



**Wambugu & 5 others v Director of Public Prosecutions & 2 others;
Highchem East Africa Limited (Interested Party) (Petition 219 of 2019)
[2025] KEHC 2691 (KLR) (Constitutional and Human Rights) (10 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 2691 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS**

PETITION 219 OF 2019

EC MWITA, J

MARCH 10, 2025

BETWEEN

**DAVID NJAU WAMBUGU 1ST PETITIONER
MARK PHILIP WAMBUGU 2ND PETITIONER
SAMUEL MUTTA NJAU 3RD PETITIONER
CHRISTINE WANJIRU NJAU 4TH PETITIONER
JANET WANJIKU NJAU 5TH PETITIONER
POLYCHEM EAST AFRICA LIMITED 6TH PETITIONER**

AND

**THE DIRECTOR OF PUBLIC PROSECUTIONS 1ST RESPONDENT
THE DIRECTOR OF CRIMINAL INVESTIGATIONS 2ND RESPONDENT
THE CHIEF MAGISTRATE MILIMANI LAW COURTS 3RD RESPONDENT**

AND

HIGHCHEM EAST AFRICA LIMITED INTERESTED PARTY

JUDGMENT

1. In January 2017, Highchem Speciality Chemicals Limited filed a complaint with the police at the Banking Fraud Investigations Unit (BFIU) against the 1st petitioner, a director of Polychem East Africa Ltd for conspiracy to defraud Highchem Speciality Chemicals Ltd and Highchem East Africa Ltd.



2. The 1st petitioner was summoned by the police to record a statement over the issue and presented himself in the company of his advocate. He was interrogated in relation to the alleged offence, recorded a statement and produced various documents in support of his position. He was again summoned on 7th March 2017 by the same officers and when he went to their offices, he was arrested and informed that a decision had been made that he be charged and prosecuted for conspiracy to defraud. The 1st petitioner was released on police cash bail of Kshs. 200,000 to appear before Nairobi Chief Magistrate's Court (the 3rd respondent) on 9th March 2017 to take plea.
3. The 1st petitioner attended court on various dates but he did not take plea because the 1st respondent was not ready for plea taking.
4. On 22nd January 2018, the 1st petitioner was again summoned to record statements over outstanding issues the 1st respondent had identified. On 25th January 2018, the 1st petitioner went with a written statement but the police declined to accept the written statement demanding to record the statement themselves.
5. On 2nd February 2018, the 1st to 5th petitioners, directors of Daes Holdings Limited were also summoned by the police and availed themselves to record statements regarding a share purchase agreement between Daes Holdings Limited and Highchem East Africa Limited. The investigating officer did not, however, record their statements or accept any documents from them.
6. On 3rd March 2019, police officers went to the 1st petitioner's office and arrested him in the presence of his employees and clients. They bundled him into a police vehicle and took him to the BFIU offices where he was placed in a cell. He was charged in court on 4th March 2019 with the offence of stealing by director contrary to section 282 of the *Penal Code*. He was released on a cash bail of Kshs. 500,000 and the matter fixed for hearing on 4th April 2019. The prosecution was ordered to supply the 1st petitioner's advocate with witness statements and all the documents the prosecution intended to rely on.
7. The prosecution had not supplied the documents despite several letters requesting to for the documents and refund of cash bail the 1st petitioner posted. Pleat taking was delayed at the 1st respondent's request.
8. On 29th May 2019, the 1st respondent presented an amended charge sheet with new charges and the 2nd to 5th petitioners as additional accused persons. The 1st and 2nd respondents intended to charge the 1st petitioner together with the 2nd to 6th petitioners with two counts of stealing by agent contrary to section 283 of the *Penal Code*; alternative counts of handling stolen property contrary to section 322(1) of the *Penal Code* and conspiracy to defraud contrary to section 317 of the *Penal Code*. Summons were issued to the 2nd to 5th petitioners to appear in court for plea on 10th June 2019.

Petition

9. The petitioners filed this petition challenging the decision to investigate and prosecute them in Nairobi Magistrate Criminal Case No. 391 of 2019 (Republic v David Njau Wambugu & 5 others). They averred that the charges the 1st and 2nd respondents intended to bring against them were baseless since the charge sheet did not state who the petitioners were acting as agents for; the 3rd, 4th and 5th petitioners were not directors of the 6th petitioner between 19th March 2012 and 30th April 2016 and the charges arose out of a commercial dispute which is the subject of a civil suit, HCCC No. 310 of 2017 pending before the Commercial Division.
10. The petitioners argued that the criminal proceedings had been commenced with an ulterior motive to intimidate and threaten them to accede to the civil claim; the 1st and 2nd respondents are not



acting independently but at the whims of the complainant who had been exerting pressure on the 1st respondent through the publication of articles in the media.

11. The petitioners stated that 1st and 2nd respondents' conduct is an abuse of the court process; is in bad faith and a breach of their legitimate expectation. The decision to charge them violates Articles 27(1), (2); 28, 29 (d), (f); 31(d); 47(1); 50(1), (2) (b), (e), (j) and (4) of *the Constitution*.
12. The petitioners sought the following reliefs:
 - a. A declaration that the investigations on the petitioners by the 2nd respondents and the institution of criminal proceedings against the petitioners by the 2nd respondent in Nairobi MCCR/391/2019 (Republic v David Njau Wambugu & 5 others) is an abuse of the process of the court and therefore unlawful, null and void ab initio.
 - b. An order of certiorari to bring into the High Court for purposes of being quashed the entire charge sheet and proceedings in Nairobi MCCR/391/2019 (Republic v David Njau Wambugu & 5 others) instituted by the 1st and 2nd respondents against the petitioners.
 - c. An order of prohibition directed at the 1st and 2nd respondents prohibiting them from proceeding with the prosecution of Nairobi MCCR/391/2019 (Republic v David Njau Wambugu & 5 others).
 - d. An order of prohibition directed to the 3rd respondent prohibiting him/her and any other magistrate's court of similar jurisdiction from trying, hearing or further hearing and determining Nairobi MCCR/391/2019 (Republic v. David Njau Wambugu & 5 others)
 - e. An order of prohibition directed at the 1st and 2nd respondents prohibiting them from investigating, arresting, recommending the prosecution of or instituting any other criminal prosecution against the petitioners relating to the subject matter in respect of which Nairobi MCCR/391/2019 Republic v David Njau Wambugu & 5 others was instituted.
 - f. A declaration that the petitioners' constitutional right to equality and freedom from discrimination as guaranteed by articles 27(1) & (2) of *the Constitution* has been violated by the 1st and 2nd respondents.
 - g. A declaration that the petitioners' constitutional right to human dignity as guaranteed by article 28 of *the Constitution* has been violated by the 1st and 2nd respondents.
 - h. A declaration that the petitioners' constitutional right to freedom and security as guaranteed by article 29(d) and (f) of *the Constitution* has been violated by the 1st and 2nd respondents.
 - i. A declaration that the petitioners' constitutional right to fair administrative action as guaranteed by article 47(1) of *the Constitution* and section 4(1) of the *Fair Administrative Action Act* has been violated by the 1st and 2nd respondents.
 - j. A declaration that the petitioners' constitutional right to a fair trial as guaranteed by article 50(1), 2(b) (e) (j) and (4) of *the Constitution* has been violated by the 1st and 2nd respondents.
 - k. This Honourable court be pleased to order the 1st and 2nd respondents to pay damages to the petitioners for violation of their constitutional rights.
 - l. Any such other or further orders as the court may deem just and appropriate in the circumstances.
 - m. The costs of the petition.



