



**Juma v Director Of Criminal Investigations, Mtwapa & 5 others; Bindo (Interested Party)  
(Constitutional Petition E010 of 2023) [2025] KEHC 10449 (KLR) (11 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10449 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MALINDI  
CONSTITUTIONAL PETITION E010 OF 2023**

**M THANDE, J  
JULY 11, 2025**

**BETWEEN**

**RAVASCO LUKIO JUMA ..... PETITIONER**

**AND**

**DIRECTOR OF CRIMINAL INVESTIGATIONS, MTWAPA . 1<sup>ST</sup> RESPONDENT  
OFFICER IN CHARGE OF STATION, MTWAPA ..... 2<sup>ND</sup> RESPONDENT  
DIRECTOR OF CRIMINAL INVESTIGATIONS ..... 3<sup>RD</sup> RESPONDENT  
INSPECTOR GENERAL OF POLICE ..... 4<sup>TH</sup> RESPONDENT  
ATTORNEY GENERAL ..... 5<sup>TH</sup> RESPONDENT  
DIRECTOR OF PUBLIC PROSECUTIONS ..... 6<sup>TH</sup> RESPONDENT**

**AND**

**RAMA HAMISI BINDO ..... INTERESTED PARTY**

**JUDGMENT**

1. In a Petition against 7.12.23, the Petitioner seeks the following reliefs:
  1. A declaration is and does issue that the DCI Mtwapa and the OCS Mtwapa alongside other Respondents violated the Petitioner's rights under Article 28, 29, 47 and 49[1][a].
  2. An order certiorari be and is issued quashing the proceedings at Shanzu Chief Magistrate's Court being CR. NO. E1168 OF 2023
  3. A permanent injunction be and is hereby issued prohibiting the Respondent from harassing the Petitioner over the dispute on Plot Number CR 80173 MN/IV/1408 measuring approximately 12.05 hectares situated in Kilifi County.



4. General damages.
  5. Exemplary and aggravated damages to deter repetition of the Respondents' conduct.
  6. Cost order against the Respondent.
2. The Petitioner's case as stated in the Petition and in his supporting affidavit sworn on even date, is that he is one of the squatters on the property known as MN/IV/1408 CR 80173 measuring approximately 12.05 ha in Kilifi County [the suit property]. He stated that the suit property has been passed down from his forefathers who cleared the forest and inhabited the same. This is the land he has been in physical possession of, cultivating and upon which he has buried his family. On the land stand Bodoi Primary School, a mosque, churches. There are also residents. He claims that he has occupied the suit property for 100 years without interruption until the Interested Party showed up in 2023, accompanied by 4 land rovers and the DCIO Mtwapa, claiming the suit property to be his, by virtue of a lease of 99 years.
  3. The Petitioner further stated that he has alongside others, authorized Wiston Hariri Ndaru, Adi Mohamed Yusuf, Johana Salimu Mwangunga, Josphat Shikoli Masheti, and Macmillan Konde Mdoe to sue on behalf of 158 others to file Land Case No. E034 of 2023 [the ELC case] in Malindi Environment and Land Court [the ELC Case], seeking orders of ownership of the suit property by way of adverse possession. Further, that there is a report of the National Lands Commission which allocated the suit land to the squatters.
  4. The Petitioner claimed that the Interested Party has been using Police Constable Musyoka and Leonard Kurgat, DCIO Mtwapa to threaten, intimidate summon and unlawfully detain arraign and prosecute him on fictitious and fabricated charges of forcible detainer. This he said was actuated by malice, following his refusal to withdraw the ELC case and a caution he placed against the suit property. He asserted that his arraignment and prosecution would only embarrass him and put him to unnecessary expense and agony, thus violating his constitutional right to dignity and security of the person under Articles 28 and 29, fair administrative action under Article 47 of *the Constitution*. Further that the needless and unjustified arrest, without being informed of the reason for his arrest or his right to remain silent violated his right under Article 49[1][a] and his right to movement under Article 39. The Petitioner further claimed that his arrest and threatened prosecution for forcible detainer without reasonable cause violated Articles 10, 157[11] and 244 of *the Constitution*.
  5. The 1<sup>st</sup> - 5<sup>th</sup> Respondents filed grounds of opposition dated 6.2.25 in opposition to the Petition. The grounds are that the arrest of some members in the suit land was pursuant to the statutory duty contained in Section 58 of the *National Police Service Act* and that the 1<sup>st</sup> - 4<sup>th</sup> Respondents acted within their mandate under Article 244[a] and [b] of *the Constitution*. Further that Section 193A of the Criminal procedure Code allows for concurrent civil and criminal proceedings. Additionally, that the Petition contravenes the doctrine of constitutional avoidance as the issue of ownership of the land is pending in the ELC Case. Further that the Petition has not particularized the alleged violation of constitutional rights and falls short of the standard set in Anarita Karimi case.
  6. The 6<sup>th</sup> Respondent opposed the Petition vide a replying affidavit sworn on 7.2.24 by No. 89228 Cpl. Juda Musyoka, the investigating officer. He averred that the Interested Party reported a case of forcible detainer at Mtwapa Police Station vide OB No. 61/24/1/2023 after he was denied access to the suit land by the Petitioner and others in occupation of the land. Investigations indicated that the Petitioner and others had built houses on the suit land after the same was visited by a surveyor. Upon considering the investigations file, the 6<sup>th</sup> Respondent instituted the criminal case against the Petitioner. The 6<sup>th</sup> Respondent's case is that from the evidence collected, the Petitioner is culpable and



