Barua v Inspector General of Police & 2 others (Petition E086 of 2024)
[2025] KEHC 8234 (KLR) (Constitutional and Human Rights) (13 June 2025) (Judgment)

Neutral citation: [2025] KEHC 8234 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CONSTITUTIONAL AND HUMAN RIGHTS

PETITION E086 OF 2024

EC MWITA, J

JUNE 13, 2025

BETWEEN

MAGDALENA NICHANZE BARUA ..... PETITIONER

AND

THE INSPECTOR GENERAL OF POLICE ..... 1ST RESPONDENT

THE DIRECTOR OF CRIMINAL INVESTIGATION ..... 2ND RESPONDENT

THE DIRECTOR OF PUBLIC PROSECUTION ..... 3RD RESPONDENT

JUDGMENT

Introduction

1. The petitioner brought this petition challenging the respondents' decision to arrest, charge and prosecute her in Nairobi Criminal Case No. E1007 of 2023 Republic v Magdalena Nichanze Barua (the Criminal Case), alleging that the actions were a violation of her rights and fundamental freedoms. The petition is supported by affidavits and written submissions, and sought various declarations and orders to halt her prosecution and compensation.

Petitioner's case

2. By way of background, the petitioner was married to one Mr. Robert Cullens Murimi (Mr. Murimi) and the couple was blessed with two children. They however divorced in 2012. Mr. Murimi then married Ms. Bakate Hall (Ms. Hall) a marriage that subsisted until Mr. Murimi's demise on 10th January 2021.

3. Ms. Hall worked with UNEP and by virtue of her employment, she was entitled to benefits including an education grant for her children. Prior to the divorce, there was a children's case; Nairobi Children's

case No. 552 of 2019 between the petitioner and the deceased regarding maintenance of their children. The case was resolved in a Mediation Settlement Agreement dated 23rd October 2019. Parties agreed that the children remain in their current schools and parties share school fees on 50:50 basis.

4. The petitioner stated that after Mr. Murimi's demise, she discovered that her children were benefiting from an education grant from the UN. This was shocking given that they had an agreement on fee payment and she had never worked for UN. The petitioner later discovered that Ms. Hall and Mr. Murimi were enjoying benefits relating to the children, without her knowledge.

5. The petitioner then received an email from Hillcrest School informing her that they had received communication from the UN seeking to verify that her children had actually attended the school and whether the fees invoices were for actual fees. The petitioner was also informed that the UN Internal Oversight Services office had visited the school to investigate the circumstances relating to the fraudulent payment of fees made by Ms. Hall.

6. The petitioner stated that she had a meeting with the Head of Hillcrest Finance office to clarify who Ms. Hall was. Following her enquiry to the UN on the circumstances of the UN education grant, she was invited for an interview as a key witness in the investigation concerning the education grant.

7. On 9th May 2023 the petitioner attended the investigation interview at the UN offices. During the interview, she was shown an affidavit allegedly sworn by Ms. Hall and commissioned by Mary Sheila, an advocate at Triple OKLaw LLP. The affidavit alleged that she(petitioner) had relinquished custody of her children to Ms. Hall.

8. On 21st April 2023, the petitioner received an email copied to several recipients purporting to come from Mr. Murimi through robertmcullens@gmail.com. The email contained several accusations against Mr. Murimi and Ms. Hall. One of the accusations was that they had embezzled money from the UN in the name of paying school fees for their children.

9. The petitioner was later served with an ex parte application where Chief Inspector Nickson Kinyua had obtained a search warrant to access to her house on 16th August 2023. On that day, investigators took her laptop, two phones and a flash disk with the promise to return them after investigations.

10. It is the petitioner's case that the Directorate of Criminal Investigations (DCI) stayed with her phones for two weeks and her laptop for three weeks before she was called to collect them. Upon collecting the items, she realized that some of her documents (files) in the computer and emails relating to the UN matter and other personal emails had been erased.

11. The petitioner inquired about the missing documents and the investigation report from the investigating officer, CI Nickson Kinyua, but her inquiries were dismissed. On 17th November 2023, she received a call from a police officer attached to the DCI offices informing her that she was required in court on 20th November 2023 to take plea on charges of cyber-crime. On that day, she was charged in Milimani Chief Magistrate's Criminal Case. E1007 of 2023 R v Magdalene Nichanze Barua and pleaded not guilty.

