



**IN THE HIGH COURT AT NAIROBI**  
**MILIMANI LAW COURTS**  
**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**  
**PETITION NO. 34 OF 2014**

**BETWEEN**

**ELIJAH MUIRURI GITHAE.....PETITIONER**

**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS..1<sup>ST</sup> RESPONDENT**

**INSPECTOR GENERAL,**

**NATIONAL POLICE SERVICE.....2<sup>ND</sup> RESPONDENT**

**THE DIRECTOR, CRIMINAL**

**INVESTIGATIONS DEPARTMENT.....3<sup>RD</sup> RESPONDENT**

**AND**

**JANE WANGARI.....INTERESTED PARTY**

**JUDGMENT**

1. By an amended petition dated 3<sup>rd</sup> March 2014, the petitioner seeks orders to stop and quash the proceedings against him in *Kibera Chief Magistrate's Criminal Case No. 190 of 2014* wherein he is charged with the assault of Jane Wangari, the interested party.
2. In the petition, his supporting affidavit and oral testimony, he alleges that on 12<sup>th</sup> January 2014 at 9.00 pm he arrived home when he saw his wife talking to the interested party. A while later, the complainant started banging his door. When he opened she was holding stone. The complainant started hurling abuses at his wife also threatened to hit him with the stone but he restrained her. She grabbed his collar and tore his shirt. He later learnt that she filed the complaint leading to the criminal charges.
3. He alleges that the criminal charges are an abuse of the court process as the complainant is trying to drag him into a dispute she has with his wife. He states that he does not even know the complainant. He also states that he lodged a complaint with the police that he was assaulted by the

interested party.

4. I have heard testimony from the complainant and the investigating officer. I am alive that this is not the trial and I therefore restrain myself from commenting on the evidence so as not to prejudice the proceedings in the other forum. I am also alive to the fact that the Director of Public Prosecutions (“DPP”) is an independent office under the Constitution entitled to exercise discretion in preferring charges against the petitioner. Such discretion is amenable to the court review in the circumstances set out in **Article 157(11)** which states that, *“In exercising the powers conferred by this Article, the Director of Public Prosecutions shall have regard to the public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process.”*
5. Unfortunately, the petitioner did not set out the circumstances of the dispute between the petitioner’s wife and the complainant and or any other dispute that would enable the court to assess whether there is any abuse of the court process or violation of the petitioner’s fundamental rights and freedoms. Although the petitioner’s counsel alluded to a debt, the petitioner did not disclose this fact in his testimony to enable the court assess whether the DPP’s discretion would be affected.
6. What is clear from the evidence is that there was an assault and there is reasonable evidence for preferring charges against the petitioner. The issues raised by the petitioner are really matters of his defence which the trial court will be able to deal with. It may well be that an offence is disclosed on the part of the complainant but that is a matter for the petitioner to take up with respondents.
7. In my view, no basis has been established for the court to interfere with the decision to prosecute the petitioner. In the circumstances, the petition lacks merit and is dismissed with no order as to costs.

**DATED and DELIVERED at NAIROBI this 26<sup>th</sup> March 2014.**

**D.S. MAJANJA**

**JUDGE**

Mr Wesonga instructed by Muema and Associates Advocates for the petitioner.

Ms Nyamweya and Ms Kiget, Prosecution Counsels, instructed by the State Law Office for the respondents.