



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MAKUENI

HC CON PET NO. 8 OF 2017

**IN THE MATTER OF ARTICLES 1, 2(1), 3(1), 10, 19, 20, 21, 22, 27(1) AND (2), 29(a),
39(1), 40, 47, 48, 49(1) (f), 156, 157, 159, 165, 258, OF THE CONSTITUTION.**

AND

**IN THE MATTER OF ALLEGED CONTRAVENTION OF ARTICLES 10,
27(1) AND (2), 29, 39(1), 40, 47 AND 49(1) (f) OF THE CONSTITUTION.**

AND

**IN THE MATTER OF FAIR ADMINISTRATIVE ACTION ACT
AND IN THE MATTER OF SECTION 10 AND 35 OF THE
NATIONAL POLICE SERVICE ACT NO. 11A OF 2011**

AND

IN THE MATTER OF OB NO. 10/24/9/2016 MAKUENI POLICE STATION.

BETWEEN

MARY LAIRUMBI.....1ST PETITIONER

EVANS OLENYO MALANDE.....2ND PETITIONER

VERSUS

THE INSPECTOR GENERAL OF POLICE.....1ST RESPONDENT

THE DIRECTOR OF CRIMINAL INVESTIGATION...2ND RESPONDENT

THE DIRECTOR OF PUBLIC PROSECUTION.....3RD RESPONDENT

THE ATTORNEY GENERAL.....4TH RESPONDENT

BENJAMIN KYALO MWOLOLO.....5TH RESPONDENT

RULING

1. By motion dated 02/10/2017, the Applicant seek the following orders:-

1) Spent.

2) **THAT** an order of temporary injunction do issue restraining the Respondents whether by themselves agents and servants and whomsoever acting under their authority or instruction from charging, prosecution, arrest, continued harassment, questioning, intimidation, apprehension on any matter against the Petitioners concerning the report made to the Makueni Police Station and reported under OB No. 10/24/9/2016 pending the hearing and determination of this application.

3) **THAT** an order of temporary injunction do issue restraining the Respondents whether by themselves agents and servants and whomsoever acting under their authority or instruction from charging, prosecution, arrest, continued harassment, questioning, intimidation, apprehension on any matter against the Petitioners concerning the report made to the Makueni Police Station and reported under OB No. 10/24/9/2016 pending the hearing and determination of petition herein.

2. The same is based on provisions of Constitution Art. 10, 27 (1) (2), 29, 39(1), 40, 47 and 49 (1) Constitution of Kenya and Section 10 & 35 National Police Service Act No. 11A of 2011.

3. The same is supported by the grounds on the motion and Supporting Affidavit of Mary Lairumbi sworn on 02/10/2017.

4. The same is opposed by Respondent and Replying Affidavit sworn by James Kihara on 13/12/2007 and grounds of opposition dated 13/10/2017.

5. 5th Respondent Benjamin Kyalo Mwololo also swore Affidavit on 17/10/2017 to oppose the Notice of Motion.

6. Parties agreed to canvass the motion via Written Submissions which Petitioners and Respondent No. 5 filed and exchanged.

THE APPLICANT'S CASE

7. The 5th Respondent made report at Makueni police station on 24/09/2016 against Applicant No. 2 that he deposited Kshs. 800,000/= in Respondent No. 2 account after he (Respondent No. 2) cheated him on buying of land parcel UNOA 421.

8. There was no complaint against Respondent No. 1 who is the wife of Respondent No. 2. Subsequently Respondent No. 2 was arrested on allegation of obtaining money by false pretences and was released on cash bail of Kshs. 100,000/= but to date of the instant application, he had not been charged in court.

9. The police have been forcing him to report at the police station every fortnight since then. The police have now started payment of the same Kshs. 800,000/= by the Appellant No. 1 being wife of the Respondent No. 2 otherwise something bad would happen concerning her job.

10. Applicant No. 1 was compelled to write statement in relations to the complaint herein. Applicant No. 2 avers that the reporting conditions attached to the bail by police has curtailed his movement and adversely affected his business, thus seeks the orders.

RESPONDENT 1 & 2 CASE

11. The 5th Respondent deposited Kshs. 800,000/= to the Applicant No. 2 account for the purposes of buying the land parcel No. MAKUENI/UNOA/421 which belonged to other people's not him.

