



REPUBLIC OF KENYA



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Nakuru Gas Limited v Kenya Revenue Authority & 3 others (Petition E027 of 2021) [2022] KEHC 10539 (KLR) (23 June 2022) (Judgment)

Neutral citation: [2022] KEHC 10539 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
PETITION E027 OF 2021
HK CHEMITEI, J
JUNE 23, 2022**

BETWEEN

NAKURU GAS LIMITED PETITIONER

AND

KENYA REVENUE AUTHORITY 1ST RESPONDENT

DIRECTOR OF PUBLIC PROSECUTION 2ND RESPONDENT

INSPECTOR GENERAL OF POLICE 3RD RESPONDENT

CHIEF MAGISTRATE COURT NAKURU 4TH RESPONDENT

JUDGMENT

1. The petitioner herein moved the court through an Amended Petition dated 28th July 2021 against the respondents jointly and severally claiming damages as hereunder: -
 - a. A declaration that the proceedings before the 3rd Respondent relating to Misc. Criminal Case No. E448 of 2021 (Kenya Revenue Authority ~Versus~ Nakuru Gas Limited) by way of the Notice of Motion dated 5th October 2021 is irregular, procedurally unfair, illegal, unreasonable, unconstitutional and therefore null and void ab initio.
 - b. A declaration that the action of the 1st, 2nd and 4th Respondents of applying for warrants of Entry and Search in Criminal Miscellaneous Application No. E448 of 2021 (Kenya Revenue Authority ~Versus~ Nakuru Gas Limited) violated Articles 157 (1), (6), (10) and 245 (2) (b), (4), 246 G) and 248 (2) (j) of *the constitution*.
 - c. A judicial review order by way of certiorari does issue to quash the warrants of Entry and Search issued by the 3rd Respondent on the 5th October 2021



in Criminal Miscellaneous Application No. E448 of 2021 (Kenya Revenue Authority ~Versus~ Nakuru Gas Limited).

- d. An order of mandamus compelling the Respondents to return forthwith the Petitioners records seized on the 6th October 2021 pursuant to the warrants issued by the 3rd Respondent on the 5th October 2021 and as recorded in the 4th Respondent's inventory dated 6th October 2021.
 - e. A judicial review order of prohibition restraining the Respondents from in any way purporting to enter and search the Petitioners premises located at NCPB Silos, Industrial Area, Off Nakuru-Eldoret Highway, Nakuru County in the execution of the warrants dated 5th October 2021 pursuant to the Notice of Motion dated 5th October 2021 in Nakuru Criminal Miscellaneous Application No. E448 of 2021 (Kenya Revenue Authority versus Nakuru Gas Limited).
 - f. General, exemplary and punitive damages for unfair treatment, harassment, discrimination and violation of constitutional rights.
 - g. Cost of this Petition.
2. Consequently, the Petitioner filed a Notice of Motion dated 8th November 2021 seeking the following orders;
- a. Spent.
 - b. Spent.
 - c. Spent.
 - a. That an interim conservatory order of stay be issued staying any further proceedings in Nakuru Criminal Miscellaneous Case No. E448 of 2021 (Kenya Revenue Authority ~Versus~ Nakuru Gas Limited) pending the hearing and determination of the Petition filed herewith.
 - b. That an interim conservatory order of stay be issued staying the enforcement or any further or continued enforcement of the warrant to enter and search order given by the 3rd Respondent herein on the 5th October 2021 in Nakuru Criminal Misc, Case No. E448 of 2021 (Kenya Revenue Authority ~Versus~ Nakuru Gas Limited) pending the hearing of this Petition.
 - c. That this honourable Court be pleased to issue such further orders as it shall deem fit and just in the circumstances of this case.
 - d. That this honourable Court be pleased to issue such further orders as it shall deem fit and just in the circumstances of this case.
3. When the matter came up for directions and hearing of the motion the parties as well as the court preferred that the main petition be disposed so as to determine the real issues in controversy.
4. The gist of the matter is that on the 6th October 2021 the 1st Respondent in the company of the 4th Respondent officers conducted a raid at the petitioners premises situate in Nakuru town at NCPB



