



**Ndegwa v Kenya Deposit Insurance Corporation & 3 others (Petition E560 of 2024)  
[2025] KEHC 10775 (KLR) (Constitutional and Human Rights) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10775 (KLR)

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

**PETITION E560 OF 2024**

**LN MUGAMBI, J**

**JULY 24, 2025**

**BETWEEN**

**JACKSON KAMAU NDEGWA ..... PLAINTIFF**

**AND**

**KENYA DEPOSIT INSURANCE CORPORATION ..... 1<sup>ST</sup> RESPONDENT**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... 2<sup>ND</sup> RESPONDENT**

**TRIAL COURT - HON. SRM ONSARIGO ..... 3<sup>RD</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. The Petition dated 4<sup>th</sup> October 2024 was amended on 24<sup>th</sup> October 2024. It is supported by the Petitioner's affidavit in support of even date and a further affidavit dated 10<sup>th</sup> January 2025.
2. The Petitioner alleges that he is being wrongfully prosecuted in Milimani -CMCR/E243/2024. He claims that the only role he played was that of a messenger who delivered the key letters to the 1<sup>st</sup> Respondent.
3. He thus complains the said criminal case is an abuse of the criminal justice process and a violation of his constitutional rights.
4. As a result, the Petitioner seeks the following reliefs:
  - a. A Declaration that the Petitioner's right to human dignity as provided for under Article 28 of the Constitution has been, is being and is likely to be contravened by the Trial Court Hon SRM Onsarigo who has failed to stop the charges despite him knowing the truth that the charges are illegal because the petitioner is not a party.



- b. A Declaration that the manner – failure and refusal by Hon SRM Onsarigo to stop the proceedings despite my 2 applications, oral and written laying bear the total fraud in Milimani -CMCR/E243/2024 is a violation of the law.
- c. An order refraining Hon SRM Onsarigo from handling and Presiding over and/or making/ delivering any ruling or any judgment or making any further decisions in Milimani - CMCR/ E243/2024 or any other matter related to this subject in respect of this Petitioner.
- d. The Court do issue all such other Orders it may deem just.
- e. The Respondents be condemned with the cost of this Petition at the higher scale.

### **Petitioner's Case**

5. The Petitioner referring to criminal case Milimani - CMCR/E243/2024, depones that he is aggrieved by the manner in which the 3<sup>rd</sup> Respondent is conducting the criminal case. The Petitioner asserts that he was a messenger hence the wrong party to be charged.
6. He avers that these proceedings are being conducted in breach of his rights under Articles 1, 3[1], 10, 19, 24, 27, 28, 47, 48, 50, 156[6], 159[2d], 165, 166[2c], 232 and 259 of the Constitution. He adds that the charges against him are malicious, abusive, punitive and a misuse of the criminal justice system.
7. For context, he avers that the investigating officer in this matter sought to charge him as a beneficiary. He terms this as an act of desperation on the part of the cartel that seeks to apprehend and kill one, Jiten Harakchand Shah using his estranged wife, Moona Chandulah Shah. He claims that Moona Shah confessed to being a fraudster and working in conjunction with the 1<sup>st</sup> Respondent to steal Ksh.10, 000, 000 from Jiten Shah.
8. To achieve this, he claims that they used false particulars being a Kenyan Identity Card to create a counterfeit identity of Jiten Shah. The fake ID stated that he was born on 10<sup>th</sup> September 1959 and bore a picture of an 18-year-old boy. This is in contrast to the 70-year-old man who appeared in Court. As such, the Petitioner questions how the government document examiner failed to pick up on this anomaly, in the Report he provided.
9. The Petitioner claims that upon realizing the numerous threats on his life, Jiten Shah went into hiding. He avers that Jiten Shah issued him with a letter addressed to the new 1<sup>st</sup> Respondent's Chief Executive Officer, with the hope that he would get assistance concerning the dire situation.
10. The Petitioner alleges that unbeknownst to Jiten Shah, the 1<sup>st</sup> Respondent's CEO's husband was also part of the alleged cartel seeking to eliminate him through the assistance of various government officials.
11. It is alleged that the Respondents seek to charge him because he failed to produce Jiten Shah. The Petitioner maintains that his crime was being the messenger who delivered the cited letter to the 1<sup>st</sup> Respondent.
12. The Petitioner further states that the Directorate of Criminal Investigations [DCI] officers attached to the 1<sup>st</sup> Respondent have been arbitrarily arresting and harassing him with the aim of forcing to produce Jiten Shah, yet that is their responsibility. He decries this act and argues that it is an outright breach of his rights.
13. In view of the foregoing, he urges that the charges against him in Milimani - CMCR/E243/2024, be stopped. Moreover, he asserts that he is apprehensive that the 3<sup>rd</sup> Respondent will not grant him justice being that he has already disallowed his two applications in the matter.