1st and 2nd respondent's response

13. The 1st and 2nd respondents opposed the petition through replying affidavits sworn by Sgt. Joseph Waweru (Sgt. Waweru). Sgt. Waweru deposed that on 16th January 2017, they received a letter from Dr. Wachira Maina, the group managing director of Highchem East Africa and Alex Tito, the finance & administration manager, reporting that the 1st petitioner had fraudulently altered the company's agencies and caused transfer of Kshs. 132,359,586 to bank accounts belonging to the 6th petitioner.
14. He was instructed to investigate the matter. In his statement, Dr. Wachira Maina had reported that the 1st petitioner had fraudulently caused transfer of funds meant for Highchem Speciality Chemicals Ltd to account number 8702009717200 at Standard Chartered Bank, Industrial Area Branch in the 6th petitioner's name. He obtained a warrant on 26th July 2017 through Misc. Criminal Application No. 2376 of 2017 from the 3rd respondent to investigate that bank account.
15. He investigated the matter; recorded statements and a decision was made to prosecute the 1st petitioner. Sgt. Waweru stated the 1st petitioner was arrested but released on a police cash bail of Kshs. 200,000 to appear in court on 9th March 2017. On that date, he (Sgt Waweru) presented the police file in court to register the plea but plea was deferred because the 1st respondent needed more time to review the investigation file.
16. Sgt. Waweru stated that on 10th January 2018, the 1st respondent advised that investigations cover some areas. He called the 1st to 5th petitioners to record statements but they refused to do so. He subsequently resubmitted the file to the 1st respondent on 5th February 2019 covering the areas advised to cover,
17. On 3rd March, 2019 Sgt Waweru in the company of colleagues went to the 1st petitioner's office and requested him to accompany them to their offices where they informed of the intended prosecution. They asked 1st petitioner to appear in court the next day. The 1st petitioner appeared in court on 4th March 2029 but plea was deferred to 9th March 2019 when he pleaded not guilty. The matter was adjourned on several occasions because the 1st respondent needed time to consider the evidence before issuing directions.
18. Sgt. Waweru denied failing to supply witness statements. He maintained that he had on several occasions asked the 1st petitioner to make arrangements have witnesses' statements and documentary exhibits photocopied at his cost without success. He stated that following a review of the evidence and further directions from the 1st respondent, they amended the charge sheet to add more counts and include the 2nd to 6th petitioners as accused persons.
19. According to Sgt. Waweru, the 1st petitioner had during investigations refused to record a statement. The statements he alleged to have recorded on 24th January 2017 was dated 3rd March 2017 and was not availed to the 2nd respondent. The 1st to 5th petitioners were informed about the allegations made against them declined to record statements. The 1st petitioner was also informed of the charge to be preferred against him and asked to appear in court on 4th March 2019 for plea but was not placed in police cells.
20. Regarding the amended chargesheet, Sgt. Waweru maintained that the amended charge sheet did not deviate much from the facts in the initial charge sheet. He denied the allegations that the 1st petitioner's rights were violated.
21. The interested party lodged the complaint and is the principal complainant and not Kronos. The interested party was the appointed an agent of Kronos in Kenya as confirmed by the documents (letters dated 6th September 2001 and 26th September 2001) from Highchem East Africa Limited to Kronos



- and a response dated 27th September 2001 from Kronos to Highchem East Africa regarding Kronos representation in Kenya, Tanzania and Uganda.
22. Sgt. Waweru stated that on 2nd January 2009, the interested party entered into a sales and marketing agreement with the 6th petitioner and thereafter informed Kronos through correspondence between 6th January 2009 to 26th February 2009. The purported agency agreement between Kronos and Polychem East Africa was fraudulently secured by the 6th petitioner through misrepresentation of facts in correspondences (emails and documents) exchanged between the 1st petitioner and Kronos between 26th July 2012 and 7th August 2012 and 19th March 2012 between the 1st petitioner and Kronos.
 23. Sgt. Waweru maintained that the 1st to the 5th petitioners were involved in the day-to-day operations of the 6th petitioner as its directors. The 5th petitioner was involved in the drafting of the correspondence stealing the interested party's agency and commissions. Sgt. Waweru asserted that there was monetary loss of USD 46,878.30 between 19th March 2012 and 7th August 2012 and a further USD 631,028.55 between 7th August 2012 and 30th April 2016. The amount lost was agency fees payable to Highchem Speciality Chemicals Ltd in which the interested party had 50% shareholding. The agency fee was instead fraudulently directed to the 6th petitioner's bank account.
 24. Sgt. Waweru maintained that the commission of USD 46,878.30 from Kronos to the 6th petitioner between 19th March 2012 and 7th August 2012 amounted to theft as they were on the strength of fraudulent instructions issued to Kronos on 19th March 2012 by the 1st petitioner changing the recipient bank account to that of the 6th petitioner. Sgt. Waweru denied they had ulterior motive or threatened the 1st and 6th petitioners to accede to the civil claim to abandon their defence in the civil matter. The intended prosecution stems from investigations conducted in course of the 2nd respondent's duties as mandated by Article 244 of *the Constitution* and sections 24 and 35 of the *National Police Service Act*.