urged this Court to let the matter proceed to its logical conclusion. The 6<sup>th</sup> Respondent denied the Petitioner's allegations of intimidation by the Kilifi South SCCIO to enter into an agreement with the Interested Party. Further that the Petitioner has not placed before the 1<sup>st</sup> Respondent or the Court, any documentary proof of proprietary interest in the suit land. The 6<sup>th</sup> Respondent urged the Court to dismiss the Petition.

7. In his replying affidavit sworn on 4.7.24, the Interested Party denied the allegations by the Petitioner. His view is that the Petition is bereft of substance and merit and only seeks to [mis]use this Court into interfering with the powers and mandate of the DCI and the ODPP. He added that the circumstances that led to the arrest of the Petitioner were properly and duly investigated by the DCI and the report forwarded to the ODPP which made the decision to prosecute him.
8. The Interested Party further stated that while the Petitioner has confirmed that the ELC case is pending, he has deliberately failed to advise this Court that the case is yet to be heard and determined; that the Applicants therein have not been granted any rights over the subject land; that the Petitioner is not a party in the ELC case; the squatters filed the ELC case after Kilifi CMCC No. E 016 of 2023 which they had filed, was withdrawn after he raised an objection on jurisdiction; that the squatters then filed Malindi ELC Misc Appl No. E 16 of 2023 seeking to have the Kilifi case transferred to Malindi for hearing and determination, which was dismissed with costs following the Interested Party's objection; that at the time the ELC case was filed, the notice of withdrawal of the Kilifi had not been endorsed by the court; that a ruling on the issue is pending in the ELC case.
9. The Interested Party asserted that he is the absolute and registered owner of the suit land having been duly issued with a certificate of title to the same on 2.8.22. However, all his efforts to take possession of the suit land were thwarted by the Petitioner who attempted to lay claim over the same despite having absolutely no right over it and or any part of it. The Interested Party stated that it is well within his rights to file a complaint with the Respondents. He denied the allegation that he controls the actions of the police, the ODPP or the courts or any other institution of the prosecution and or conduct of the prosecution as alleged by the Petitioner. Further that the Petitioner has not presented any evidence to that effect.
10. The Petitioner filed a further affidavit sworn on 6.8.24 in which he stated that the proceedings in the criminal case were ongoing and slated for hearing on 26.9.24. He exhibited a copy of the charge sheet. He further stated that he and fellow squatters instructed their advocate to write a complaint letter regarding constant harassment and intimidation by officers of the 1<sup>st</sup> Respondent. A similar letter of complaint was written on 18.1.24 to the Independent Policing and Oversight Authority regarding the said harassment and intimidation. He thus contended that there was an unholy alliance between the DCI and OCS Mtwapa and the Interested Party.
11. In his submissions, the Petitioner listed the following issues for determination which the Court adopts:
  - i. Whether the Respondents violated his rights under Articles 28, 29, 47 and 49[1] of *the Constitution*.
  - ii. Whether an order of certiorari should issue, quashing the proceedings in the criminal case.
  - iii. Whether a permanent injunction should issue prohibiting the Respondents from harassing the Petitioner over the dispute over the suit land.
  - iv. Whether the Petitioner is entitled to damages sought.



