



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**

**PETITION NO. 2 OF 2013**

**IN THE MATTER OF THE CONSTITUTION OF THE REPUBLIC OF KENYA**

**AND**

**IN THE MATTER OF ARTICLES 22, 23(3) (f), 25 (c), 27 (1), (2), 40, 47, 50, 157 (6), (10), (11), 259  
(1) OF THE CONSTITUTION OF KENYA**

**AND IN THE MATTER OF MAVOKO PRINCIPAL MAGISTRATE'S COURT CRIMINAL  
CASE NO. 525 OF 2012**

**BETWEEN**

**RUGA GITUKU.....  
.....PETITIONER**

**VERSUS**

**1. THE DIRECTOR OF PUBLIC PROSECUTION**

**2. PHILIP LEMEITEI SIRONKA**

**3. THE PRINCIPAL MAGISTRATE'S COURT MAVOKO LAW COURTS.....  
RESPONDENT**

**JUDGMENT**

1. The petitioner has filed this petition seeking the following orders:

- i. A declaration that the Mavoko Principal Magistrate's Court Criminal Case No. 525 of 2012 Republic v. Ruga Gituku is an infringement breach of otherwise a contravention of the petitioner's right to fair trial as enshrined in Article 50 of the Constitution.
- ii. A declaration that the Mavoko Principal Magistrate's Court Criminal Case No. 525 of 2012 R v. Ruga Gituku is a breach or otherwise a contravention of the petitioner's right to equality before the law, equal protection and equal benefit of the law as enshrined in Article 27 (1) of the Constitution.
- iii. A declaration that the Mavoko Principal Magistrate's Court Criminal Case No. 525 of 2012, R v. Ruga Gituku is a threat to the petitioner's right to property as enshrined in Article 40 of the Constitution.

iv. A declaration that the charges against the petitioner preferred over 24 years after the events of the alleged offence occurred are vexatious, oppressive, tantamount to harassment, an abuse of court process and contrary to public interests of administration of justice contrary to Article 157 (11) of the Constitution.

v. An order of Judicial Review in form of an order of prohibition do issue prohibiting the 1<sup>st</sup> respondent from prosecuting or further prosecuting or preferring and prosecution charges preferred against the petitioner in Mavoko Principal Magistrate's Court Criminal Case No. 525 of 2012, R v. Ruga Gituku or any variation thereof or any charge of charges akin to the same Mavoko Principal Magistrate's Court Criminal Case No. 525 of 2012, R v. Ruga Gituku.

vi. An order of Judicial Review in form of an order of prohibition do issue prohibiting the Principal Magistrates Court Mavoko and or any other magistrate from hearing or further hearing and determining the charges preferred against the petitioner in Mavoko Principal Magistrate's Court Criminal Case No. 525 of 2012, R v. Ruga Gituku or any variation of thereof or any charge or charges in substitution thereof akin to the same in Mavoko Principal Magistrate's Court Criminal Case No. 525 of 2012, R v. Ruga Gituku.

2. The petitioner herein is the registered owner of land Known as Kajiado/Kaputiei- North/2864, 2865, 2866, 2867, 2868, 2869, 2870, 2871, 2872, 2873, 2974, 2875, 2876, 2877, 2878, 2879, 2880, 2881, 2882 and 2883 measuring 5 acres each. He later purchased two plots within Plot No. 42, Emboloi Group Ranch each measuring approximately 50 acres between the year 1984 and 1987. The two had no titles but later a titled deed was procured for the same and the petitioner was transferred to the 100 acres being Parcel No. Kajiado/Kaputiei – North 1076. Sometime in the year 2011, the 2<sup>nd</sup> respondent filed a dispute in Kajiado North District Lands Dispute Tribunal Dispute No. TC/282/2/011 which dispute was heard and determined with the effect that the tribunal dismissed the 2<sup>nd</sup> respondent's claim. The 2<sup>nd</sup> respondent subsequently filed Judicial Review application, Machakos High Court Miscellaneous Application No. 58 of 2012 which is said to be pending. Another suit was filed by the 2<sup>nd</sup> respondent, Machakos High Court Civil Suit No. 108 of 2011 together with an application dated 12<sup>th</sup> May, 2011 seeking for injunctive orders. A second application dated 14<sup>th</sup> June, 2012 was filed in Machakos High Court Civil Suit No. 108 of 2011 which application was dismissed.

