REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ANTI-CORRUPTION AND ECONOMIC CRIMES DIVISION MILIMANI

PETITION NO. 11 OF 2018

IN THE MATTER OF ARTICLES 48, 49(1) (f) (g) (h), (50) (2) (b) (c) (e) (e) (f) (o), (157 (11), (159) (2) (b) OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF ALLEGED CONTRAVENTION OF ARTICLES 48, 49(1) (f) (g) (h) AND 50(2) (b) (c) (f) OF THE CONSTITUTION OF KENYA

BETWEEN

LILIAN MBOGO OMOLO.....APPLICANT

VERSUS

DIRECTOR OF PUBLIC PROSECUTION.....RESPONDENT

JUDGMENT

INTRODUCTION

1. Lilian Mbogo Omolo (hereinafter referred to as "the petitioner''), has come to this court vide a Petition dated 7th June 2018 and filed on 8th June 2018 pursuant to Articles 48, 49(1) (f),(g)&(h), 50(2) (b), (c), (f), (g)& (o), 159(1) and (2) (b) of the Constitution seeking orders as follows:

(a) A declaration that the respondents have contravened the aforementioned provisions of the Constitution of Kenya.

(b) A declaration that the continued custody of the Petitioner without bail violates her rights as entrenched in Articles 49 (1) (g) and (h) of the Constitution of Kenya.

(c) An order of certiorari to quash the charges as contained in ACC 8 through to 17.

(d) An order of mandamus to compel the D.P.P. to frame charges relating to the Petitioner on their own to rid of duplicity.

(e) A declaratory order that the charges as framed and presented in ACC 8 through to 17 are unconstitutional and stand to violate the rights of the Petitioner as an accused person.

(f) An order directing the chief magistrate to admit the Petitioner to bail on reasonable terms.

(g) An order staying any further proceedings in the lower Courts until the prospect of means of how to achieve a fair and expeditious hearing to the petitioner and co-accused persons is determined.

(h) That the honourable court be pleased to direct that the matters be heard before a different court that is not prejudiced or set in its opinions by public and media pressure.

(i) That costs of the petition be provided for.

(j) Such other order(s) as this Honourable Court shall deem just.

2. Contemporaneously filed with the petition under certificate of urgency is a notice of motion of even date and filed the same day seeking:

(1) Spent.

(2) Spent.

(3) That the honourable court be pleased to stay any further proceedings in the lower courts in ACC's No. 8 to ACC's No. 17with respect to accused persons pending hearing and determination of this application interpartes.

(4) That the honourable court be pleased to stay any further proceedings in the lower courts in ACC's No. 8 to ACC's No. 17 with respect to accused persons pending hearing and determination of the applicant's substantive petition filed herein.

(5) That the court be pleased to issue such other and further order(s) as it may deem just and fit.

(6) That costs of this application be provided for.

3. The application is premised on grounds on the face of it and a supporting affidavit sworn by the Applicant on 7th June 2018. When the application was presented before the duty Judge on 8th June 2018, directions were made interalia; the petition and application to be served; the Respondent to file its response to the notice of motion within 7 days of service and mention on 19th June for directions. Subsequently, on 18th June 2018, the Respondent filed a replying affidavit sworn by IP Paul Waweru on the same day.

4. On 19th June 2018, parties appeared for interpartes hearing as directed. However, by consent they opted to compromise the hearing of the notice of motion in favour of the petition. Consequently, the Court collapsed the petition and application with directions that the petitioner's supporting affidavit to the application (notice of motion) be deemed as the affidavit in support of the petition and the Respondent's replying affidavit to the application to apply in response to petition. Further orders were made directing that the Petitioner was at liberty to file a further affidavit in case of need with corresponding leave to the Respondent. Again by consent, parties agreed to have the Petition disposed of by way of written submissions. The Petitioner was directed to file and serve her written submissions within 14 days and the Respondent to file and serve theirs within 7 days from the date of service. Subsequently, the mater was scheduled for highlighting of submissions on 12th July 2018.

5. Pursuant to the above directions, the Petitioner filed her submissions on 5th July 2018 through the firm of Rachier and Amollo LLP. Equally, the Respondent filed theirs together with a list of authorities on 12th July 2018.

