a witness or expert who is giving evidence before the Court that have not been posed by the prosecutor;*
> >
> > *g. The Judge has control over the right to ask questions and should ensure that neither the victim nor the accused are not subjected to unsuitable treatment or questions that are irrelevant to the trial;*
> >
> > *h. The trial Court should ensure that the victim or the victim's legal representative understands that prosecutorial duties remain solely with the DPP;*
> >
> > *i. While the victim's views and concerns may be persuasive; and no doubt in the public interest that they are acknowledged, these views and concerns are not to be equated with the public interest;*
> >
> > *j. The Court may hold proceedings in camera where necessary to protect the privacy of the victim;*
> >
> > *k. While the Court has a duty to consider the victim's views and concerns, the Court has no obligation to follow the victim's preference of punishment.*

24. The trial court in its ruling of 27th September 2021 said the following of the 1st respondents conduct in court –

"12. At the trial of this case when the complainant and PW2 gave evidence, the complainant attempted to micromanage both the court and the court prosecutor in the exercise of their court duties. At times, she would refuse to answer questions in the misguided belief she should not be asked certain questions in cross-examination. Her evidence was lengthy and heard on two dates. The Court allowed here to fully tender her evidence and it cannot see what else it would have done differently to make the complainant feel confident with the fairness of the trial process in this case."

25. With regard to the complaint about error in the evidence, the trial court ruling at paragraphs 10 and 13 explains it thus-

"10. Regarding the subject matter of this ruling, namely, the complainant's letter dated 11/8/2021 alleging I misquoted her evidence, the position is that the copy typed by the Secretary and supplied to the complainant was not brought to me for proofreading and certification that it accurately captured the contents of its original, namely, my hand written proceedings. Inevitably, the typed copy supplied to the complainant may have had typographical errors of which I am not responsible.

12….

13. Only two witnesses have so far tendered their evidence. PW2 gave evidence on 19/10/2020. By the said letter dated 21/10/2020, the complainant raised a complaint to say, inter alia, that I misquoted her when recording her evidence. By 21/10/2020 when she wrote the said letter, the proceedings had not been typed. If she was issued with a handwritten manuscript of the proceedings, which is not allowed in this court station, she would not have been able to read the proceedings fully because she is not familiar with my handwriting. The moot question to ask is: why does the complainant have a dogged determination to have me recuse myself from hearing this case?"

26. The complainant/victim submitted that she was vindicated in her complaint by the acknowledgement by the trial court of the errors in the proceedings. The complainant may genuinely consider her participation innocuous in the ends of justice in the matter, but she must accept the parameters set down by the Supreme Court in the interests of securing fair trial in our common law adversarial system of justice. The parties to a suit or criminal case are also bound by the law relating to the record of the proceedings and evidence.

Official record of the court

27. In accordance with Civil Procedure Rules, the official record of the court is the record, however taken, signed by the judge/magistrate, as set in Order 18 Rule 4 thereof as follows:

"[Order 18, rule 4.] How evidence to be recorded.

4. The evidence of each witness shall be taken down in writing by or in the presence and under the personal direction and superintendence of the judge, not ordinarily in the form of question and answer but in that of a narrative, and ***when completed shall be signed by the judge:***

Provided that—

(i) the court may use such recording processes and technology as may from time to time be approved;

(ii) the transcript of such evidence when checked and approved by the judge shall constitute the official record of the evidence."

28. In a criminal trial the proceedings of the court are provided for under section of the Criminal Procedure Code, as follows:

"197. Manner of recording evidence before magistrate

(1) In trials by or before a magistrate, the evidence of the witnesses shall be recorded in the following manner—

a. the evidence of each witness shall be taken down in writing or on a typewriter in the language of the court by the magistrate, or in his presence and hearing and under his personal direction and superintendence, and shall be signed by the magistrate, and shall form part of the record;

b. such evidence shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative:

Provided that the magistrate may take down or cause to be taken down any particular question and answer.

(2) Notwithstanding the provisions of subsection (1), a record of any proceedings at a trial by or before a magistrate may be taken in shorthand if the magistrate so directs; and a transcript of the shorthand shall be made if the magistrate so orders, and the transcript shall form part of the record.

(3) If a witness asks that his evidence be read over to him the magistrate shall cause that evidence to be read over to him in a language which he understands.

[Act No. 57 of 1955, s. 6, Act No. 22 of 1959, s. 22, Act No. 13 of 1982, First Sch.]"