3. The 2<sup>nd</sup> respondent later made a report and the petitioner was on 28<sup>th</sup> August, 2012 charged with the offence of forgery contrary to section 345 as read with section 349 of the Penal Code in Mavoko Principal Magistrate's Court Criminal Case No. 525 of 2012, R v. Ruga Gituku.

4. It is the said prosecution in Mavoko Principal Magistrate's Court Criminal Case No. 525 of 2012, R v. Ruga Gituku that has occasioned the filing of this petition. The petitioner's case is that the motive behind the criminal case is not on the interest of justice but to serve extraneous purposes. He alleged that the 2<sup>nd</sup> respondent's interest is to procure a conviction and use the same as evidence or as a means of procuring evidence of the alleged fraud in the series of civil suits. He stated that the said is illustrated by the notice to produce documents filed and served upon him by the prosecution giving him and his advocate notice that the prosecution intend to rely on secondary evidence. That the prosecution does not have original documents they intend to rely on but have merely photocopied documents his advocate filed in opposition of the application. That even the exhibits used to analyze the signatures in a bid to prove fraud and sample signatures submitted by the prosecution were analyzed using copies of documents that his advocate filed in Civil Suit No. 108 of 2011 instead of the original documents as provided for in the Evidence Act. That during the analysis, the document examiner used current samples of the 2<sup>nd</sup> respondent compared with samples written over 24 years ago yet handwritings and signatures change over time due to age. He lamented that the delay of over 24 years in prosecuting him shall occasion him unfair trial since it has commenced after a rather long and inordinate delay and amounts to contravention of his rights enshrined under Article 50 (2) (e) of the Constitution. That his right to adduce and challenge evidence under Article 50 (2) (k) will be infringed upon for the reasons that; it will be surmountable to trace all the relevant documents including banking transactions from KCB, the Purka Land Control Board which issued the consent to sub divide and transfer land way back in the year 1988 and the Agricultural Finance

Corporation; it will be hard to trace all the witnesses who were present when he was transacting with the 2<sup>nd</sup> respondent including the advocate who drew the agreement for sale and attested the transfer whose whereabouts he alleges he does not know, the members of the Land Control Board before whom the consent to transfer and the surveyor who undertook the subdivision of Kajiado/Kaputiei- North/713 into Kajiado/Kaputiei – North/1076 and 1077; and that even if he were to trace the foregoing witnesses, it shall be hard for the witnesses to remember the specific details of the transaction, given the fact that a period of over 24 years have lapsed since the events referred in the criminal case occurred. He further alleged that his right to property as enshrined in Article 40 of the Constitution is threatened as he is the registered owner of the parcels of land Known as Kajiado/Kaputiei- North/2864, 2865, 2866, 2867, 2868, 2869, 2870, 2871, 2872, 2873, 2974, 2875, 2876, 2877, 2878, 2879, 2880, 2881, 2882 and 2883 and therefore the absolute owner thereof. That the trial offends Article 157 (11) of the Constitution in as much as the 1<sup>st</sup> respondent failed to consider that the trial would be against public interest policy to prosecute him after 27 years of the occurrence of the alleged offence against the interest of the administration of justice and would result to an abuse of court process.

5. The 1<sup>st</sup> respondent's response to the petition was by Corporal Dickson Musya Mutemi's replying affidavit sworn and filed on 25<sup>th</sup> June, 2013. He contended that he was assigned to investigate the 2<sup>nd</sup> respondent's material complaint which was made on 16<sup>th</sup> July, 2012. That his investigations revealed that an offence of forgery had been committed on 8<sup>th</sup> May, 1987 and the petitioner was then charged on 29<sup>th</sup> August, 2012. That the criminal law justice system and public interest requires that accused of violation of the law be tried in accordance with the law from the time of discovery of the offence. that there is no time limit within which a complaint should be filed in a criminal matter. That there has been no delay in investigating and making the decision to charge the petitioner and further that the petitioner was charged with offences that are known in law thereby will be accorded fair trial.