12. The petitioner had wanted suspension of plea taking pending investigation of her complaint and the report of fraud against Ms. Hall but she was informed that her claim was a basis for an independent investigation for which she had to make a formal complaint to trigger investigations. The petitioner then wrote two letters dated 8th December 2023 and 26th January 2024 to the 1st respondent to lodge a complaint and sought investigations over it. The 1st respondent however took no action.

13. It was the petitioner's position that the complaint against her and the subsequent charges were undertaken in disregard of the investigation by the UN against Ms. Hall. Further, that there was a nexus

between the investigation at the UN, the complaint by Ms. Hall and her subsequent arrest and charging over cybercrime. The petitioner was therefore aggrieved that despite the foregoing, the 2nd respondent neither took her statement nor considered the UN investigation before arresting and charging her. She asserted that her rights were violated and the ordeal she went through had caused her mental and psychological stress.

14. The petitioner stated that although CI Kinyua stated that he commenced investigations on the use of the late Murimi's email addresses, he was not particular on which email addresses he was referring to since the late Murimi had five (5) official email addresses, including the one she was accused of using.

15. According to the petitioner, the forensic report did not mention the email address she allegedly used to send an email to the late Murimi's business associates, or that the email was sent from her laptop. She also denied knowing any of the late Murimi's business associates or even communicating with them. She further denied that the mobile number used to register the suspicious email account was hers.

16. The petitioner stated that Mr. Bravian Barare swore an affidavit confirming that she engaged him to help her locate missing files from her desktop. He performed a routine malware diagnosis on the laptop and discovered several concerning issues that posed a threat to the integrity and security of the system. The petitioner also gave him a Forensic Audit Report from the DCI for his review and he prepared a report based on his analysis of the petitioner's computer and Forensic Audit Report.

Respondents' case

17. The respondents opposed the petition through a replying affidavit sworn on 4th April 2024 by No. 239238 Chief Inspector Nickson Kinyua (CI Kinyua) and written submissions.

18. CI Kinyua stated that on 30th March 2023, the DCI's Serious Crimes Unit received a complaint from Mr. James Ochieng Oduol, Advocate of the firm of TripleOK Law on behalf of his client Ms. Hall alleging that an individual unknown to his client had created a suspicious email address and was impersonating her late husband and trying to correspond with third parties as the late Mr. Murimi.

19. CI Kinyua stated that following investigations, he found that on 1st March 2023 at about 06:52hrs, the petitioner sent an email to late Mr. Murimi's business associate's email amitk@amagroupimtl.com through the email address robertmcullens@gmail.com.

20. On 16th March 2023 and thereafter, the complainant in the Criminal case and her employer continued receiving defamatory emails referenced "Fraudulent School Fees Claims at the UNEP Kenya (Bakate Hall)" from the suspicious email address. CI Kinyua deposed that on 4th April 2023, he summoned James Ochieng Oduol to record a statement. The witness provided his self-recorded statement and that of Ms. Hall together with documentary exhibits from the firm of TripleOK Law.

21. On 17th April 2023, CI Kinyua requested for Lab assistance from the digital forensic laboratory in relation to extraction and analysis of the suspicious emails in question and the witness was escorted to the lab to facilitate access to the emails for analysis. Information provided from the Digital Forensic Analysis showed that the mobile subscriber number 0742983823 registered in the name of UNON, was used to register the suspicious email account.

22. On 25th April 2023 CI Kinyua made a request for call geolocations, IMEI and MSISDN to the Service providers through CRIB for the history of suspicious numbers availed to him by the complainant. On 5th May 2023 he was granted orders to investigate the suspicious email accounts by the Kiambu Chief Magistrates Court through Misc. App E159 of 2023.

23. On 10th July 2023 he made a request for call geolocations, IMEI and MSISDN history for the subscriber mobile numbers in question from the Risk Management, Safaricom (K) Ltd. On 19th July 2023 he forwarded inquiry file for perusal and advice by senior command. On 25th July 2023, he was granted orders from Kiambu Law Courts through Misc. App E257 of 2023 to investigate a suspicious account.

24. On 3rd August 2023, he was granted further orders by Kiambu Law Courts through Misc. App. E273 of 2023 for seizure of the petitioner's electronic gadgets. On 16th August 2023, he effected the search warrant at the petitioner's residence and confiscated two smartphones, one flash disk and a Dell Laptop.