Interested party's response

25. The interested party opposed the petition through a replying affidavit and further affidavit both sworn by Dr. Wachira Maina (Dr. Maina). Dr. Maina stated that he was a director of Highchem Speciality Chemicals Ltd between 1st April 2011 and 31st December 2015 when the interested party owned 50% of the shares in Highchem Speciality Chemicals Ltd.
26. Kenya Revenue Authority (KRA) conducted an audit on Highchem Speciality Chemicals Ltd in October, November and December 2016 KRA when an issue of undeclared commissions from revenue and a loan of USD 619,548 arose. It was then when it was realized that Highchem Speciality Chemicals Ltd had lost USD 620,681.85 in form of commissions due from Kronos International Inc. (Kronos) which had been diverted to the 6th petitioner's account.
27. The matter was reported to the BFIU; investigations were conducted and it was discovered that Highchem Speciality Chemicals Ltd.'s agency with Kronos was also stolen and transferred to the 6th petitioner. The theft of USD 620,681.85 and agency with Kronos was committed between March 2012 and November 2015 when the 1st to 5th petitioners were directors and or employees of the 6th petitioner. It was therefore necessary that the 6th petitioner, an agent of the interested party be charged alongside the 1st to 5th petitioners with theft by agent or handling stolen property.
28. Dr. Wachira asserted that the interested party had over the years been appointed the local agent of various international organizations by virtue of the nature of the business it carries out. The interested party was an agent of Kronos. To be able to carry out its business effectively, in 2000, the interested party



- appointed the 6th petitioner its sales and marketing agent. Under this arrangement the interested party provided the 6th petitioner with office space, internet platform, email facilities and paid for the sales and marketing services for purposes of executing its obligations to the interested party. The interested party was however to remain the local agent for Kronos.
29. The interested party which wholly owned Highchem Speciality Chemicals Ltd between 2007 and 2008 transferred 50% of its shares to the 1st petitioner who subsequently transferred his shares to the 6th petitioner. The interested party authorised its agents, including Kronos, to pay its commissions into Highchem Speciality Chemicals Ltd account. Highchem Speciality Chemicals Ltd further appointed 6th petitioner as its sales and marketing agent. One of the 6th petitioner's duties was to ensure that all commissions are paid into Highchem Speciality Chemicals Ltd account.
 30. On 19th March 2012, the 1st petitioner wrote to Kronos advising it to make payments due to Highchem Speciality Chemicals Ltd to the 6th petitioner's account without the board's approval. The commissions due to Highchem Speciality Chemicals Ltd were henceforth paid into the 6th petitioner's account.
 31. The 1st petitioner wrote letters and emails on 7th August 2012 to Kronos without the knowledge Highchem Speciality Chemicals Ltd 's board advising Kronos to cancel the interested party's agency with effect from 1st January 2012 and have it in favour of the 6th petitioner thus, the 6th petitioner procured the agency from with Kronos. According to Dr. Maina, the 1st to 5th petitioners as directors and or management staff of the 6th petitioner were directly or indirectly involved in that transaction; were aware of the theft of money from Highchem Speciality Chemicals Ltd; the agency from Kronos and retained the benefits.
 32. According to Dr. Maina, pursuant to the sales and marketing agreement between Highchem Speciality Chemicals Ltd and the 6th petitioner, between 21st January 2009 and 30th November 2015, Highchem Speciality Chemicals Ltd paid for the services provided by the 6th petitioner. The interested party continued to provide office space, internet and email platforms to the 6th petitioner until 1st November 2015 when the interested party sold its shares in Highchem Speciality Chemicals Ltd. The interested party's access to servers and obtaining information on the 6th petitioner from the servers was not unlawful.
 33. Dr. Maina maintained that although commissions due to Highchem Speciality Chemicals Ltd stopped being paid in 2012, Highchem Speciality Chemicals Ltd and the interested party continued performing their obligations under the agreement unaware that the commissions had been diverted to the 6th petitioner and the agency agreement taken over by the 6th petitioner. The fact that the interested party was not earning from the arrangement yet it kept supporting the 6th petitioner, forced it to sell its shares to Daes Holdings Limited, a company fully owned by the petitioners.
 34. Dr. Maina asserted that civil and criminal proceedings can run concurrently as the two provide distinct legal remedies. He took the position that the petitioners carried out the actions fraudulently and were the beneficiaries and should face trial since the trial court has jurisdiction to address the issues raised in the petition.
 35. Dr. Maina denied the petitioners' allegation that the 1st and 2nd respondents were being used to harass or intimidate them (petitioners) or that the criminal proceedings were actuated by malice or were intended to achieve an ulterior motive. The civil suit (HCCC No. 310 of 2017) seeks various declarations and amounts in excess of USD 1,297,643.