### **1<sup>st</sup> Respondents' Case**

14. The 1<sup>st</sup> Respondent through the Liquidation Agent in respect of Trust Bank Limited, Caroline Mutungi filed the Replying Affidavit sworn on 29<sup>th</sup> November 2024.
15. She depones that upon her appointment and in compliance with Section 28 and 33 of the [Kenya Deposit Insurance Act](#), they commenced payment of the protected deposits owed to depositors of Trust Bank. She states that among the depositors who have claimed payment of their dividends are Jiten Shah and Moona Shah.
16. She depones that following issuance of two letters from the Petitioner, they were not able to settle Jiten Shah and Moona Shah's payment in light of Trust Bank's recent Declaration of dividends at the time.
17. It is deponed that the 1<sup>st</sup> Respondent's investigation team undertook investigations in the matter which resulted in the institution of the criminal proceedings against the Petitioner in CMCR/E243/2024.
18. It is contended that the issues raised herein ought to be raised before the Trial Court during the hearing of the matter and if dissatisfied, the Petitioner should lodge an appeal instead of a constitutional petition.
19. That said, she claims that the Petitioner's allegation of abuse of the criminal justice system are unfounded and false. Equally, she stresses that 1<sup>st</sup> Respondent at all times acted within its legal scope as outlined in the Act and as such in no way violated the Petitioner's constitutional rights.

### **2<sup>nd</sup> Respondent's Case**

20. The 2<sup>nd</sup> Respondent in reply to the Petition filed grounds of opposition dated 14<sup>th</sup> November 2024 on the basis that:
  - i. The Petition lacks clarity and precision in setting out the Declaration s in relation to the 2<sup>nd</sup> Respondent.
  - ii. The orders sought are therefore untenable as against the 2<sup>nd</sup> Respondent as the Petitioner has not shown how the 2<sup>nd</sup> Respondent has a duty in the matters raised.
  - iii. The 2<sup>nd</sup> Respondent is not aware of the matters alleged in the Petition as they do not fall within his constitutional mandate hence the Petitioner ought to direct their inquiry to the proper officers.
  - iv. There is no inquiry file pending before the 2<sup>nd</sup> Respondent in respect of the Petitioner's issues raised in the Petition as the 2<sup>nd</sup> Respondent is not seized of the matter at all.
  - v. The 2<sup>nd</sup> Respondent has not received any formal complaint from the Petitioner to enable him direct the DCI under Article 157[4] of the [Constitution](#).
  - vi. The instant application amounts to an abuse of the court process as it fails to appreciate that matters averred by the applicant largely forms what should be his defence in the criminal charges thus, the application should be dismissed with costs.
21. Furthermore, the 2<sup>nd</sup> Respondent filed a replying affidavit through PC Patrick Bagajo who is attached to the 1<sup>st</sup> Respondent, sworn on 24<sup>th</sup> January 2025.
22. He depones that around May 2023, they received a complaint from Caroline Mutungi concerning two suspicious letters. The two letters were issued on 20<sup>th</sup> April 2023 and 10<sup>th</sup> May 2023 and related to the



joint account of their clients, Jiten Harakchand and Moona Chandulal. She noted that the letters were delivered by the Petitioner who informed that he was their messenger and business associate.