- Silos, Industrial Area, off Nakuru-Eldoret Highway. It is averred that there was tax dispute between the 1st Respondent and the petitioner/applicant that would have justified the raid and the same led to a pending investigation by the 1st and 4th Respondent in relation to the same.
5. It is further averred that the petitioner had religiously filed its tax return with the 1st respondent and the same were up to date. That as a result of the said raid, the 1st respondent seized and carried away various records and computers from the petitioner's premises. Additionally, that the said raid was carried out pursuant to the warrant to enter and search given by the 3rd respondent herein on the 5th October, 2021 pursuant to the 2nd respondent's notice of motion application that was supported by a supporting affidavit sworn by an officer of the 4th Respondent purportedly on the instructions of the 1st respondent.
 6. According to the petitioner, it is through the said application that it learnt that the 1st respondent was allegedly investigating it for tax fraud. That the petitioner was concerned about the independence and impartiality of the 2nd respondent should its file be forwarded to it for the purposes of making the decision to prosecute when it has been part and parcel of the investigations process.
 7. Additionally, it is the petitioner's view that all the respondents had ganged up against it in an illegal and unconstitutional alliance with the intention of deliberately deny it the constitutional safeguards of impartiality and independence of constitutional bodies particularly the independence of the 1st Respondent in making decision relating to prosecution and the independence of the 4th Respondent in its investigative functions.
 8. The petitioner went on to aver that its fundamental rights under Article 10(2)(c), 31, 40(3), 47, 157(1), (6), (10) and 245 (2) (B), (4), 246 (3) and 248 (2) of *the Constitution* of Kenya, 2010 were violated. It is the petitioner's case that the respondents through those actions have denied it the benefit of the decisions of independent constitutional bodies as envisaged under constitution. That therefore it had been denied the benefits of the constitutional guard rails put in place to ensure that administrative actions are constitutional, accountable and procedurally fair. In addition, that it is being subjected to an arbitrary, illegal, irregular, unreasonable, malicious, unconstitutional, and preference process.
 9. The petitioner stated that petition was brought under the provisions of Articles 20, 21,22 and 23 of *the Constitution* of the Republic of Kenya. The Petitioner stated further that by Article 22(1) of *the Constitution* of Kenya, 2010 permits it to institute court proceedings when its rights or fundamental freedoms in the Bill of Rights are denied, violated, infringed or threatened.
 10. The petition is supported by an affidavit dated 8th November, 2021 sworn by the petitioner's director Ahmed Hassan Mamo which reiterates the contents of the petition.
 11. The Petition and the Notice of motion was opposed through the 1st Respondent's affidavit dated 29th November, 2022 and sworn by No. 86229 PC Daniel Mungai, an investigating officer at the Directorate of Criminal Investigations seconded to its Investigations and Enforcement Department at Nakuru Office.
 12. The 1st respondent contends that under Section 5(1) of the *Kenya Revenue Authority Act*, it is an agency of the Government for the collection and receipt of all revenue. Further, that under Section 5(2) of the said Act, it administers and enforces all provisions of the written laws set out in Part I and II of the First Schedule to the Act for the purposes of assessing, collecting and accounting for all revenues in accordance with those laws.
 13. The 1st respondent contends further that in October 2021, it received intelligence report that the petitioner was engaged in tax evasion estimated to be Kshs 126,047,093 through under declaration