## **Whether the Respondents violated his rights under Articles 28, 29, 47 and 49[1] of *the Constitution***

12. The Petitioner submitted that his right under Article 49[1] of *the Constitution* was violated in that he was arrested without being informed of the reason for his arrest or his right to remain silent and was arraigned in court on 1.12.23 over the fictitious charge of forcible detainer. Further that by the arrest and the taking of his fingerprints without probable cause, his rights to dignity under Article 28 and to freedom and security of the person under Article 29 and fair administrative action under Article 47 were all violated. It was further submitted that there was abuse of prosecutorial power given that the DPP and the DCI were aware of the existence of the ELC case. His arrest therefore was in violation of the provisions of Article 157[11] of *the Constitution*.
13. For the Respondents, it was submitted that the 1<sup>st</sup> to the 4<sup>th</sup> Respondents operate under Article 243 and 244 over *the Constitution*. Sections 24 and 35 of the *National Police Service Act*. The 6<sup>th</sup> Respondent operates under Article 157 of *the Constitution* and Section 5 of the *Office of the Director of Public Prosecutions Act* [ODPP Act]. It was further submitted that upon review of the evidence in a police file, and a reasonable prospect of securing a conviction is established, a prosecutor may go ahead and charge a person. The Respondents submitted that the police were well within their right to investigate the conduct of the Petitioner and arrest him to maintain law and order.
14. The Respondents' contention is that in this case, none of the Petitioner's rights were violated as alleged. The Respondents acted within their mandate and the Petitioner has failed to demonstrate how the police acted unlawfully by arresting him and the 6<sup>th</sup> Respondent by preferring criminal charges. The Respondents urged the Court to dismiss the Petition.
15. For the Interested Party, it was submitted that the Petitioner introduced new matters in submissions which were not in his pleadings. Further that the veracity of the evidence gathered in an investigation can only be tested in the criminal case by the trial court. The Interested Party asserted that the Petitioner has not brought forth any evidence to prove that the Respondents acted beyond their mandate. The Petition is thus intended to interfere with that independence of the 6<sup>th</sup> Respondent in the exercise of the constitutional mandate and functions without demonstrating violation of his rights. The Interested Party thus urged that the Petition be dismissed for want of proof of violation of the Petitioner's rights.
16. As I consider this issue and the rival depositions and submissions, I am keenly aware that my role is not to test the legality or otherwise of the charges against the Petitioner, or to determine his guilt or innocence. The single constitutional issue for this Court to consider is whether the Respondents' actions of conducting the investigation and charging the Petitioner are within the law and whether they in any way infringe upon the Petitioners' rights and fundamental freedoms or are an abuse of process.
17. Article 245[1] of *the Constitution*, establishes the office of the Inspector General of Police. Clause [4] confers upon the Inspector General of Police, autonomy in the discharge of its mandate with regard to, the investigation of any particular offence or offences, the enforcement of the law against any particular person or persons, and the employment, assignment, promotion, suspension or dismissal of any member of the National Police Service. It is only the DPP who, under Article 157[4] of *the Constitution*, may direct the Inspector General of Police to investigate any information or allegation of criminal conduct and he is required to comply.
18. Section 28 of the *National Police Service Act* establishes the 2<sup>nd</sup> Respondent which shall be under the direction, command and control of the Inspector General of Police. Investigations of crime is a statutory function of the 2<sup>nd</sup> Respondent. Section 35 of the *National Police Service Act* provides that the 2<sup>nd</sup> Respondent shall have the following functions:



1. collect and provide criminal intelligence;
  2. undertake investigations on serious crimes including homicide, narcotic crimes, human trafficking, money laundering, terrorism, economic crimes, piracy, organized crime, and cyber crime among others;
  3. maintain law and order;
  4. detect and prevent crime;
  5. apprehend offenders;
  6. ...
19. The functions of the Directorate of Investigations as set out under Section 35 of that Act include collecting and providing criminal intelligence; undertaking investigations on serious crimes; maintaining law and order; detecting and preventing crime; apprehending offenders; maintaining criminal records; conducting forensic analysis and executing the directions given to the IG of Police by the DPP.
20. In the case of *Republic v Commissioner of Police & another Ex-Parte Michael Monari & Another* [2012] eKLR Warsame, J, [as he then was] considered whether to intervene in respect of the discharge by the police of their duty and stated:

It is also clear in my mind that the police have a duty to investigate on any complaint once a complaint is made. In deed 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.