23. The letters informed that there was a criminal cartel that was operating together with the 1<sup>st</sup> Respondent's staff with the goal of stealing the dividends that were payable to the Jiten Shah and Moona Shah.
24. Following issuance of these letters, they commenced investigations on the two letters. He depones that the investigations revealed that Jiten Shah's signature on the letter did not match with the client signature in Trust Bank records. Jiten Shah and Moona Shah who had been summoned to record their statements indicated that they were not aware of the said letters and did not know the Petitioner.
25. Moreover, their specimen signatures were subjected to forensic analysis against those in the cited letters and records in Trust Bank. The Report established that the signatures were made by different authors. Their investigations further sought information from the post master general on the postal address that had been utilized in the said letters. He states that they were told that the specific box number did not have a renter.
26. In addition, the outlined phone numbers in the letters [07xxx and 07xxx] from Airtel Kenya were investigated. Airtel Kenya informed them that 07xxx is registered under the Petitioner while 07xxx is registered under Jiten Shah. Likewise, they wrote to Business Registration Services in respect of Paradise Africa Expedition which was mentioned in the letters. It was found that the Petitioner is one of the directors with 70% shares.
27. He states that the Petitioner who was summoned to record a statement averred that he had taken the received copy to Jiten Shah. He depones that the Petitioner declined to produce the purported Jiten Shah emphasizing that he was sick and that his life was in danger. He points out that as an alternative, the Petitioner produced a suspicious ID copy of Jiten Shah which portrait did not match the one in Trust Bank Records.
28. It is conversely noted that upon submission of the said ID card to the National Registration Bureau, they were informed that the result showed that the serial number, pictorial and identity number, matches Jiten Shah held Trust Bank [IL] records.

### **3<sup>rd</sup> and 4<sup>th</sup> Respondent's Case**

29. These Respondents' response and submissions are not in the Court file or Court Online Platform [CTS].

### **Petitioner's Submissions**

30. The Petitioner filed submissions dated 15<sup>th</sup> January 2025 and supplementary submissions dated 9<sup>th</sup> June 2025.
31. The Petitioner reiterating his averments submitted that the charges against him are malicious, abusive and punitive as he was only a messenger. As such, his constitutional rights under Articles 10[2b], 22, 23, 24, 27, 35, 48, 50, 165 and 259 of the Constitution were violated.
32. He additionally argued that the charges in Milimani -CMCR/E243/2024, are a misuse of power by the 2<sup>nd</sup> Respondent and the DCI. Reliance was placed in Republic v The Commissioner of Police & the



Director of Public Prosecution Ex parte Michael Monari & Another Misc. Application No. 68 of 2011 where it was held that:

“In exercising the powers conferred by this article, the director of public prosecutions shall have regard to the public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process.”

33. Additional reliance was placed in Mumo Matemo v Trusted Society of Human Rights Alliance [2014]eKLR.
34. He added that upon realization that the 1<sup>st</sup> Respondent’s CEO was an interested party in the matter, his friend Jiten Shah wrote to the Cabinet Secretary to the Treasury lodging his complaint against the 1<sup>st</sup> Respondent. The Petitioner informs that he is the one who delivered these letters.
35. Reliance was placed in Katiba Institute & 8 Ors v DPP & 2 Ors HCCHRPET No E016 of 2023 where it was noted that Article 50[2] [n] requires that a criminal law especially one that limits a fundamental right and freedom must be clear enough to be understood and be precise enough to cover only the activities connected to the law’s purpose.
36. Additional dependence was placed in Ndama v Director of Public Prosecutions [2021] KEHC 12538 [KLR], Aids Law Project v Attorney General [2015] eKLR, Cyprian Andama v Director of Public Prosecution & another; Article 19 East Africa [Interested Party] [2019] eKLR, Andare v Attorney General [2015] eKLR and Grayned v Rockford 408 U.S. 104 [1972].