- of turnover and over declaration of their purchases in the income tax returns to increase expenses thus reducing the income earned and consequently tax payable. Additionally, that upon conducting preliminary analysis it established that the petitioner grossly under- declared the margins resulting to estimated taxes of Kshs 73,338,336
14. It is the 1st respondent's case that on 5th October 2021 it's investigator got orders to enter and search the petitioner's business premises located at NCPB Silos at Nakuru County and carry away records, documents, electronic and storage devices. That on 6th October 2021, upon obtaining the search warrant, its team comprising of Mr., Peter Mutwiri, Mr. Shem Ombati, Mr. Christopher Mbatha, Mr. Eric Mbiyu and its investigator conducted a search at the petitioner's premises and were able to recover one laptop computer, assorted copies of delivery notes, copies of invoices, copies of cash sale receipts, copies of bank deposit slips, several counter books and note books containing business transactions recordings, business registration documents and authorization letters.
 15. He went on to state that when they analyzed the documents and devices obtained from petitioner's premise, its officers established that there was need for more time to obtain further information from the said documents and/or devices. That on 8th November 2021, during the mention of Nakuru Chief Magistrates Court Miscellaneous Criminal Case No. E448 of 2021, it was granted by the court fourteen (14) more days' extension to enable them obtain the additional required information from the petitioner's premises.
 16. The 1st respondent stated that on 8th November 2021, the Petitioner rushed to this honourable Court to challenge the orders issued in the Nakuru Chief Magistrates Court Miscellaneous Criminal Case No. E448 of 2021 primarily on the basis that the Notice of Motion Application for the orders were made by the 2nd respondent. It is the 1st respondent's belief that that the 2nd respondent's functions contemplated by Section 23(c) of the Office of the Director of the Public Prosecutions Act, 2013 include drawing and filing applications for search warrants made by investigating officers under any written law. That also, *the Constitution* of Kenya 2010 under Article 157(6)(a) mandates the 2nd respondent to institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed.
 17. It is further the 1st respondent belief that drawing of application for search warrants is a function which falls squarely within the ambit of the 2nd respondent's functions from the reading of *the Constitution* of Kenya, 2010 and the Office of the Director of the Public Prosecutions Act, 2013.
 18. The 1st respondent contends that the petitioner has failed to demonstrate that its case is one that warrants the grant of conservatory orders under Article 23(3) of *the Constitution*, 2010. Additionally, that by granting any of the orders sought by the petitioner it will amount to this honourable Court unduly interfering with the constitutional and/or statutory duties and powers of the respondents herein.
 19. When the matter came up for hearing the court directed the parties to file their written submissions, but only the petitioner and the 1st respondent complied.

Petitioners Submissions

20. The petitioner in its submissions identified one of the issues for determination as to whether it has demonstrated that the respondents violated *the Constitution*. It submitted that it is not in dispute that the notice of motion was drafted and filed by the 2nd respondent and that the same was to aid the 1st and 4th respondent in their tax investigations against it. It is the petitioner's submission that the 2nd respondent had abandoned its constitutional duty under Articles 157(4), (6), (10), (11) and (12) as a



prosecutor and was now assisting the 1st and 2nd respondents by drafting and filing the application for search warrant in conducting investigations.

21. It cited the case of *Republic v Director of Public Prosecution & 2 others; Evanson Muriuki Kariuki (Interested Party); Ex parte James M. Kahambura* [2019] eKLR, where Justice Mativo observed that the prosecution system should not only be impartial but should be seen to be so and that it should not only be free from outside influence but be manifesting so.
22. The petitioner submitted further that 2nd and 4th respondents were constitutional offices established under Articles 157(1) and Articles 243(1) as read together with Article 245(1) of *the Constitution* respectively. That further, Article 157(10) of *the Constitution* as read together with Section 6 of the ODPP Act establishes the independence of the 2nd respondent while Article 245(2) (b) and (4) as read together with Article 248(2) (j) and Section 8 of the Act establishes the independence of the 4th respondent.
23. It is the petitioner's submission that the 2nd respondent by descending into the arena of investigations by prematurely drafting and filing an application in furtherance of the investigative functions of the 4th respondent, violated the independence required of its office. Additionally, that the same amounted to constitutional overreach on its part and the notice of motion does not fall within the ambit of proceedings contemplated in the Articles of *the Constitution*. It is the petitioner's view that the law envisages that search warrants should be applied by investigative agencies in the course of their investigative functions and not by the 2nd respondent.
24. On the second issue, whether there is real danger that the petitioner will suffer prejudice as a result of the violation or threatened violation of *the Constitution*, the petitioner submitted that the respondents were likely to proceed with the enforcement of the search warrants to its detriment having been granted further 14 days by the Chief Magistrate court on the 8th November 2021 to obtain additional documents and information from its premises.
25. Lastly, on the issue whether it is the public interest to grant the conservatory orders sought in the petition the impugned acts and decision of the Respondents in obtaining and enforcing the search warrants on the 5th and 6th October 2021 respectively, were made in violation of *the Constitution* and therefore not in the public interest. Additionally, that there can be no greater public interest than upholding *the Constitution* and the law as was held in the case of *Law Society of Kenya v. Attorney General & Another* [2020] eKLR. It urged the court to allow the petition as prayed.

