



THE REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CONSTITUTION AND HUMAN RIGHTS DIVISION

PETITION NO. 503 OF 2019

JOHN MATETE ABAYO.....PETITIONER

-VERSUS-

THE DIRECTOR OF PUBLIC PROSECUTIONS.....1ST RESPONDENT

CPL MUTONI-CENTRAL POLICE STATION.....2ND RESPONDENT

CALEB ORWA AJUANG.....3RD RESPONDENT

JUDGEMENT

1. The factual foundation of this petition as presented to the Court by the Petitioner, John Matete Abayo, through his petition dated 16th December, 2019 is that on 1st February, 2019 he was summoned through his cell phone by the 2nd Respondent, Corporal Muthoni of Central Police Station, to appear before her at 2.00 pm on the same date. He was not given any reason for the summons.
2. It is the Petitioner's case that when he appeared before Corporal Muthoni he was interrogated and put in custody. He was subsequently informed that he had been arrested on the basis of a complaint lodged by the 3rd Respondent, Caleb Orwa Ajuang, that he had obtained goods by false pretence from him.
3. It is the Petitioner's averment that although he denied the allegations he was denied bail. His deposition is that on 2nd February, 2019 he was granted cash bail of Kshs. 100,000/- which he could not raise and he therefore remained in custody until 4th February, 2019 when he was presented in Court. The Petitioner deposed that he pleaded not guilty to the charge of obtaining goods from the 3rd Respondent by false pretences contrary to Section 313 of the Penal Code and he was released on cash bail of Kshs. 50,000/-.
4. According to the Petitioner, despite several court appearances the trial did not take off and on 25th July, 2019 he raised a preliminary objection to the proceedings in Chief Magistrate Court Case No. 216 of 2019, Republic v John Abayo Matete. The preliminary objection was premised on the ground that the criminal proceedings were illegal and contrary to the provisions of Section 23 of the Penal Code as the Petitioner was neither a director nor the person in-charge of the daily management of Ariane International being the company that received the goods from the 3rd Respondent. Another ground was that during the pendency of his trial the 3rd Respondent had continued demanding for the payment of the goods from the company.
5. The Petitioner avers that when his preliminary objection came up for hearing on 15th October, 2019, counsel representing the 1st Respondent, the Director of Public Prosecutions, did not oppose the preliminary objection and instead terminated the proceedings under Section 87(a) of the Criminal Procedure Code indicating that charges would be preferred against the proper party.
6. The Petitioner contends that he was subjected to an illegal trial process, arrested and detained arbitrarily and his freedom of movement curtailed without any reasonable or justifiable cause. The Petitioner asserts that the respondents acted maliciously, unreasonably and recklessly in arresting, detaining and denying him bail and or bond and subjecting him to a criminal trial without any lawful, reasonable or justifiable cause.
7. According to the Petitioner, the respondents' actions infringed his constitutional rights. He therefore prays for orders as follows:

“1) A declaratory order does issue to the effect that the arrest, detention, arraignment, and subjecting of John Abayo Matete

to prosecution in Milimani Chief Magistrate's Court Case No. 216 of 2019; Republic versus John Abayo Matete, was illegal, unconstitutional and contrary to the Constitution of Kenya, 2010, namely:

- a. In contravention of the Petitioner's rights to equal protection of the law as guaranteed under Article 27(1) and the right not to be discriminated against on any grounds.
- b. In contravention of the Petitioner's right to inherent dignity and the right to have that dignity respected and protected under Article 28.
- c. In contravention of the Petitioner's right and freedom to security of the person not to be deprived of freedom arbitrarily or without just cause under Article 29.
- d. In contravention of the Petitioner's right to freedom of movement under Article 39.
- e. In contravention of Article 49 on the rights of arrested person.
- f. In contravention of the Petitioner's right to administrative action that is lawful, reasonable and procedurally fair as stipulated under Article 47 of the Constitution as read with the Fair Administrative Action Act.
- g. In contravention of the Petitioner's right to access justice and to a fair trial and hearing under Articles 48 and 50 of the Constitution.

2) An order for compensation of the Petitioner by the respondents jointly and severally for general damages for the aforesaid violations of his constitutional rights and for distress and mental anguish caused by the infringement of his fundamental rights and freedoms and his illegal arrest, detention and arraignment and further punitive damages against the respondents.

3) Special damages.