### **1<sup>st</sup> Respondent’s Submissions**

37. The 1<sup>st</sup> Respondent through its Counsel, Titus W. Ranja filed submissions dated 3<sup>rd</sup> June 2025. Counsel highlighted the issues for discussion as: whether the Petition is competent, whether the actions by the 2<sup>nd</sup> Respondent to cause the arraignment of the Petitioner was lawful and whether the Petitioner is deserving of the orders sought.
38. Counsel in the first issue submitted that the Petition is not competent as fails to disclose with sufficient precision the manner in which the Petitioner’s constitutional rights were infringed by the Respondents. Counsel pointed out that the Petitioner had merely stated the alleged provisions without demonstrating and specifying how they had been violated.
39. Reliance was placed in Kariuki v Director of Public Prosecutions & 3 others; Wangila & 2 others [Interested Parties][2024] KEHC 834 [KLR.] where it was held that:

“After considering the grounds set forth by the Petitioner I find with respect, that it is not enough for the Petitioner to state that because the dispute giving rise to the prosecution is originated from a commercial transaction, the criminal proceedings against him violate his constitutional rights and are thus null and void. The Petitioner was required to show how the process of the court is being abused or misused and further demonstrate how the criminal prosecution has jeopardised his rights or placed his rights under serious threat of violation, which he failed to do.”
40. Like dependence was placed in Anarita Karimi Njeru v Republic [1979] eKLR.
41. In the second issue, Counsel affirmed that the Respondents had acted within their legal mandate as stipulated in law.



42. Counsel turning to the next issue submitted that the Petitioner was not entitled to the orders sought as failed to demonstrate the manner in which the proceedings before the Trial Court have infringed upon his constitutional rights. Additionally, that he had failed to meet the minimum requirements to warrant this Court's interference with the criminal proceedings.

43. Reliance was placed in *Kariuki v Director of Public Prosecutions* [*Supra*] where it was held that:

“This Court may stop or quash criminal proceedings in the lower courts, where it is demonstrated inter alia that there is failure to exercise discretion or abuse of discretion or discretion is exercised in an improper manner. The Court may quash proceedings if there is breach of duty to act fairly or the decision-maker is irrational and unreasonable. Proceedings may also be stopped or quashed in the interests of the ends of justice or where the proceedings are an abuse of the court process or that the quashing of the impugned proceedings would secure the ends of justice. 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. The Court will only intervene where the actions of the Respondents are tainted with unreasonableness, illegality, irrationality and procedural impropriety.”

44. Counsel in conclusion submitted that the orders sought herein ought not to be issued as a remedy can be obtained through an alternative channel such as revision of proceedings under Section 362 of the *Criminal Procedure Code*. To buttress this point, Counsel cited the case of *Rutere v Inspector General, National Police Service & 3 others* [2023] KEHC 22244 [KLR] where it was held that:

“The Petitioner being aggrieved with the decision of the lower Court, her remedy lay in moving the High Court by way of revision under Section 3 62 of the *Criminal Procedure Code*. Having found that there exists a remedy in statute law, which the Petitioner ought to have pursued, this Court must refuse to be bogged down by a matter which is so plainly provided for under statute. In this regard, I associate myself with the sentiments expressed by Mativo, J [as he then was], in Mombasa Petition No. E002 of 2022, Jean Bosco Muhayimana & Another v Jimmy Irengi aka Jimmy Mwachuga & Others [unreported]. The Learned Judge stated: The doctrine of avoidance is primarily viewed by courts from the position that although a court could take up a matter and hear it, it would still decline to do so if there is another mechanism through which the dispute could be resolved.”