Grounds upon which the petition is hinged

6. The grounds upon which this petition is predicated can be summarized as follows:

(a) That the respondent has lumped the petitioner in 10 cases each having over 30 accused persons, and in so doing has violated and threatens to violate the petitioner's rights in several regards:

(i) Article 50 (2) (e) to be imminently violated, as it is not possible to have ten (10) trials begin and end without unreasonable delay and that the Petitioner is likely to be locked in court battles for up to even 5 years.

(ii) The lumping of the petitioner in each of the 10 cases with a minimum of 30 and maximum 41 co-accused persons, raises the real risk of unreasonable delay in the likely event that one or more accused persons should abscond, be sick or absent for any number of reasons.

(iii) In trials with estimated 30 to 80 witnesses per case and at least 10 advocates per case, it is legally impossible to talk or expect to begin and conclude without unreasonable delay.

(iv) The very number of witnesses and the process of cross examination of each witness by over 10 advocates and by at least 30 or 40 people in each case portends by and of itself of unreasonable delay in each one of the 10 cases.

(v) Any application or challenge being raised would take an inordinate length of time to resolve.

(b) The manner and formation of the charges in the 10 cases, raises the real and inevitable prospect of double jeopardy in utter contravention of Article 50 (2) (o).

(c) The Petitioner's rights under Articles 49 (1) (h) and 50 (2) (a) have been traversed in that the Chief Magistrate has refused to grant the Petitioner bail for what is clearly a bailable offence without any cogent grounds to support such denial having been tendered or proven against her.

(d) The lumping of accused persons in massive numbers in each charge sheet also violates Article 50 (2) (c) by denying the petitioner time and facilities to prepare a defence.

(e) The petitioner is apprehensive of her rights under Article 50 (2) (f) and (g) as malicious charges against her are scattered in 10 cases, rather than consciously in one case, and then ten cases spread into three different courts such that it is primitive to her and she may likely wish to attend one court or case while attending another or out of confusion in tracking 10 cases simultaneously.

(f) Further, that the accused (petitioner) has hired 2 advocates to act in

consort which is impossible if the ten cases are to proceed simultaneously, forcing a split of duties in her team, thereby depriving her of advocate of her choice.

(g) That the fact that pre-trials concluded before the delivery of all evidence the prosecution intends to rely on, and so soon after bail ruling without allowing the petitioner time to receive review and study the evidence, is a direct abrogation of Article 50 (2) (i).

(h) That the impracticality of a fair hearing on the magistrate's court with the charges as drafted was self evident, when the presiding magistrate Hon. Ogoti, proposed that all accused persons' counsels select only one counsel to argue pre-trials, alleging it was not realistic to allow each accused person's Advocate address him during the trial conference.

Petitioner's Case

7. The petitioner's case is principally anchored on the aforesaid grounds and affidavit in support of the petition which in content are more less the same. It is the Petitioner's case that at all material times to this case, she was the principal secretary in the Ministry of Public Service, Youth and Gender and therefore not directly involved in every transaction undertaken by the ministry staff. That pertaining to this case, she has been charged on three counts to wit abuse of office, failure to put in place checks and conspiracy to commit a felony all scattered in 10 cases before three different courts instead of charging her in one charge sheet containing all the counts before one court.

8. It is her contention that she was not informed and furnished with a full list of the intended charges in good time before being arraigned in court. She argued that the splitting of charges as aforesaid amounted to an assault on her fundamental rights inter alia; access to justice, fair trial and exposure to double jeopardy in the event one court acquits and the other convicts on similar charges. She further stated that, the charges as currently drafted and presented before court in 10 separate charge sheets with a minimum of 3 counts in each file is meant to embarrass and intimidate her thus causing her mental anguish.

9. In support of the petition, Mr. Ligunya appearing for the Petitioner adopted the grounds set out on the face of the petition and affidavit in support. Counsel urged the court to quash the charges in Anti-Corruption Cases No. 8 to17 and make a declaration that the charges as drawn and presented before court violated the petitioner's constitutional rights to a fair trial.

10. In support of his proposition, Mr. Ligunya referred the court to the case of **Joseph Ndungu Kagiri vs R (2016) eKLR** where the court emphasized that the right to a fair trial is held at a much higher pedestal and that the court as the custodian of the law must ensure constitutional safeguards are protected and upheld at all times while upholding judicious, fair, transparent and expeditious trial.

