



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW NO. 81 OF 2017

IN THE MATTER OF ORDER 53 RULE 1 OF THE CIVIL PROCEDURE ACT

AND

**IN THE MATTER OF INFRINGEMENT OF CONSTITUTION RIGHTS UNDER ARTICLE
27,28,29,31,47,50.**

AND

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL
REVIEW.**

REPUBLICAPPLICANT

VERSUS

THE DIRECTOR OF CID1ST RESPONDENT

THE INSPECTOR GENERAL OF POLICE2ND RESPONDENT

ALICE NYOMENDA OERI.....EX-PARTE

JUDGMENT

1. By a notice of motion dated 16th March 2017 and filed in court on 17th March, 2017 pursuant to leave granted on 27th February, 2017, the exparte applicant **Alice Nyomenda Oeri** seeks from this court against the Respondents Judicial Review orders of:

*a. **Certiorari** to bring into this Honourable Court and quash the decision by the Inspector General of Police and the Director of Criminal Investigations officers from intimidating, harassing and threatening to arrest her at her home or place of work on matters touching the conduct of Machakos HCC NO. 244 of 2011.*

*b. **Prohibition** to issue against the 1st and 2nd respondents prohibiting the office of Inspector General of Police and the Director of Criminal Infestations from intimidating, harassing and threatening to arrest at Home or place of work on matters touching the conduct of Machakos HCC No. 244 of 2011;*

c. Declaration that the decision of the 1st and 2nd respondents to keep issuing summons or sending police officers to harass and intimidate and threaten to arrest the applicant causing mayhem at (sic) her office or elsewhere in the excuse of conducting investigations on matters touching or related to Machakos HCC 244 of 2011 is unlawful, ultra vires, conducted in bad faith and the procedures used are bias(sic) against the applicant.

d. That costs of the application be provided for.

2. The notice of motion is predicated on the grounds on the face of the motion and supported by the statutory statement of the applicant and her verifying affidavit all dated 24th February 2017 and filed in court on 27th February 2017 in support of the chamber summons for leave and annexures thereto.

3. The ex parte applicant's case is that she is an advocate of the High Court of Kenya practicing as an Associate in the firm of Morara Ngisa & Company Advocates since 2006 but now practices in her own name and style of A.N. Oeri & Company Advocates.

4. The ex parte applicant claims that while working in the firm of Morara Ngisa and Company Advocates in September 2011 one Naphtali Mureithi (complainant/clients) sought the legal services of that firm in obtaining injunctive orders against Ecobank Kenya Ltd who had advertised its property for sale for guaranteeing PRISCO Petroleum Ltd.

5. That the ex parte applicant, acting on Mr Mureithi's instructions moved to court under certificate of urgency vide HCC Civil Case No. 244/2011 and on 14th September 2011 the matter was heard and interim orders granted by Honourable Justice Dulu.

6. That the suit which was instituted against Ecobank was defended by Majanja Luseno & Company Advocates, who filed a replying affidavit to the application on 23rd September 2011 and the ex parte applicant filed a further supporting affidavit on 4th October 2011.

7. That Honourable Dulu J then directed parties to file and exchange written submissions and have the matter canvassed on 6th December 2011. That on 3rd November 2011 the defendant's advocates wrote to the plaintiff's advocate (where the ex parte applicant herein previously practiced), proposing to concede to the application which was premised on a non-issuance of mandatory notices. That the matter was mentioned on 4th November 2011 before Honourable Makhandia J (as he then was) and the learned judge directed parties to agree on the costs or file bill of costs for assessment but that they agreed on costs tentatively at KShs 40,000/-.

8. According to the ex parte applicant, the plaintiff (client) in the Civil Suit was during all the court sessions present in court and followed what was transpiring and that he paid his advocates 2 cheques of Shs 90,000 and KShs 15,000/- respectively and the application was by consent marked as settled by an order of the court.

9. It is alleged that on diverse dates during the month of April 2012 the said client Mr Naphtali Mureithi went to the ex parte applicant's offices claiming that Ecobank Ltd had advertised his property for sale without serving him with the statutory notice as indicated in the consent recorded.

