



**Muhiato v Director of Criminal Investigations & 2 others (Constitutional
Petition E026 of 2023) [2025] KEHC 5059 (KLR) (10 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 5059 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CONSTITUTIONAL PETITION E026 OF 2023**

OA SEWE, J

MARCH 10, 2025

**IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL
RIGHTS AND FREEDOMS UNDER THE CONSTITUTION OF KENYA,**

AND

**2. IN THE MATTER OF RULE 4 OF THE CONSTITUTION OF KENYA (PROTECTION OF
RIGHTS AND FUNDMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2012**

BETWEEN

FRANCIS NJUGUNA MUHIATO PETITIONER

AND

DIRECTOR OF CRIMINAL INVESTIGATIONS 1ST RESPONDENT

INSPECTOR GENERAL OF POLICE 2ND RESPONDENT

THE ATTORNEY GENERAL 3RD RESPONDENT

JUDGMENT

1. The Petitioner is an adult male resident of the County of Mombasa. He filed the Petition dated 27th April 2023 contending that he was being harassed, threatened and intimidated through arrests by the respondents on trumped up charges. He further contended that the respondents' actions amount to nothing but an orchestrated scheme to unlawfully alienate his properties in the guise of enforcing contracts of a company known as Frahi Africa Investments Limited, (hereinafter, Frahi Africa), of which he is a director.
2. The petitioner further stated that he had always diligently and truthfully executed his duties as the director of Frahi Africa as provided for under the laws of Kenya. He explained that the company invited individuals to invest in it by advancing the company money in the form of loans for which contracts were executed. The petitioner further stated that, following the outbreak of the Covid 19 pandemic,



- the company was adversely affected by constant expenditures with no inflow of income; and therefore it had taken the company some time to get on the path to financial recovery.
3. The petitioner further averred that as a result of the company's financial woes, individuals who invested in it resorted to legal action by moving to court for recovery of the monies lent, while others had opted to file complaints at various police stations. The petitioner added that, as a director of the company, he has been summoned and threatened with arrest and imprisonment if the sums owed were not repaid immediately. He was of the firm view that the respondents have no intention of prosecuting him and are simply using the criminal justice system to blackmail, intimidate and harass him.
 4. Thus, the petitioner stated that the Court has a duty to protect and have regard for the interest of administration of justice and the need to prevent and avoid abuse of the legal process. He added that it is only fair and just that the respondents be restrained from arresting or detaining him in breach of his fundamental rights and freedoms. The relevant provisions of *the Constitution* were set out in the Petition to be Articles 3, 10, 22, 23, 29, 49 and 238.
 5. The petitioner also alleged breach of Sections 49(1) and 49(2) of the *National Police Service Act* as well as international instruments such as the International Covenant on Civil and Political rights (ICCPR), the African Charter on Human and Peoples' Rights (ACHPR), the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, and the Universal Declaration of Human Rights, 1948.
 6. On account of the foregoing, the petitioner prayed for the following reliefs:
 - (a) A declaration that the respondents violated and threatened his fundamental rights and freedoms;
 - (b) Compensation for breaches of his fundamental rights and freedoms as pleaded hereinabove;
 - (c) An order that any further purported investigations, summons and arrests against him on the issues concerning Frahi Africa Investments Company Limited will be an exercise in abuse of the criminal justice system and in contradiction of Chapter 4 of *the Constitution*.
 - (d) A permanent injunction prohibiting the respondents, their officers, subordinates, agents, assigns, employees and/or any other person whatsoever from arresting, charging and/or prosecuting the petitioner on any issue in relation to his capacity as a Director of Frahi Africa Investments Company Limited and/or in relation to the contracts between Frahi Africa Investments Company Limited and any other person.
 - (e) Costs of the petition and interest thereon at court rates.
 7. In support of the Petition, the petitioner relied on his affidavit, sworn on 27th April 2023, in which he reiterated and expounded on the grounds aforementioned. The petitioner also annexed documents to the said affidavit to augment his assertions. The documents include copies of the loan contracts, audited accounts for the years 2020 to 2022, pleadings, police summons and cash bail receipts. At paragraph 15 of his affidavit, the petitioner averred that the Court is enjoined by the provisions of Article 159(2) of *the Constitution* to protect and promote the purpose and principles of *the Constitution* at all times; and therefore it is within the province of the Court to prohibit abuse of the criminal process, as such abuse would be inconsistent with the values enshrined under Article 10 of *the Constitution*.
 8. The Petition was resisted by the respondents vide their Replying Affidavit, sworn on 14th June 2023 by Joseph Ngatia, an investigator attached to the Directorate of Criminal Investigations. Mr. Ngatia averred that the investigations into the activities of Frahi Africa were triggered by a complaint by one



