



**Wambugu (Formerly Practicing as PM Wamae and Company Advocates) v Nganga & another;  
 Director of Public Prosecutions & 2 others (Interested Parties) (Petition E340 of 2020)  
 [2025] KEHC 11147 (KLR) (Constitutional and Human Rights) (29 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11147 (KLR)

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

**PETITION E340 OF 2020**

**EC MWITA, J**

**JULY 29, 2025**

**BETWEEN**

**CHARLES WAMBUGU (FORMERLY PRACTICING AS PM WAMAE AND  
 COMPANY ADVOCATES) ..... PETITIONER**

**AND**

**NANCY WAMORO NGANGA ..... 1<sup>ST</sup> RESPONDENT**

**DIRECTOR OF CRIMINAL INVESTIGATIONS ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... INTERESTED PARTY**

**MEREKA AND CO ADVOCATES ..... INTERESTED PARTY**

**NGANGA MBUGUA AND CO ADVOCATES ..... INTERESTED PARTY**

**JUDGMENT**

1. The petitioner, an advocate acted for Nancy Wamoro Ng'ang'a, (the 1<sup>st</sup> respondent), widow to Humphrey Rubia Ng'ang'a (deceased) in HCC Succession Cause No. 917 of 2008 -Estate of Humphrey Rubia Ng'ang'a (the Succession Cause). The other beneficiaries of the estate, Agnes Ng'ang'a and two of her siblings were represented by Mr. David Mereka Advocate of Mereka & Co. Advocates while Allan Ng'ang'a, the elder brother to Agnes Ng'ang'a was represented by Mr. George Ng'ang'a Advocate of Mbugua Ng'ang'a & Co. Advocates.
2. By a consent dated 29<sup>th</sup> March 2010 entered into in the Succession Cause, the beneficiaries of the deceased's estate agreed on, among others, distribution of the estate and fees payable to advocates



in the succession cause. Subsequently, the petitioner assisted the 1<sup>st</sup> respondent in the process of immobilization of shares, sale of LR No. Ngong/Ngong/8834 and representation in court.

3. A misunderstanding arose between the petitioner's firm and the 1<sup>st</sup> respondent in what was said to be the 1<sup>st</sup> respondent's breach of an agreement regarding the handling issues concerning the estate. As a result, the petitioner's firm declined to continue representing the 1<sup>st</sup> respondent and informed the 1<sup>st</sup> respondent of this position. The 1<sup>st</sup> respondent later instructed another counsel to represent her on the affairs of the Estate. Her son James Kabeere also started making certain demands and visited the petitioner's office despite having their own counsel.
4. Concerned that this would cause confusion, the petitioner wrote to the 1<sup>st</sup> respondent on 13<sup>th</sup> November 2015 advising her to appoint another advocate failing which, his firm would cease acting for her. The 1<sup>st</sup> respondent did not however appoint another advocate. On 30<sup>th</sup> November 2015, the petitioner filed an application to cease acting for the 1<sup>st</sup> respondent.
5. Soon after, the 1<sup>st</sup> respondent started making accusations against the petitioner culminating in her lodging a complaint with the Advocates Complaints Commission. By letter dated 25<sup>th</sup> April 2018, the Advocates Complaints Commission noted that there were matters in court over the issues raised in the complaint and closed the file. However, during the pendency of the complaint, a police officer visited the petitioner's office and interrogated him over the same issues but the petitioner did not know the outcome of the investigations.
6. By letters dated 16<sup>th</sup> May 2018, 29<sup>th</sup> June 2018 and 4<sup>th</sup> March 2019, the 1<sup>st</sup> respondent asked for statements of account for the estate's bank account. Through a letter dated 9<sup>th</sup> May 2019, the petitioner sent to the 1<sup>st</sup> respondent a comprehensive client statement showing the use and disbursements made from the proceeds of the sale of LR Ngong/Ngong/8834. The petitioner was later surprised to learn that the 1<sup>st</sup> respondent had lodged a complaint with the police over the same issues accusing a different advocate, (Mr. David Mereka).
7. Through letters dated 10<sup>th</sup> September 2019 and 16<sup>th</sup> November 2019 addressed to Messrs KN Mburu and Co Advocates acting for the 1<sup>st</sup> respondent, The petitioner expressed concern about lack of response to his letters dated 10<sup>th</sup> May 2019, 14<sup>th</sup> May 2019 and 10<sup>th</sup> September 2019.
8. On 13<sup>th</sup> July 2020, the petitioner received a call from the 2<sup>nd</sup> respondent over an allegation by the 1<sup>st</sup> respondent of misappropriation of Kshs. 10,000,000 belonging to the estate. The petitioner was required to record a statement. In a response dated 15<sup>th</sup> July 2020, the petitioner responded that this was abuse of process by the 1<sup>st</sup> respondent and asked that she be investigated. He also sought a copy of the complaint lodged against him and all documents to enable him respond substantively. No further however information came from the 2<sup>nd</sup> respondent.
9. It is the petitioner's case that, he lives in a state of perpetual fear of being arrested, humiliation and prosecution; the 1<sup>st</sup> respondent is using the criminal process maliciously and in bad faith and the 1<sup>st</sup> respondent's complaint came almost five years after he ceased acting in the succession cause yet, no accounts had been done.
10. The petitioner asserted that based on the foregoing, the respondents and the 1<sup>st</sup> interested party violated his rights guaranteed under Articles 25, 27, 28, 29, 31, 39, 47 and 50 of *the Constitution* and legitimate expectation. The petitioner filed this petition seeking the following relief:
  - a. An order restraining the 1<sup>st</sup> and 2<sup>nd</sup> respondents from harassing and interfering with privacy, dignity and business of the petitioners.