## **2<sup>nd</sup> Respondent's Submissions**

45. Principal Prosecution Counsel, Edna Ntabo filed submissions dated 28<sup>th</sup> March 2025 and underscored the issues for discussion as: whether the arraignment of the Petitioner was lawful and whether there has been violation of the Petitioners' constitutional rights in the initiation of the charge against him.

46. To begin with, Counsel submitted that the 2<sup>nd</sup> Respondent under Article 157[6] of the *Constitution* is mandated to institute and undertake criminal proceedings against any person before any Court. Counsel stressed that the Petitioner's arraignment followed the due process wherein the 2<sup>nd</sup> Respondent was presented with a complete investigative file and thereafter made the decision to charge him.



47. Reliance was placed in *Pauline Raget Adbiambo Agot v DPP and 5 Others* [2010] Petition No. 446 of 2015 where the Court stated that:

“It must first be stated that the clear intention of the Constitution was to ensure that the Office of the Director of Public Prosecutions was free of any interference or meddling. No person or body including the court ought to instruct or direct the 1st Respondent on how to conduct its business as to investigating crime and prosecuting offenders. Indeed, it is the 1<sup>st</sup> Respondent who is enjoined under Article 157[4] of the Constitution to direct the National Police Service to investigate any criminal activities. On the other hand, members of the public are also morally obligated to report incidents of crime to the ODPP and DCI.”

48. Similar dependence was placed in *Republic v The Commissioner of Police & the Director of Public Prosecution Ex parte Michael Monari & Another* [*supra*] and *Cascade Company Limited v Kenya Association of Music Production [KAMP] & Others*, Petition No. 7 of 2014.

49. Counsel further argued that the Petitioner had failed to demonstrate how the 2<sup>nd</sup> Respondent in discharging his mandate acted contrary to public interest, the interest of the administration of justice or failed to prevent and avoid abuse of the legal process. Counsel underscored that while the Petitioner has the right not to be subjected to an unwarranted criminal process, the 2<sup>nd</sup> Respondent is also under a public duty to ensure that offences are prosecuted and those culpable attended to as the law requires as echoed in *Maina & 4 others v Director of Public Prosecutions & 4 Others 9 [Consolidated]* [2022] KEHC 15 [KLR].

50. Counsel in the second issue urged the Court to be guided by the opine in Mason CJ in *William and Others v Spautz* [1993] 2 LRC 659 at 667 where it was held that:

“It is of fundamental importance that, unless the interests of justice demand it, courts should exercise, rather than refrain from exercise, their jurisdiction, especially their jurisdiction to try persons charged with criminal offences, and that persons charged with such offences should not obtain an immunity from prosecution. It is equally important that freedom of access to the courts should be preserved and that litigation of the principal proceeding, whether it be criminal or civil, should not become a vehicle for abuse of process issues on an application for stay, unless once again the interests of justice demand it.”

51. As well, Counsel submitted that the Petitioner had failed to prove his case by stating and identifying the rights with precision and how the same had been infringed. Reliance was placed in *Mumo Matemo v Trusted Society of Human Rights Alliance* [2014] eKLR, where it stated that:

“...the principle in *Anarita Karimi Njeru* [*supra*] underscores the importance of defining the dispute to be decided by the court... Procedure is also a handmaiden of just determination of cases. Cases cannot be dealt with justly unless the parties and the court know the issues in controversy. Pleadings assist in that regard and are a tenet of substantive justice, as they give fair notice to the other party. The principle in *Anarita Karimi Njeru* [*supra*] that established the rule that requires reasonable precision in framing of issues in constitutional petitions is an extension of this principle”

52. Analogous reliance was placed in *Anarita Karimi Njeru* [*supra*] and *Leonard Otieno v Airtel Kenya Limited* [2018] eKLR.