11. It is Mr. Ligunya's submission that the charges as framed are devoid of any legal basis and are a sham, hence should not proceed to trial. He urged the court to quash the defective charge of failure to comply with applicable procedures and guidelines relating to management of public funds contrary to Section 45 (2) (b) as read with Section 48 of the Anti Corruption and Economic Crimes Act No. 3 of 2003 in that the Petitioner failed to comply with Section 68 (1) (A) and (3) of the Public Financial Management Act which does not create an offence.

12. Further, Mr. Ligunya opined that the Petitioner cannot be accused of failure to put in place control measures in a Ministry which is a ministerial function thus there is no proof of any actus reus nor mens rea. Regarding the aspect of double jeopardy, Mr. Ligunya observed that, there is a likelihood of one court acquitting or convicting the Petitioner in related charges while another does the opposite hence exposing the Petitioner to double jeopardy.

13. Concerning denial of the Petitioner adequate time and facilities to prepare, counsel asserted that the overloaded charges amounting to 25 counts in number amounts to a gross violation of her rights to a fair trial. To buttress his position, counsel referred the court to the case of **Peter Ochieng vs R (1985) eKLR** where the appellant was tried of 44 counts which the court found undesirable and instead recommended that not more than 12 counts should be preferred in a single charge sheet. In arriving at this conclusion, the Court of appeal cited with approval the case of **R vs Hudson and Hagan (1952) 36 CAR 94** where the court held that:

"the court has on many occasions pointed out how undesirable it is that a large number of counts should be contained in one indictment. Where prisoners are on trial and have a variety of offences alleged against them, the prosecution ought to be put on their election and compelled to proceed on a certain number only. Quite a reasonable number of counts can be proceeded on, say, three, four, five or six, and then, if there is no conviction on any of those, counsel for the prosecution can consider whether he will proceed with any other counts in the indictment. If there is a conviction, the other counts can remain on the file and need not necessarily be dealt with unless this court should for any other reason quash the conviction and order for the others to be tried. But it is undesirable that as many counts as were tried together in this case should be tried together, though the court desires to say that, in its opinion, the chairman dealt with the case admirably. It was a pity an application was not made to him for separate trial, or perhaps if he had a longer experience as chairman he might have said at once that he would not try all these counts together…it is quite possible to split the indictment up and put some counts in another indictment. It may increase the cost to some small amount, but any small increase of that sort is nothing compared with the danger there may be of not having a fair trial".

14. Lastly, Mr. Ligunya submitted that the charges now scattered in three separate courts are likely to deny the Petitioner an opportunity

envisaged in Article 50 (2) of the Constitution on a fair trial as she will not have sufficient time to prepare adequately for all the 10 cases and also legal representation of her choice in each case. To support this position, counsel referred the court to the case of **Maina Njenga vs R (2017) eKLR)** where the court stated that ;

> **"Where a limitation is to be placed on counsel of choice, it ought to meet the constitutional threshold. It must not compromise an accused person's right to a fair trial".**

Respondent's Case

15. Submitting for the Respondent, M/S Kahoro reiterated the contents contained in the Respondent's replying affidavit sworn by IP Waweru on the 18th June 2018, written submissions filed on 12th July 2018 together with a list of authorities. Learned counsel opposed the petition arguing that the Petitioner was arrested on 28th May 2018 and arraigned before court on 29th May 2018 in compliance with Article 49 (l)(f) of the Constitution. Counsel submitted that the 10 cases i.e. ACC Nos 8- 17/18 were registered separately because all the actions complained of against the Applicant and other Accused Persons arose from different transactions involving different amounts on tender awards in relation to different companies/business entities committed at different times hence could not be lumped together. M/S Kahoro contended that the power to prefer charges is purely within the remit of the DPP under Article 157 of Constitution.

16. It is M/s Kahoro's submission that framing, consolidation, substitution and joinder of charges are matters of discourse and determination before atrial court hence this petition is premature and an abuse of the court process. Counsel further asserted that the Petitioner having been arraigned before court within 24 hours after her arrest, supplied with a copy of charge sheet and plea taken in a language she understood, her rights to a fair trial were safeguarded.