- Grace Wanja, who alleged to have entered into an agreement with the company for the investment of some Kshs. 1,000,000/= with a view of earning interest thereon at the rate of 10% per annum, but lost both her investment and the anticipated interest.
9. Mr. Ngatia further averred that, as the investigations were ongoing, more complaints were filed against the same company by other victims. He stated that upon conducting a search at the Business Registration Service, he ascertained that Frahi Africais duly registered and has the petitioner as its sole director. According to the 1st respondent, the preliminary findings revealed that the company was operating as a micro-finance institution without complying with the requisite licensing requirements. He consequently wrote to various institutions including the Capital Markets Authority, the Central Bank of Kenya, the County Government of Mombasa and the Association of Kenya Insurers, to inquire whether Frahi Africa had complied with various legislative and regulatory requirements for running a money-lending institution.
 10. At paragraphs 13 and 14 of his affidavit, Mr. Ngatia averred that already, responses had been received by his office from the Capital Markets Authority and the Association of Kenya Insurers confirming non-compliance. He also deposed that he had already applied for search order in Miscellaneous Criminal Application No. E541 of 2022 and proceeded to conduct a search of the petitioner's premises from where he obtained relevant documents for purposes of further investigation and analysis at their Forensic Documents Section. Thus, the 1st respondent contended that the investigations are well within the law and are being carried out in accordance with the dictates of the Constitution and the National Police Service Act.
 11. At paragraphs 20 and 21 of his affidavit, the 1st respondent explained that the petitioner is being investigated for several offences, including obtaining money by false pretences contrary to Section 313 of the Penal Code; and that he is currently out on cash bail. He added that the petitioner has been reporting at Central Police Station, Mombasa, awaiting completion of investigations. Accordingly, the 1st respondent posited that the Petition has been filed with the sole intention of stifling the investigation process. In the respondents' view, the Petition lacks merit and therefore ought to be dismissed with costs.
 12. The Petition was canvassed by way of written submissions, pursuant to the directions given herein on 30th April 2024. In the petitioner's written submissions dated 18th July 2024, he acknowledged the duty of the respondents to conduct investigations into alleged criminal offences with a view of prosecution. He further pointed out that he was not seeking to tamper with any ongoing criminal investigations in general. He explained that what he is seeking is the Court's intervention in connection with the transactions related to the contractual relationship between Frahi Africa and the complainants.
 13. The petitioner further submitted that the company is a legal entity with the capacity to sue and be sued; and therefore there is no reason why the complainants opted to pursue him instead. In particular, the petitioner urged the Court to note that:
 - (a) The contracts in question which have been exhibited by both sides are between Frahi Africa and third parties;
 - (b) The complaints giving rise to the petitioner's arrest arose from the contractual relation between the said Frahi Africa and third parties;
 - (c) The company by the name Frahi Africa Investments Company Limited exists and its registered offices are well known;