12. Thus complaint was made over the said fraud and police booked Applicant No. 2 for offence of obtaining by false pretense. He was arrested and released on cash bail of Kshs. 100,000/= in November 2017. The file was forwarded to the ODPP office for advice.

13. The DCI office directed further investigation be conducted. Between December 2017 and January 2018, statements of 6 persons were recorded in regard to the complaint.

14. After investigations it is recommended that both Petitioners be charged with various offences related to the complaint.

15. The file is with ODPP awaiting action as police are through with investigations.

3RD RESPONDENT CASE

16. The same is to the effect that the file on the matter is under the ODPP custody after it was forwarded to Nairobi Headquarters for clarification on some issues. Harassment and intimidation is denied or even invasion.

17. The ODPP and police are acting within their mandate under the law.

18. The 4th Respondent in the grounds of opposition centered; that the police have mandate to investigate and court should not interfere unless breach of law is demonstrated.

5TH RESPONDENT CASE

19. He says that he paid Kshs. 800,000/= to the 2nd Petitioner for the purchase of UNOA 421.
20. The deal turned to be fraudulent and he demanded refund of his money.
21. On 24/09/2016 he filed complaint with police and they took over investigation and the matter is being pursued thus opposes the motion.

PETITIONER'S SUBMISSIONS

Whether there is breach of article 27 of the Constitution.

22. The petitioners submit that they are entitled to protection of the law under Art 27 which right has been infringed by the respondents herein since they have delayed to arraign the petitioners before a court of law as it required by the law.
23. It is the contention of the petitioners that the continued delay in prosecution this case since 2016 has caused substantial prejudice against the 2nd petitioner because it is likely to impend fair trial.
24. It is also aggravating unnecessary costs to the 2nd Petitioner and subsequently caused specific hardships to him as he has also been required to appear before the OCS Makueni Police Station every fortnight since 18/11/2016.

Whether there is breach of article 39 of the Constitution.

25. **Article 39** of the Constitution provides that every person has the right to freedom of movement. The 2nd Petitioner's constitutional right of free movement has been curtailed by the actions of the respondents.
26. Since 18/11/2016, the respondents have been extending his bail terms hence requiring him to appear before the OCS Makueni Police Station every two weeks thus violating the his rights under Art 39.
27. His right to movement has been curtailed in that he cannot travel away from Makueni for a period exceeding two weeks and or on certain dates when he is required to report to the police station.

Whether there is a breach of articles 47 and 49(1)(f) of the Constitution.

28. It is the complain of the 2nd petitioner that his fundamental rights were breached by the respondents due to the unreasonable delay in commencement of the charges against him that he has not been arraigned in court after one year amounts to inordinate delay thus violation of art 49 (1) (f).
29. It is contended that, investigations in question are being conducted in bad faith with an ulterior motive solely motivated to achieve a collateral purpose other than legitimate objectives for administration of justice thus violation of Art 47 and sect 7 of Fair administrative action Act.
30. It is submitted that one of the Constitutional tenets of a fair hearing is that one's case should begin and be concluded without unreasonable delay as set out in Article 50(2). This delay has clearly caused irreparable prejudice to the petitioners' fundamental rights to fair trial within reasonable time.

Whether or not the Director of the Public Prosecution and the Directorate of Criminal Investigations have exercised their powers properly.

31. The office of the Director of Public Prosecutions is clearly provided under article 157 of the Constitution. The said article does not merely mean that the Director of Public Prosecution is a conveyor belt for each and every investigations and findings placed before him.
32. It is submitted that under Art 157 the office of the DPP is bound to interrogate the investigations presented to it and ensure that they comply and meet the Constitutional threshold.
33. **Article 157(11)** of the Constitution provides:-

“ 11 In exercising the powers conferred by this article, the Director of Public Prosecutions shall have regard to the public interest, the interests of administration of justice and the need to prevent and avoid abuse of the legal process.”