25. On 21st August 2023 the items were subjected to digital forensic analysis and the forensic examiner in a preliminary Digital Forensic Report dated 6th September 2023 formed the opinion that the petitioner through the web history from the analyzed gadgets, sent the defamatory emails in question.

26. CI Kinyua stated that upon concluding investigations the file was forwarded to the 3rd respondent on 26th October 2023 for perusal and advice, with recommendations that the petitioner be charged with the offences brought under Criminal Case.

27. According to CI Kinyua, the 3rd respondent through letter dated 14th November 2023 to the 2nd respondent directed that the petitioner be arrested and charge with the offences of Impersonation; Publication of False Information and Cyber Harassment contrary to sections 29, 23 and 27(1)(b) of the *Computer Misuse and Cybercrimes Act* No. 5 of 2018.

28. CI Kinyua stated that the criminal case was registered at Milimani Chief Magistrate's Court on 21st November 2023. CI Kinyua denied that the respondents had acted in excess of their power in undertaking investigations, arresting and arraigning the petitioner in court. the petitioner had also not demonstrated that the respondent failed to comply with the provisions of *the Constitution* or the law.

29. CI Kinyua asserted that the petitioner was given reasonable opportunity to state her case by answering to the charge and a cautionary statement read to her by the investigation officer but declined to do so on the advice of her advocate. Moreover, the issues raised by the petitioner are issues to be determined by the trial court.

30. CI Kinyua was of the view, that the petitioner's attempt to link the criminal prosecution with any parallel proceedings such as the UN investigation against Ms. Hall was irrelevant to the criminal proceedings.

Submissions

31. The petition was disposed of through written submissions with oral highlights.

Petitioner's submissions

32. The petitioner filed writes submissions which Mr. Mutua, learned counsel for the petitioner, adopted and fully relied on in urging the petition.

33. In the submissions, the petitioner cited article 165 of *the Constitution* to submit that this court has the jurisdiction to hear and determine this petition. It was petitioner's position that her prosecution is unfair and malicious because the concerns raised by the complainants regarding defamation and an attack on the estate of the deceased, were civil in nature.

34. The petitioner took issue with the fact that she was the only person of interest in the investigation despite the fact that she did not interact with the complainant, nor does she have any interest in the

estate of her deceased former husband. According to the petitioner, the DPP had no foundational basis to institute criminal proceedings against her. The petitioner relied on the decisions in Republic v Director of Public Prosecutions & another Ex parte Patrick Ogola Onyango & 8 other [2016] eKLR and Republic v Attorney General & another Ex-Parte Kipng'eno Arap Ng'eny [2001] eKLR.

35. It was submitted that the respondents acted maliciously in their investigations because they failed to consider the petitioner's evidence, including the fact that the email complained of did not originate from her; the phone number paired to the email address did not belong to her and they also failed investigate the allegations in the email. The petitioner urged the court to allow the petition with costs.

Respondents' submissions

36. The respondents filed written submissions which Mr. Achochi, learned counsel for the respondents adopted and relied on in urging their position in the matter.

37. In the written submissions, the respondents argued that the decision to charge and prosecute the petitioner was made after thorough investigations. According to the respondents, they complied with their constitutional and statutory mandate as well as the principles of natural justice. They relied on the decisions in Rhodah Mutete Mutuku v Inspector General, National Police Service & 2 others [2019] eKLR; Republic v Commissioner of Police & another Ex Parte Michael Monari & another [2012] eKLR; Douglas Maina Mwangi v Director of Public Prosecutions & another [2013] eKLR and Kelly Kases Bunjika v Director of Public Prosecutions (DPP) & another [2018] eKLR and urged the court to decline the invitation to interfere with their mandate.

38. The respondents maintained that investigations were conducted in line with sections 24 and 35 of the *National Police Service Act*. They relied on the decision in Muema Mativo v Director of Criminal Investigations & 2 others; HFC Limited (Interested Party) [2021] eKLR. They also cited the decisions in Kuria & 3 others v Attorney General [2002] 2 KLR 69 and Republic v Chief Magistrate Milimani & another Ex-parte Tusker mattresses Ltd & 3 others [2013] eKLR for the argument that it will be untenable to prohibit or restrain them from performing their functions because the decision to charge the petitioner was made within *the Constitution* and the law.