4) An order awarding costs of the Petition to the Petitioner."

8. The 1st Respondent opposed the petition through grounds of opposition dated 9th June, 2020. The 2nd and 3rd respondents did not file any response and neither did they participate in the proceedings.

9. The 1st Respondent's case is that the orders sought are meant to prevent the Director of Public Prosecutions (DPP) from exercising his mandate under Article 157 of the Constitution and granting the orders would be contrary to the public interest; that under Article 157(10) of the Constitution and Section 6 of the Office of the Director of Public Prosecutions Act, 2013, the DPP does not require the consent of any person or authority for commencement of criminal proceedings; and, that in the exercise of his mandate the DPP shall not be under the direction or control of any person or authority.

10. It is further the DPP's case that Section 24 of the National Police Service Act mandates the police to investigate any complaint brought to their attention in order to determine whether a criminal offence has been committed; that the Petitioner has not adduced any reasonable evidence to show that the criminal proceedings were mounted for an ulterior purpose; and, that it is in the public interest that complaints made to the police are investigated and the perpetrators of crimes are charged and prosecuted.

11. The Court is therefore urged to find that the petition has no merit and dismiss it with costs to the 1st Respondent.

12. The Petitioner supported his case through written submissions dated 31st March, 2020 and further written submissions dated 12th July, 2020.

13. On his claim that his rights to freedom and security of the person guaranteed by Article 29 and freedom of movement protected by Article 39 were violated, the Petitioner contended that Article 29 as read with Article 9 of the International Covenant on Civil and Political Rights safeguard against arbitrary deprivation of freedom and torture whether physical or psychological. He adds that the cited provisions also prohibit arbitrary arrest and detention. The decision in **Mohamed Feisal & 19 others v Henry Kandie, Chief Inspector of Police, OCS, Ongata Rongai Police Station & 7 others; National Police Service Commission & another (Interested Party) [2018] eKLR** was cited as frowning upon unjustified arrest and detention of individuals.

14. The Petitioner submitted that he was arrested and detained arbitrarily before being subjected to an illegal trial process resulting in the curtailment of his freedom of movement without any reasonable or justifiable cause. The Petitioner asserted that the respondents acted maliciously, unreasonably and recklessly in arresting, detaining and denying him bail. He pointed out that he was arrested on 1st February, 2019 and detained until 4th February, 2019.

15. The Petitioner submitted that the 2nd Respondent illegally and without any basis or justification or factual foundation whatsoever arrested, detained and denied him bail thereby infringing on his rights to freedom of movement and human dignity. He stated that the actions of the respondents amounted to illegal detention and arbitrary deprivation of his freedom thus violating Article 29.

16. On the allegation that his right to dignity guaranteed under Article 28 was violated, the Petitioner submitted that his arrest and prosecution occasioned him and his family great prejudice, mental anguish and physical torture and torment. According to the Petitioner, his

right to human dignity was infringed as he was merely being vexed, victimised and used as a sacrificial lamb. The Petitioner asserted that his arrest and prosecution was not justified as the DPP later withdrew the charge and indicated to the trial Court that they would arrest the right person.

17. The decision in **Johnson Gacheru Ngigi v Inspector General of the National Police Service & another [2019] eKLR** was cited in support of the proposition that inhuman treatment is treatment that is unjustifiable and deliberately causes mental or physical suffering. The decision in **Mohamed Feisal (supra)** was cited as holding that apprehending and detaining a person even for a short period is unconstitutional and degrading.

18. Turning to the claimed infringement of the right to fair administrative action as guaranteed under Article 47 of the Constitution, the Petitioner submitted that he was aggrieved by the respondents' action of blatantly abusing their powers to settle commercial disputes and using the criminal justice system to vex him. According to him this amounted to an infringement of his constitutional rights and fundamental freedoms as he was subjected to an illegal criminal process and administrative action that was unreasonable and unfair contrary to Article 47 as read with the Fair Administrative Action Act, 2015. The Petitioner submitted that the 3rd Respondent together with the 1st and 2nd respondents used the criminal justice system to enforce a debt in a commercial transaction between the 3rd Respondent and Ariane International.