## Analysis and Determination

53. It is my considered opinion that the issues that arise for determination are as follows:
- i. Whether the Petition meets the constitutional threshold.
  - ii. Whether this Petition offends the doctrine of constitutional avoidance.
  - iii. Whether the Petitioners constitutional rights were violated by the Respondents; and
  - iv. Whether the Petitioner is entitled to the reliefs sought.

### Whether the Petition meets the constitutional threshold.

54. The 1<sup>st</sup> Respondent submitted that the Petition is not pleaded with reasonable degree of precision required of constitutional petitions since the Petitioner merely states the rights that were allegedly violated without a description of the manner in which the alleged violation was carried out. That position was also echoed by the 2<sup>nd</sup> Respondent.
55. The Petitioner did not specifically respond to this assertion in his submissions.
56. A Constitutional Petition, just like any other pleading, should clearly lay down the facts upon which the case is founded to enable the issues in dispute to be easily identified so that the adverse party knows what to respond to, and better still, for the Court comprehend the dispute so as to do justice in the matter. The case of *Anarita Karimi Njeru v R* 1979 KLR cited with approval by the Supreme Court in *Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others* [2014] KESC 53 [KLR] underscores the need clarity by stating thus:

“[349] .... 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 a principle plays a positive role, as a foundation of conviction and good faith, in engaging the constitutional process of dispute settlement...”

57. That was also reiterated in *Julius Meme v Republic & another* [2004] KEHC 2623 [KLR] where the Court held thus:

“Where a person is seeking redress from the High Court on a matter which involves a reference to the Constitution, it is important that he should set out with reasonable degree of precision that of which he complains, the provisions said to have been infringed and the manner in which they are alleged to have been infringed and that the applicant’s instant application had not fully complied with the basic test of constitutional references, as it was founded on generalized complaints without any focus on fact, law or Constitution, hence it had nothing to do with the constitutional rights of the appellants”.



58. The rationale for reasonableness and precision was explained by Court of Appeal in *Mumo Matemu* [supra] 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. For example, in paragraph 2 of the petition, the 1st respondent averred that the appointing organs ignored concerns touching on the integrity of the appellant. No particulars were enumerated. Further, paragraph 4 of the petition alleged that the Government of Kenya had overthrown the *Constitution*, again, without any particulars. At paragraph 5 of the amended petition, it was alleged that the respondents have no respect for the spirit of the *Constitution* and the rule of law, without any particulars.

59. The superior Court went further to state that:

“We wish to reaffirm the principle holding on this question in *Anarita Karimi Njeru* [Supra]. In view of this, we find that the petition before the High Court did not meet the threshold established in that case. At the very least, the 1<sup>st</sup> respondent should have seen the need to amend the petition so as to provide sufficient particulars to which the respondents could reply. Viewed thus, the petition fell short of the very substantive test to which the High Court made reference to.”

60. In the instant case, I closely studied this Petition. I note that under Section B of the Petition which bears the heading ‘Constitutional Foundation of the Petition’ the Petitioner has listed various constitutional provisions that he alleges are the foundation of the Petition which include- Articles 23 [1], 19, 20, 21, 27, 28, 47, 10 & 232 of the *Constitution*.

61. Part C of the Petition has the sub-heading that reads: ‘Facts & Reasons *inter alia*.’

62. Here the Petitioner makes statements without rationally linking them to the provisions of the Constitution he claims have been violated. Statements are made such as ‘The Petitioner strongly objects to the illegal manner the Subject Trial Court In Chief Magistrate Milimani CMR/E243/2024 is abusing, breaching, contravening, denying, oppressing and wantonly violating the Rights and Freedoms of the Petitioner/Applicant contrary to least expectations under Articles 1, 3[1], 10, 19, 24, 27, 28, 48, 50, 159, 165, 166 [2c], 232, and 259 of the *Constitution* of Kenya 2010, including Preamble and legal notice 117 alias Mutunga Rules. ‘Hon Onsarigo has denied deprived and violated the Rights and Freedoms of the Petitioner by fixing hearing date for charges that are malicious, abusive, punitive, misuse of the criminal justice to Articles 10, [2b], 22, 23,24,27,35,48,50,165 & 259 of the *Constitution*



of Kenya, 2010. The Petitioner pleads conclusions instead of facts capable of enabling the Court draw such inferences by itself.