21. The learned Judge went on to state:

“It is not the duty of the court to go into the merits and demerits of any intended charges to be preferred against any party. It is the function of the court before which the charge shall be placed and which shall conduct the intended trial to determine the veracity and the merit of any evidence to be tendered against an accused person. It would be improper for this court to try and/or attempt to determine the intended criminal case which is not before it. There is no evidence to show that the respondents exceeded jurisdiction, breached rules of natural justice or considered extraneous matters or were actuated by malice in undertaking the investigations against the applicants. The purpose of criminal proceedings is to hear and determine finally whether the accused has engaged in conduct which amounts to an offence and on that account is deserving punishment.”

22. As regards the 6<sup>th</sup> Respondent, his office is established under Article 157[1] of *the Constitution*. Under Clause [6] and Section 5[1][a][b] of the *Office of the Director of Public Prosecutions Act*, the 6<sup>th</sup> Respondent exercises State powers of prosecution and may institute and undertake criminal proceedings before any court [other than a court martial], take over and continue any criminal proceedings commenced in any court and discontinue any criminal proceedings at any stage before judgment is delivered. Article 157[10] and Section 6 of the Act insulates that 6<sup>th</sup> Respondent from



interference from any quarter and stipulates that the 6<sup>th</sup> Respondent shall not require the consent of any person or authority for the commencement of criminal proceedings and in the exercise of his or her powers or functions, shall not be under the direction or control of any person or authority. The decision of whether or not to prefer criminal charges lies solely with the 1<sup>st</sup> Respondent. This independence is however not absolute. Under Article 157[11], places an obligation upon the 6<sup>th</sup> Respondent, in the discharge of the aforesaid mandate, to have regard to the public interest, the interests of administration of justice and the need to prevent and avoid abuse of the legal process.

23. In the case of *Diamond Hasham Lalji & another v Attorney General & 4 others* [2018] eKLR, the Court of Appeal had this to say about the limitation of the prosecutorial discretion of the 6<sup>th</sup> Respondent:

[41] Thus, the exercise of prosecutorial discretion enjoys some measure of judicial deference and as numerous authorities establish, the courts will interfere with the exercise of discretion sparingly and in the exceptional and clearest of cases.

24. The Court went on to say:

[42] The burden of proof rests with the person alleging unconstitutional exercise of prosecutorial power. However, if sufficient evidence is adduced to establish a breach, the evidential burden shifts to the DPP to justify the prosecutorial decision.

[45] In considering the evidential test, the court should only be satisfied that the evidence collected by the investigative agency upon which 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 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.

25. In emphasizing the mandate of the 6<sup>th</sup> Respondent, the court in *Republic v The Director Of Public Prosecution & 7 Others* [2013] eKLR, Odunga, J. considered the independence of the Director of Public Prosecution in the discharge of his mandate and stated:

“The law is 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. The mere fact that the intended or ongoing criminal proceedings are in all likelihood bound to fail is not a ground for interfering with those proceedings by way of judicial review since judicial review proceedings are not concerned with the merits but with the decision making process.

The Learned Judge went on to state:

It follows that the office of the Director of Public Prosecutions is an independent constitutional office which is not subjected to the control, directions and influence by any other person and only subject to control by the Court based on the aforesaid principles of illegality, irrationality and procedural impropriety.”

26. What is evident from the cited provisions of the law and case law, is that, the mandate of the Respondents should not be interfered with unless there is justifiable reason to do so. Constitutional and statutory bodies must be allowed to discharge their mandate unhindered. Such discharge must however be within the four corners of *the Constitution* and the law. The Court will only intervene where the actions of the Respondents are tainted with illegality, irrationality and procedural impropriety.