6. The 2<sup>nd</sup> respondent in his replying affidavit sworn and filed on 28<sup>th</sup> February, 2013 opposed the petition. The 2<sup>nd</sup> respondent denied the allegations by the petitioner particularly that, there has been delay in prosecuting the matter since the petitioner went into hiding and had deliberately not settled or caused development on the property and he was only able to trace him in the year 2011, that criminal cases are not governed by Limitation of Actions Act and that section 26 of the said Act makes exceptions on the running of time for cases pertaining to fraud, mistake and ignorance of material facts, that there is evidence that the petitioner committed the offences he has been charged with, that the thumb print analysis provided by the prosecution demonstrate that the thumb print affixed in the said alleged agreement does not belong to his mother, that there is no infringement of the petitioner's fundamental right nor violation to right to equality. That the petitioner has not demonstrated any difficulty in procuring documents from Kenya Commercial Bank, Purka Land Control Board, Agricultural Finance Corporation and Emboloi Group Ranch Limited and that documents are in possession of the petitioner. The 2<sup>nd</sup> respondent contended that he is an illiterate Maasai and did not think the petitioner would disappear with his title deeds. That although he had not obtained a certificate of title he on 16<sup>th</sup> November, 1984 entered into a sale agreement with the petitioner for sale of some fifty (50) acres of his land at KShs. 1,300/- per acre making the total aggregate of KShs. 65,000/-. That due to some financial pressure he approached Agricultural Finance Corporation (AFC) Kajiado branch to advance him unsecured loan and was advanced KShs. 40,000/- payable within 5 years on condition that the money would be recovered once the Group Ranch was dissolved and the certificate of title deeds issued. That in the year 1987, he was issued with a certificate of title to all the property L.R. Kajiado/Kaputei-North/713 measuring 64.4 Ha and he therefore became the indefeasible and absolute owner. That as per the agreement, he presented the certificate to AFC to be held as security for the collateral of the finances he had borrowed. That he was unable to furnish the loan and approached people for help including the petitioner. That it was agreed that the petitioner pays off the balance of the loan being KShs. 52,000/- and an additional KShs. 290,000/- so that he could purchase an extra 50 acres hence obtaining 100 acres. That all that was a gentle man's agreement and there was no express written agreement and that the 2<sup>nd</sup> respondent's family was not aware of the agreements he entered into. That upon making payment, the title was released to him on 27<sup>th</sup> January, 1988 and he caused the subdivision thereof to L.R. Kajiado/Kaputei- North 1076 measuring 40.47 Ha (100 acres) and L.R. Kajiado/Kaputei- North 1077 measuring 46.51 Ha (114.93 acres). That he

handed over the title deed for L.R. Kajiado/Kaputei- North 1076 to the petitioner as security for the loan of KShs. 290,000/- the petitioner had paid for him. That after expiry of three (3) months as agreed, the petitioner failed to pay the sum of KShs. 290,000/- and instead sent surveyors to re survey the land and claimed that the land was less than 100 acres. That the petitioner moved beacons to cover extra 2 acres to compensate for the alleged loss of 2 acres. He stated that the petitioner disappeared and all efforts to trace him were fruitless until the year 2004. That the petitioner requested the 2<sup>nd</sup> respondent to give him three months within which to pay the KShs. 290,000/-. That sometime in the year 1993, the land was taken by the government for purposes of construction of the tarmac Kiserian – Isinya pipeline road and he continued looking for the petitioner urging not to be the one to receive money for compensation since his names were still on the title documents. That when he conducted a search, it revealed that the land had been fraudulently subdivided into 10 plots being L.R. No. Kajiado/ Kaputei- North /1157, 1158, 1159, 1160, 1161, 1162, 1163, 1164, 1165 and 1166. That the paradox is that L.R. No. Kajiado/ Kaputei- North /1076 was still in the 2<sup>nd</sup> respondent's name as per the District Land Registrar's records.

7. I have considered the dispositions of the parties in this petition. The issue that fall for determination are:

i. Whether or not this court can interfere with the criminal proceedings, in particular Mavoko Principal Magistrate's Court Criminal Case No. 525 of 2012, R v. Ruga Gituku.

8. On this question, the petitioner submitted that while the Director of Public Prosecution has the powers under Article 157 (6) (a) and (11) to institute and undertake criminal proceedings against any person in respect of any offence and that the said power ought to be exercised with due regard to public interest, the High Court is vested with the jurisdiction to issue orders of judicial review including the orders by the DPP to prosecute. To illustrate the said argument the petitioner cited **Samuel Rono Gicheru & another v. O. C. S. Nanyuki Police Station & Another Miscellaneous Criminal Application No. 22 of 2014, Kuria & 3 others v. Attorney General** and **Joram Mwenda Guantai v. The Chief Magistrate (2007) 2 EA 170**. The respondent did not submit to this extent. The courts in these decisions were all of the view that High 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. It follows therefore that this court has the jurisdiction to interfere with the proceedings in Mavoko Principal Magistrate's Court Criminal Case No. 525 of 2012, R v. Ruga Gituku if it finds it to be an abuse of the process of the court and is oppressive and vexatious.