10. The ex parte applicant alleges that she immediately prepared an application under certificate of urgency and went to Machakos High Court to file it on 11th April 2012 but the court file could not be traced so she was advised to go back the following day which she did return together with the plaintiff Naphtali Mureithi but the file could still not be traced and the plaintiff wrote to court a letter on 12th April 2012 complaining of the missing court file.

11. That owing to the missing file, the ex parte applicant decided to move the court by way of Miscellaneous Application awaiting tracing of the original court file and prepared all documentation

which were duly signed by the plaintiff.

12. That the plaintiff in the said civil suit then promised the ex parte applicant that they would meet at the Kenya Commercial Bank(KCB) Machakos Branch the following day for him to facilitate court filing fees but he never turned up and the court clerk who was sent to file the documents was left alone hence he could not file the documents for lack of court filing fees.

13. That after the plaintiff evaded paying court fees for filing of the application to stop the sale of his property, he approached another firm of advocates who on 7th May 2012 wrote to the ex parte applicant's former firm calling for his file which case file was released and thereafter a bill of costs was filed in court for taxation for the plaintiff to settle advocate client bill of costs for the work done in the matter.

14. That it was during the pendency of taxation of Advocate/client Bill of costs that the ex parte applicant advocate has been summoned severally by the CID Nairobi and Headquarters in Kiambu on allegations of fraud and that she had recorded her statement on the allegations and complaints made by the plaintiff in the civil suit.

15. That in April 2016 the ex parte applicant was served with Kiambu Miscellaneous Application No. 97 of 2016 which application was dismissed. The application was by Inspector Stephen Wanyama Nyongesa seeking a warrant to investigate accounts of the ex parte applicants firm of advocates and Majanja Luseno and Company Advocates.

16. The ex parte applicant laments that the respondents have been calling her and threatening that unless she appears at their offices they will arrest her at their offices, that they will arrest her at their own convenience, despite the fact that she recorded a statement with them. She therefore urges the court to grant her the orders sought in the motion.

17. Despite service of the motion and all its accompaniments upon the respondents, they did not appear and neither did they file any response to the notice of motion.

18. The ex parte applicant also filed written submissions dated 20th April 2017 on 21st April 2017 wherein she reiterated her grounds and the depositions in her verifying affidavit, which I need not reproduce here. She relied on no case law or statute law in canvassing her application in urging the court to grant her the orders sought.

DETERMINATION.

19. I have considered the ex parte applicant's application. It is brought under the provisions of Order 53 Rule 3 of the Civil Procedure Rules, the Law Reform Act, the Judicature Act and all other enabling provisions of the law.

20. The motion seeks for certiorari to quash the decision of the respondents to intimidating, harassing and threatening to arrest the applicant on matters relating to Machakos HCC 244/2011; prohibition to prohibit the respondents from harassing, intimidating and threatening to arrest her and Declaration that the summons or sending of police officers to harass, intimidate and threaten the ex parte applicant is unlawful, ultra vires, biased and done in bad faith.

21. The respondents have not contested the allegations leveled against them by way of a sworn affidavit verifying the facts relied on by the ex parte applicant who is an advocate of the High Court of Kenya.

22. Therefore the main issue for determination is whether the ex parte applicant is entitled to the orders sought in the notice of motion.

23. First and foremost is that the office of Inspector General of Police is a constitutional office and

so is that of the Director of Criminal Investigations, charged with the mandate of enforcing the law and detecting and preventing crime. The Inspector General is empowered to investigate complaints and to take appropriate action of advising the Director of Public Prosecutions to mount a prosecution of a suspect where the Director of Public Prosecution is satisfied that there is sufficient evidence to mount a prosecution.

24. The police only need to establish reasonable suspicion to prefer charges against a suspect and submit their recommendations to the Director of Public Prosecutions who directs the prosecution and the rest is left to the trial court to determine the guilt of the suspect.

25. The applicant in this case complains that she is being intimidated, harassed and or threatened with arrest. The court ought not to usurp powers or constitutional mandate of the police in investigating allegations or complaints that a crime has been committed. However, the court has jurisdiction and power to prohibit the continuation of criminal investigations or even prosecution if extraneous matters divorced from the goals of justice guide their instigation. (see **Kuria & 3 others v Attorney General [2002] 2 KLR 69**).