39. The respondents again relied on the decision in Republic v Director of Criminal Investigations & 2 others; Resilient Investments Limited & 3 others (Interested parties); (Exparte) [2022] KEHC 43 (KLR) for the position that in the absence of an illegality, irrationality or impropriety, the prayer for certiorari should not granted.

40. The respondents again cited Black's Law Dictionary, 9th Edition; Halsbury's Laws of England 4th Edition Volume 1 page 111 paragraphs 89 and 90 and the decision in Kenya National Examinations Council v Republic Ex Parte Geoffrey Gathenji Njoroge & 9 others [1997] eKLR, to argue that save for the DPP who can issue directions to the IG to investigate a crime any other person's directions to the 1st and 2nd respondents to investigate a crime violates articles 245(4) of *the Constitution*. The order of mandamus is therefore unavailable.

41. They urged the court to dismiss the petition with costs.

Determination

42. I have considered the petition, response, arguments by parties and the decisions relied on. The issue for determination is whether the petitioner's rights and fundamental freedoms were violated calling on this court to halt her prosecution.

43. The petitioner's case was that she was once married to the late Mr. Murimi and thy had children together but divorced in 2012. Thereafter, Mr. Murimi married Ms. Hall who worked with UNEP and by virtue thar employment, Ms. Hall was entitled to certain benefits, including an education grant for her own children.

44. Prior to the divorce, the petitioner and Mr. Murimi had a children case; (Nairobi Children's case No. 552 of 2019) over maintenance of the children. The case was however resolved through Mediation in 2019 where parties agreed that children remain in Hillcrest School and the petitioner and Mr. Murimi share school fees on 50:50 basis.

45. Following Mr. Murimi's demise, the petitioner was shocked to discover that her children were benefiting from the education grant from the UN despite the agreement she and the late Murimi had on payment of school fees and given that she had never worked with the UN. That meant Ms. Hall and Mr. Murimi were enjoying benefits relating to the children without her knowledge.

46. The issue became a matter for police investigations as well as by the UN. She also received an email from Hillcrest School informing her that the school had received communication from the UN trying to verify whether her children actually attended the school and whether the fee invoices were for the children. The petitioner was also informed that the UN Internal Oversight Services office had visited the school to investigate the circumstances relating to the fraudulent payment of fees.

47. The petitioner had a meeting with the Head of Hillcrest Finance office and clarified who Ms. Hall was. She was later invited by the UN for an interview as a key witness over the investigation concerning the education grant. During the interview at the UN offices, the petitioner was shown an affidavit sworn by Ms. Hall and commissioned by an advocate from Triple OKLaw LLP, alleging that she (the petitioner) had relinquished custody of her children to Ms. Hall.

48. The petitioner also received an email copied to several other recipients, purporting to be from the late Murimi's email address (robertmcullens@gmail.com)containing several accusations against the late Murimi and Ms. Hall, including one that the two had embezzled money from the UN in the name of paying school fees for their children.

49. The police later obtained search warrants to access the petitioner's house for purposes of investigations. Investigators took the petitioner's laptop, phones and a flash disk for further investigations. When the petitioner was eventually asked to collect the items, she noticed that some of her files in the computer and emails on the UN matter and other personal emails had been erased. She was then charged in Criminal Case E1007 of 2023 (R v Magdalene Nichanze Barua, on charges relating to cybercrime for allegedly sending emails to Mr. Murimi's business associates.

50. The petitioner wrote to the 3rd respondent requesting that taking of plea be suspended pending investigation of her complaint on the report of fraud against Ms. Hall but she was informed that her claim was a basis for an independent investigation for which she needed to make a formal complaint to trigger investigation.

51. It was the petitioner's case, therefore, that the complaint against her and the subsequent charges were undertaken despite the investigations by the UN against Ms. Hall still ongoing. Further that there was a nexus between the investigation by the UN, the complaint by Ms. Hall and her subsequent arrest and prosecution for cybercrime.

52. The petitioner denied using the email address allegedly used to send an email to the late Murimi's business associates. She also denied that the email was sent from her laptop or that she knew any of the

late Murimi's business associates or even having communicated with them. She further denied that the mobile number 0742983823 used to register the suspicious email account was hers.

53. The petitioner argued that the respondents' decision to investigate, charge and prosecute her violated her rights and fundamental freedoms guaranteed by *the Constitution*.