- (d) The disputes arose purely because the company was unable to refund the complainants' monies with interest as promised and therefore the issue is purely on delay of payment;
- (e) The petitioner has neither denied having received the monies nor his obligation to refund the same.
14. Accordingly, the petitioner submitted that the dispute is of a civil nature in respect of which the respondents have no mandate. He added that he is yet to be charged or arraigned before a court of law for a criminal offence in spite of his numerous arrests. He therefore expressed the conviction that the arrests were being used as a tool for intimidation, granted that the complainants thereafter lodged civil claims in the Small Claims Court in which they are pursuing redress.
15. The petitioner also pointed out that, in any event, the parties entered into an arbitral agreement to have all their disputes resolved through arbitration. He therefore argued that it was malicious for the complainants to invoke the criminal justice process in disregard of the arbitral agreement and the provisions of Article 159(2) of *the Constitution*.
16. The petitioner made specific reference to Articles 3, 10, 22, 23, 29 and 244 of *the Constitution* as well as the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and Peoples' Rights (ACHPR), Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, and the Universal Declaration of Human Rights, 1948 to demonstrate that the arrest and arbitrary summons by the respondents amount to a blatant disregard of the law, democracy, human rights and fundamental freedoms protected by *the Constitution*. He accordingly urged the Court to protect him by granting the orders prayed for in his Petition dated 27th April 2023.
17. On their part, the respondents relied on their written submissions dated 4th July 2023. They proposed the following issues for determination by the Court:
- (a) Whether the respondents have violated or are likely to violate the petitioner's rights;
- (b) Whether the injunctive orders sought should be granted.
18. In respect of the first issue, the respondents submitted that it is the obligation of the 1st respondent to investigate criminal complaints pursuant to Section 24(e) as read with Section 35 of the *National Police Service Act*, No. 11A of 2011; and that the 1st respondent has been acting in response to the bona fide complaints made by ordinary citizens. They further submitted that, contrary to the petitioner's allegations, he has been summoned to two police stations only, namely Central Police Station where the initial complaint was made; and Urban Police Station for the purpose of extending his cash bail.
19. The respondents relied on *Republic v Commissioner of Police & Another, Ex Parte Michael Monari & Another* [2012] eKLR to buttress their submission that it is the duty of the police to investigate complaints. They also took the view that the Petition has not been drawn with the precision contemplated by the Court in the locus classicus case of *Anarita Karimi Njeru v Republic* [1976-1980] KLR 1272. Accordingly, the respondents were of the view that, since the petitioner has failed to demonstrate that his constitutional rights have been violated so as to be entitled to the prayers sought, Petition dated 27th April 2023 is an abuse of the court process and ought to be dismissed with costs.
20. I have given careful consideration to the Petition, and the petitioner's averments as set out in the Supporting Affidavit. I have likewise considered the response filed on behalf of the respondents by Joseph Ngatia as well as the written submissions filed on behalf of the parties. It is imperative that, before engaging in a merit consideration of the Petition, the issue of jurisdiction and competence of



the Petition be settled first. Indeed, in *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] eKLR, it was held:

“...Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds that it is without jurisdiction...”

21. Needless to emphasize that jurisdiction is donated either by *the Constitution* or Statute, and is therefore not left to conjecture. The Supreme Court made this clear in *Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 Others* [2012] eKLR, thus:

“...A Court’s jurisdiction flows from either *the Constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by *the constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings. This Court dealt with the question of jurisdiction extensively in, *In the Matter of the Interim Independent Electoral Commission (Applicant), Constitutional Application Number 2 of 2011*. Where *the Constitution* exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by *the Constitution*. Where *the Constitution* confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law...”

22. The approach taken by the 1st respondent was that the Petition does not raise constitutional issues and therefore the Court, sitting as a constitutional court has no basis for assuming jurisdiction. He relied on the case of *Anarita Karimi Njeru v Republic* [1979] eKLR in which it was held:

“...if a person is seeking redress from the High Court on a matter which involves a reference to *the Constitution*, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed.”