9. To establish whether or not the proceedings were an abuse of the court process and vexatious, this court has to inquire into whether the petitioner's rights were infringed as alleged and whether or not the motive behind the prosecution was to serve extraneous interests other than to serve the interest of justice as alleged by the petitioner. The petitioner argued that it was after filing a series of claims before the tribunal, judicial review and a civil claim which failed that the 2<sup>nd</sup> respondent resorted to making a report of forgery. That it is therefore clear that the criminal case was instituted for extraneous purposes. That it was a scheme to fish out evidence after he had failed to prove fraud in all the civil suits. That due to the aforesaid, the criminal trial is an abuse of court process. That in the strength of the words of the court in **Thomas Nyakambi Maosa v. Kibera Chief Magistrate & 3 others, JR Miscellaneous Civil Application No. 303 of 2013**, continuation of criminal matters instituted for extraneous purposes ought to be stopped. Also cited were **R v. Attorney General Ex parte Kipngeno Arap Ngeny High Court Civil Application No. 406 of 2001**, **Republic v. Chief Magistrate's Court at Mombasa Ex parte Ganjee & another [2002] 2 KLR 703** and **Republic v. Director of Public Prosecution & 2 others Ex Parte Praxidis Namoni Saisi, Miscellaneous Civil Application No. 502 of 2015** in which the need for a prosecutor to have in mind the reasonable and probable cause for mounting a criminal prosecution and not prosecution to advance the frustrations of complainant's civil cases. It was argued that the basis of the charge were the malicious intentions of the 2<sup>nd</sup> respondent veiled under a complaint of forgery materializing to criminal charges against the petitioner. It was submitted that the petitioner was charged in the year 2011 for offences alleged to have occurred in the year 1987 i.e. 27 years down the line. It was argued that the said delay was unreasonable and the reasons tendered by the respondent for the delay was not plausible. To advance his case of unreasonableness of delay he relied on **Jago v. The District Court**

of South Wales & others, 168 C.L.R. 23, 12<sup>th</sup> October, 1989, **Githunguri v. Republic (1985) KLR 103** and **Attorney General Exparte Kiggeno** (supra). It was argued that on the basis of Article 50 (2) (e) of the Constitution, the right to speedy trial was not separate and distinct from a right to fair trial.

10. On the other hand, it was submitted on behalf of the 2<sup>nd</sup> respondent that the matter was reported on 16<sup>th</sup> July, 2012 and investigations subsequently commenced. Charges were preferred on 29<sup>th</sup> August, 2012. That although the offence was not reported in 1987 when it occurred, there exists no limitation on criminal cases. The 2<sup>nd</sup> respondent cited **Republic v. Attorney General & 4 others ex parte Diamond Hasham Lalji and Ahmed Hasham Lalji [2014] eKLR**. It was argued that the cases relied on by the petitioner, particularly **Githunguri** and **Kipng'eno** cases (supra) disregarded that in both cases, the trial process had commenced and that the delay in the said cases was on the part of the Attorney General. It was submitted that the prosecution was not malicious since the law provides for avenues both criminal and civil for seeking recourse. That what constitutes abuse of legal process would be where discretion is being exercised with a view to achieving extraneous goals other than those legally recognized by the Constitution. He cited **Dream Camp Kenya Ltd v. Mohamed Eltaff and 3 others (2013) eKLR** where Odunga J held:

***“That the aftermath of vexatious and frivolous litigations is normally taken care of by way of costs. The discomfort of litigation would not certainly render the success of the intended appeal nugatory if we do grant the application sought.”***