54. The respondents denied violating the petitioner's rights and fundamental freedoms. According to the respondents, a complaint was filed and was investigated. The investigation file was sent to the DPP with a recommendation that the petitioner be prosecuted. The DPP directed that the petition be prosecuted for the offence she was charged with.

55. Article 23(3) confers on this court jurisdiction to grant appropriate relief to redress denial, violation or infringement of, or threat to, a right or fundamental freedom. The essence of such relief is to ensure that rights enshrined in, and guaranteed by, *the Constitution*, are protected and enforced. (Fose v Minister of safety and Security (CCT 14/ 96 [1997] ZACC 6.)

56. In this respect, for the court to act towards enforcing the rights, a petitioner has to satisfactorily demonstrate the violation of his/her rights and fundamental freedoms. If the court finds violation it then invokes Article 23(3) of *the Constitution* to grant appropriate relief. This is so, because as the Constitutional Court of Uganda stated in Tinyefuze v Attorney General of Uganda (Constitutional Petition No. 1 of 1996) [1997] UGCC 3, "if a petitioner succeeds in establishing breach of a fundamental right, he is entitled to the relief in exercise of constitutional jurisdiction as a matter of course."

57. Section 24 of the Police Service Act provides for the functions of the Police Service. They include; investigating crime, maintenance of law and order and protection of life and property. That is, the police have statutory mandate to discharge in the performance of those functions, namely; to investigate complaints reported to them regarding commission of crime. This is a statutory duty the law has placed on the police and which they have an obligation to discharge.

58. In that regard, the police are required to exercise their powers and discharge their functions subject to the constitutional safeguards of human rights and fundamental freedoms as required by Article 244 of *the Constitution*. The police investigate complaints of a criminal nature reported to them to ascertain whether or not a crime has been committed. Once investigations are concluded and the police form the view, that a crime has been committed, the investigation file is forwarded to the DPP to make a decision based on the evidence collected, whether or not to charge and prosecute the person involved. If investigations conclude that no offence was committed, the file is closed and that is the end of the matter.

59. On the other hand, article 157(6) of *the Constitution* confers on the DPP constitutional mandate and discretion to initiate, continue and or terminate criminal prosecutions. When exercising this discretion, article 157 (10) is plain that the DPP does not require permission or consent from any person or authority. However, article 157(11) demands that when the DPP is exercising his powers, he should do so in a manner that has regard to public interest, interests of administration of justice and prevents and avoids abuse of the legal process. (See also Director of Public Prosecutions v Martin Mina & 4others [2017] eKLR).

60. From the constitutional text, therefore, it is clear that the intention of *the Constitution* was to enable the DPP carry out his constitutional mandate without interference from anybody or authority. The Court will not direct the DPP how to exercise his constitutional powers or interfere with exercise of his mandate unless there is clear evidence of violation of *the Constitution*, the law or a party's rights and

fundamental freedoms (Francis Anyango Juma v The Director of Public Prosecutions and another [2012] eKLR).

61. In that respect, the law is settled that where the police are investigating a crime, or the DPP is exercising the constitutional mandate and discretion conferred on that office, courts should rarely interfere with the mandate of those offices. (See Republic v Director of Public Prosecution & 2 others Ex parte Francis Njakwe Maina & another [2015] eKLR and Paul Ng'ang'a Nyaga v Attorney General & 3 others (2013) eKLR).

62. In other words, the police have a statutory obligation to investigate a complaint made to them over commission of a crime, while the decision by the DPP to prefer charges and prosecute, is at the discretion of that office and courts will only come in where there is evidence of abuse, malice or ulterior motive in exercising that mandate. That is, only investigations and or institution of criminal prosecution which exhibits abuse of discretion or undermines the essence of the criminal justice system, will call for the court's interference.

63. In this petition, the police received a complaint following which investigations were conducted and a recommendation made to the DPP. The DPP, exercised the mandate conferred to that office and directed that the petitioner be prosecuted, a decision made in exercise of his constitutional mandate and discretion.

64. The record also shows that the petitioner wrote a letter to the police and from her own account, the police informed her that she needed to make a formal complaint for purposes of investigations. It is not clear whether the petitioner did so.

65. I have carefully considered this petition and respective parties' arguments. The petitioner's grievance is that she was the only one being pursued despite having also made a complaint to the police. She also denied sending the alleged emails to associates of the late Murimi and that the phone number used did not belong to her. In the petitioner's view, the respondents' actions violated her rights and fundamental freedoms. The respondents on their part, argued that the petitioner had not demonstrated that her rights and fundamental freedoms had been violated.