1st Respondent Written Submissions

26. The 1st respondent in its submissions identified five issues for determination beginning with whether conservatory orders should be granted. The 1st respondent urged the court to be guided by the principles of granting conservatory orders as was set out in the case of *Lipisha Consortium Limited & Another v Safaricom Limited* [2015] eKLR, Nairobi High Court Petition No. 512 of 2015. It is the 1st respondent's case that petitioner through its application and the written submissions has failed to demonstrate the said principles in its case.
27. On the second issue, whether the proceedings in Nakuru Chief Magistrate Court Misc. Criminal Case No. E448 of 2021 are valid, the 1st respondent submitted that it followed the due process of law in applying, getting and executing the 3rd respondent's orders of 5th October 2021. The 1st respondent argued that there was reasonable basis for applying for the warrants. The notice of motion application dated 5th October 2021 has all ingredients required for a warrant and that the 2nd respondent was



- mandated by law in particular Article 157 (1) of *the Constitution* to draw and file applications for warrants.
28. It placed reliance in the cases of *Standard Newspapers Limited & Another v Attorney General & 4 others* [2013] eKLR which cited with approval the decision in *Vitu Limited v The Chief Magistrate Nairobi & Two others*, H.C Misc. Criminal Application No. 475 of 2004, *William Baraka Mtengo v Attorney General & 3 others* [2018] eKLR and *Samuel Thinguri Warwathe v Mary N. Mungai, Commissioner for Co-operative & 2 others* [2017] eKLR.
 29. On the third issue, whether the 1st respondent's application in Nakuru Chief Magistrate Court Misc. Criminal case No. E448 of 2021 violated the Constitutional provisions the 1st respondent relied on the contents of paragraph 35, 36, 37,38,39,40, 41 and 42 in its replying affidavit. It is the 1st respondent submission that in line with Section 118 of the *Criminal Procedure Code*, Cap 75 laws of Kenya and section 60(1) of the *Tax Procedures Act* No. 29 of 2015, it followed the due process of the law in obtaining the search warrants to enter the petitioner's premises.
 30. In response to the allegation by the petitioner that it obtained warrants to enter and search the petitioner's premises without notifying it of the ongoing investigations it submitted that notifying a suspect of the intended investigations may compromise the quality and purpose of the said investigations. It placed reliance on Section 118A of the Criminal Procedure Code and the case of *James Humbrey Oswago v Ethics and Anti-Corruption* [2014] eKLR. Additionally, the 1st respondent argues that the right under Article 31,40(2)(a) and 47 of *the Constitution* of Kenya, 2010 was not absolute as Article 24 allows for limitation of rights to the extent that it was reasonable and justified in an open and democratic society based on human dignity, equality and freedom. It cited the case of *William Baraka Mtengo v Attorney General & 3 others* (supra) and submitted that it did not violate the said rights.
 31. The 1st respondent went on to submit that the petitioner's allegation that the 2nd respondent was subjected to its control or direction by drafting and filing its application for search warrants, was not supported with any proof and thus it remained just a statement. Additionally, the 1st respondent denied the allegations by the petitioner that in drafting and filing of its application it blurred the line between the investigative functions of the 2nd and 4th respondents.
 32. It further denied the allegations by the petitioner that there existed unconstitutional and illegal alliance between the respondents contrary to the constitutional provisions and values and principles of public service. The petitioner was under strict proof of the same and the court's attention was drawn to the cases of *Leonard Otieno v Airtel Kenya Limited* [2018] eKLR and *Association of Public Health Officers of Kenya v Kenya Bureau of Standards & 2 others* [2020] eKLR.
 33. On the fourth issue, whether judicial review orders of certiorari, mandamus and prohibition should be granted it submitted that it discharged its duty by following the right procedure to apply for the search warrants. That unless the petitioner could demonstrate that the 3rd respondent exercised the discretion improperly or in excess of jurisdiction, then its allegations and the said orders sought were without basis. It cited the cases of *Daniel Ogwoka Manduku v Director of Public Prosecutions & 2 others* [2019] eKLR, *Republic v The Council of the Legal Education Ex-parte James Njuguna & 14 others* [2007] eKLR and *Pevans East Africa Limited v Betting Control and Licensing Board & 2 others; Safaricom Limited & another (Interested Parties)* [2019] eKLR.
 34. Lastly, on whether the petitioner is entitled to the costs of the petition the 1st respondent submitted that the petitioner having failed to prove, by way of evidence, that execution or further execution of the search warrants would in any way violate its constitutional rights, the issue of cost should not arise and the same should be denied.



35. In conclusion, the 1st respondent urged the court to find that its Notice of Motion Application dated 5th October 2021 in Nakuru Chief Magistrates Court Misc. Criminal Case No. E448 of 2021, the proceedings and orders flowing therefrom are valid. It further urged this court to find that the petitioner's notice of motion application and petition dated 8th November 2021 are without merit and same be dismissed accordingly with cost in its favour.