Submissions

Petitioners' submissions

36. Mr. Paul Muite, SC., leading Miss Odari and Mr. Wakiaga, for the petitioners, highlighted their written submissions. Mr. Muite, SC. submitted that the criminal proceedings instituted by the 1st and 2nd respondents contravene Articles 27(1) & (2), 28, 29(d) and (f), 31, 47, 50(1), (2) (b) (e) (j) and (4) and 157(11) of *the Constitution* and are unlawful. Senior Counsel relied on Article 157(6) (a) and (11) of *the Constitution* and the decision in R v Attorney General & another Ex-Parte Kipng'eno Arap Ngeny [2001] KEHC 746 (KLR) on the mandate of the DPP and the principles the DPP has to consider when instituting prosecutions.
37. Senior counsel took the position that the 1st and 2nd respondents do not have a reasonable and probable cause for mounting the criminal prosecution against the petitioners and the decision to charge the petitioners had no basis; the charge sheet does not disclose who the petitioners were acting as agents for; Kronos, the principal, had not made any complaint against the 6th petitioner and the 6th petitioner entered into a valid agency agreement with Kronos.
38. According to Mr. Muite, SC., the amount of money quoted in the charge sheet was not stolen and had never been the property of Highchem Speciality Chemicals Ltd. The money was paid to the 6th petitioner by virtue of the agency agreements the 6th petitioner had with Kronos. The charges against the 2nd to 5th petitioners are based on the assumption that at the time when the offences are alleged to have been committed, they were directors, shareholders or officers of the 6th petitioner which was not the case.
39. Senior Counsel argued that the intended prosecution does not meet the criterion of sufficient evidence to provide a realistic prospect of conviction. He relied on the decisions in R v Chief Magistrate, Milimani Criminal Division & 4 others Ex-Parte John Wachira Wambugu & another [2018] eKLR and Kipngeno Arap Ngeny case (supra).
40. Mr. Muite, SC. asserted that the criminal proceedings are unnecessary since the issues in dispute are of civil in nature and are pending in a civil suit. He argued that failure to join the 2nd to 5th petitioners in the civil suit demonstrates malice and bad faith on the part of the complainant. Reliance was placed on the decisions in Cyrus Shakhalinga Khwa Jirongo v Soy Developers Ltd & 9 others [2021] eKLR; Commissioner of Police & the Director of Criminal Investigation Department & another v Kenya Commercial Bank & 4 others [2013] eKLR; R v Chief Magistrates' Court at Mombasa Ex-Parte Ganijee & another [2002] eKLR and George Joshua Okungu & another v Chief Magistrate's Court Anti-Corruption Court at Nairobi & another [2014] eKLR.
41. Mr. Muite, SC. went on to argue, that the documents the 1st and 2nd respondents relied on to prefer charges against the petitioners cannot be admitted as evidence because they were illegally obtained, without a court order and in contravention of Article 31 of *the Constitution*. Senior Counsel submitted that relying on such evidence, the 1st and 2nd respondents contravened Articles 25 and 50(4) of *the Constitution* and section 83W of the *Kenya Information and Communications Act*. He relied on the decisions in Njonjo Mue & another v Chairperson of Independent Electoral and Boundaries Commission & 3 others [2017] eKLR and Okiya Omtatah Okoiti & 2 others v Attorney General & 4 others [2020] eKLR, to urge that the criminal proceedings be quashed.
42. Mr. Muite, SC. again submitted that the 1st and 2nd respondents violated the petitioners' rights to a fair trial guaranteed under Article 50(1), 2(b), (e), (j), 4) of *the Constitution* by failing to supply the



petitioners with documents and witness' statements; refusing to accept the documents and witness statements presented by the 1st petitioner; delaying plea-taking by adjourning the matter for almost two years from the date the 1st petitioner first appeared in court to take plea and requesting for adjournments on several occasions to amend the charge sheet to include the 2-5th petitioners.

43. Senior Counsel argued that the manner in which the 2nd respondent conducted investigations contravened the provisions of the National Police Act as read with the Police standing Orders. He asserted that instituting the criminal proceedings amounted to an abuse of the court process and a contravention of the petitioners' right to fair hearing. Senior Counsel relied on the decisions in *Reuben Njuguna Gachukia & another v Inspector General of the National Police service & 4 others* [2019] eKLR and *RC v KKR* [2021] eKLR; [2021] KEHC 12803(KLR).
44. Learned Senior Counsel maintained that the respondent discriminated against the 1st petitioner on account of his age and social status in the manner he was arrested which caused him embarrassment, injured his reputation and subjected him to psychological and mental anguish. Mr Muite, SC argued that because of the 1st and 2nd respondents' actions, the petitioners have been subjected to adverse publicity, embarrassment and damage to their business a violation of their right to human dignity guaranteed by Article 28 of *the Constitution*. He relied on *MW K v another v Attorney General & 3 others* [2017] eKLR to support this position.
45. Learned Senior Counsel asserted that the delay in taking the 1st petitioner's plea for close to 2 years and using the media to tarnish his name violated his rights to freedom and security of the person guaranteed under Article 29 (d) and (f) of *the Constitution*. He further argued that the 1st and 2nd respondents violated the 2nd to 5th petitioners' right to fair administrative action by hauling them to court without recording their statements or affording them an opportunity to be heard. He relied on the decisions in *Republic v National Cohesion and Integration Commission; Chama Cha Mawakili Limited (Exparte)* [2022] KEHC 10206 (KLR) and *Republic v Nairobi City County Ex parte Registered Trustees of Sir Ali Muslim Club* [2017] KEHC 2864 (KLR).
46. Further reliance was placed on *Njuguna S. Ndung'u v Ethics & Anti-Corruption Commission (EACC) & 3 others* [2018] eKLR and *Republic v Kikuyu Magistrates Court (Criminal Division) & 9 others Ex Parte Charles Mbugua Njuguna* [2016] eKLR. He urged the Court to allowed the petition with costs.

1st and 2nd respondents' submissions

47. Mr. Kinuthia, learned counsel for the 1st and 2nd respondents orally highlighted their written submission. Learned counsel argued that the 1st and 2nd respondents acted within the law in exercising their mandate. Counsel relied on Article 157 (4), (6), (10) and (11) and Article 245(5) of *the Constitution* and the decision in *Matalulu v DPP* [2003] 4 LRC 712 for the argument that the DPP has mandate to institute, undertake, takeover, or terminate prosecutions in criminal proceedings. The DPP is not subject to control of any person or authority and only the DPP can direct the Inspector General to investigate a matter.
48. Mr. Kinuthia argued that the petitioners had failed to demonstrate that the DPP lacked authority; acted in excess of his jurisdiction, or departed from the rules of natural justice in directing that they be charged with the offences disclosed in the evidence gathered. Learned counsel maintained that the petition does not meet the threshold for granting the judicial review orders sought; that the matters raised in the petition will form their defense before the trial court and that this court lacks jurisdiction to test the veracity of the evidence. They relied on the decisions in *Eunice Khalwali Mlima v Director*



- of Public Prosecutions & 2 others [2017] eKLR and Thuita Mwangi & Another v The Ethics and Anti-Corruption Commission & 3 others [2013] eKLR.
49. Learned counsel maintained that the petitioners had not shown that the 1st respondent's decision to institute criminal proceedings against them was made in bad faith; or is an abuse of the court process; amounts to abuse of power, or contravenes the rules of natural justice. He relied on the decision in Nicholas Mwaniki Waweru & another v Attorney General & 5 others [2017] eKLR
50. Mr. Kinuthia again relied on the decision in *R v Inspector General, Director of Public Prosecution & 3 others (Judicial Review Application No. 621 of 2017)* for the argument that the quality and sufficiency of evidence gathered in an investigation can only be tested by the trial court before which the charges are brought. They should therefore be accorded a fair chance to present their evidence before the trial court for determination. The 1st and 2nd respondents urged the court to dismiss the petition with costs.