66. A claim of violation of rights and fundamental freedoms is first, a matter of fact, and once facts established violation, it becomes a question of law. A petitioner has to prove to the satisfaction of the court that indeed, there was violation of his/her rights or contravention of *the Constitution* and the law.

67. In Communication Commission of Kenya & 5 others v Royal Media Services Limited & 5 others [2014] eKLR, the Supreme Court pointed out that there is need for a link between the aggrieved party, the provisions of *the Constitution* alleged to have been contravened, and manifestation of contravention or infringement, which plays a positive role as a foundation of conviction and good faith, in engaging the constitutional process of dispute settlement.

68. What the Supreme Court meant was that a party claiming violation of rights and fundamental freedoms, should plead with precision, the constitutional rights violated, the provisions infringed and demonstrate the manner of violation so that there is a link between the alleged violation, the rights infringed and the constitutional provisions contravened to put the respondent on notice over the petitioner's claim in order to respond appropriately.

69. Further, as the Court of Appeal stated in Diamond Hasham Lalji & another v Attorney General and 4 others [2018] eKLR (at par 42);"The burden of proof rests with the person alleging unconstitutional exercise of prosecutorial power...if sufficient evidence is adduced to establish a breach, the evidential burden shifts to the DPP to justify the prosecutorial decision."

70. The Court of Appeal made it clear that in considering the evidential test, the court should only be satisfied that the evidence collected by the investigative agency upon which the DPP's decision is made, establishes a prima facie case necessitating prosecution. At this stage the courts should not hold a fully-fledged inquiry to find if evidence would end in a conviction or acquittal. That is the function of the trial court. However, a proper scrutiny of facts and circumstances of the case are absolutely imperative.

71. Applying that principle to this petition, the police investigated the complaint, took the petitioner's computer and phone which were subjected to forensic investigation and analysis. The report generated from the analysis showed that the petitioner, through the web history from the analyzed gadgets, sent the emails in question. That report formed part of the evidence relied by the DPP to recommend that the petitioner be prosecuted. This fact was appreciated by the petitioner who, according to her own affidavits, she also submitted the computer together with the forensic report to her own expert (Mr. Bravian Barare) for analysis. Mr. Barare admitted as much in his affidavit, stating that he produced his own report on what he found. That is the report which the petitioner relies on to counter that of the respondents.

72. The petitioner's concern here, rests on issues of fact which do not fall on this court's mandate at this stage. As the Court of Appeal observed in Director of Public Prosecutions v Martin Mina & 4others [2017] KECA 93 (KLR), it is not the duty of this court in judicial review proceedings to evaluate the sufficiency of the evidence in the envisaged criminal proceedings. That is the function of the trial Court or the High Court in a criminal appeal. "A Judicial Review Court should not usurp the functions of a trial court, except in the clearest of the cases."

73. In a persuasive decision of the Supreme Court of India, State of Maharashtra & Others v Arun Gulab & Others, Criminal Appeal No. 590 of 2007, the Court stated:

> The power of quashing criminal proceedings has to be exercised very sparingly and with circumspection and that too in the rarest of cases and the Court cannot be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of allegations made in the Complaint, unless the allegations are so patently absurd and inherently improbable so that no prudent person can ever reach such a conclusion.

74. In this petition, the petitioner was required to demonstrate which rights were violated, the constitutional provisions infringed and the manner of the infringement. The petitioner was also to prove that in investigating the complaint against her, the police violated the constitutional safeguards and failed to respect her rights and fundamental freedoms, including dignity. The petitioner failed in this respect.

75. The petitioner was again under obligation to demonstrate that the DPP's decision to prosecute her violated the tenets in article 157(11) of *the Constitution*. The petitioner did not show that the DPP's decision was based on malice, was against public interest or was against the interests of justice. That is, the petitioner did not show that any of the two organs failed to discharge their mandate as required by *the Constitution* and the law.

76. In the end, the court concludes that the petitioner failed to demonstrate violation of her rights and fundamental freedoms. Consequently, the petition fails and is dismissed. Costs being discretionary, each party shall bear their own costs.

DATED AND DELIVERED AT NAIROBI THIS 13TH DAY OF JUNE 2025

E C MWITA

JUDGE