29. In the High Court the record may be taken in substance, rather than verbatim, as set out in section 201 (1) of the Criminal Procedure Code, as follows:

> ***"201. Rules as to taking down of evidence***
>
> ***(1) The Chief Justice may make rules of court prescribing the manner in which evidence shall be taken down in cases coming before the High Court, and the judges shall take down the evidence or the substance thereof in accordance with those rules."***

30. Although corrections on typographical errors maybe pointed by counsel for the parties or the parties where they are unrepresented, the official record of the trial court remains the record signed by the judge/magistrate/Kadhi as reflecting the true record. This is in agreement with the principle that a court/tribunal is headed by the judicial official appointed to preside over the particular court by virtue of the Constitution or statute law.

31. The limits of victim participation do not include the proof reading of the record of the trial court to discover any errors in the witness evidence or of the proceedings of the court. She is bound by our law to accept the record of the court proceedings and of evidence to be as set out by, or under the direction of, the presiding officer of the Court. Neither do such right of participation in a criminal trial extend to writing to the employers of accused persons and the court to litigate issues pending before the court. In these communication, the court clearly sees an attempt to brow beat the accused persons into submission as well as influence the trial court to decide in a manner favourable to her cause or else disqualify itself. It is a clear case of interference with the judicial independence of the court.

Procedure for seeking recusal of the trial court

32. Aggrieved by the trial court's refusal to recuse itself upon the application dated 6/11/2020, the 1st respondent properly appealed the decision to the High Court. The High Court dismissed the appeal Meru HC Criminal Appeal No. E60 of 2021 and directed the trial to proceed before the same court. She ought to have appealed the decision of the High Court and not try to seek the disqualification of the court by other means through the administrative complaint by letter dated 11/8/2021 against the presiding judicial officer made to his employer the judicial service commission.

33. As explained by the Supreme Court in ***Joseph Lendrix*** case the issue of recusal of the court is one of the exceptions to the rule against interlocutory appeal in criminal cases, as follows:

> "94. Flowing from the above, we are of the view that the right of appeal against interlocutory decisions *is available to a party in a criminal trial* but *should be deferred,* and await the final determination by the trial Court. A person seeking to appeal against an interlocutory decision must file their intended Notice of Appeal *within* 14 days of the trial Court's judgment. However, exceptional circumstances may exist where an appeal on an interlocutory decision may be *sparingly* allowed. These include:
>
> *a. Where the decision concerns the admissibility of evidence, which, if ruled inadmissible, would eliminate or substantially weaken the prosecution case;*
>
> *b. When the decision is of sufficient importance to the trial to justify it being determined on an interlocutory appeal;*
>
> *c. Where the decision entails the recusal of the trial Court to hear the cause."*

34. In seeking to influence the decision of the court by making administrative complaint against the judicial officer the complaint was out of order and outside any provision for victim participation recognized under the Victim Protection Act. The provisions of the Act do not cover communication made outside the purview of the trial.

Recusal of the trial court

35. The dismissal by the High Court of the appeal from the initial refusal by the trial court to disqualify itself did not forestall any consideration relating the issue of recusal in changed circumstances. There were changed circumstances in the continued correspondence to the Chief Magistrate and the Judicial Service Commission and the reaction thereto by the magistrate. While being clear that he did not consider himself unable to impartially deal with the matter, the trial magistrate recused himself on account of likely perception of bias by an observer in view of the comments that he made in response to the letter of complaint following the dismissal of the appeal by the High Court. The Court's ruling states:

> *"21. From the forgoing a neutral observer in this case may be of the view that this court has a dim view of the complainant which may use as an extraneous consideration to evaluate the complainant's evidence negatively, to the detriment of the prosecution's case, thus leading to an acquittal.*
>
> ***22. While I am clear in my mind that I am not prejudiced, if I persist in hearing this matter, considering my comment herein about the conduct of the complainant and that she has complained about me to my employer, it will not be apparent to an onlooker that I will remain impartial. This Court has no alternative but to recuse itself from hearing this case."***

36. I should agree with the petitioners that on the correct test for recusal, there was not a good ground for recusal. The standard is not one of the ordinary observer but, *an* ***informed observer.*** Indeed, as approved in ***Philip K. Tunoi & another v Judicial Service Commision &***

another [2016] eKLR, a decision cited by the 1st respondent, the correct test for recusal as settled by the House of Lords in ***Porter v. Magill*** **[2002] 1 All ER 465** –

> *"[T]he question is whether the fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased."*

There is no likelihood that an informed fair minded observer having considered the facts would conclude that the trial magistrate was biased.