26. The court in the above case further held that

“The Court has power and indeed the duty to prohibit the continuation of the criminal prosecution if extraneous matters divorced from the goals of justice guide their instigation. It is a duty of the court to ensure that its process does not degenerate into tools for personal score-settling or vilification on issues not pertaining to that which the system was even formed to perform...A stay (by an order of prohibition) should be granted where compelling an accused to stand trial would violate the fundamental principles of justice which underlie the society’s senses of fair play and decency and/or where the proceedings are oppressive or vexatious...The machinery of criminal justice is not to be allowed to become a pawn in personal civil feuds and individual vendetta. It is through this mandate of the court to guard its process from being abused or misused or manipulated for ulterior motives that the power of judicial review is invariably invoked so as to zealously guard its (the Court’s) independence and impartiality (as per section 77(1) of the Kenya Constitution in relation to criminal proceedings and section 79(9) for the civil process). The invocation of the law, whichever party in unsuitable circumstances or for the wrong ends must be stopped, as in these instances, the goals for their utilization is far that which the courts indeed the entire system is constitutionally mandated to administer...In the instant case, criminal prosecution is alleged to be tainted with ulterior motives, namely the bear pressure on the applicants in order to settle the civil dispute. It is further alleged that the criminal prosecution is an abuse of the court process epitomized by what is termed as selective prosecution by the Attorney General. It would be a travesty to justice, a sad day for justice should the procedures or the processes of court be allowed to be manipulated, abused and/or misused, all in the name that the court simply has no say in the matter because the decision to so utilize the procedures has already been made. It has never been argued that because a decision has already been made to charge the accused persons, the court should simply as it were fold its arms and stare at the squabbling litigants/ disputants parade themselves before every dispute resolution framework one after another at every available opportunity until the determination of the one of them because there is nothing, in terms of decisions to prohibit...The intrusion of judicial review remedies in criminal proceedings would have the effect of requiring a much broader approach, than envisaged in civil law...In this instance, where the prosecution is an abuse of the process of court, as is alleged in this case, there is no greater duty for the court than to ensure that it maintains its integrity of the system of administration of justice and ensure that justice is not only done but is seen to be done by staying and/or prohibiting prosecutions brought to bear for ulterior and extraneous considerations. It has to be understood that the pursuit of justice is the duty of the court as well as its processes and therefore the use of court procedures for other purposes amounts to abuse of its procedures, which is diametrically opposite the duty of the court. It therefore matters not whether the decision has been made or not, what matters is the objective for which the court procedures are being utilized. Because the nature of the judicial proceedings are concerned with the manner and not the merits of any decision-making process,