Interested party's submissions

51. Mr. Kingati, learned counsel for the interested party, supported the respondents in urging the court to dismiss the petition. learned counsel relied on the decisions in Reuben Mwangi v Director of Public prosecutions & 2 others; UAP Insurance & another (Interested Parties) [2021] eKLR; Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others [2014] eKLR and Mohammed Edin Adan v Director of Public Prosecutions and another [2022] eKLR to argue that it is the duty of the petitioners to prove allegations of infringement rights and fundamental freedoms.
52. Mr. Kingati submitted that the petitioners did not demonstrate how their fundamental rights and freedoms guaranteed under Articles 27(1), (2); 28; 29 (d), (f); 31(d); 47(1) and 50 (1), 2(b), (e), (j) of *the Constitution* were violated. He relied on the decision in Terry Muringo Muchiri v K-Rep Group Limited [2021] eKLR.
53. Learned counsel again relied on the decision in Robert Waweru Maina & 4 others v Director of Public Prosecutions & 3 others [2022] eKLR for the position that the petitioners had not established a basis for stopping the criminal proceedings. According to Mr. Kingati, the petitioners did not demonstrate that the criminal proceedings were instituted for ulterior motive or in breach of Article 50. Learned counsel maintained that the civil suit was filed after the criminal case had been reported and section 193A of the *Criminal Procedure Code* permits concurrent criminal and civil proceedings arising from similar facts. He relied on the decision in Hussein Khalid and 16 others v Attorney General & 2 others [2019] eKLR
54. Responding to whether the 2nd to 5th petitioners were directors of the 6th petitioner, Mr. Kingati posited that it is an issue for the trial court. He maintained that the petition does not raise constitutional issues but factual and evidential matters which should be determined by the trial court. According to learned counsel, the petition was an afterthought since the 1st petitioner was charged in 2017. He urged the Court to dismissed the petition with costs.

Determination

55. I have considered the petition, responses, arguments made on behalf of the parties and the decisions relied on. The gravamen of this petition is the DPP's decision to prosecute the petitioners in Nairobi Magistrate's Criminal case No. 391 of 2019 (Republic v David Njau Wambugu 7 others) over matters relating to an agency contract with Kronos and commissions form that agency.



56. Initially, the 1st petitioner was charged alone but later on, the DPP sought to charge the 2nd to 6th petitioners together with the 1st petitioner and introduced more charges which the petitioners challenged. The petitioners argued that the charges were brought in bad faith and were aimed at assisting the interested party in the civil suit pending before the Commercial Division thus, raising the question whether the petitioners' prosecution is a violation of the principle in Article 157(11), calling on this Court to halt it.
57. The main issue in the criminal prosecution is an alleged fraudulent diversion of agency contract between the interested party and Kronos and commissions that the interested party was to receive from Kronos, to the 6th petitioner.
58. The 1st petitioner was arrested and charged in court in March 2019 with stealing by director. He was released on bail and the matter fixed for hearing in April 2019. The prosecution did not supply the 1st petitioner's advocate with witness' statements and other documents as ordered by the court. The trial did not also commence because of adjournments at the DPP's request.
59. In 29th May 2019, the DPP sought to amend the charge sheet to introduce new charges and add the 2nd to 6th petitioners as accused persons. The charges were stealing by agent with alternative counts of handling stolen property and a third count of conspiracy to defraud.
60. The petitioners brought this petition to challenge their prosecution. They argued that the charges were baseless since the charge sheet did not state who the petitioners were acting as agents for; the 3rd, 4th and 5th petitioners were not directors of the 6th petitioner between 19th March 2012 and 30th April 2016; the charges arose out of a commercial dispute which is the subject matter in HCCC No. 310 of 2017 pending before the Commercial Division and that the criminal proceedings were brought with an ulterior motive to intimidate and coerce them into acceding to the civil claim.
61. The petitioners further argued that the interested party and, by extension, the respondents, unlawfully obtained documents and data, (including emails) belonging to the petitioners which were intended for use in the criminal case. The petitioners maintained that whether the documents formed part of the interested party's property and the interested party could lawfully access those documents, is an issue pending determination before the Court of Appeal in Civil Appeal No. 41 of 2021.
62. The petitioners asserted that the 1st and 2nd respondents' action amounted to abuse of the court process; was made in bad faith and violated their legitimate expectation and Articles 27(1), (2); 28, 29 (d), (f); 31(d); 47(1); 50(1), (2) (b), (e), (j) and (4) of *the Constitution*.
63. The petitioners again argued that the complainant violated the confidentiality clause in the service support agreement and Article 31 of *the Constitution* when it unlawfully accessed their data containing their business information, made copies and the documents illegally obtained were being relied on to mount the criminal case in violation of Article 31 as read with Article 50(4) of *the Constitution*.
64. In essence the, petitioners denied stealing or diverting commissions belonging to the interested party. They maintained that the 6th petitioner had an agency contract and lawfully received commissions from Kronos. They denied committing any offence thus, the charges and prosecution were instituted in bad faith.
65. The 1st and 2nd respondents, supported by the interested party, argued that they acted within the law; that the purported agency agreement between Kronos and the 6th petitioner (Polychem East Africa Ltd) was fraudulently obtained through misrepresentation of facts as captured in correspondences (emails