27. From the affidavit of Cpl. Juda Musyoka oit is noted that the Interested Party reported a case of forcible detainer at Mtwapa Police Station after he was denied access to the suit land by the Petitioner and others in occupation of the land. Further, investigations indicated that the Petitioner and others had built houses on the suit land after the same was visited by a surveyor. Having established reasonable suspicion of the commission of an offence, the Respondents cannot be faulted for preferring charges against the Petitioner, leaving the rest to the trial court.
28. It is well settled that the acts of arrest and prosecution do not in and of themselves constitute violation of constitutional rights, unless they have been done maliciously or excess of jurisdiction. Our superior courts have often been called upon to examine the lawfulness of the discharge by the constitutional and statutory bodies such as the Respondents herein, of their mandate and make pronouncements thereon. The common thread running through a long line of decisions is that where a person has been arrested and charged following investigations, there must be justification, to avoid arbitrariness. Where the arrest and prosecution of a person is warranted, it cannot be said that such person's rights and fundamental freedoms have been violated.
29. In the case of *Cape Holdings Limited v Attorney General & Another* [2012] eKLR, Warsame, J. stated:
- “My understanding of the law is that the responsibility to investigate, determine the credibility of the complaint and prosecution is solely left for the police under the direction and control of the Director of Public Prosecution. The predominant factor being that they must act in accordance with the law and so long as they do not exceed the limits, then a court should not prohibit the prosecution of an individual. The investigation of a criminal offence or complaint cannot be easily prohibited or stopped unless there is credible and reasonable evidence to show the same is mounted for an ulterior purposes or objectives.
- The applicant has failed to demonstrate that the Police lack or acted in excess of jurisdiction or have not complied with the rules of natural justice. In my view it is outside the jurisdiction of this court to supervise how the police should conduct its investigations unless there is evidence to show that the investigation is being conducted in a manner to prejudice the rights and the interests of the applicant. The police should be allowed to investigate the complaint lodged by the interested party to its logical conclusion and it is now premature for me to determine whether there is any abuse being committed against the applicant.”
30. I fully concur with the sentiments of the learned Judge. The Interested Party like any other person in the Republic of Kenya is entitled to the full protection of the law and to report any complaint of wrong doing to the police for investigation and determination. Accordingly, the Interested Party as the registered owner of the suit land cannot be faulted for lodging the complaint that he did to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents against the Petitioner, who in exercise of their mandate proceeded to investigate the complaint and determined that a criminal offence has been committed. The exercise by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents of their mandate to investigate the complaint made to them by the Interested Party, was legitimate. Similarly, the decision of the 6<sup>th</sup> Respondent, upon conclusion of the investigations by the 1<sup>st</sup> and 2<sup>nd</sup> Respondent to charge the Petitioner was done in the lawful exercise of his constitutional and statutory mandate. The Petitioner has not placed any material before the Court to demonstrate the contrary.
31. Our courts have stated time and again that investigations into alleged offence and indeed arrest and prosecution of the same does not in and of itself amount to violation of a constitutional right. This



was the holding in *Kenneth Kanyarati & 2 others v Inspector General of Police Director of Criminal Investigations Department & 2 others* [2015] eKLR, where Onguto, J. stated:

“1. It is evident consequently that investigation of crime has a constitutional underpinning with proper statutory structures. It is to ensure that persons are not simply dragged to court and charged with offences only to turn out that there was no basis for the prosecution in the first place. The mere fact therefore of an investigation being undertaken by the 1<sup>st</sup> Respondent would not itself be unconstitutional and a party must prove much more than the investigation process alone. As was stated by Ngugi J in *Peter Ngaki Njagi v Officer Commanding Station [OCS] Kasarani Police Station, and others NBI HCCC No. 169 of 2012* [2013] eKLR

“[12].....an investigation into alleged commission of an offence does not amount to violation of a constitutional right. Indeed, neither does arrest and prosecution, for those are all part of the criminal justice system which is sanctioned by *the Constitution*.”

32. For the Court to interfere with the work of the 6<sup>th</sup> Respondent, it must be demonstrated that the conduct constitutes an abuse of process. This was the holding in *Republic v Director of Public Prosecutions & 2 others Ex-Parte Stephen Mwangi Macharia* [2014] eKLR where again Odunga, J. [as he then was] stated:

“The general rule in these kinds of proceedings is 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*. Therefore mere fact that the intended or ongoing criminal proceedings are in all likelihood bound to fail, is not, on its own and without more, a ground for halting such proceedings by way of judicial review since judicial review proceedings are not concerned with the merits but with the decision making process. An applicant who contends that he has a good defence in the criminal trial ought to be advised to raise the same in his defence before the criminal trial instead of invoking this Court’s jurisdiction with a view to having this Court determine such an issue as long as the criminal process is being conducted bona fides and in a fair and lawful manner. However, if the applicant demonstrates that the criminal proceedings that the police intend to carry out constitute an abuse of process, the Court will not hesitate in putting a halt to such proceedings.