37. Moreover, the trial magistrate was not obliged to disqualify himself under any of the circumstances set out in the Judicial Code of Conduct and Ethics 2020 which provides as follows:

> *"47. (1) A judicial officer may recuse himself or herself in any proceedings in which his or her impartiality might reasonably be questioned where the judicial officer—*
>
> *(a) is a party to the proceedings;*
>
> *(b) was, or is a material witness in the matter in controversy;*
>
> *(c) has personal knowledge of disputed evidentiary facts concerning the proceedings;*
>
> *(d) has actual bias or prejudice concerning a party;*
>
> *(e) has a personal interest or is in a relationship with a person who has a personal interest in the outcome of the matter;*
>
> *(f) had previously acted as a counsel for a party in the same matter;*
>
> *(g) is precluded from hearing the matter on account of any other sufficient reason; or*
>
> *(h) a member of the judicial officer's family has economic or other interest in the outcome of the matter in question.*
>
> *(2) Recusal by a judicial officer shall be based on specific grounds to be recorded in writing as part of the proceedings.*
>
> *(3) A judicial officer may not recuse himself or herself if—*
>
> *(a) no other judicial officer can deal with the case; or*
>
> *(b) because of urgent circumstances, failure to act could lead to a serious miscarriage of justice."*

38. However, it would appear to this court that the magistrate was a victim of the 1st Respondents machinations at trying to, as he found, to delay the trial so that the accused may suffer longer. This court would understand the peculiar circumstances that the magistrate found himself as now the subject of a complaint before his employer the Judicial Service Commission.

39. *The trial court, however, having exercised a discretion, as urged by Counsel for the 2nd and 3rd Respondents, this court cannot compel it to proceed with the trial without further endangering the credibility of the criminal trial process. That, however, is not the prayer of the petitioners in this case who would rather the court determined that the fair trial of the charges before the trial is not possible and, consequently, acquit the accused of the charges.*

Complainant may by interference commit offence against administration of justice

40. The complainant may have committed an offence on administration of justice under section 121 (1) of the Penal Code which provides as follows:

> ***"121. Offences relating to judicial proceedings.***
>
> *(1) Any person who –*
>
> *(a) within the premises in which any judicial proceeding is being had or taken, or within the precincts of the same, shows disrespect, in speech or manner, to or with reference to such proceeding, or any person before whom such proceeding is being had or taken; or*
>
> *(b) having been called upon to give evidence in a judicial proceeding, fails to attend, or having attended refuses to be sworn or to make an affirmation, or, having been sworn or affirmed, refuses without lawful excuse to answer a question or to produce a document, or remains in the room in which such proceeding is being had or taken, after the witnesses have been ordered to leave such room; or (c) causes an obstruction or disturbance in the course of a judicial proceeding; or*

(d) while a judicial proceeding is pending, makes use of any speech or writing misrepresenting such proceeding or capable of prejudicing any person in favour of or against any parties to such proceeding, or calculated to lower the authority of any person before whom such proceeding is being had or taken; or

(e) publishes a report of the evidence taken in any judicial proceeding which has been directed to be held in private; or

(f) attempts wrongfully to interfere with or influence a witness in a judicial proceeding, either before or after he has given evidence, in connexion with such evidence; or

(g) dismisses a servant because he has given evidence on behalf of a certain party to a judicial proceeding; or

(h) wrongfully retakes possession of land from any person who has recently obtained possession by a writ of court; or

(i) commits any other act of intentional disrespect to any judicial proceedings, or to any person before whom such proceeding is being had or taken,

is guilty of an offence and is liable to imprisonment for three years."

41. The 1st respondent is cautioned against conduct that may amount to an offence relating to judicial proceedings.

Right to Expeditious trial

42. The Supreme Court in ***Joseph Lendrix Waswa*** considered the right to expeditious trial and held as follows:

"*78. The Appellant was charged with murdering the deceased on 30th August 2013. The trial commenced sometime in September 2014, almost six (6) years ago. The trial was paused at an advanced stage because an oral application was made by the victim's legal representative to actively participate in the matter. The trial judge then made a ruling which resulted in the interlocutory appeal before the Court of Appeal and that is now before us.*

79. The right to have a trial commence and conclude without unreasonable delay is an accused person's constitutional guarantee under Article 50(2) (e) of the Constitution. A victim also has the right to have the trial begin and conclude without unreasonable delay under Section 9(1) (b) of the VPA. In addition, Article 159 (2) (b) obligates Courts not to delay justice.