34. In **MUSYOKI KIMANTHI –VS- INSPECTOR GENERAL OF POLICE & 2 OTHERS [2014]** after setting out the provisions of Article 157 (4)(6) and (11) of the Constitution, Majanja J. held:-

“In light of the mandate conferred upon the DPP in Article 157 of the constitution, the High Court therefore ought not to interfere with the above mandate unless cogent reasons are given thus, that the DPP has acted without due regard to public interest, against the interest of the administration of justice and has not taken account of the need to prevent and avoid abuse of the court process. Although the DPP has the discretion to determine which complaint should lead to criminal prosecution, the High Court may intervene where that discretion has been abused or where the effect of the proceedings results in the abuse of

the court process.”

35. It is submitted that there is no reasonable explanation as to why the 2nd Petitioner has not been presented before a court of law since 18/11/2016.
36. This court is obliged under article 159(2)(e) of the constitution to protect and promote the purposes and principles of the constitution. The court is bound to adopt the interpretation that most favors the enforcement of the rights.
37. The charges against the 2nd petitioner are malicious as no proper investigations were carried out to establish the truth in it; neither was he given an opportunity to be heard but were instituted for a malicious and/or ulterior purpose and are calculated to embarrass, humiliate, vex and coerce him.
38. This clearly explains why the respondents have opted to harass and intimidate the 1st petitioner yet she was neither mentioned as a suspect nor a witness in the alleged transaction between the 2nd petitioner and the 5th respondent.
39. They have gone to the extent of threatening the 1st petitioner and the 5th respondent. They have gone to the extent of threatening the 1st petitioner that she would lose her job if she did not refund the money alleged to have been defrauded from the 5th respondent.
40. There is no evidence whatsoever to show that the petitioners actually transacted with the 5th respondent.
41. Nevertheless in this case there is no factual foundation upon which the facts which a year ago were deemed insufficient to sustain a criminal charge have had life breathed into them so as to be the basis of the subject criminal proceedings. It is our humble submission that the decision to charge the 2nd petitioner cannot be justified in the circumstances of this case.
42. In view of the conduct of the 2nd and 3rd respondent as stated herein any resulting process would amount to an abuse of process and therefore breach of article 157(11) of the Constitution.
43. It is therefore submitted that the court in exercising its power to prohibit the abuse of the intended criminal process as it is divorced from the goals of justice, and to find that the intended prosecution is not consistent with the constitutional values as enshrined under Article 10 and the tenets of good governance and the rule of law. They rely on the case of **REPUBLIC –VS- A.G. EXP KIPGNENO ARAP NGENY HIGH COURT CIVIL APP NO. 406 OF 2001.**
44. It is submitted that Petitioners are in danger of being denied a fair hearing in breach of their fundamental right as enshrined in the constitution thus violations of Articles 27, 29 & 50 of the constitution.
45. It is that, it is trite that the court is mandated to interfere with criminal proceedings where the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious.
46. To establish whether or not the proceedings were an abuse of the court process and vexatious, this court has to inquire into whether the petitioners’ rights were infringed as alleged and whether or not the motive behind the prosecution was to serve extraneous interest other than to serve the interest of justice as alleged by the petitioner, the petitioners rely on the cases of **VINCENT KIBIEGO SAINA –VS- ATTORNEY GENERAL, HCC MISC APPL. NO. 839 OF 1999 and JOHN MURITU KIGWE & ANOR HCCC NO. 223 OF 2000.**

5TH RESPONDENT SUBMISSIONS

47. It is submitted that under the functions of the office of Attorney General, the constitution empowers the office to Attorney General to uphold the rule of law and defend public interest. This is stated clearly under Article 156 (6) ***“The Attorney General shall promote, protect and uphold the rule of law and defend public interest.”***
48. The court is urged to also consider, Article 157 of the Constitution of Kenya which establishes the office of Director of Public Prosecution. Its functions are clearly stated in Article 157(4).
49. Article 157(4)

“The Director of Public Prosecutions shall have power to direct the Inspector General of the National Police Service to investigate any information or allegation of criminal conduct and the Inspector General shall comply with any such direction.”

50. It is submitted that the constitution has given the DPP autonomy of its functions and further shielded it from interference by any other authority. See Article 157(10) which states

“The Director of Public Prosecutions shall not require the consent of any person or authority for the commencement of criminal proceedings and in the exercise of his or her powers or functions shall not be under the direction or control of any person or authority.”