33. The burden of proof on a petitioner in a constitutional petition was addressed by the Supreme Court in the case of *Communications Commission of Kenya & 5 Others v Royal Media Services Limited & 5 Others* [2014] eKLR. The Court stated as follows:

“Although Article 22[1] of *the Constitution* gives every person the right to initiate proceedings claiming that a fundamental right or freedom has been denied, violated or infringed or threatened, a party invoking this Article has to show the rights said to be infringed, as well as the basis of his or her grievance. This principle emerges clearly from the High Court decision in *Anarita Karimi Njeru v Republic*, [1979] KLR 154: the necessity of a link between the aggrieved party, the provisions of *the Constitution* alleged to have been contravened, and the manifestation of contravention or infringement. Such principle plays a positive role, as a



foundation of conviction and good faith, in engaging the constitutional process of dispute settlement."

34. The Petitioner has invoked the provisions of Article 22[1] to institute the proceedings herein claiming that his constitutional rights were violated by the Respondents. Although the Petitioner has listed numerous articles of *the Constitution*, alleging violation of his rights, he has not placed any cogent evidence to demonstrate the manner in which the Respondents have violated the said rights, as required in the principle set out in the case of *Anarita Karimi Njeru v Republic* [1979] eKLR, where Trevelyan and Hancox, JJ stated:

"We would, however, again stress that 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."

35. This principle was upheld in the case of *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* [2013] eKLR by the Court of Appeal, which observed as follows:

"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."

The petition before the High Court referred to Articles 1, 2, 3, 4, 10, 19, 20 and 73 of *the Constitution* in its title. However, the petition provided little or no particulars as to the allegations and the manner of the alleged infringements."

36. Flowing from the cited provisions and authorities, it is quite evident that for a constitutional petition to be sustainable, a petitioner must cite the constitutional provisions that are alleged to have been violated or threatened and must also demonstrate with facts and evidence, the manner in which the said provisions have been violated or are threatened with violation.
37. Other than listing constitutional provisions he alleges to have been violated by the Respondents, the Petitioner has not given any specific details on the manner of violation. All he complains about is that he was arrested and was not informed of the reason for his arrest. He however adds that he was later informed that the Interested Party was the owner of the suit land. He stated that the charges of forcible detainer against him are fictitious and fabricated and actuated by malice following his refusal to withdraw the ELC case which he instituted. A look at the record however shows that the Petitioner is not a party to the ELC case. As such, it is difficult to understand how anyone can intimidate him to withdraw a case to which he is not a party. This claim thus rings hollow. Additionally, the Petitioner has not placed any evidence to demonstrate what he refers to as an unholy alliance between the DCI and OCS Mtwapa on the one hand and the Interested Party on the other. In sum, the Petitioner has provided little or no particulars as to the allegations and the manner in which the Respondents are



responsible for the alleged infringements on his rights. From the material placed before the Court, there is no evidence of malice on the part of the Respondents both in the investigation and prosecution of the Petitioner. The claim of violation is thus rejected.

38. On the claim that he has been subjected to harassment and intimidation by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, the Petitioner was required to place before the Court cogent proof of the existence of the facts that he asserts and also that his fundamental rights and fundamental freedoms under the Bill of Rights were violated by the Respondents. This is the requirement in Section 107 of the Evidence Act, which provides:

[1] Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

[2] When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

39. After due consideration of the facts herein, the law and the authorities cited, my view is that the Petitioner has not laid any basis for this Court to bring to a halt the criminal proceedings against him. And as Lenoala, J. [as he then was] stated in the case of Daniel Ndungu v Director of Public Prosecutions & another [2013] eKLR, the Petitioner ought to face his accusers and prove his innocence or otherwise.

40. Having answered the issue whether the Petitioner's rights have been violated by the Respondents, it follows that the prayers seeking damages and permanent injunction against the Respondents cannot issue.

41. Accordingly, I find that the Petition herein dated 7.12.23 lacks merit and the same is hereby dismissed. There shall be no order as to costs.

**DATED SIGNED AND DELIVERED IN MALINDI THIS 11<sup>TH</sup> DAY OF JULY 2025.**

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**M. THANDE**

**JUDGE**