19. It was further the Petitioner's argument that his prosecution was founded on an improper factual foundation hence violating his constitutional rights. The Petitioner contended that his prosecution was founded on ulterior motives as it was based on improper considerations and lacked a proper factual foundation. Reliance was once again placed on the decision in **Mohamed Feisal (supra)** in support of the argument that the DPP violated Article 47 and the Fair Administrative Action Act as the decision to charge him was not based on diligent investigations. Also cited in support of the same argument is the decision of **G.B.M. Kariuki v Attorney General [2016] eKLR**.

20. According to the Petitioner, the respondents had all the information and material in regard to the persons in charge of the daily affairs and operations of Ariane International but nevertheless proceeded to charge him. He urged that being aware of the provisions of Section 23 of the Penal Code, as to who is to be charged where a company commits an offence, the respondents had no reasonable or probable cause for arresting, detaining and prosecuting him.

21. Finally, on his claim that his rights which are protected under Articles 27, 48 and 50 were violated, the Petitioner submitted that the 3rd Respondent conspired with the DPP and Corporal Muthoni and selectively chose him for prosecution and frustration in order to enforce a contractual relationship between the 3rd Respondent and Ariane International. It is therefore the Petitioner's assertion that the respondents acted in a discriminatory manner and unjustifiably, and denied him the right to equal protection of the law.

22. According to the Petitioner, the respondents discriminated against him and victimised him thereby denying him the right to equal protection of the law as guaranteed under Article 27(1) of the Constitution. He submitted that his arrest, detention and prosecution was discriminatory as he was discriminated against on the basis of his status and job position.

23. The Petitioner additionally submitted that his continued prosecution without a proper factual foundation was an abuse of the court process and misuse of power by the DPP and the actions infringed his right to access justice as guaranteed under Article 48 and the right to a fair trial as guaranteed under Article 50.

24. The Petitioner signed off by urging the Court to allow the petition and award him Kshs. 5 million as compensation for the violation of his rights. He relied on the decisions in **Johnson Gacheru Ngigi v Inspector General of the National Police Service & another [2019] eKLR**; **National Social Security Fund Board of Trustees v Sifa International Limited [2016] eKLR**; **Macharia Waiguru v Muranga Municipal Council & another [2014] eKLR**; **Provincial Insurance Co. E. A. Ltd v Mordekai Mwanga Nandwa, KSM CACA No. 179 of 1995 (UR)**; **Akusala A. Borniface v OCS Langata Police Station & 4 others [2018] eKLR**; and **Republic v Independent Electoral and Boundaries Commission (I.E.B.C.) Ex parte National Super Alliance (NASA) Kenya & 6 others [2017] eKLR** for the proposition that he is entitled to both special and general damages.

25. In the further submissions filed in response to the DPP's submissions, the Petitioner urged that the DPP had misconstrued his case and failed to rebut any of the allegations and averments in the petition. It is posited that Rule 28 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 provides that if the respondent does not dispute the facts in the petition whether wholly or in part the Court shall, after hearing the parties, make such orders as it may deem fit.

26. The Petitioner therefore urged that since the respondents disregarded the petition and never bothered to rebut the factual assertions and contentions raised therein, the Court ought to consider the petition unopposed. This proposition was supported by reference to the decision in **Alfred Nyandaika Ongiri v Director of Public Prosecutions & others, Nairobi H.C. Petition No. 233 of 2017** where it was held that the facts of the case remained unchallenged since the respondents did not rebut them by way of replying affidavit. It is therefore submitted that the failure to file a replying affidavit implies that the DPP has failed to justify the illegal arrest, detention and arraignment of the Petitioner and demonstrates malice, ill-will and abuse of power and misuse of prosecutorial authority.

27. The Petitioner additionally submits that since the DPP did not file a response, his submissions have no foundational basis and they should be disregarded. Reliance is placed on the decision of the Supreme Court in **Gideon Sitelu Konchellah v Julius Lekakeny Ole Sunkuli & 2 others [2018] eKLR** for the proposition that in the absence of a replying affidavit, written submissions are of no effect. Also cited in support of the argument are the decisions in **Anthony Murimi Waigwe v Attorney General & others, Petition No. 336 of 2019** and **John Atelu & another v Attorney General & 4 others [2017] eKLR**.

28. On his part the DPP through written submissions dated 9th June, 2020 identified two issues for the determination of the Court. The first issue is whether the arrest, detention, arraignment and prosecution of the Petitioner in Milimani Chief Magistrate Court Criminal Case No.