51. It is submitted the court should be weary to exercise its discretion in order not to encroach and/or intrude into the jurisdiction of the investigators of complaints and/or alleged crimes.

52. It is trite law that the court ought not to usurp the constitutional mandate of the respondents to investigate any matter see **REPUBLIC – VS- CHIEF MAGISTRATE MILIMANI & ANOR EX-PARTE TUSKEY MATTRESSES LTD & 3 OTHERS [2013] EKLR** and **REPUBLIC –VS- COMMISSIONER OF POLICE AND ANOR EX-PARTE MICHAEL MONARI & ANOR [2010] EKLR** and also **NBI HC MISC JUD REV APPL NO. 162 OF 2015 REPUBLIC –VS- THE DPP & 3 OTHERS.**

53. It is submitted that in this case, in light of the material placed before this court, the court cannot state that the acts and/or actions of the 1st through to 5th Respondent warrant issuance of orders sought by the petitioners.

54. Indeed it would be premature and further unconstitutional to grant sought orders. The orders sought should be based on concrete grounds that manifest abuse of judicial procedure to a point that public interest would be served by granting such stay orders.

55. In this case there is no evidence of malice, no evidence of unlawful actions, no evidence harassment or intimidation or even manipulation of the court process to warrant the court to exercise its discretion to warrant sought stay orders.

56. It is submitted that nothing done by the Respondents have been acts that would be unacceptable in a just, open and democratic society. The Petitioners having further failed to demonstrate how their rights have been infringed under Article 47 and 49.

ISSUES, ANALYSIS AND DETERMINATION

57. After going through the pleadings and submissions by Petitioner and 5th Respondent Advocate, I find the issues raised are:-

- i. Whether the Application has met the threshold for grant of conservatory orders of injunction sought?*
- ii. If the above is affirmative, what are the appropriate orders to grant?*
- iii. What is the orders as to costs?*

58. At this stage the Court is not called upon to make any definite finding either of fact or law as that is the province of the court that will ultimately hear the petition.

59. It is incumbent upon the Petitioner to establish a prima facie case with a likelihood of success.

60. He must also demonstrate that unless the conservatory order is granted there is real danger which may be prejudicial to him. In the case of **G.B.M. Kariuki vs. Director of Criminal Investigations & 3 others [2016] eKLR**. The court stated in paragraphs 35, 36 & 37 that:-

“Conservatory orders bear a more decided public law connotation: for these are orders to facilitate ordered functioning within the public agencies, as well as to uphold the adjudicatory authority of the court, in the public interest. Conservancy orders, therefore, are not unlike interlocutory injunction, linked to such private party issues as the prospects of irreparable harm occurring during the pendency of success in the applicant’s case for order 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.”

61. In the Supreme Court of Canada case of **Potash Corp of Saskatchewan In c V Mosaic Potash Esterhazy Ltd Partnership [2011] SJ No. 627(CA)** the court stated:

“.....the strength of the case, irreparable harm and a balance of convenience, consideration, although prescribed and necessary parts of the analysis mandated by the Supreme Court, are nonetheless not usefully seen as an inflexible straight jacket. Instead, they should be regarded as the framework in which a court will assess whether an injunction is warranted on any particular case. The ultimate focus of the court must always be on the justice and equity of the situation in issue.....there are important and considerate interconnections between the three tests. They are not water tight compartments.”

62. Thus, in constitutional petition, courts do not restrictively apply the principles espoused in **Giella Vs Cassman Brown** and those set out in the grant of mandatory interlocutory injunctions but give prominence to public interest considerations, which principle this court subscribes to and as was echoed by Muriithi J in **Mombasa Branch Vs Mombasa County Council Constitution 3/2014** that:-

“With respect, although the counsel for respondents submitted on the basis of the standard of prima facie case with regard to temporary injunctions in civil cases as established by the decision on Giella Vs Cassman Brown [1973] EA 358, the test for the grant of conservatory orders under constitutional applications must be qualified to take into account the premium that the constitution places upon the enjoyment of fundamental rights. such premium is to be seen in the easy access to the court that is granted to the applicants in terms of locus standi and the formality of documentation (See Article 22 of the Constitution). In such circumstances the balance of convenience test upon an arguable case being demonstrated by the applicant is more appropriate to preserve the enjoyment of rights pending hearing and determination of the petition for breach of fundamental human rights and freedoms. Needless to state, in terms of Article 24 of the Constitution the balance of convenience must involve balancing the rights of the applicant against the rights of others whose enjoyment of those or other rights may be jeopardized or affected by the enjoyment by the applicant of the rights in question.”