- b. A declaration that the actions of the 2<sup>nd</sup> respondent's officers investigating the same matters twice and failing to provide information to the would be accused were oppressive, violated the petitioner's human rights and fundamental freedoms and constitute an abuse of the legal process.
- c. A declaration that the fundamental rights and freedoms of the petitioner under Article 27, 28, 31, 35, 47, 49 and 50 of the Constitution have been violated by the 1<sup>st</sup> and 2<sup>nd</sup> respondents.
- d. An order of prohibition do issue restraining the 2<sup>nd</sup> respondents by themselves, agents, servants or employees from carrying out any further or continued investigations in any manner whatsoever or any intended prosecution of the petitioner, his present and current partners, his servants, agents or employees or summoning the petitioner's advocates to disclose any information regarding the petitioners representation of the 1<sup>st</sup> respondent in Succession Cause No. 917 of 2008 Estate of Humphrey Rubia Ng'ang'a (Deceased) or any related issues.
- e. An order do issue quashing the continued investigations in any manner whatsoever or any intended prosecution by the 2<sup>nd</sup> respondents by themselves, agents, servants or employees from carrying out any further or continued investigations in any manner whatsoever or any intended prosecution of the petitioner, his present and current partners, his servants, agents or employees or summoning the petitioner's advocates to disclose any information regarding the petitioners representation of the 1<sup>st</sup> respondent in Succession Cause No. 917 of 2008 Estate of Humphrey Rubia Ng'ang'a (Deceased) or any related issues.
- f. A declaration that the continued investigation of the petitioner by the 2<sup>nd</sup> respondents in relation to petitioner's representation of the 1<sup>st</sup> respondent in Succession Cause No. 917 of 2008 Estate of Humphrey Rubia Ng'ang'a (Deceased) or any related issues is a breach to the petitioner's right to a fair trial guaranteed under article 50 of the Constitution.
- g. Exemplary Damages.
- h. Costs.

#### **-1<sup>st</sup> respondent's response**

11. The 1<sup>st</sup> respondent informed the court that a replying affidavit sworn on 14<sup>th</sup> December 2020 had been filed in response to the petition. The affidavit is however not in the file and cannot be downloaded on the CTS.

#### **2<sup>nd</sup> respondent and 1<sup>st</sup> interested party's response**

12. The 2<sup>nd</sup> respondent and the 1<sup>st</sup> interested party opposed the petition through a replying affidavit sworn by Marindah Berryl. They contended that the petition does not raise ripe issues for determination and is an abuse of the court process.
13. The 2<sup>nd</sup> respondent and the 1<sup>st</sup> interested party stated that the orders of prohibition and certiorari sought violate articles 27, 47, 157, 159, 243 and 245 of the Constitution, sections 1, 2, 3, 4, 5, 6, 23 and 26 of the Office of Director of Public Prosecution Act (ODPP Act) and section 35 of the National Police Service Act as they would curtail their mandate.
14. The 2<sup>nd</sup> respondent and the 1<sup>st</sup> interested party asserted that the petition does not meet the threshold of a constitutional petition laid down in Anarita Karimi Njeru v Republic [1979] eKLR. They contended



that the petitioner had failed to demonstrate how his rights were infringed due to the investigations by the 2<sup>nd</sup> respondent.