63. The entire Petition is characterized by similarly made statements which are conclusions of the petitioner but without factual descriptions that would support those conclusions.
64. Moreover, Petition does not have a logical flow, the statements are made in hotch-potch manner creating confusion and one is not certain of what the Petitioner's real grievances are. To illustrate, the Petitioner in the Petition pleads as follows:

“That the created Jiten was issued with Kenyan ID on 15.08.2018 and his date of birth was 10/9/1959 while the picture in this ID is one of an 18 years old boy, while Jiten who appeared in Court. Looked 70 years. Your Lordship the biggest question in my mind was that, Is it possible for a Human being to change so drastically in 5 years to look 50 years older?”

65. Somewhere else in the Petition, he states:

“Your Lordship, unfortunately for him, he did not know that, the CEO's husband is the Chief Cartel who have recruited so many people in the Army, Police, DCI, State House Operatives and so many other brokers who are all Hell Bent to eat this money at all costs.”

66. This equivocality in the manner the Petition is pleaded makes it difficult for this Court to properly appreciate the nature and the scope of the grievances that the Petitioner wants resolved. The Petition is wanting and does not meet even the basic tenets of a proper petition or pleading as was elaborated by the Court *Isiah Ondiba Bitange & 3 others v Institute of Engineers of Kenya* [2017] eKLR where it was held thus:

“The purpose of pleadings is to enable the defendant to know the case he had to meet so that he could properly plead his defence with the result that the issues would be sufficiently defined to facilitate the appropriate questions for decision to be resolved. This purpose cannot be achieved unless the words are pleaded with sufficient particularity. Pleadings do not only define the issues between the parties for the final decision of the court at the trial; they manifest and exert their importance throughout the whole process of the litigation. They contain the particulars or the allegations of which further and better particulars may be requested or ordered, which help still further to narrow the issues or reveal more clearly what case each party is making. They act as a measure for comparing the evidence of a party with which he has pleaded. They determine the range of admissible evidence which the parties should be prepared to adduce at the trial...”

67. This petition falls short of meeting the threshold required of a Constitution Petition.

#### **Whether this Petition offends the doctrine of constitutional avoidance.**

68. The principle of Constitutional avoidance requires that where a dispute can be resolved without reaching a constitutional question, that route is the one to be followed. In *COD & another v Nairobi City Water & Sewerage Co. Ltd* [2015] eKLR held as follows:

“... 13. It was further observed in the case of *Minister of Home Affairs v Bickle & Others* [1985] LRC Const [per [Georges C.]];

“Courts will not normally consider a constitutional question unless the existence of a remedy depends on it; if a remedy is available to an applicant under some



other legislative provision or on some other basis, whether legal or factual, a Court will usually decline to determine whether there has been in addition a breach of the Declaration of Rights.”

69. Further, the Supreme Court in *Communications Commission of Kenya* [supra] explained the principle as follows:

“[256] The appellants in this case are seeking to invoke the “principle of avoidance”, also known as “constitutional avoidance”. The principle of avoidance entails that a Court will not determine a constitutional issue, when a matter may properly be decided on another basis. In South Africa, in *S v Mblungu*, 1995 [3] SA 867 [CC] the Constitutional Court Kentridge AJ, articulated the principle of avoidance in his minority Judgment as follows [at paragraph 59]:

“I would lay it down as a general principle that where it is possible to decide any case, civil or criminal, without reaching a constitutional issue, that is the course which should be followed.”