63. In the case of **G.B.M. Kariuki v Director of Criminal Investigations & 3 others** (supra), it was held at paragraph 37 as follows:-

“Needless to state, in terms of Article 24 of the Constitution the balance of convenience must involve balancing the rights of the applicant against the rights of others whose enjoyment of those or other rights may be jeopardized or affected by the enjoyment by the applicant of the rights in question.”

64. Musinga, J (as he then was) in Petition No. 16 of 2011, Nairobi – Centre For Rights Education and Awareness (CREAW) & 7 Others stated that:-

“...It is important to point out that the arguments that were advanced by Counsel and that I will take into account in this ruling relate to the prayer for a Conservatory Order in terms of prayer 3 of the Petitioner’s Application and not the Petition. I will therefore not delve into a detailed analysis of facts and law. At this stage, a party seeking a Conservatory Order only requires to demonstrate that he has a prima facie case with a likelihood of success and that unless the court grants the Conservatory Order, there is real danger that he will suffer prejudice as a result of the violation or threatened violation of the Constitution.”

65. In **The Centre for Human Rights and Democracy & Others vs. The Judges and Magistrates Vetting Board & Others Eldoret Petition No. 11 of 2012**, it was held by a majority as follows:

“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.”

66. Similarly, in **Judicial Service Commission vs. Speaker of the National Assembly & Another [2013] e KLR** this Court expressed itself as follows in regard to Conservatory orders:-

“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.”

67. In case of **MUMO VS. TRUSTED SOCIETY OF HUMAN RIGHTS ALLIANCE & 5 OTHERS** (supra) where the court rendered itself thus:

“However, we must hasten to make it clear that the person who moves the court for judicial redress in cases of this kind must be acting bona fide with a view to vindicating the cause of justice. Where a person is acting for personal gain or private profit or out of political motivation or other oblique consideration, the court should not allow itself to be seized at the instance of such person and must reject the application at the threshold.”

68. Whether the Petitioners/Applicants have established a *prima facie* Case?

69. It is now settled that whoever claims that his/her constitutional right is infringed or threatened first, the applicant ought to demonstrate a *prima facie* case with a likelihood of success and that in the absence of the conservatory orders he/she is likely to suffer prejudice. As was stated by Musinga J. (as he then was) in the case of **Centre for Rights Education and Awareness and 7 Others –v- The Attorney General [HCCP No. 16 of 2011]**:

“[Arguments] in this ruling relate to the prayer for a conservatory order..... At this stage, a party seeking a conservatory order only requires to demonstrate that he has a prima facie case with a likelihood of success and that unless the court grants the conservatory order, there is real danger that he will suffer prejudice as a result of the violation or threatened violation of the Constitution”.

70. The Applicant seek to stop Respondents from:-

- Charging.
- Prosecuting.
- Arrest.
- Harassment.
- Questioning.
- Intimidation.

- Apprehension on any matter against them on complaint made on 24/09/2016 pending hearing and determination of the petition.

71. This is because since then no action of charging them has been commenced and that Applicant No. 2 continues to report at police station every fortnight to date as a condition to his Kshs. 100,000/= bail deposited with police. This has curtailed his movement.

72. As for the 2nd Applicant, the police have subjected her to harassment and intimidation despite the fact that there was no complaint against her lodged.

73. However an un-re-butted averment by Corporal Edgar Kibet, after investigation various offences on fraud have been unearthed and thus recommendation for the 2 Petitioners to be charged with the same.

74. The police have even recorded statement of Applicant No. 1. The file been taken to ODPP Nairobi, to advise on the matter.

75. The claim by the Applicant is that there is inordinate delay in deciding on whether to charge them or not. They thus believe they are being prejudiced.