15. It is the 2<sup>nd</sup> respondent and the 1<sup>st</sup> interested party's case, that the 1<sup>st</sup> interested party had discharged its mandate under Article 157 of *the Constitution*. Further, that the petitioner's presumption of innocence and his fundamental rights and freedoms are guaranteed and jealously guarded by *the Constitution* and the courts and do not vanish when the 2<sup>nd</sup> respondent carries out investigations.
16. The 2<sup>nd</sup> respondent and the 1<sup>st</sup> interested party stated that the 1<sup>st</sup> respondent made a report at the DCI on 21<sup>st</sup> June 2017 regarding sale of parcel Nos. Ngong/Ngong 2766, Ngong/Ngong 5804 and Ngong/Ngong 8834. The 2<sup>nd</sup> respondent commenced investigations and recorded statements from potential witnesses and the suspects. The petitioner was summoned to give more information.
17. According to the 2<sup>nd</sup> respondent and the 1<sup>st</sup> interested party, the fact that the Advocates Complaints Commission had dealt with the matter and the issues complained of were determined in Succession Cause No. 917 of 2008, did not prohibit commencement of criminal investigations or proceedings since section 193 A of the *Criminal Procedure Code* permits concurrent criminal and civil proceedings.
18. The 2<sup>nd</sup> respondent and the 1<sup>st</sup> interested party contended that investigations were lengthy and took almost three years to concluded. The 2<sup>nd</sup> respondent recommended that the matter be dealt with under civil process. They asserted that allegations against the 1<sup>st</sup> interested party are premature because no decision had been made to either charge or prosecute the petitioner.

#### **2<sup>nd</sup> interested party's response**

19. The 2<sup>nd</sup> interested party informed the court that they filed a replying affidavit sworn on 24<sup>th</sup> November 2021. However, that affidavit is not in the court file and cannot be downloaded on the CTS.

#### **3<sup>rd</sup> interested party's response**

20. The 3<sup>rd</sup> interested party did not file any pleadings and did not take part in the proceedings.

#### **Submissions**

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

#### **Petitioner's submissions**

22. Mr. Wabwire, learned counsel for the petitioner submitted that the petitioner's rights and fundamental freedoms guaranteed under Articles 27(1) and (2); 28 and 50(1) and (2) of *the Constitution* were violated by the respondents and the 1<sup>st</sup> interested party because the foundation of the alleged complaint against the petitioner were based on a contractual advocate-client relationship.
23. Mr. Wawire argued that rights under Article 50(1) and (2) (a, b, c, j, k) and 2 (b) of *the Constitution* were violated because the complaints against the petitioner lacked proper factual and legal basis to give rise to criminal charges. Further, the petitioner's rights under Articles 25, 28 and 31 of *the Constitution* were violated because he was constantly being threatened with arrest over a civil dispute; was subjected to constant surveillance; threat of unfair trial arising from framed up charges; was denied information necessary to make representation and defend himself, when necessary, the petitioner was also subjected to double jeopardy for being pursued in various tribunals.



24. Learned counsel went on to submitted that the petitioner's rights under Article 39 of *the Constitution* were violated because he was restrained from freely moving as he was apprehensive of being arrested. Similarly, rights under Articles 29 and 47 of *the Constitution* and legitimate expectation were violated.
25. Counsel relied on the decision in *Republic v Minister for Home Affairs & 2 others Exparte Leonard Sitamze* [2008] eKLR to argue that this court has jurisdiction to stop the respondents and the 1<sup>st</sup> interested party from harassing the petitioner because investigations were being carried out with ulterior motive. Investigations were also malicious, capricious and were in bad faith.
26. According to counsel, although the Advocates Disciplinary Tribunal had ruled that the dispute be resolved through a civil suit, the 2<sup>nd</sup> respondent and the 1<sup>st</sup> interested party stated in their replying affidavit that investigations did not find any criminal culpability and that the matter should be resolved through a civil process. The 2<sup>nd</sup> respondent had not produced an investigation report showing the recommendations and conclusions.
27. Mr. Wawire urged the court to grant an order of prohibition and relied on the decisions in *Commissioner of Police & the Director of Criminal Investigation Department & another v Kenya Commercial Bank Limited & 4 others* [2013] eKLR and *Lenah Catherina Koinange v Attorney General & Another* [2007] eKLR.
28. Learned counsel urged the court to allow the petition because the respondents and the 1<sup>st</sup> interested party are abusing the court process by using the criminal process to advance the civil dispute which has already been determined. Reliance was placed on *Francis Kirima M'Ikunyua & 2 others -suing as chairman, secretary and treasurer on behalf of Zimmerman Settlement Scheme Society v Director of Public Prosecutions & 4 others* [2013] eKLR and *Republic v Chief Magistrates Court at Mombasa Exparte Ganijee & Another* [2002] eKLR.
29. Counsel again relied on the decision in *Maggie Mbogo Macniven t/a Garden of Eden Restaurant v North Lake Limited & 2 others* [2019] eKLR to urge for exemplary damages of Kshs. 5,000,000. He urged the court to allow the petition with costs.