which process affects the rights of citizens, it is apt for circumstances such as this where the prosecution and/or continued prosecution besmirches the judicial process with irregularities and ulterior motives. Where such a point is reached that the process is an abuse, it matters not whether it has commenced or whether there was acquiescence by all the parties. The duty of the court in such instances is to purge itself of such proceedings. Thus where the court cannot order that the prosecution be not commenced, because already it has, it can still order that the continued implementation of that decision be stayed...There is nothing which can stop them from prohibiting further hearings and/or prosecution of a criminal case, where the decision to charge and/or admit the charges as they were have already been made...Under section 77(5) of the Constitution it is a constitutional right that no person who has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial of the offence. What is clear from this constitutional right is that it prevents the re-prosecution of a criminal case, which has been determined in one way or another. However, it does not mean that a civil suit and a criminal case cannot co-exist at any one particular time. This is because the section envisages the re-prosecution of a criminal case substantially dealt with either in fact or law, a case in which issues have been laid to rest. There is no mention in the section that the simultaneous existence of civil and criminal cases constitutes double jeopardy. The courts have, however stated that the power to issue an order of prohibition to stop a criminal prosecution does not endow a court to say that no criminal prosecution should be instituted or continued side by side with a civil suit based on the same or related facts, or to say that a person should never be prosecuted in criminal proceedings when he has a civil suit against him relating to matters in the criminal proceedings...The normal procedure in the co-existence of civil and criminal proceedings is to stay the civil proceedings pending the determination of the criminal case as the determination of civil rights and obligations are not the subject of a criminal prosecution...A prerogative order is an order of serious nature and cannot and should not be granted lightly. It should only be granted where there is an abuse of the process of law, which will have the effect of stopping the prosecution already commenced. There should be concrete grounds for supposing that the continued prosecution of a criminal case manifests an abuse of the judicial procedure, much that the public interest would be best served by the staying of the prosecution...In the instant case there is no evidence of malice, no evidence of unlawful actions, no evidence of excess or want of authority, no evidence of harassment or intimidation or even of manipulation of court process so as to seriously deprecate the likelihood that the applicants might not get a fair trial as provided under section 77 of the Constitution. It is not enough to simply state that because there is an existence of a civil dispute or suit, the entire criminal proceedings commenced based on the same set of facts are an abuse of the court process. There is a need to show how the process of the court is being abused or misused and a need to indicate or show the basis upon which the rights of the applicant are under serious threat of being undermined by the criminal prosecution. In absence of concrete grounds for supposing that a criminal prosecution is an “abuse of process”, is a “manipulation”, “amounts to selective prosecution” or such other processes, or even supposing that the applicants might not get a fair trial as protected in the Constitution, it is not mechanical enough that the existence of a civil suit precludes the institution of criminal proceedings based on the same facts. The effect of a criminal prosecution on an accused person is adverse, but so also are their purpose in the society, which is immense. There is a public interest underlying every criminal prosecution, which is being zealously guarded, whereas at the same time there is a private interest on the rights of the accused person to be protected, by whichever means. Given these bi-polar considerations, it is imperative for the court to balance these considerations vis-à-vis the available evidence. However, just as a conviction cannot be secured without any basis of evidence, an order of prohibition cannot also be given without any evidence that there is a manipulation, abuse or misuse of court process or that there is a danger to the right of the accused person to have a fair trial... In the circumstances of this case it would be in the interest of the applicants, the respondents, the complainants, the litigants and the public at large that the criminal prosecution be heard and determined quickly in order to know where the truth lies and set the issues to rest, giving the applicants the chance to clear their names.”

27. Albeit the above case with the long holding concerned actual prosecution against the ex parte applicant, the principles espoused therein are relevant to this case where the prosecution has not been mounted yet, but the applicant complains that the respondent's actions and conduct amounts to intimidation, harassment and threat to arrest which is in bad faith, biased and therefore unwarranted for the last 4 years, even after she had recorded a statement regarding the conduct of civil proceedings where she professionally represented her client in the civil matter but that it was her client who changed tact and even instructed another advocate to whom the entire case file was handed over to continue pursuing the claim on his behalf.

28. In **Republic vs Chief Magistrate's Court at Mombasa ex parte Ganijee & Another [2003] 2 KLR 703**, 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 civil trial. If a criminal prosecution is an abuse of the process of the court, oppressive or vexatious, prohibition or certiorari will issue and go forth.....when a remedy is elsewhere provided and available to a person to enforce an order of 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 out 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 there under, 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....."

29. This court further wholly concurs with the learned judge's holding in **Republic vs Attorney General Kipngeno Arap Ngeny HC Civil Application No. 406/2001** where the court held:

"A criminal prosecution which is commenced in the absence of proper factual foundation or basis is always suspect for ulterior motive or improper purpose. Before instituting criminal proceedings, there must be in existence material evidence on which the prosecution can say with certainty that they have a prosecutable case. A prudent and cautious prosecutor must be able to demonstrate that he has a reasonable and probable cause for mounting a criminal prosecution otherwise the prosecution will be malicious and actionable."

30. And as was aptly stated in **Republic vs Commissioner of Police and Another Ex parte Michael Monari and Another [2012] e KLR**:

"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 to establish reasonable suspicion before preferring charges. The rest is left to the trial court.

The predominant reason for the institution of the criminal case cannot therefore be said to have been the vindication of the criminal justice. As long as the prosecution and those

charged with the responsibility of making the decisions to charge act in a reasonable manner, the High Court would be reluctant to intervene.”