23. The principle was affirmed by the Court of Appeal in the case of *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* [2013] eKLR as hereunder:

“(42)...the principle in *Anarita Karimi Njeru* (supra) underscores the importance of defining the dispute to be decided by the court. In our view, it is a misconception to claim as it has been in recent times with increased frequency that compliance with rules of procedure is antithetical to Article 159 of *the Constitution* and the overriding objective principle under section 1A and 1B of the *Civil Procedure Act* (Cap 21) and section 3A and 3B of the *Appellate Jurisdiction Act* (Cap 9). Procedure is also a handmaiden of just determination of cases. Cases cannot be dealt with justly unless the parties and the court know the issues in controversy. Pleadings assist in that regard and are a tenet of substantive justice, as they give fair notice to the other party. The principle in *Anarita Karimi Njeru* (supra) that established the rule that requires reasonable precision in framing of issues in constitutional petitions is an extension



of this principle. What Jessel, M.R said in 1876 in the case of *Thorp v Holdsworth* [1876] 3 Ch. D. 637 at 639 holds true today:

“The whole object of pleadings is to bring the parties to an issue, and the meaning of the rules...was to prevent the issue being enlarged, which would prevent either party from knowing when the cause came on for trial, what the real point to be discussed and decided was. In fact, the whole meaning of the system is to narrow the parties to define issues, and thereby diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing.”

24. There is therefore no doubt that it was imperative for the petitioner to plead his case with the precision recommended in the *Anarita Karimi* case. I have looked at the Petition and note that the petitioner made specific references to the specific provisions of *the Constitution* on which his Petition is hinged. In particular, the petitioner cited Articles 3, 10, 22, 23, 29 and 49, among other provisions, as the provisions pertinent to his Petition. He likewise set out the particulars of breach alongside the aforementioned Articles. Accordingly, not much turns on the respondents’ contention that the Petition does not meet the requisite threshold is unfounded.

25. Besides, Rule 10(3) and (4) of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, recognizes that:

“(3) Subject to rules 9 and 10, the Court may accept an oral application, a letter or any other informal documentation which discloses denial, violation, infringement or threat to a right or fundamental freedom.

(4) An oral application entertained under sub rule (3) shall be reduced into writing by the Court.”

26. I therefore agree with the conclusion reached by Hon. Odunga, J. (as he then was) in *Michael Osundwa Sakwa v Chief Justice and President of the Supreme Court of Kenya & Another* (supra) that:

“On the issue whether this Court can determine the constitutional issues raised without compliance with the requirements stipulated in *Anarita Karimi Njeru v. Attorney General* (supra), it is my view that the said decision must now be read in light of the provisions of Article 22(3)(b) and (d) of *the Constitution* under which the Chief Justice is enjoined to make rules providing for the court proceedings which satisfy the criteria that formalities relating to the proceedings, including commencement of the proceedings, are kept to the minimum, and in particular that the court shall, if necessary, entertain proceedings on the basis of informal documentation and that the court, while observing the rules of natural justice, shall not be unreasonably restricted by procedural technicalities. Whereas it is prudent that the applicant ought to set out with reasonable degree of precision that of which he complains, the provision said to be infringed and the manner in which they are alleged to be infringed, to dismiss a petition merely because these requirements are not adhered to would in my view defeat the spirit of Article 22(3)(b) under which these proceedings may even be commenced on the basis of informal documentation...”

27. The same position was taken in *Mumo Matemu v Trusted Society of Human Rights Alliance* [2013] eKLR, in which the Court of Appeal pointed out that:

“...precision is not coterminous with exactitude. Restated, although precision must remain a requirement as it is important, it demands neither formulaic prescription of the factual



claims nor formalistic utterance of the constitutional provisions alleged to have been violated. We speak particularly knowing that the whole function of pleadings, hearings, submissions and the judicial decision is to define issues in litigation and adjudication, and to demand exactitude ex ante is to miss the point.”

28. This was a reiteration of the viewpoint taken by a 3-judge bench of the High Court in *Trusted Society of Human Rights Alliance v Attorney General & 2 Others* [2012] eKLR in which it was held that:

“We do not purport to overrule *Anarita Karimi Njeru* as we think it lays down an important rule of constitutional adjudication: a person claiming constitutional infringement must give sufficient notice of the violation to allow her adversary to adequately prepare her case and to save the Court from embarrassment of adjudicating on issues that are not appropriately phrased as justiciable controversies. However, we are of the opinion that the proper test under the new Constitution is whether a Petition as stated raises issues which are so insubstantial and so attenuated that a Court of law properly directing itself to the issue cannot fashion an appropriate remedy due to the inability to concretely fathom the constitutional violation alleged. The test does not demand mathematical precision in drawing constitutional petitions. Neither does it demand talismanic formalism in identifying the specific constitutional provisions which are alleged to have been violated. The test is a substantive one and inquires whether the complaints against the respondents in a constitutional petition are fashioned in a way that gives proper notice to the respondents about the nature of the claims being made so that they can adequately prepare their case...”