80. ….

83. The benefits of an expeditious trial cannot be gainsaid. A speedy trial ensures that the rights of the accused person are secured; it minimizes the anxiety and concern of the accused; it prevents oppressive incarceration; and it protects the reputation, social and economic interests of the accused from the damage which flows from a pending charge. It also protects the interests of the public, including victims and witnesses, and ensures the effective utilization of resources. Additionally, it lessens the length of the periods of anxiety for victims, witnesses, and their families and increases public trust and confidence in the justice system.

84. Therefore, in conformity with the Constitution, ***Courts should shun situations where an accused's right to a fair trial is prejudiced by virtue of undue delay. Courts possess the power to take appropriate action to prevent injustice. This power is derived from the public interest that trials are conducted fairly and that as far as possible the accused is tried without unreasonable delay the end goal being to achieve prompt justice in criminal cases."***

43. The Supreme Court further held that six-year delay in conclusion of a criminal trial is undue delay as follows:

"91. In the instant matter, the delay of over six years in our opinion, defeats the intention of the framers of the Constitution and of Parliament to have criminal trials concluded expeditiously. The guarantee to have a criminal trial conducted without undue delay relates not only to the time by which a trial should commence but also the time by which it should end, judgment rendered and any applicable appeals or reviews completed."

Consequently, the Supreme court made an order "iii. In view of the inordinate delay of the original murder trial, occasioned by Appeals relating to an interlocutory matter, we direct that the substantive matter be heard and determined on the basis of priority."

The delay in this case

44. The effect of the recusal and possible restart of the criminal trial before another court is obvious delay of the trial in Meru CMC Criminal Case No. 189 of 2019 which was filed on 24th January 2019. Although it cannot be said to be unduly delayed, the suffering of the petitioners who are civil servants on interdiction with half pay must be considered to deteriorate the effect of the delay on the accused persons.

45. The delay occasioned by the order for recusal and hearing before another court is not inordinate as to defeat justice. In the ***Joseph Lendrix Waswa*** case the delay of six years was thought to be a violation of the right to expeditious trial as follows:

"91. In the instant matter, the delay of over six years in our opinion, defeats the intention of the framers of the Constitution and of

Parliament to have criminal trials concluded expeditiously. ***The guarantee to have a criminal trial conducted without undue delay relates not only to the time by which a trial should commence but also the time by which it should end, judgment rendered and any applicable appeals or reviews completed.****"*

46. In his ruling subject of this petition, the trial magistrate pointed to the prejudice to the accused by the dilatory acts of the 1st Respondent as follows:

"14. In this case before us, two of the accused are public servants in their middle age, namely, a teacher and an assistant chief, respectively. It is not in dispute the complainant wrote several complaint letters against them to their employers. On the basis of this raft of letters both were interdicted.

15….

16….

17. This is an old case having been instituted in the year 2019. I have searched my conscience with a tooth comb and asked myself what it is I would have done better to imbue the complainant with the confidence in the justice system. The answer remains that it is not the trial magistrate that the complainant has a problem with. The complainant is desirous in having a long protracted drawn out litigation to punish the accuseds before the court determines their case.

18. This is consistent with her steadfast insistence to have this case transferred to another court station for hearing. Her motivation to delay the conclusion of this case is contrary to her attitude in the criminal case in which she is the accused. As I started, for example, in the pending Cr. C. 659/2019 where she is an accused, she has not applied to have me recuse myself out of her desire to have the case concluded expeditiously.

19. As I said it is not in dispute the complainant raft of letters to employers of two accused led to their interdiction from public service. She has invented a modus operadi of writing several complaint letters against a public servant to his/her employer. This is the strategy she wishes to adopt to intimidate this court to recuse itself so that the trial commences afresh.

20. I note the complainant and PW2 gave very lengthy testimonies over several days. ***Having them give evidence again on ulterior motives is an abuse of the process of the Court. It is in the interest of justice that this case be concluded expeditiously to bring closure to the troubled souls who are parties in this case."***

Verdict

47. The more the trial delays the more the suffering of the accused petitioners. The court must find in the circumstances of this case that the right to fair trial within reasonable time is ***threatened*** with violation by the conduct of the 1st Respondent who seeks recusal of the trial court and trial before another court without sufficient grounds therefor.