### **1<sup>st</sup> respondent's submissions**

30. Mr. Kariuki, learned counsel for the 1<sup>st</sup> respondent, submitted that the petitioner was involved in unlawful activities while acting for the estate of the deceased hence the need for investigations. Learned counsel argued that the 1<sup>st</sup> respondent lodged a complaint with the 2<sup>nd</sup> respondent because the Advocates Complaint Commission did not address her grievances.
31. It was learned counsel's argument that if indeed the petitioner truly and honestly discharged his professional obligation, he would want a full and thorough investigations over any complaint by the 1<sup>st</sup> respondent so as to finally clear himself of any allegations of professional misconduct.
32. Counsel contended that there is no law that bars criminal investigations and prosecution even where the Advocates Complaints Commission had dismissed her complaint. The law allows an aggrieved person to pursue and exhaust all avenues available in law and the doctrine of *res judicata* does not apply to investigations.
33. According to learned counsel, the Directorate of Criminal investigations was only carrying out its mandate and the respondents cannot be stopped from investigating the complaints or commencing the case. Counsel dismissed the allegation that the 1<sup>st</sup> respondent was using the criminal process maliciously and in bad faith. It was counsel's position that the petitioner failed to account for proceeds of the sale of part of the estate and he was yet to be charged in a court of law.



34. Learned counsel relied on Article 50(1) of *the Constitution*, section 35 of the *National Police Service Act*, section 80 of the *Advocates Act*, the Advocates (Accounts) Rules and the Advocates (Deposit Interest) Rules as well as the decision in *Kim Jong Kyu v Housing Finance Company Ltd & 2 others* [2015] eKLR and urged the court to dismiss the petition with costs.

### **2<sup>nd</sup> respondent and 1<sup>st</sup> interested party's submissions**

35. Mr. Maatwa learned counsel for the 2<sup>nd</sup> respondent and the 1<sup>st</sup> interested party argued that the petition was not merited. Counsel relied on Articles 157, 245(1) and 244 of *the Constitution* and section 24 of the *National Police Service Act* to argue that they were discharging their mandate. Learned counsel submitted that the petitioner had not demonstrated how his constitutional rights had been violated to warrant the orders sought. Counsel relied on the decisions in *Andrew Okoth Onanda v Inspector General of Police & 2 others* [2018] eKLR and *Ashish Kampani v Director of Public Prosecution & 3 others* [2016] eKLR.
36. Counsel again relied on the decision in *Paul Ng'ang'a Nyaga v Director of Public Prosecutions & another* [2012] eKLR and *William S. K. Ruto & Anor v Attorney General* [2010] eKLR for the position that even though the Advocates Disciplinary Tribunal had decided on the matter, this did not bar the 2<sup>nd</sup> respondent from investigating a criminal complaint.
37. On the fact that the 2<sup>nd</sup> respondent was discharging its constitutional mandate, counsel relied on *Raphael Waweru Kung'u v Director of Public Prosecutions* [2018] eKLR and *Stephen Ndambuki Muli & 3 others v Director of Public Prosecutions & another* [2016] eKLR.
38. Mr. Maatwa asserted that the 1<sup>st</sup> respondent made a complaint to the 2<sup>nd</sup> respondent which was investigated within the law. Counsel maintained that investigations over a criminal complaint do not amount to infringement of rights and fundamental freedoms and it is in the public interest that such complaints are thoroughly and conclusively investigated.
39. According to counsel, after investigations the file is forwarded to the 1<sup>st</sup> interested party to make a decision whether or not to charge and prosecute based on the evidence available and the public interest. It is within these parameters that the 1<sup>st</sup> interested party bases its decision. Counsel urged the court to dismiss the petition with costs.