- and documents) exchanged between the 1st petitioner and Kronos between 26th July 2012; 7th August 2012 and 19th March 2012.
66. The respondents maintained that the 1st to the 5th petitioners were involved in the day-to-day operations of the 6th petitioner as directors; the 5th petitioner was involved in the drafting of the correspondence stealing the interested party's agency and commissions and that the interested party suffered monetary loss of USD 46,878.30 between 19th March 2012 and 7th August 2012 and a further USD 631,028.55 between 7th August 2012 and 30th April 2016 being agency fee directed to the 6th petitioner's bank account.
 67. The respondents asserted that the commission of USD 46,878.30 from Kronos to the 6th petitioner between 19th March 2012 and 7th August 2012 amounted to theft having been paid on the strength of fraudulent instructions issued to Kronos on 19th March 2012 by the 1st petitioner changing the recipient bank account to that of the 6th petitioner.
 68. According to the 1st and 2nd respondents, investigations concluded that the interested party's agency with Kronos was also stolen and transferred to the 6th petitioner. The theft of USD 620,681.85 and the agency with Kronos was done between March 2012 and November 2015 when the 1st to 5th petitioners were directors and or employees of the 6th petitioner. It was therefore decided that the 6th petitioner, an agent of the interested party, be charged alongside the 1st to 5th petitioners with theft by agent or handling stolen property.
 69. Article 157(6) confers on the DPP (1st respondent) constitutional mandate and discretion to initiate, continue and, or terminate criminal prosecutions. When exercising this discretion, the DPP does not require permission or consent from any person or authority. However, Article 157(11) requires the DPP to exercise the powers in a manner that has regard to public interest, interests of administration of justice and prevents and avoids abuse of the legal process. (See *Director of Public Prosecutions v Martin Mina & 4 others* [2017] eKLR).
 70. In the same vein, the police have statutory mandate to, among others, protect life and property and investigate crimes based on complaints lodged with them. In that respect, the law is settled that where the police are investigating crime, or the DPP is exercising constitutional discretion conferred on that office, courts will rarely interfere with their mandate.
 71. In *Republic v Director of Public Prosecution & 2 others Ex parte Francis Njakwe Maina & another* [2015] eKLR, it was observed that courts ought not usurp the constitutional mandate of the DPP to undertake prosecution in exercise of the discretion conferred on that office. The Court however pointed out that if a party demonstrates that the criminal proceedings constitute an abuse of process, the Court will not hesitate in putting a halt to such proceedings.
 72. Similarly, in *Paul Ng'ang'a Nyaga v Attorney General & 3 others* (2013) eKLR, it was held that the Court will only interfere with and interrogate acts of other constitutional bodies if there is sufficient evidence that those bodies acted or are acting in contravention of *the Constitution* or the law.
 73. The intention of *the Constitution* was to enable the DPP carry out constitutional mandate of that office without interference from anybody. The Court cannot direct or interfere with the DPP's exercise of his constitutional powers unless there is clear evidence of violation of a party's rights or *the Constitution* itself (*Francis Anyango Juma v The Director of Public Prosecutions and another* [2012] eKLR).
 74. In a persuasive decision of *Williams v Spautz* [1992] HCA 34; 174 CLR 509; 66 ALJR 585, the Court stated that "If a stay is sought to stop a prosecution which has been instituted and maintained for an



improper purpose, it by no means follows that it is necessary, before granting a stay, for the court to satisfy itself in such a case, that an unfair trial will ensue unless the prosecution is stopped.”

75. The decisions referred to above emphasise that the DPP’s discretion to charge will only be interfered with where there is evidence of abuse, malice or ulterior motive in mounting the prosecution. That is, institution of criminal prosecution which exhibits abuse of discretion or undermines the essence of criminal justice system, will be interfered with.
76. In this petition, the petitioners argued that the criminal prosecution was instituted in bad faith and for purposes of coercing them into admitting the civil claim. That is, it was instituted to aid the complainant by intimidating the petitioners to accede to the civil case pending before the Commercial Division.
77. The petitioners further argued that there was no agency agreement between the interested party and Kronos and, therefore, they did not commit fraud and there was no diversion of commissions from Kronos meant for the interested party. The petitioners maintained that the 6th petitioner had a lawful agency contract with Kronos and lawfully received the commissions. According to the petitioners, the agency fee (commission) was money paid by Kronos and therefore was Kronos’ money lawfully paid to the 6th petitioner. The respondents also illegally obtained documents they were intending to use in the criminal case.
78. I have considered the arguments by parties and perused the record. Whether or not there was agency contract between the interested party and Kronos is a contentious issue. The petitioners explained how the 6th petitioner got the agency contract with Kronos, the history and the people involved in that regard. The respondents and the interested party maintained that interested party had an agency contract with Kronos. In that case, the contention on who, between the interested party and the 6th petitioner, had agency contract with Kronos is the real issue.
79. I have perused the chargesheet and the charges the petitioners are to face-(stealing by agent between 19th March 2012 and 7th August 2012 of USD 46, 878. 30, equivalent to Kshs. 4,734, 708.30, the property of Highchem Speciality Chemicals Ltd; an alternative count of handling stolen property between 19th March 2012 and 30th April 2016 -USD 46, 878.30, equivalent to Kshs. 4,734, 708,30.
80. In count 2, they face stealing by agent between 7th August 2012 and 30th April 2016 (USD 63,028.55- equivalent to Kshs.63,733, 883.55); an alternative charge of handling stolen property between 19th March 2012 and 30th April 2016 (USD 631, 028. 55 equivalent to Kshs. 63, 733,883.55) the property of Highchem Speciality Chemicals Ltd in account No. 8702009717200 held at Standard Chartered Bank Industrial Area Branch, in the name of Polychem East Africa Ltd (6th petitioner).
81. In count 3, the petitioners face a charge of conspiracy to defraud between 19th March 2012 and 31st August 2012 at an unknown place jointly with others not before court, by diverting commission payment of USD 46,878.30 equivalent to Kshs. 4,734.708.30 from Kronos to a/c No.8702009717200 held at Standard Chartered Bank Industrial Area Branch in the name of the 6th petitioner (the property of Highchem Speciality Chemicals Ltd). The money was received in the 6th petitioner’s account from Kronos. All the charges relate to actions that took place from March 2012.
82. On the other hand, the petitioners attached an agency contract between Kronos International Inc. and the 6th petitioner (Polychem East Africa Ltd) signed by Kronos on 22nd August 2012 and by Polychem East Africa Ltd on 3rd September 2012 as (DNW-9). The agency contract granted the 6th petitioner exclusive selling rights in Kenya, Tanzania, Uganda and Rwanda (the contract territory), to demonstrate that the 6th petitioner had an agency contract with Kronos.