17. Concerning the allegation that the Petitioner is likely to suffer double jeopardy by virtue of splitting the charges, Mr. Kahoro opined that the doctrine refers to the principle of collateral estoppel which means that once an issue has been determined, it cannot be litigated again between the same parties. Counsel referred the court to the case of **Nicholas Kipsgei Ngetich & 6 Others vs R (2016 eKLR** where the court held that Article 50 (2) (o) of the Constitution captures what is double jeopardy as:

> **"not to be tried for an offence in respect of an act or omission for which the accused person has been tried previously either acquitted or convicted".**

M/S Kahoro urged the court to find that the accused has not been tried, convicted or acquitted hence the principle of doubt jeopardy cannot apply.

18. As to defective charges, counsel urged the court to find that it is the responsibility of the trial court to make a determination in accordance with Section 89 (5), 137 and 214 of the CPC (Cap 75). To support her position, reference was made to the cases of **Thuita Mwangi and 2 others vs Ethics and Anti Corruption Commission and 3 others (2013) eKLR and William S.K. Ruto and Another vs Attorney General Nairobi HCCC No. 1192 of 2005(2010)s e KLR**.

19. Responding to the allegation of complexity and inconvenience experienced during pre-trial proceedings held before the trial court, M/S Kahoro submitted that the Respondent has since complied by supplying materials and documents relevant to the case(s) and that such supply is a continuous process and not a one off event (**See Thuita Mwangi & 2 Others vs Ethics and Anti Corruption Commission and 3 others (Supra).** As to the number of people charged in one case, M/s Kahoro urged the court to find that it does not amount to a violation of anybody's rights to a fair trial as it all depends on the circumstance of each case and that the DPP properly acted within the confines of **Article 157 of the Constitution**. To fortify this position, learned counsel made reference to the cases of **Cape Holdings Ltd. vs Attorney General and Another (2012) eKLR** and **John Swaka vs The DPP and 2 others (2013) eKLR**.

20. Concerning lack of sufficient evidence by the prosecution, M/S Kahoro asserted that it is not for this court to determine but rather the trial court upon conclusion of the trial, assessment, evaluation of evidence and a determination made. In support of this proposition, the court was further referred to the case of **Meixner vs Attorney General (2005) 2KLR 189**.

21. Finally, M/s Kahoro challenged the prayer for stay of proceedings as well as Judicial Review orders of Mandamus, certiorari and prohibition arguing that the Petitioner has failed to demonstrate that the Respondent has acted partially, capriciously, in bad faith or has abused the legal process. To bolster her case, learned counsel made reference to the cases of **Municpal Council of Mombasa vs R and Umoja Constultants Ltd (2002) eKLR)** and **R vs Commissioner of Police and Another Exparte Michael Monari and Another (2012) e KLR**.

Analysis and Determination

22. I have critically and carefully examined the petition herein, supporting affidavit, replying affidavit and detailed counsels' rival submissions. Issues that crystalize for consideration are:

> **(a) Whether charging the petitioner with 10 different cases with several co-accused persons tried in three different courts violates her fundamental right to a fair trial.**
>
> **(b) Whether the charges against the Petitioner in ACC Nos. 8 – 17/2018 Milimani Chief Magistrate's Court amounts to double jeopardy.**
>
> **(c) Whether the charges as preferred are defective.**

(d) Whether Judicial Review orders of Mandamus, certiorari or prohibition are applicable.

(e) Whether the petitioner's rights to bail pending trial was violated.

23. Having isolated the issues for determination, I would like to address each issue separately as hereunder:

(a) Whether charging the Petitioner (accused) with different cases with several co-accused persons in 3 different courts violates or is likely to violate her right to a fair trial

24. The right to a fair trial is underpinned under Article 50 (2) of the Constitution 2010 which provides thus:

"Every accused person has the right to a fair trial, which includes the right

(a) to be presumed innocent until the contrary is proved;

(b) to be informed of the charge, with sufficient detail to answer it;

(c) to have adequate time and facilities to prepare a defence;

(d) to a public trial before a court established under this Constitution;

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

(f) to be present when being tried, unless the conduct of the accused person makes it impossible for the trial to proceed;

(g) to choose and be represented by, an advocate, and to be informed of this right promptly;

(h) …

(i) to remain silent and not to testify during the proceedings;

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

(k) …

(l) …

(m) ...

(n) …

(i) …

(ii) …

(o) not to be tried for an offence in respect of an act or omission for which the accused person has previously been either acquitted or convicted.

(p) ...

(q) .....

25. The right to a fair trial is sacrosanct and a Constitutional imperative that is not subject to any limitation whatsoever under Article 25 (c) of the Constittution. Any denial or attempt to curtail its operation in criminal proceedings will render such proceedings null and void.