216 of 2019 was illegal and unconstitutional. On this issue, counsel for the DPP submitted that Article 157 of the Constitution and Section 5 of the Office of the Director of Public Prosecutions Act vests the State power of prosecution upon the Office of the DPP and that in exercise of this power the DPP is under no direction or control of any person, body or authority. The decision of **Hon. James Ondicho Gesami v the Attorney General & others, Petition No. 376 of 2011** is cited as affirming the independence of the DPP.

29. Counsel for the DPP submitted that as enunciated in the National Prosecution Policy the primary test in making a decision to prosecute is whether the material gathered meets the evidential and public interest threshold. It is counsel's case that courts have held that it is not the courts' duty to decide who is to be charged and with what offence, as to do so would amount to intermeddling with the DPP's mandate rendering the DPP a constitutionally docile entity.

30. Counsel for DPP, while urging the Court not to emasculate independent constitutional offices and organs, conceded that the Court can indeed intervene where the offices or organs act *ultra vires, mala fides*, outside the confines of reasonableness, violates the doctrine of procedural fairness, and in total disregard of the doctrine of proportionality in making the impugned decision. Counsel was, however, quick to point out that in the instant case there is absolutely no reason for the Court to bar investigations and prohibit prosecution since no grounds exist to justify such action.

31. It was additionally submitted that the act of lodging complaints or reporting incidents of criminal activity does not amount to giving directions to the respondents or any of them. It is urged that agreeing with the Petitioner would mean that no crime would be reported and the respondents would also be under no obligation to act on crime reports.

32. The DPP's counsel, Ms Njoki Kihara, supported her submissions by citing the decisions in the cases of **Mohamed Ali Swaleh v The Director of Public Prosecutions & another, Mombasa H. C. Petition No. 2 of 2017**; **Republic v Commissioner of Police & another [2012] eKLR**; **Pauline Raget Adhiambo Agot v DPP & 5 others, Petition No. 446 of 2015**; **AG v AG & 3 others Ex parte Thomas Ng'ang'a Munene, Petition No. 166 of 2013**; **Hon. James Ondicho Gesami (supra)**; **Thuita Mwangi & 2 others v Ethics and Anti-Corruption Commission & 3 others [2004] eKLR**; and, **Total Kenya Limited & 9 others v Director of Criminal Investigations Department & 3 others [2013] eKLR**.

33. Pointing out that the National Police Service draws its authority to investigate from Article 245 of the Constitution and Section 35 of the National Police Service Act, 2013, counsel submitted that in exercise of the power to investigate crimes, the National Police Service is functionally independent and can only take directions to investigate from the DPP and no other authority. Counsel for the DPP contended that the Petitioner has not presented any written directive to the 2nd Respondent by any other authority to justify his claim that the investigations were commenced for a collateral purpose. It is urged that in the absence of such evidence, the Court can only presume that the 2nd Respondent was discharging her lawful authority.

34. It is the DPP's position that the law allows the police or any other investigative agency to investigate complaints and that in the instant case the police acted upon receiving a complaint. The DPP buttressed his submission on the authority of the police to conduct investigations on suspected criminal conduct by citing the decisions in **Dr. Alfred N. Mutua v The Ethics and Anti-Corruption Commission & others, Misc. Application No. 31 of 2016**; **Republic v The Commissioner of Police & the Director of Public Prosecutions Ex Parte Michael Monari & another, Nairobi H. C. Misc. Application No. 68 of 2011**; and, **Cascade Company Limited v Kenya Association of Music Production (KAMP) & others, Muranga H. C. Petition No. 7 of 2014**.

35. Still urging the Court to find that there was no illegality or unconstitutionality in the prosecution of the Petitioner, counsel for the DPP submitted that for the orderly functioning of State organs, each arm of government should be allowed to exercise its powers without interference from any of the other arms. Counsel urged that too much superintendence by one organ can render the other arms of government dysfunctional and can threaten the rule of law with the possibility of constitutional paralysis or crisis in government. The decision of **Dr. Alfred N. Mutua (supra)** is cited as holding that it is not the work of courts to interfere with other State organs unless it can be shown that they have violated the Constitution.

36. On the second issue as to whether the Petitioner's constitutional rights have been violated, counsel submitted that the prayers sought by the Petitioner are unconstitutional as they seek to prevent the respondents from exercising their mandates as provided by the law. According to counsel, granting the prayers sought in the petition would be contrary to public interest as such orders would insulate the Petitioner against future liability in the matter notwithstanding discovery of new evidence.