29. Looked at from that angle, there can be no doubt that the Petition is compliant. That said, only two issues arise for determination on the merits of the Petition. They are:

- (a) Whether the petitioner has demonstrated the violations complained of herein; and if so
- (b) Whether his entitled to the remedies prayed for by him.

A. Whether the petitioner has demonstrated the violations complained of herein:

30. Under Article 22 (1) of *the Constitution* every person has a right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened. Where a party pleads that such rights or fundamental freedoms are at stake, this court is enjoined under Article 23 (3) of *the Constitution* to grant appropriate reliefs including:

- (a) a declaration of rights;
- (b) an injunction;
- (c) a conservatory order;
- (d) a declaration of invalidity of any law that denies, violates, infringes or threatens a right or fundamental freedom in the bill of rights and is not justified vide Article 24;
- (e) an order for compensation; and
- (f) an order of judicial review.

31. The question that this court has to answer is whether the 1st and 2nd Respondents abused their offices by summoning and investigating the petitioner’s dealing in Frahi Africa in which he is a director. The 1st and 2nd respondents have stated that they received complaints from investors who expected to paid back the sums invested along with return on invested; but that they were yet to be paid in terms of their



respective contracts. The 1st and 2nd respondents annexed copies of agreements and bank statements of one of the complainants, Grace Wanja as JN-1 and JN- 2 who alleged she lost Kshs. 1,000,000/= through what the complaint and the respondents believed was a scam.

32. The National Police Service is established under Article 243 of *the Constitution* with their function and mandate being outlined under Article 244. It is also important to mention that under Article 245 (4) (a) and (b) of *the Constitution* it is stipulated that:

The Cabinet secretary responsible for police services may lawfully give a direction to the Inspector-General with respect to any matter of policy for the National Police Service, but no person may give a direction to the Inspector-General with respect to—

- (a) the investigation of any particular offence or offences;
- (b) the enforcement of the law against any particular person or persons

33. Moreover, Section 51 of the *National Police Service Act* provides:

- (1) A police officer shall—
 - (a) obey and execute all lawful orders in respect of the execution of the duties of office which he may from time to time receive from his superiors in the Service;
 - (b) obey and execute all orders and warrants lawfully issued;
 - (c) provide assistance to members of the public when they are in need;
 - (d) maintain law and order;
 - (e) protect life and property;
 - (f) preserve and maintain public peace and safety;
 - (g) collect and communicate intelligence affecting law and order;
 - (h) take all steps necessary to prevent the commission of offences and public nuisance;
 - (i) detect offenders and bring them to justice;
 - (j) investigate crime; and
 - (k) apprehend all persons whom he is legally authorized to apprehend and for whose apprehension sufficient ground exists.

34. It is indubitable therefore that the Police have the clear mandate to investigate, and that mandate is undertaken independently without influence from outside factors. On that account the respondents cannot be faulted for having instituted investigations as it did into the allegations of fraud against Frahi Africa and its director, the applicant. Indeed in *Kites Technical Limited v Police & 2 others; Kenya Power & Lighting Company Limited (Interested Party) (Constitutional Petition E041 of 2021) [2021] KEHC 204 (KLR) (10 November 2021) (Ruling)*, the observation was made thus:

“The police have a statutory and constitutional duty to investigate crime. Failure to investigate is a gross dereliction of duty which can have the most far-reaching consequences for the complainant, the suspect and the criminal justice system. A wrong decision not to investigate or failure to prosecute or, conversely, a wrong decision not to prosecute, both tend to undermine the confidence of the community in the criminal justice system. For victims and their families, a decision not to investigate crime or not to prosecute can be



distressing. The victim, having made what is often a very difficult and occasionally traumatic decision to report a crime, may feel rejected and disbelieved...”