Analysis and Determination

36. Upon analyzing the facts of the case, evidence and the submissions tendered by the petitioner, the following issues in arise for determination namely;

- a. Whether the Petitioner has prima facie satisfied the conditions for issuance of a conservatory order stopping Misc. Criminal Case No. E448 of 2021 (Kenya Revenue Authority v Nakuru Gas Limited).
- b. Whether the actions by the 1st, 2nd and 4th respondent of applying for warrants of entry and search in Misc. Criminal Case No. E448 of 2021 (Kenya Revenue Authority v Nakuru Gas Limited) violated articles 157(1), (6), (10) and 245(2) (b), (4) 246(3) and 248(2)(j) of *the Constitution* was lawful.
- c. Whether judicial review orders of certiorari, mandamus and prohibition should be granted.
- d. Whether the Petitioner is entitled to any reliefs, if any.

37. In addressing the first issue, whether the petitioner has prima facie satisfied the conditions for issuance of a conservatory order stopping Misc. Criminal Case No. E448 of 2021 (Kenya Revenue Authority v Nakuru Gas Limited) this court is required to consider the petitioner prayer for conservatory orders halting its prosecution and establish whether it has demonstrated a prima facie case with a chance of success. Further, should the prayer sought be denied, the petitioner stands to suffer real prejudice. This is because conservatory orders have a public law leaning, a decision to grant them rests on the inherent merits of the case; taken in tandem with the public interest, the constitutional values, the proportionate magnitudes, and priority levels attributable to the relevant causes.

38. The Supreme Court in *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others* [2014] eKLR succinctly sets it out thus:

“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.”

39. Further, in *Judicial Service Commission v. Speaker of the National Assembly & Another* [2013] eKLR where it is held:

“Conservatory orders in my view are not ordinary civil law remedies but are remedies provided for under *the Constitution*, the Supreme law of the land. They are not remedies



between one individual as against another but are meant to keep the subject matter of the dispute in situ. Therefore, such remedies are remedies in rem as opposed to remedies in personam. In other words, they are remedies in respect of a particular state of affairs as opposed to injunctive orders which may only attach to a particular person.”

40. Additionally, the majority bench in *The Centre for Human Rights and Democracy & Others vs. The Judges and Magistrates Vetting Board & Others* Eldoret Petition No. 11 of 2012, held:

“In our view where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any Constitutional or legal right or any burden is imposed in the contravention of any Constitutional or legal provision or without the authority of the law or any such legal wrong or injury is threatened, the High Court has powers to grant appropriate reliefs so that the aggrieved party is not rendered, helpless or hapless in the eyes of the wrong visited or about to be visited upon him or her. This is meant to give an interim protection in order not to expose others to preventable perils or risks by inaction or omission.”

41. In *Simeon Kioko Kitheka & 18 others v County Government of Machakos & 2 others* [2018] eKLR, it was established that a prima facie case is not a case which must succeed at the hearing of the main case and nonetheless it is not a case which is frivolous. That further, an applicant must show that they have a case which discloses arguable issues; and in a case alleging violation of rights, arguable constitutional issues.
42. In the instant petition it is the petitioner’s case that the impugned acts and decision of the respondents in obtaining and enforcing the search warrants on the 5th and 6th October 2021 respectively, were made in violation of *the Constitution*.
43. The 1st respondent maintain that they are well within their mandate and that the petitioner’s application and written submissions have not satisfied the conditions set for grant of conservatory orders. It is not in dispute that the 1st respondent is in possession of valid court orders from the Nakuru Chief Magistrate court and the same enabled them to enter and search the petitioner’s premise which it did and have also been granted further extension of the said orders. The petitioner argues that the issuance of those court orders violated its right as they were obtained by the 1st respondent with the assistance of the 2nd respondent in violation of its constitutional mandate and without following due procedure. The petitioner has however not presented any proof of its allegation and therefore the same stand as mere statement.
44. In *Diamond Hasbam Lalji & another v Attorney General & 4 others* [2018] eKLR which the Court of Appeal cited in Njuguna S. Ndung’u, the Court held:

“(45) In considering the evidential test, the court should only be satisfied that the evidence collected by the investigative agency upon which DPP’s decision is made establishes a prima facie case necessitating prosecution. At this stage, the courts should not hold a fully-fledged inquiry to find if evidence would end in conviction or acquittal. That is the function of the trial court. However, a proper scrutiny of facts and circumstances of the case are absolutely imperative. *State of Maharashtra Ors v Arun Gulab Gawall & Ors* – Supreme Court of India – Criminal Appeal No. 590 of 2007 para 18 and 24, *Meixner & Another v Attorney General* [2005] 2 KLR 189.”