83. The petitioners attached a copy of the plaint in HCC NO.310 of 2017, dated 26th July 2017, Highchem East Africa Ltd v David Njau Wambugu, Polychem East Africa Ltd, Eagle Chemicals El-Shark company for Trade & Industry, Eagle Speciality Chemicals Ltd and Daes Holding Ltd. The issues pleaded in the plaint relate to the relationship between the parties; breaches alleged to have been committed by the defendants and particulars of those breaches. The plaintiff (Highchem East Africa Ltd) sought not only declarations, but also judgment against the defendants. In one prayer, the plaintiff sought judgment against the defendants jointly and severally for “USD 678, 095 comprising commissions earned from its agency with Kronos from 19th March 2012 to 30th June 2016.”
84. The defendants filed a defence dated 11th September 2017 denying any of the plaintiff’s claims. At paragraph 42 of the defence, the defendants responded to the plaintiff’s (interested party) claim of agency contract with Kronos, denying that the plaintiff had any agency contract with Kronos. The defendants stated that Kronos made an independent decision to appoint the 2nd defendant (6th petitioner) as its agent based on its commercial considerations. The issue of agency contract is indeed the core issue forming the basis of the criminal case against the petitioners.
85. I have carefully perused chargesheet, the plaint as well as the defence. They show that the issue in the criminal case is one of the core issues in the civil suit. Who between the interested party and the 6th petitioner had agency contract with Kronos, is a key issue to be determined in the civil case. That will also determine who between the 6th petitioner and the interested party was entitled to commissions from Kronos. It will also determine whether or not there was diversion of commissions from Kronos to the 6th petitioner since that amount is claimed in the plaint.
86. Before the issue of ownership of the agency contract with Kronos, when it started and or terminated and therefore who was entitled to receive commissions from Kronos and up to when, is determined (in the civil suit), the issue of stealing, handling stolen property or even conspiracy to defraud commissions could not arise. In other words, the DPP could not properly mount prosecution against the petitioners when ownership of the agency contract had not been determined and was pending in the civil case before the High court.
87. The Court hearing the civil suit is the proper forum to determine the issue of acquisition and ownership of the agency contract and any fraudulent diversion of commissions since these issues are intertwined. This is so, because the petitioners argued that the 6th petitioner’s director directly negotiated for the agency contract with Kronos and therefore the commissions were lawfully paid to the 6th petitioner. The interested party also argued that it owned the agency and was entitled to commissions. A criminal trial cannot, in my respectful, determine the issue of ownership of the agency contract where both parties claim ownership.
88. There is no doubt that section 24 of the Police Service Act provides for the functions of the Police Service which include; investigating crime, maintenance of law and order and protection of life and property. The police are, however, required to exercise their powers and discharge their functions subject to the constitutional safeguards of human rights and fundamental freedoms. The police must, as much as possible, avoid duplicating legal processes and the DPP must ensure that the discretion to prosecute is not used to assist one of the parties to a civil dispute pending in court.
89. The DPP has also an obligation to ensure that any intended prosecution does not go against the caveat in Article 157(11), so that the discretion to prosecute is exercised in public interest, interest of the administration of justice and is not open to abuse of the legal process. Even where section 193A allows concurrent criminal and civil proceedings from the same facts, the DPP must be weary of the criminal process being weaponised in what is otherwise a purely civil dispute. What section 193A



means is that the court will not stop criminal proceedings merely because there are civil proceedings. The court will consider all relevant factors, including the likely consequences such as the possibility of conflicting decisions from concurrent criminal and civil proceedings. The court should allow only criminal proceedings where there is reasonable basis. But where there is a clear dispute of a civil nature, like in the present case, it is not a desirable case for instituting criminal proceedings, otherwise it will be an abuse of the criminal justice system.

90. In this respect, this Court agrees with the position espoused in *Republic v Attorney General & 4 others ex-parte Kenneth Kariuki Gathii* [2014] KEHC 6188 (KLR) that facts forming the basis of criminal proceedings may also be the basis for a civil suit. However, if commencement of the criminal proceedings is meant to force a party to submit to the civil claim, institution of the criminal proceedings would have been for achieving a collateral purpose other than its legally recognised aim.
91. Similarly, as this Court observed in *Wamburu v Director of Public Prosecution & another (Petition E430 of 2023)* [2024] KEHC 11496 (KLR), “the Court will intervene in a case where a petitioner shows that the criminal prosecution is being used for improper purposes, ulterior motive, or to coerce one to admit a civil claim.” See also *R v Inspector General, Director of Public Prosecutions & 3 others (J.R Application. No. 621 of 2017)*, that “The power to stay or prohibit criminal proceedings is meant to advance the Rule of Law and not to frustrate it.”
92. This Court is alive to the fact that matters of fact are better left for the trial court. However, where the facts clearly show that the issues raised in the criminal proceedings which are also the basis of a civil suit are fundamentally of a civil nature and fall for a proper and conclusive determination before the civil court, the Court should not allow prosecution to commence or continue if it will interfere with the proceedings pending before the civil court.
93. In this petition, allowing the criminal case to continue before the 3rd respondent while the civil suit is before the High Court may also result into conflicting decisions. What if the trial court was to find that there was diversion of the commissions, yet the High Court finds that the 6th petitioner owned the agency contract with Kronos and lawfully received the commissions? This would lead to not only an absurdity but also an undesirable result. Such a scenario will be avoided by deferring to the civil case so that the High court can conclusively determine the issue of ownership of the agency contract with Kronos.
94. It is also worth noting that the interested party filed the civil suit in 2017 while the criminal case was filed 2019, two years after filing the civil suit even though investigations began in 2017. Given the close proximity of the issues in the criminal case and those in the civil suit, one cannot escape forming the view, that the criminal case was initiated to coerce the petitioners into admitting the civil claim, thus, a potential abuse of the criminal justice system in violation of the principle in Article 157(11) of *the Constitution*.

Unlawfully obtained documents

95. The petitioners again argued that the interested party unlawfully obtained their documents which were being used by the 1st and 2nd respondents to prosecute them. The petitioners attached a copy of the business support agreement (Annex DNW-14) between the interested party and Highchem Speciality Chemicals Ltd, dated 1st November 2015 for provision of business support services to support their argument that the evidence was unlawfully obtained. The respondents maintained that the evidence was legally obtained.
96. I have perused that agreement and, in particular, clause 5. At clause 5.1 parties undertook (save with prior written consent of the other) to treat as strictly confidential and not to disclose any information



- concerning existence or contents of the agreement or any transaction or matter together with any and all business, technical, economic, financial, or other information acquired from the other, to third parties.
97. Clause 5.2 stated that “the obligation of confidentiality was to subsist without limit in point of time.” The agreement was signed by Dr. Wachira Maina for Highchem East Africa and 1st petitioner on behalf of Highchem Speciality Chemicals Ltd.
98. There can be no doubt that the agreement protected information belonging to the parties. That information could only be revealed to a third party with prior written consent of the owner. The petitioners argued that the respondents unlawfully accessed their information. Indeed, the respondents made reference to exchange of emails and letters between the 1st petitioner and Kronos. They argued that the information was lawfully obtained but did not show that they had prior consent to reveal the documents. It is therefore true that the interested party and, by extension, the respondents acting on the interested party’s instructions, were using confidential information despite the undertaking not to do so without prior consent.
99. That notwithstanding, I note that according to the petitioners, the issue whether that information belongs to the interested party or the petitioners is an issue pending before the Court of Appeal in Civil Appeal No. 41 Of 2021. For that reason, this court will not say more on the issue.