31. From the plethora of case law relevant to this case as cited above, it is trite that the power given to the respondents to investigate and detect crime is not to be taken lightly. It is a power that is exercised in the public interest. Therefore, it should not be interfered with. However, where the power aforesaid is exercised capriciously, unreasonably and with ulterior motive and with a view to massaging the ego of some individuals who have an interest in the outcome of civil claims, the court will not hesitate to interfere with the exercise of power that it intended to abuse the very power delegated to a few individuals – the police, by the people of Kenya to exercise it on their behalf. Article 1 of the Constitution is clear that all sovereign power is vested in the people of Kenya and state organs only exercise it on their behalf through delegation. It follows that power is not available for abuse or for being used for ulterior motives and or to achieve some collateral purpose which is not geared towards the vindication of the commission of a criminal offence such as with a view to forcing a party to submit to a concession of a civil dispute. In such a case, the court will intervene to bring such proceedings to a halt.

32. This court in Judicial Review proceedings is not concerned with the merits of the case which is being investigated into as that entirely falls in the discretion of the police once investigations are over, to decide whether there is sufficient evidence gathered to mount a prosecution by the DPP.

33. This court is concerned with the process and conduct or motivation of the respondents and therefore determine whether the persons affected by the decision to investigate them are given a fair treatment. The court is also concerned with whether the decision maker had the necessary jurisdiction to make such a decision and whether it acted within that jurisdiction; or whether it took into account relevant matters or did take into account irrelevant considerations.

34. Judicial review does not lie where the challenge is on contested matter on which of the disputants' versions is the correct one.

35. Therefore, determination of this matter must be seen in light of the above consideration.

36. Applying the above principles to this case, it is clear to my mind that there are no contested facts since the respondents despite being served with the court process herein, they chose not to participate in these proceedings.

37. It follows that the version presented by the ex parte applicant as to the propriety of the investigations being mounted against her is uncontroverted. She claims that despite recording a statement with the police in 2012 concerning the conduct of Machakos HCC 244/2011 wherein she represented her client Mr Naphatali Muriithi and securing a consent to settle the application for injunction in his favour stopping the sale of his property by Ecobank, the police have continued to call her and intimidate and harass her, threatening to arrest her.

38. The ex parte applicant filed affidavits wherein she clearly stated on oath that the Machakos High Court Civil court file went missing from court and she had to apply to move the court on a Miscellaneous case file but the client vanished and reappeared a month later with another advocate asking for surrender of office case file which she willingly surrendered after which she filed an advocate/bill of costs for taxation upon which the client filed a complaint with the police to investigate her for fraud.

39. Annexure “ANO13” is a notice of motion and affidavit sworn by No. 235119 Inspector Stephen Wanyama Nyongesa who alleges that he is the investigating officer in the matter of conspiracy to defraud contrary to Section 317 of the Penal Code, and was so instructed to investigate fraud involving LR No. 12610/13 IR 84029/2 measuring 9.930 hectares registered in the name of seed and General Ltd guarantor to Prisco Petroleum Network Ltd to secure an overdraft facility for shs 10 million from Ecobank (K) Ltd through a legal charge created thereon.

40. What the good Inspector of police deposes to agrees fully with the exparte applicant's depositions on how HCC Machakos 244/2011 was initiated and handled; and how the land subject matter of that case was sold using the quashed statutory notices save that there is now a claim that the consent that settled the case(not application) was signed without the plaintiff's consent and that shs 40,000 was paid by Majanja Luseno and Company advocates to the exparte applicant's firm herein as an inducement to sign the consent.

41. With utmost respect to Inspector of police Stephen Wanyama Nyongesa, together with his master, whoever it is that instructed him to investigate and detect the commission of a crime, his narration flies in the eyes of the law.

42. It does not make any legal sense for a party to complain that his advocate conceded to a consent settling a matter in favour of that party. Every party who approaches the court expects a favourable outcome.

43. Neither does it make any legal sense to depose that a matter of costs of the application having been agreed at shs 40,000/- turned out to be an inducement to an advocate to sign a consent settling the case. It is indeed an absurd thinking full of ignorance of the law and its processes, more particularly when on 16th April 2012 the complainant/plaintiff in the civil suit at Machakos swore an affidavit that agrees with what his advocate the exparte applicant herein stated with regard to the due process followed in stopping sale of his property.