11. According to the petitioner, sometimes he bought the material properties from the 2<sup>nd</sup> respondent sometime between 1984 and 1987 and acquired interest over the said parcels of land. He retained the beneficial interest and was later registered as the proprietor thereof. He maintained that he observed all the terms of agreement for sale. In the year 2011, that is 24 years later, the 2<sup>nd</sup> respondent filed a series of suits claiming that the petitioner obtained the properties from him fraudulently. The 2<sup>nd</sup> respondent failed in Kajiado North District Lands Dispute Tribunal Dispute No. TC/282/2/011 and Machakos High Court Civil Suit No. 108 of 2011 in which he sought injunctive orders against the petitioner, failed. Judicial Review application, Machakos High Court Miscellaneous Application No. 58 of 2012 is pending in court. Shortly after the filing of the said suit, the 2<sup>nd</sup> respondent on 28<sup>th</sup> August, 2012 instigate the filing of Mavoko Principal Magistrate’s Court Criminal Case No. 525 of 2012, R v. Ruga Gituku where the 2<sup>nd</sup> respondent claims that the ownership of the pieces of land was obtained by a forgery. While the 2<sup>nd</sup> respondent contended that the delay in instigating the suit late was because the petitioner was at large, the said explanation is not satisfactory. I say so for the reason that the criminal case has been brought after two of the 2<sup>nd</sup> petitioner’s cases have failed in finding that the property was obtained fraudulently. It is clear to me that the 2<sup>nd</sup> respondent is using the criminal case to hunt down the petitioner having failed in the civil cases. The criminal case is therefore an abuse of the Court process and is meant to embarrass the petitioner.

Majanja, J had this to say in **Francis Kirima M’ikunyua & Others vs. Director of Public Prosecutions, Nairobi Petition No. 461 of 2012** when dealing with a case where there existed criminal and civil proceedings arising from the same facts:

***“It is very clear that the criminal process and the resultant court proceedings are being used to settle what is otherwise civil dispute which has been the subject of several court cases and indeed decisions. It is clear to me that the contending parties wish to use the criminal process to score points against each side in order to assert the rights of ownership. The use of the criminal process in this manner is not uncommon within this jurisdiction to find that intractable land disputes mutate into criminal matters. It is not difficult to see why. In criminal cases the State’s coercive power is brought to bear upon the individual and where we have an inefficient system to settle civil claims, a person who can tie his opponent in the criminal justice system and ultimately secure a conviction will no doubt have an advantage over his opponent.”***

See also: **Republic vs. Chief Magistrate’s Court at Mombasa Ex Parte Ganijee & Another [2002] 2**

KLR 703, where it was held:

*“It is not the purpose of a criminal investigation or a criminal charge or prosecution to help individuals in the advancement of frustrations of their civil cases. That is an abuse of the process of the court. No matter how serious the criminal charges may be, they should not be allowed to stand if their predominant purpose is to further some other ulterior purpose. The sole purpose of criminal proceedings is not for the advancement and championing of a civil cause of one or both parties in a civil dispute, but it is to be impartially exercised in the interest of the general public interest. When a prosecution is not impartial or when it is being used to further a civil case, the court must put a halt to the criminal process. No one is allowed to use the machinery of justice to cause injustice and no one is allowed to use criminal proceedings to interfere with a fair civil trial. If a criminal prosecution is an abuse of the process of the court, oppressive or vexatious, prohibition and/or certiorari will issue and go forth...When a remedy is elsewhere provided and available to person to enforce an order of a civil court in his favour, there is no valid reason why he should be permitted to invoke the assistance of the criminal law for the purpose of enforcement. For in a criminal case a person is put in jeopardy and his personal liberty is involved. If the object of the appellant is to over-awe the respondent by brandishing at him the sword of punishment thereunder, such an object is unworthy to say the least and cannot be countenanced by the court... In this matter the interested party is more actuated by a desire to punish the applicant or to oppress him into acceding to his demands by brandishing the sword of punishment under the criminal law, than in any genuine desire to punish on behalf of the public a crime committed. The predominant purpose is to further that ulterior motive and that is when the High Court steps in...”*

12. The 2<sup>nd</sup> respondent realized the alleged forgery many years back and it would have been prudent for him to make the report then. Reporting a criminal case does not quite require a person to have a suspect in his confines rather the identity of the suspect. If subjected to trial without according him the chance to get his evidence his right to fair trial will have been infringed. I am guided by Supreme Court of India in **Natasha Singh v. CB [2013] 5 SCC 741** where it was held that:

*“Fair trial is the main object of criminal procedure, and it is the duty of the court to ensure that such fairness is not hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society must be ensured as this is a constitutional, as well as a human right...”*

13. I also borrow the words of Hon. Justice Fred Ochieng’ in **Ketan Somaia & Jason Wellington Oluga v. R (2005) e KLR** where he held:

*“In the recent case of REPUBLIC V. KAMLESH MANSUKLAL DAMJI PATTNI alias PAUL PATTNI, CRIMINAL CASE NO. 229 OF 2003, the Hon. Lesit J. tackled a similar issue in the manner following:*

*“The next issue which begs some consideration is, when is a suspect a suspect” Section 72(3)(b) of the Constitution provides:*

*“A person who is arrested or detained (b) upon reasonable suspicion of his having committed or being about to commit a criminal offence...” “The key words used here is “reasonable suspicion.” A person becomes a suspect in relation to the commission of a crime only where there exists a clear and genuine cause for suspicion. Such genuine cause will emerge where a complaint has been raised by an aggrieved person or persons; or alternatively, where there exist openly suspicious circumstances calling for investigations by the relevant authority. In either case, where genuine cause is sought for, the passage of a long time, such as many years, without any complaint raised, or openly suspicious circumstances emerging, will negate the possibility that anyone is a suspect. In such circumstances, the police, whether acting on their own or under instructions, would have no reason or business to arrest anyone.”*

*The next issue that I wish to address relates to **DELAY**. The appellants have pointed out that whereas the offences are said to have been committed between October 1988 and July 1989, it was not until April 2003 that they were charged. That is a period of about 14 years. According to the appellants, that period is so long that in itself it was tantamount to abuse of the process of the court. They cited the case of **GITHUNGURI V REPUBLIC (1985) KLR 91**, for the proposition that if a delay was sufficiently prolonged, that by itself, could render criminal proceedings brought long after the events said to constitute the offence, both vexations and an abuse of the court process. I have no doubt at all that that is the correct legal position.”*

14. It follows therefore that if the matter proceeds, the petitioner’s right to fair trial shall be infringed on. Secondly, bearing in mind that the petitioner prima facie proved ownership of the property, his right to property shall be infringed upon by a dubious criminal case in the event the case is allowed to continue.

15. In the end, the application is meritorious. I find that:

a) Mavoko Principal Magistrate’s Court Criminal Case No. 525 of 2012 Republic v. Ruga Gituku is an infringement breach of otherwise a contravention of the petitioner’s right to fair trial as enshrined in Article 50 of the Constitution.

b) Mavoko Principal Magistrate’s Court Criminal Case No. 525 of 2012 R v. Ruga Gituku is a breach or otherwise a contravention of the petitioner’s right to equality before the law, equal protection and equal benefit of the law as enshrined in Article 27 (1) of the Constitution.

c) Mavoko Principal Magistrate’s Court Criminal Case No. 525 of 2012, R v. Ruga Gituku is a threat to the petitioner’s right to property as enshrined in Article 40 of the Constitution.

d) the charges against the petitioner preferred over 24 years after the events of the alleged offence occurred are vexatious, oppressive, tantamount to harassment, an abuse of court process and contrary to public interests of administration of justice contrary to Article 157 (11) of the Constitution.

And order as follows:

a) An order of prohibition is hereby issued forthwith prohibiting the 1<sup>st</sup> respondent from prosecuting or further prosecuting or preferring and prosecution charges preferred against the petitioner in Mavoko Principal Magistrate’s Court Criminal Case No. 525 of 2012, R v. Ruga Gituku or any variation thereof or any charge of charges akin to the same Mavoko Principal Magistrate’s Court Criminal Case No. 525 of 2012, R v. Ruga Gituku.

b) An order of prohibition is hereby issued forthwith prohibiting the Principal Magistrates Court Mavoko and or any other magistrate from hearing or further hearing and determining the charges preferred against the petitioner in Mavoko Principal Magistrate’s Court Criminal Case No. 525 of 2012, R v. Ruga Gituku or any variation of thereof or any charge or charges in substitution thereof akin to the same in Mavoko Principal Magistrate’s Court Criminal Case No. 525 of 2012, R v. Ruga Gituku.

c) Costs of this petition shall be borne by the petitioner.

It is so ordered.

Dated, signed and Delivered at **Machakos** this **29<sup>th</sup>** day of **September, 2017**.

**D.K. KEMEI**

**JUDGE**

**In the presence of:**

Kyalo for Ngunjiri for the Petitioner

No attendance for the 1<sup>st</sup> Respondent

Marambi for Naikuni for the 2<sup>nd</sup> Respondent

C/A: Kituva