26. According to the Petitioner, she was not informed in advance the actual charges levelled against her and even when arraigned before court, she was charged with several counts in 10 separate files/cases triable before three separate courts a fact she claimed is embarrassing, intimidating and a denial of adequate legal representation by her two counsels who would have to spend their appearance in attending to different files in different courts instead of concentrating on one file at one given time.

27. It is not in dispute that the Petitioner is charged together with others in 10 different files being ACC Nos 8 – 17/18 Milimani Chief Magistrate's Court. Prior to her appearance for plea taking, the petitioner had been detained in police custody for one day which translates to 24 hours in compliance with Article 49 (1) (f) of the Constitution. When the plea was taken, she was supplied with a copy of the charge sheet in the presence of her legal representative and an order for supply of necessary documentary exhibits or otherwise made promptly. The

argument that the Petitioner was harassed prior to her arraignment before court is not founded on any tangible evidence or substantiated.

28. The power to direct investigation, recommend and or generally institute and undertake proceedings is within the remit of the DPP pursuant to Article 157 of the Constitution. The guidelines, manner and style of drawing charges is anchored under Sections 134 – 137 of the Criminal procedure code Cap 75. It then follows that the DPP has powers to institute criminal proceedings against anybody who in his opinion is culpable of an offence based on evidence placed before him. However, in exercise of that authority, the DPP must act judicially and with utmost good faith without abusing his office or acting under direction(s) from any quarters. To that extent I do agree with M/S Kaharo that the DPP cannot be directed on who to charge or which case to prefer. However, enforceability or sustainability of the DPP's powers on which charges to prefer is subject to certain legal parameters or threshold with court's concurrence.

29. To what extent is the petitioner likely to suffer in the face of having been charged of 10 cases each containing a minimum of three counts and scheduled to be heard before three separate courts? In total, the petitioner is facing ten cases constituting of a total of 25 counts but split into between 3 – 4 counts per file.

30. The issue regarding the maximum number of counts an accused person should be charged with or with how many co-accused persons in any particular case (charge sheet) or at any particular time is not stipulated in any written law. However, various courts have addressed the effect of having several counts in a single charge sheet arguing that it is embarrassing and inconveniencing on the defence. Superior Courts have therefore recommended not more than twelve counts should be preferred in a single charge sheet against an accused person. Such prudent decision is however left to the discretion of the trial court to either allow a joinder or recommend separate charges after taking into account a likelihood of duplicating proceedings, extra expenses, inconvenience and prejudice to the accused person.

31. In the case of **Peter Ochieng vs R (supra),** the court of appeal had this to say:

> **"there is one other matter to which we should refer. It is undesirable to charge an accused person with so many counts in one charge sheet. That alone may occasion prejudice. It is proper for a court to put the prosecution to its election at the inception of the trial as to the counts, upon which it wishes it to proceed. Usually, though not invariably, no more than twelve counts should be laid in one charge sheet...."**.

32. In compliance with the wisdom imparted by the Court of Appeal in the Ochieng case, the Petitioner is not charged with more than five counts in a single charge sheet. If accused were to be charged in a single charge sheet as submitted by her counsel, then 25 counts would have been preferred hence prejudicing the Petitioner. To prefer a joint charge or charges against Accused persons alleged to have committed separate offences on different dates would amount to a misjoinder hence a defective charge. For clarity purposes and proper understanding of the specific charges levelled against each accused person, separate charges are recommended depending on the circumstances of each case(See **Malebe vs R)(1982) IKLR 32.**

33. However, the power to order separate charges lies with the trial court pursuant to Section 135(3) of the Criminal Procedure Code Cap 75 subject to the circumstances of each case and nature of evidence which information is not within the knowledge of this court. In the instant case, accused is charged of various offences committed at different times in respect to different transactions relating to tenders awarded to different companies or entities. With this in mind, it is desirable to have separate criminal proceedings for purposes of convenience.

34. The fact that one has several cases pending in court for offences committed at different times in respect to distinct transactions is not a bar to subsequent charges being preferred. I am alive to the fact that the word convenience is relative. Whereas it may not be convenient for the accused in terms of hiring a lawyer or time spent in court while moving from court to court, it will also be convenient in understanding the exact distinct charges in a separate trial. Considering the nature of the charges the Petitioner is facing where colossal sums of money was allegedly lost, it will not be in the public interest to withdraw some charges or hold them in abeyance pending the outcome of the others. To do so will amount to discrimination as some accused persons facing similar charges or related charges would have to be set free especially where conspiracy is alleged thus leading to loss of money involved in the transaction.