44. There is no evidence that the Machakos case was settled but that the consent was signed allowing the plaintiff's application for injunction to stop the sale of his land. If the defendant used the quashed statutory notices to sell the plaintiff's land after the consent was recorded, it bears individual responsibility and that is why the applicant made concerted efforts, on learning of the problem, to stop the process of transfer of her client's property, only for the plaintiff to vanish and reappear through another advocate.

45. The plaintiff in that case had the right to change advocates but the motive was to shift blame to his/ its former advocate, the applicant herein.

46. Further, there is ample evidence that the plaintiff/complainant is using the police to intimidate the applicant owing to the filed/pending advocate/client bill of costs against him.

47. In my humble view, the respondents are being used to abuse their power by brandishing penal law on the applicant and intimidating and harassing her. Nothing stopped them to prefer any charges against her in 2012 after the sale of the plaintiffs property if at all they believed the complainant's story. They did not have to continue threatening the exparte applicant with arrest. They have not told the court why they have not placed the investigations file before the Director of Public Prosecutions to give directions on whether or not the applicant should be charged with any criminal offence (fraud).

48. I find the conduct of the respondents in their prolonged threatening and intimidating of the applicant malicious and with ulterior motive intended to achieve a collateral purpose. Though mere delay in bringing criminal proceedings would not *per se* warrant halting of criminal investigations, the issue is whether or not criminal proceedings being brought have the effect of merely vexing and vilifying the applicant that matters.

49. In this case, I find that there is a legitimate apprehension on the part of exparte applicant that the criminal process is being abused by the respondents who have the power to arrest her and humiliate her only to please their master the plaintiff in the Machakos case not to vindicate the criminal justice.

50. In this case, I find that the exparte applicant has established that no reasonable person in the name of carrying out investigations into an offence allegedly committed would continue calling and harassing and intimidating or threatening with arrest the suspect. If the respondents had a probable case against the applicant for investigations, they did not have to intimidate the applicant. They simply act in

accordance with the legal process. Incessant telephone calls and threats to a person that they would face criminal charges subjects the person to physical and mental torture. It is not a pleasant experience for the police to keep calling the applicant and merely threaten to take action but they do not take legal action against her. The police are expected to do their part of the investigations and hand over the file to the Director of Public Prosecutions for prosecution if he agrees with them.

51. What is happening in the instant case is that the police are not in a hurry to conclude their investigations. They are using their investigative powers to intimidate and harass the applicant.

52. In my humble view, those actions by the police amounts to abuse of power and this court cannot hesitate to intervene to prevent abuse of power.

53. For the reasons, I find the notice of motion dated 16th March 2017 merited as presented. I proceed to allow it and grant the following Judicial Review orders:

a. Certiorari bringing into this Honourable Court and quash the decision by the Inspector General of Police and the Director of Criminal Investigations officers from intimidating, harassing and threatening to arrest her at her home or place of work on matters touching the conduct of Machakos HCC NO. 244 of 2011.

b. Prohibition issuing against the 1st and 2nd respondents prohibiting the office of Inspector General of Police and the Director of Criminal Investigations from intimidating, harassing and threatening to arrest at Home or place of work on matters touching the conduct of Machakos HCC No. 244 of 2011;

c. Declaration that the decision of the 1st and 2nd respondents officers to keep issuing summons or sending police officers to harass and intimidate and threaten to arrest the applicant causing mayhem at her office or elsewhere in the excuse of conducting investigations on matters touching or related to Machakos HCC 244 of 2011 is unlawful, ultra vires, conducted in bad faith and the procedures used are bias(sic) against the applicant.

54. Costs are in the discretion of the court. As the respondents did not challenge the allegations against them, I find it appropriate to order that the applicant bears her own costs of these Judicial Review proceedings to avoid unnecessarily burdening innocent tax payers with paying legal costs for acts of individual police officers who were acting in utter ignorance of the law and legal process.

Dated, signed, and delivered in open court at Nairobi this 20th day of September, 2017.

R. E. ABURILI

JUDGE