37. It is the DPP's position that the Petitioner has not established that his arrest and prosecution was illegal and his petition therefore fails the test in **Anarita Karimi Njeru v Republic (1976 – 1980) KLR 1272** that constitutional violations must be pleaded with a reasonable degree of precision; that the constitutional provisions allegedly violated should be cited; and that the violations must be particularised.

38. It is the 1st Respondent's case that no evidence has been adduced in support of the alleged violation of the Petitioner's constitutional rights. The decision in **Leonard Otieno v Airtel Kenya Limited [2018] eKLR** is cited in support of the proposition that claims of violation of constitutional rights must be supported by evidence. The Court is urged to find that the Petitioner's case is not supported by evidence and dismiss the same with costs to the respondents.

39. Upon perusal of the pleadings and submissions, I reach the conclusion that the key issue for the determination of this Court is whether the 1st and 2nd respondents abused their constitutional and statutory powers in arresting and prosecuting the Petitioner based on the 3rd Respondent's complaint.

40. Clause (11) of Article 157 of the Constitution which grants prosecutorial authority to the DPP places a caveat by requiring that in exercising the mandate the DPP should "**have regard to the public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process.**" Where it is shown that the DPP has ignored the limitation in Clause (11), the Court is empowered to stop the unconstitutional action by the DPP. The authority of the Court to grant relief also covers any unconstitutional or

illegal actions by investigative agencies, police officers included.

41. The question to be answered in this case therefore is whether the 1st and 2nd respondents' treatment of the Petitioner was unconstitutional and illegal. The answer lies in the facts of the case.

42. The Petitioner's case is hinged on alleged abuse of the legal process by the 1st and 2nd respondents at the behest of the 3rd Respondent. In **Hui Chi-Ming v R [1992] 1 A.C. 34** the Privy Council held that abuse of process is **"something so unfair and wrong that the court should not allow a prosecutor to proceed with what is in all respects a regular proceeding."**

43. Black's Law Dictionary, 9th Edition at page 11 defines abuse of process thus:

"The improper and tortious use of a legitimately issued court process to obtain a result that is either unlawful or beyond the process's scope – Also termed abuse of legal process; malicious abuse of process; malicious abuse of legal process; wrongful process; wrongful process of law."

44. As correctly submitted by counsel for the Petitioner, the facts of the case are not in dispute. Those facts have been summarised elsewhere in this judgment.

45. In **Elisha Nyaganya Onduro v Republic [2016] eKLR**, it was held that:

"The essential elements of the offence of obtaining through false pretences are as follows:-

- i. Obtaining something capable of being stolen.**
- ii. Obtaining the money through a false pretence.**
- iii. Obtaining the money with intention to defraud."**

46. In **Irene Rose Wanjira Mararo v Republic [201] eKLR** the Court cited a Nigerian case which listed the ingredients of the offence of obtaining money by false pretence as follows:

"Perhaps the most explicit exposition of the ingredients of the offence of obtaining by false pretences is to be found in the decision rendered by the Nigerian Supreme Court in the case of *Dr. Edwin U. Onwudiwe vs Federal Republic of Nigeria*[\[7\]](#) where the court stated in order to succeed in a charge of obtaining by false pretences, the prosecution must prove:-

- a) that there is a pretence;**
- b) that the pretence emanated from the accused person;**
- c) that it was false;**
- d) that the accused person knew of its falsity or did not believe in its truth;**
- e) that there was an intention to defraud;**
- f) that the thing is capable of being stolen;**
- g) that the accused person induced the owner to transfer his whole interest in the property."**

47. The evidence placed before this Court by the Petitioner shows that a company known as Ariane International which was associated with the Petitioner obtained goods from the 3rd Respondent but failed to pay for the goods. The elements of the offence of obtaining by false pretence therefore existed in the act and the 2nd Respondent could not be accused of abusing police powers. She received a report from the 3rd Respondent which disclosed an offence known to the law.

48. The Petitioner's complaint is anchored on the claim that he was not liable to be prosecuted by virtue of the provisions of Section 23 of the Penal Code, Cap. 63. The Section states:

"Where an offence is committed by any company or other body corporate, or by any society, association or body of persons, every person charged with, or concerned or acting in, the control or management of the affairs or activities of such company, body corporate, society, association or body of persons shall be guilty of that offence and liable to be punished accordingly, unless it is proved by such person that, through no act or omission on his part, he was not aware that the offence was being or was intended or about to be committed, or that he took all reasonable steps to prevent its commission."