45. At this stage there is no sufficient evidence to suggest that there is a prima facie case established by the respondent against the petitioner. All that the 1st respondent is doing is to gather evidence and if it is satisfied in its own wisdom that what it had obtained is sufficient then it may prefer charges against the petitioner. The test of whatever evidence it has assembled will thus be tested in a properly constituted tribunal where the petitioner shall have a right of reply.
46. For now, therefore to issue the conservatory orders sought by the petitioner would be akin to halting the process prematurely. It is not for this court at this moment to consider the merits or otherwise of the investigation as that would be usurping the constitutional powers of the 1st respondent.
47. In addressing the second issue namely whether the actions by the 1st, 2nd and 4th respondent of applying for warrants of entry and search in Misc. Criminal Case No. E448 of 2021 (Kenya Revenue Authority v Nakuru Gas Limited) violated articles 157(1), (6), (10) and 245(2) (b), (4) 246(3) and 248(2)(j) of *the Constitution* the court in *Matalulu & Another v DPP* [2003] 4 LRC 712 held that:
- “ This would have proper regard to the great width of the DPP’s discretion and the polycentric character of official decision making in such matters including policy and public interest considerations which are not susceptible of judicial review because it is within neither the constitutional function nor the practical competence of the courts to assess their merits. This approach subsumes concerns about separation of powers.”
48. Further, in *Thuita Mwangi & 2 Others v Ethics & Anti-Corruption Commission & 3 Others* [2013] eKLR court addressed the matters germane to the mandate of the police to mount investigations and stated that:
- “The police have a duty to investigate on (sic) any complaint once a complaint is made. Indeed, the police would be failing in their constitutional mandate to detect and prevent crime. The police only need to establish reasonable suspicion before preferring charges. The rest is left to the trial court. The predominant reason for the institution of the criminal case cannot therefore be said to have been the vindication of the criminal justice. As long as the prosecution and those charged with the responsibility of making the decisions to charge act in a reasonable manner, the High Court would be reluctant to intervene.” (Emphasis added)
49. In view of the above cited authorities it is my view that the 1st, 2nd and 4th respondent acted within their mandate under *the Constitution* and therefore did not violate the petitioner’s constitutional rights. They were acting on a reasonable suspicion of a tax evasion or avoidance by the petitioner based on the documents and other evidence that was in their custody.
50. Additionally, this court does not find any reason to suggest that they acted unreasonably. The obtaining of the court order *ex parte* was within its mandate including a further extension. The petitioner in as much as he may have been ambushed was not necessarily complaining. Its complaint in my view was that the 2nd respondent acted outside its mandate when it purported to prepare the application before the magistrate’s court.
51. In my view the 1st respondent vide the affidavit of PC Daniel Mungai explained itself well on how the 2nd respondent came into the mix. Whichever way however i do not see any prejudice suffered by the petitioner. In any case at this level what is before this court is purely investigation and not the results thereof.
52. Peradventure the respondents decide to prefer charges against the petitioner, then in my considered view it shall have a nut to grind against the 2nd respondent if at all it was complicit. In a sense all is



not lost for the petitioner. The legal process is still ongoing and all that the respondents are doing are within their constitutional mandate.

53. The prayers for the writs of certiorari, mandamus and prohibition respectfully do not find place herein for now. There is no evidence that the petitioner's constitutional rights have been violated. The process of obtaining search warrants from the court albeit *ex parte* was lawful. The search has not been demonstrated to have been done arbitrarily and in violation of the petitioner's rights to privacy in any way.
54. There is no evidence that the respondents jointly or severally have exceeded their powers and or acted *ultra vires* *the constitution*. The items collected were clearly secured and inventory provided and are within its reach.
55. . In the premises, and for the reasons stated above, the court does not find the petition meritorious and the same is hereby dismissed with costs.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAKURU THIS 23RD DAY OF JUNE 2022.

H K CHEMITEI.

JUDGE