2nd to 5th petitioners

100. The petitioners again argued that the 2nd to 5th petitioners were not directors of the 6th petitioner in 2012 when commission of the alleged offence commenced hence, they could not be charged without showing in what capacity they were being prosecuted. They attached annual returns for Polychem East Africa Ltd of 7th July 2015 (annex DNW-10) to show that as at that date, directors of Polychem East Africa Ltd were the 1st petitioner and Esther Njau. The 2nd to 5th petitioners joined Polychem East Africa Ltd following transfer of shares dated 2nd February 2015 as shown by the annual returns of 4th July 2016 (annex DNW-11).
101. The respondents did not adequately respond to the argument that the 2nd to 5th petitioners were not directors of the 6th petitioner at the time of the alleged transgressions, or that they could be prosecuted for offences that were committed before they joined the 6th petitioner. This is an issue of fact this court cannot determine regarding the role the 2nd to 5th petitioners may have played in 2012 and whether they were officers of the 6th petitioner.
102. The petitioners again attached annex DNW-12 share purchase agreement between Highchem East Africa Ltd which was to sell shares in Highchem Speciality Ltd to Daes Holdings Ltd owned by the petitioners as well as documents showing that Dr. Wachira Maina and Walter Steffen Richard Beuthner resigned from the directorship of Hichem Speciality Chemicals Ltd with effect from 28th December 2015 leaving David Njau Wambugu, Alex Tito Mwangi muiruri, Mark Philip Wambugu as directors. (annex DNW-13). They argued that the complainant had no locus to lodge a complaint since by then Hichem Speciality Chemicals Ltd was owned by the petitioners.
103. Indeed, the charge sheet shows that the complainant was Highchem Speciality Chemicals Ltd. According to the charge sheet, the report was made in 2017 when Highchem Speciality Chemicals Ltd belonged to the petitioners. It is not clear how documents were signed on its behalf by persons other than its directors at that time the complaint was lodged. It is doubtful whether Highchem Speciality Chemicals Ltd could lodge a complaint after change of ownership; but I will not say more on it.



104. A party who approaches the Court seeking to halt prosecution is required to show that investigations or intended prosecution is not being initiated in public interest or in the interest of administration of justice, but is based on extraneous matters and, therefore, an abuse of the legal process. In this respect, the Court emphasised in *Kuria & 3 others v Attorney General* [2002] 2 KLR 69, that the Court has power and duty to prohibit continuation of criminal prosecution if extraneous matters divorced from the goals of justice, guide their instigation and issue an of prohibition where compelling an accused to stand trial would violate the fundamental principles of justice.
105. In *Republic v Attorney General & another Ex-Parte Kipng'eno Arap Ng'eny* [2001] eKLR, the Court stated that 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.”
106. Taking into account the observations in the decisions referred to above, and considering the material placed before this Court, the long history and the relationship between the parties, including the civil case (HCCC No. 310 of 2017) pending before the Commercial Division where the issues of ownership of the agency contract with Kronos and commissions paid are at the centre of that case, I agree with the petitioners that the investigations and indeed any intended prosecution is not being undertaken in the interest of criminal justice system. The interested party filed the civil suit and a defence was filed stating that it was the 6th petitioner that had agency contract with Kronos and lawfully earned the commissions. The question of ownership of the agency contract having not been determined and therefore who was entitled to the commissions, it was improper to initiate and mount prosecution against the petitioners.
107. The criminal proceedings were being undertaken to assist either in getting evidence for purposes of coercing the petitioners into admitting the civil claim, or to influencing the outcome in the civil case pending in the Commercial Division. In the circumstances and in the interest of justice, it would be proper for the civil court to resolve the issues placed before it as this will determine the rights of parties regarding the agency contract and attendant commissions.
108. This Court also noted the petitioners’ argument that the issue of whether the documents belong to the interested party and the interested party could use them even in the civil case is pending before the Court of Appeal. In that regard, it would not be proper to allow the criminal proceedings to continue where there are fundamental issues waiting determination in the Court of Appeal and the High Court.

Conclusion

109. Having considered the pleadings and arguments by parties, the conclusion I come to, is that the petitioners have demonstrated that it will not be in the interest of justice to allow the criminal proceedings against them to continue. The issues forming the basis of the criminal proceedings are at the centre of the civil suit, HCCC No. 310 of 2017, including who had agency contract with Kronos and who was therefore entitled to the commissions.
110. The petitioners have raised doubts whether the respondents and interested party can use documents and data obtained from the petitioners’ records without prior consent, given the confidentiality clause in the business support agreement and the issue of who owns the documents and information which is pending before the Court of Appeal.



Disposal

111. Based on the above conclusions, the Court makes the following declaration and or orders it considers appropriate.
- a. A declaration is hereby issued that investigations and institution of criminal proceedings against the petitioners in Nairobi Magistrate's Criminal Case No. 391 of 2019 -Republic v David Njau Wambugu & 5 others is an abuse of the process of the court and is therefore unlawful.
 - b. An order of certiorari is hereby issued quashing the proceedings in Nairobi Magistrate's Criminal Case No. 391 of 2019 -Republic v David Njau Wambugu & 5 others.
 - c. An order of prohibition is hereby issue prohibiting the Inspector General of Police and or his officers and the Director of Public Prosecutions and or his officers from carrying on with investigations and or prosecutions against the petitioners on matters arising from the agency contract with Kronos International Inc. and or commissions received from Kronos International Inc., which were the basis of criminal proceeding in Nairobi Magistrate's Criminal Case No. 391 of 2019 -Republic v David Njau Wambugu & 5 others.
 - d. Each party will bear costs of the petition.

DATED AND DELIVERED AT NAIROBI THIS 10TH DAY OF MARCH 2025

E C MWITA

JUDGE

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JUDGMENT PETITION NO. 219 OF 2019