49. According to the Petitioner, he was a mere employee of Ariane International and he had never interacted with the 3rd Respondent. This

avermment though not rebutted by way of a replying affidavit leaves several unanswered questions. For instance, how did the 3rd Respondent know that the Petitioner was an employee of Ariane International if they had never met? How did the 2nd Respondent obtain the Petitioner's phone number? It is therefore possible that the Petitioner presented himself as the person in control or management of affairs of the company and that is why he was arrested.

50. In **Regina v Telford Justices, ex parte Badhan [1991] 2 QB 78**, it was held that whoever asserts that there is abuse of process must prove it on a balance of probabilities. The Petitioner in his pleadings throw around heavy words like ill-will and malice without backing up the same with any evidence. He also did not adduce any evidence to show that Corporal Muthoni exceeded her investigative remit. For instance, the 2nd Respondent is accused of abusing her powers by denying the Petitioner bail. It is, however, admitted at paragraph 12 of the petition that the Petitioner was granted cash bail of Kshs. 100,000/- on the second day of his arrest. It cannot therefore be said that his right to be released on bail was violated.

51. The Petitioner also alleged that he was not informed of the reasons for his arrest and was illegally and unjustifiably detained from 1st to 4th February, 2019. The Petitioner's averments are not correct. At paragraph 8 of the petition he discloses that during his interrogation he was informed that he was arrested as a result of a complaint by the 3rd Respondent that he had illegally, with false pretences, obtained goods from him. He therefore knew the reason for his arrest immediately he was taken into custody.

52. One of the rights provided to arrested persons by the Constitution is the right to be brought before a court as soon as reasonably possible, but not later than twenty-four hours after being arrested – see Article 49(1)(f)(i). Article 49 (1)(f)(ii), nevertheless, provides a proviso that if the twenty-four hours ends outside ordinary court hours, or on a day that is not an ordinary court day, the arrested person should be presented to the court before the end of the next court day.

53. This Court takes judicial notice of the fact that the Petitioner was arrested on 1st February, 2019 which was a Friday. Kenyan courts do not ordinarily sit on Saturdays and Sundays. The Petitioner was presented to the court on 4th February, 2019 which was a Monday and the next court day after the day of his arrest. His arrest and presentation to the court was therefore in compliance with the provisions of Article 49(f) of the Constitution.

54. So far, there is no evidence that the 1st and 2nd respondents took the Petitioner through processes that were different from those that arrested persons are ordinarily subjected to. They cannot therefore be said to have abused the legal process or their statutory and constitutional powers.

55. The Petitioner seem to suggest that the fact that the DPP withdrew the case after he filed an application challenging his arrest and prosecution supports his claim that the 1st and 2nd respondents are guilty of abuse of process. The decision of the DPP to withdraw the charge does not of itself establish the Petitioner's claim that there was abuse of process. The impression I get is that of a professional prosecutor who upon the review of the evidence concluded that a conviction was not likely in circumstances where there was no evidence to link the Petitioner with the management and control of Ariane International. A mistake may have been made in the arrest and prosecution of the Petitioner but that error in judgment by the 1st and 2nd respondents cannot be equated to abuse of legal process or unconstitutional exercise of power by any of them. No evidence of abuse of power has been placed before the Court.

56. Before disposing of this matter, I must mention the alarming but incorrect submission by the Petitioner that all the respondents did not oppose the petition. The correct position is that the 1st Respondent (DPP) filed grounds of opposition dated 9th June, 2020. The decision of the Supreme Court in **Gideon Sitelu Konchellah (supra)** is therefore not an appropriate authority for declining to entertain the DPP's defence and submissions.

57. Having reviewed the evidence placed before this Court by the Petitioner, I find that he has failed to establish that the 1st and 2nd respondents violated any of his constitutional rights in the process of handling the 3rd Respondent's complaint.

58. For the reasons stated in this judgement, the petition fails and the same is dismissed with the parties being directed to meet their costs of the proceedings.

Dated, signed and delivered virtually at Nairobi this 11th day of February, 2021.

W. Korir,

Judge of the High Court