76. The court has perused in details the process undertaken by the Respondents 1 & 2 as deponed by Edgar Kibet and noted that the file is with the ODPP Nairobi.

77. There is no limitation period in the crimes proposed to be used to charge Applicant though the inordinate delay may prejudice defence and also ran foul with the provisions of the Article 47.

78. The court shall be reluctant to interfere with the prosecution investigation, arrest unless there is demonstration of breach of the law and the constitution.

79. In the case of **Republic –vs- Commissioner of police and another ex parte Michael Monari and Another (2012) Eklr** it was stated that;

“.....the police have a duty to investigate on 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 establish reasonable suspicion before preferring charges. The rest is left to the trial court as long as the prosecution and those charged with the responsibility of making the decision to charge act in a reasonable manner, the High Court would be reluctant to intervene.”

80. In the case of **Fredrick Masanhwe Mukasa –vs- Director of Public Prosecution and 3 others (2016) eKLR** Justice Nyakundi reiterated the sentiments of Lord Diplock in the case of **Council for Civil Service Unions –vs- Minister for Civil Service (1985) AC 374** at 401 D that;

“Judicial review has I think developed a stage today when one can conveniently classify under three heads, the grounds upon the first ground I will call illegality, the second irrationality and the third procedural impropriety. By illegality as a ground for judicial review, I mean that the decision making power and must give effects to it. By irrationality, I mean what can now be succinctly referred to as wednesbury (unreasonableness) it implies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it..... I have described the third head as procedural “impropriety” rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decisions.”

81. The constitution provides safeguarding to an accused person. In the case of **Ronald Leposo Musengi –vs- Director of Public Prosecution and 3 others (2015) eKLR** Justice Ngaah stated;

“I have reproduced the relevant provision of the article so an order to show that our constitutional has provided extensive safeguards to accused person when charged with a criminal offence and therefore, unless there is material upon which the court can find that the petitioner is unlikely to receive a fair trial before the trial court, the court ought not to interfere simply because the petitioner may at the end be found to be innocent.”

82. Further in the **Republic –vs- National Transport and Safety Authority and 10 Others ex parte James Maina Mugo (2015) eKLR** Odunga stated;

“The rationale for this is that Judicial Review jurisdiction is a special jurisdiction which is neither Civil nor Criminal. It follows that where an applicant brings judicial review contested matters of facts and in effect determine the merits of the dispute the court would not have jurisdiction in a judicial review proceeding to determine such a dispute and would leave the parties to ventilate the merits of the dispute in the ordinary civil courts or criminal courts.”

83. It is further illustrated in the case of **Kipoki Oreu Tasur –vs- Inspector General of Police and 5 Others (2014) eKLR** that:

“It’s not for this court to inquire into the evidence and the facts that give rise to the charges. Suffice to say that the authorities charged with investigation and prosecution have carried out investigation and found that offences under the penal code have been established.”

84. Since the investigations are concluded vide Edgar Kibet Affidavit, it is upon the ODPP to decide to proceed or not but they cannot put Applicant in limbo.

85. However the court is of view that there is no justification to stop arrest, charge and prosecution as it is within the Respondents No. 1 & 2 mandate provided the law is strictly followed.

86. However harassment, intimidation and invasion of Applicant homes is in bad taste and unlawful. Also further reporting every fortnight is by any standard harassment since investigations are complete.

87. The police and ODPP should either charge the Applicant or release his cash bail until they decide when to charge the Applicants.

88. The Applicants will be at liberty to challenge further delay in charging them once the matter goes to court or if charges are abandoned. In any case the petition is yet to be heard.

89. Thus the court makes the following orders:-

1. The Notice of Motion is dismissed with no orders as to costs.

2. The Respondent 1 & 2 are stopped from harassing, intimidating and coercing Applicants to pay the Kshs. 800,000/=.

3. The reporting every fortnight by Applicant No. 2 to the police is adjusted to quarterly and if charges are not instituted by the end of 6 months from the date herein, same to cease and cash bail be refunded.

Orders accordingly.

SIGNED, DATED AND DELIVERED THIS 20TH DAY OF JUNE, 2018, IN OPEN COURT.

C. KARIUKI

JUDGE

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