[257] Similarly the U.S. Supreme Court has held that it would not decide a constitutional question which was properly before it, if there was also some other basis upon which the case could have been disposed of [*Ashwander v Tennessee Valley Authority*, 297 U.S. 288, 347 [1936]].”

70. The 1<sup>st</sup> Respondent contended that the reliefs sought could be got by applying the provisions of Section 362 of the *Criminal Procedure Code*. To buttress this point, Counsel cited the case of *Rutere v Inspector General, National Police Service & 3 others* [2023] KEHC 22244 [KLR] in urging the Court to refuse to elevate this matter into constitution issue yet it can comfortably be resolved without any recourse being had on the Constitution.

71. The prayers that the Petitioner is seeking in the instant Petition; there are four in number, and are as follows:

- a. A Declaration that the Petitioner’s right to human dignity as provided for by Article 28 of the Constitution has been and is being likely to be contravened by the trial court Hon SRM Onsarigo who has failed to stop the charges despite knowing the truth that the charges are illegal because the Petitioner is not a Party.
- b. A Declaration that the manner- failure and refusal by Hon Onsarigo to stop the proceedings despite my 2 applications, Oral & Written laying bare the total Fraud in Milimani CMCR/ E243/2024 is a violation of the law.
- c. An order refraining Hon SRM Onsarigo from handling and presiding over and/or making/ delivering any ruling or any judgment or making any further decisions in Milimani CMCR/ E243/2024 or any other matter related to this subject in respect of this Petitioner/Applicant.
- d. The Hon Court to issue all such orders it shall deem just.
- e. The Respondents be condemned with cost of this Petition at higher scale.

72. All the prayers are aimed at the criminal proceeding before the subordinate court and relate to what has been done or taking place in that court. Criminal trials are regulated by the *Criminal Procedure Code*, Cap 75 Laws of Kenya. The said statute has sufficient in-built mechanisms that ensure that the



orders made by the subordinate Court are challenged by the aggrieved party either on appeal pursuant to Section 347 or revision under 362 of the *Criminal Procedure Code*.

73. For instance, the Petitioner's protest that the Magistrate handling the matter should not hear it; that may be pursued by an application for recusal which can be made before the trial court, and if the magistrate rejects it, the matter can be taken up further before the High Court under its revisionary jurisdiction provided for in Section 362 of the *Criminal Procedure Code*. The same case would apply in regard to the Petitioner's complaint that the Magistrate refused to allow the petitioner's two applications, one oral and one written.
74. The Petitioner contended that the magistrate has failed to stop the trial yet he knows the truth that the petitioner was not a party to the commission of the alleged crime. I would consider that grievance to be a matter of evidence which can only be made after the Court has had the opportunity to evaluate the evidence presented and can only arise either at the close of the prosecution case or when the petitioner has been required to give his defence, at the end of that trial. Before the Court has had the opportunity to consider the evidence, one cannot accuse the Court of ignoring the truth. If dissatisfied at any of these stages, the Petitioner has the opportunity to challenge the court's decision on appeal.
75. Inevitably therefore, the instant Petition not only fails to meet the threshold of a Constitutional Petition, but also, having regard to the remedies sought, it offends the doctrine of Constitutional avoidance.

**Whether the Petitioner's constitutional rights were violated by the Respondents**

76. The Petition does not contain factual descriptions of violations of rights and fundamental freedoms committed against the Petitioner, instead, it essentially comprises of statements or criticisms made contesting the culpability of the Petitioner in respect of the criminal charge. It is more of a defence to the criminal charge couched as a Petition. These are matters of evidence which the trial court has the capacity to determine and is for this court sitting as a Constitutional Court.
77. Inescapably therefore, the instant Petition is for dismissal. The same is hereby dismissed with no orders as to costs.

**SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 24<sup>TH</sup> DAY OF JULY, 2025.**

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**L N MUGAMBI**  
**JUDGE**