35. I do not see any prejudice in being charged separately for offences committed at different times, involving different amounts of money and affecting different companies. Where appropriate depending on the nature of evidence, the trial court is in a better position to act by directing on separate charges or joinder.

36. Whether the applicant will be inconvenienced by way of losing track or missing some court sessions, it is all about planning one's diary such that not more than one case proceeds at any one given time.

(b) Whether the charges against the petitioner amounts to double jeopardy

37. It is the petitioner's contention that the charges preferred and being tried in different courts are likely to subject her to double jeopardy as one court is likely to convict and the other acquit and vice versa. The doctrine of double jeopardy is only applicable where a trial has been concluded and a determination made either acquitting or convicting the accused hence no charges of similar nature should be preferred **(See Nicholas Kipsigei Ngetich & 6 Others vs R (Supra)**. It is my finding that the claim of double jeopardy before the trial commences is merely speculative and untenable since the charges are independent of each other and each court will consider the relevant evidence and arrive at an appropriate decision which will not have any nexus with similar offence with different particulars in another court. The doctrine of Autroffois Acquit or convict is not applicable in the circumstances.

(c) Whether the charges preferred are defective

38. Mr. Ligunya invited this court to consider and find the preferred charges with reference to Section 68 of the Public Finance Management Act as defective as the said section does not provide a penalty. A petition for declaratory orders cannot be extended to determination of whether the charges preferred are defective or not. That is the role of the trial court under Section 89 of the Criminal Procedure Code which

if not addressed will constitute a ground of appeal or revision. In arriving at this holding, I am guided by the finding in the case of **William S.K. Ruto and Another vs Attorney General (Supra)** where the court held that:

> **".....the fact that the charge is defective does not raise a constitutional issue".**

For those reasons, I do not find that ground sustainable. Regarding lack of sufficient evidence, that is for the trial court to determine upon conducting the trial.

(d) Whether orders of Judicial Review can apply

39. It is trite that Judicial Review orders only apply where the process leading to a decision or how the decision was arrived at by a public entity or body or person is unlawful, illegal or absurd hence the prayer to quash the same. The party seeking such prayers is duty bound to prove that the Responded acted in excess of jurisdiction, breached the rules of natural justice or considered extraneous matter or was actuated with malice (**See R vs Commissioner of Police and Another Exparte Michael Monari and Another (Supra)**. It is my holding that the judicial review orders sought have no relevance in this case.

(e) Whether the Petitioner's rights to trial were violated

40. It is Mr. Ligunya's assertion that his client was denied bail contrary to Article 49 (2) of the Constitution. However, I take judicial notice that the issue is now moot as the petitioner and her co-accused were granted bail by the High Court after the lower court denied the samme. I do not need to belabour on this matter as it is spent.

Conclusion

41. Having addressed the issues in controversy, it is my finding that;

> **(a) the Petitioner was properly charged before court without undue delay, accorded an opportunity to be represented by an advocate of her choice and subsequently supplied with relevant documentary evidence during the pre-trial stage.**
>
> **(b) Institution of charges against an accused person is a Prerogative of the Director of public prosecution**
>
> **(c) In recommending charges, it is advisable to prefer separate charges where the act or omission complained of is distinct in terms of transaction, time committed and separate parties involved hence the Petitioner was not prejudiced in any way**
>
> **(d) To avoid unnecessary inconvenience and or embarrassment, it is desirable for the prosecution not to prefer more than twelve counts in a single indictment against an accused person which is not the case in the instant case**
>
> **(e) Determination whether a charge sheet is defective or not is not a constitutional issue calling for declaratory orders as purported by the Petitioner herein**
>
> **(f) The doctrine of double jeopardy is applicable only where a trial has been concluded and a determination made hence not applicable in this case as the trial has not even started**
>
> **(g) The issue of denial of bail which is a constitutional right is now moot as the same has since been granted.**

42. Accordingly, I am satisfied that the Petition herein is not merited and the orders sought are not applicable hence dismissed with no order as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 26th DAY OF SEPTEMBER, 2018.

J.N. ONYIEGO

JUDGE