35. Authorities abound for the proposition that Courts ought to be slow in intervening in what are bona fide activities in furtherance of constitutional and statutory mandates and functions of independent state organs or bodies, unless manifest contravention of the law is demonstrated. For instance, in the case of Paul Ng’ang’a Nyaga & 2 others v Attorney General & 3 others [2013] eKLR the Court held:

“...that this Court can only interfere with and interrogate the acts of other Constitutional bodies if there is sufficient evidence that they have acted in contravention of *the Constitution*, inter-alia and one of the complaints made herein is that the Petitioners were unlawfully arrested...”

36. Similarly, in Republic v Commissioner of Police & Another, Ex Parte Michael Monari & Another (supra), it was emphasized that:

“The police have a duty to investigate on any complaint once a complaint is made. Indeed the police would be failing in their constitutional mandate to detect and prevent crime. The police only need 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 not 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.”

37. The petitioner’s allegations of malice were not proved. On the other hand, the respondents have demonstrated that bona fide complaints were filed by some members of the public; and that investigations into those complaints are yet to be completed. They averred at paragraph 21 of their Replying Affidavit that the petitioner was arrested and released on police bond; and that he has since been making periodic reports as advised by the Police pending the conclusion of investigations.

38. Therefore, no basis has been shown for the court to hinder the police from conducting investigations when they have reasonable grounds to suspect that an offence has been committed. The police must carry out their inquiries, and if they determine that an offence has occurred, the suspect should be detained and formally charged.

39. It is now settled that the best forum for testing the validity of a charge including the sufficiency of evidence is the trial court itself. In Erick Kibiwott & 2 Others v Director of Public Prosecution & 2 Others [2014] eKLR it was held that:

“...In determining the issues raised herein the Court will therefore avoid the temptation to unnecessarily stray into the arena exclusively reserved for the criminal or trial court. In dealing with the merits of the application, it is trite that the Court ought not to usurp the Constitutional mandate of the Director of Public Prosecutions to investigate and undertake prosecution in the exercise of the discretion conferred upon that office under Article 157 of *the Constitution*. There mere fact that the intended or ongoing criminal proceedings are in all likelihood bound to fail, it has been held time and again, is not a ground for halting those proceedings...”



40. Additionally, and more importantly, Article 50(1) of *the Constitution* provides that:

“(1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.”

41. Needless to mention that the essence of Article 50(1) of *the Constitution* is the concept of a fair hearing; and that it envisages the context of the fair hearing to be a public hearing before “...a court or, if appropriate, another independent and impartial tribunal or body...” in which the accused is afforded all the safeguards set out in Article 50(2) of *the Constitution*. It is for the foregoing reasons that it is always preferable that disputes about facts, such as those raised herein by the petitioner, be ventilated before the trial court, which is itself a creature of *the Constitution* pursuant to Article 162 and 169 of *the Constitution*.

42. It is therefore my finding that the petitioner has failed to prove that the 1st and 2nd respondents violated his rights under Articles 29 and 49(1) of *the Constitution*. It is important to mention that the 1st and 2nd respondents have shown that the matter is still under investigations and that the petitioner is free on bond.

43. In one of his prayers, the petitioner sought to have the Director of Public Prosecutions restrained from prosecuting him. That limb of the Petition must also fail for the reasons that, quite apart from the fact that the DPP was not impleaded herein, his mandate is also explicit in Article 157 of *the Constitution*. *The Constitution* states that the Office of the Director of Public Prosecutions is an independent body with the powers to “institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed”.

44. This court cannot interfere with the powers of the Director of Public Prosecution under Article 157 unless it is shown that he has gone against the provision of the law. Hence, there is no justifiable cause to issue an order of permanent injunction against the DPP as sought under prayer no. 4 of the Petition.

45. For the above reasons, I find no merit in the Petition dated 27th April 2023 and it is hereby dismissed. Each party to bear their own costs.

It so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 10TH DAY OF MARCH 2025.

OLGA SEWE

JUDGE