48. The charges in the case were filed in January 2019 and the recusal subject of this Petition granted in September 2021. It is still possible to complete the trial inside four years from the date of filing of the charges in Meru CMC Criminal Case No. 189 of 2019. The court is not able to find that there has been inordinate delay as would make the fair trial of the criminal charges impossible. The petitioners prayed for "*Any other relief the court may deem just to grant*", and the court has power under Article 23 (3) and 165(7) of the Constitution to give appropriate relief to ensure justice is served in the context of the particular case. The 1st respondent victim is also entitled to the right under Article 50 (1) of the Constitution to have a dispute, in this case relating to the estate of her late father, being, *"any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body."*

Appropriate relief

49. The court finds that the fair trial of the charges facing the accused petitioners herein is still possible with the appropriate directions for expedition and prevention of interference by any person including the complainant. The court considers that the supervisory jurisdiction of the High Court under Article 165 (6) and (7) of the Constitution and the holding of the Supreme Court in ***Joseph Lendrix Waswa*** include a power to ***"make any order or give any direction it considers appropriate to ensure the fair administration of justice"*** including injunctive relief against interference with the judicial process and presiding officers and directions to ensure the expeditious hearing and disposal of trials (as well as civil hearings) before the subordinate courts and tribunals. Whatever the prejudice to the accused petitioners in delayed conclusion of the trial by the conduct of the complainant is remediable by an order for expedited hearing as appropriate relief within the meaning of the Article 23(3) of the Constitution.

50. This court considers that a period of hearing and determination within 180 days (six months) will ameliorate the suffering of the accused who are on interdiction following complaint made by the 1st respondent to their employers. For this reason, this court will pursuant to its supervisory powers under Article 165 (6) and (7) of the Constitution direct an expedited trial within six months (180 days).

51. This is without prejudice to their right to move the court appropriately for orders for the lifting or quashing of their interdiction on the basis of the presumption of innocence before there is a finding of guilt.

52. This is a matter suitable for the order for hearing on priority basis, as an appropriate action of the court to prevent injustice.

ORDERS

53. Accordingly, for the reasons set out above, the court makes the following orders:

1. The Court finds that the fair trial of the accused petitioners is ***threatened*** with violation of the right to trial within a reasonable time, in the circumstances of this case, by the conduct of the 1st respondent which has resulted in the delay in the conclusion of the trial.

2. As appropriate relief under Article 23(3) of the Constitution, and pursuant to its power under Article 165(6) and (7) the Court will grant an injunction against the 1st respondent from interfering with the trial process in trial court in any way, including writing letters to the ***employers*** of the accused petitioners or the officers presiding over the pending trial or related proceedings or proceedings arising from the charges preferred against the accused petitioners whatever.

3. The 1st Respondent's involvement in the trial against the accused petitioners shall be restricted to the involvement of a "victim" within the meaning of the Victim Protection Act and in accordance with the Supreme Court's *"guiding principles"* set out in ***Joseph Lendrix Waswa*** case, supra.

4. As further appropriate relief in the circumstances of this case is an order for expedited hearing of the criminal trial, which the court hereby grants directing the trial court to hear and determine the trial of the criminal charges against the accused petitioners within 6 months (180 days) of this Judgment.

5. The recusal of the presiding officer (Hon. Muraguri, SPM) from further hearing of Meru Criminal Case No. 189 of 2019 is valid and the trial of the accused petitioners therein shall be had before the Magistrate's court at Meru by a court differently constituted.

6. For the purpose of directions as to hearing and consistently with the order for priority hearing the case shall be mentioned before the Chief Magistrate Court on Monday **6th April 2022.**

7. The Petitioners are at liberty, as they may be advised by their legal advisors, by a suit in that behalf, to move the court appropriately for orders discharging the interdiction of the public officers affected by interdiction.

8. Each party shall bear its own costs of the suit.

Order accordingly.

DATED AND DELIVERED THE 31TH DAY OF MARCH, 2022.

EDWARD M. MURIITHI

JUDGE

APPEARANCE:

MR. MUNENE WITH MR. MUTUMA FOR THE PETITIONERS.

1ST RESPONDENT IN PERSON.

MR. NJERU MUGAMBI, STATE COUNSEL FOR THE AG.

MR. CHELULE PROSECUTION COUNSEL FOR THE DPP.