### **3<sup>rd</sup> interested party's submissions**

40. Mr. orange, counsel for the 3<sup>rd</sup> interested party associated himself with the submissions of the 2<sup>nd</sup> respondent. He also reiterated the contents of the 2<sup>nd</sup> interested party's replying affidavit and associates themselves with submissions on behalf of the petitioner. Counsel urged the court to allow the petition.

### **2<sup>nd</sup> interested party's submissions**

41. The 2<sup>nd</sup> interested party did not file submissions to the petition.

### **Determination**

42. I have considered the petition, responses and arguments made on behalf of the parties. The issues for determination are whether the petitioner's rights were violated and, depending on the answer to this issue, whether he should be compensated and what is the quantum.



## Violation of petitioner's rights

43. The facts of this petition are largely undisputed. The petitioner, an advocate of this court, acted for the 1<sup>st</sup> respondent, widow to Humphrey Rubia Ng'ang'a (deceased) in Succession Cause No. 917 of 2008-Estate of Humphrey Rubia Ng'ang'a. Other beneficiaries of the estate were represented by different firms of Advocates. Beneficiaries agreed on the mode of distribution of the estate and fees payable to the various advocates.
44. Thereafter, the petitioner assisted the 1<sup>st</sup> respondent in immobilizing and sale of shares as well as parcel of land LR No. Ngong/Ngong/8834. The petitioner also represented the 1<sup>st</sup> respondent in court matters. A misunderstanding, however, arose between the petitioner's firm and the 1<sup>st</sup> respondent on what the petitioner said was the 1<sup>st</sup> respondent's breach of an agreement regarding the handling of issues concerning the estate. As a result, the petitioner informed the 1<sup>st</sup> respondent that his firm did not wish to continue representing her and asked her to instruct another firm of advocates to act for her.
45. The 1<sup>st</sup> respondent later lodged a complaint with the Advocates Complaints Commission but the Commission/committee noted that the complaint was over civil matters pending in court and closed the file. The 1<sup>st</sup> respondent then filed a complaint with the police following which a police officer visited the petitioner's offices and interrogated him over the same issues that had been reported to the Advocates Complaints Commission. The petitioner maintained that he did not know the outcome of the police investigations. The petitioner argued that he was surprised that the 1<sup>st</sup> respondent had lodged a complaint with the police over the same issues even after he (petitioner) had given the 1<sup>st</sup> respondent a comprehensive statement showing the disbursements made from the proceeds of sale of LR Ngong/Ngong/8834.
46. The petitioner therefore filed this petition arguing that the actions of the respondents and 1<sup>st</sup> interested party violated his rights and fundamental freedoms. The respondents and the 1<sup>st</sup> interested party, however, denied violating the petitioner's rights and fundamental freedoms.
47. Section 24 read with section 35 of the [National Police Service Act](#) provide for the functions of the Police Service which 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 on commission of crime reported to them. This is a statutory duty placed on the police which they have an obligation to discharge.
48. The police are required to exercise their powers and discharge their functions subject to the constitutional safeguards of human rights and fundamental freedoms in article 244. The police can investigate any complaints of a criminal nature 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 whether or not to charge and prosecute the person. If investigations however conclude that no offence was committed, the file is closed and that is the end of the matter.
49. On the other hand, article 157(6) confers on the 1<sup>st</sup> interested party, (the DPP), constitutional mandate and discretion to initiate, continue and or terminate criminal prosecutions. When exercising this discretion, the DPP does not require permission or consent from any person or authority. However, article 157(11) demands that when the DPP is exercising those 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 *Director of Public Prosecutions v Martin Mina & 4others* [2017] eKLR).



50. In that regard, the law is settled that where the police are investigating a crime, or the DPP is exercising the constitutional mandate and discretion conferred on his 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).
51. From the constitutional text, it is clear that the intention of *the Constitution* is to enable the DPP carry out his constitutional mandate without interference from anybody or authority. The Court should not therefore direct or interfere with the DPP's exercise of his constitutional powers unless there is clear evidence of violation of *the Constitution* or a party's rights and fundamental freedoms (*Francis Anyango Juma v The Director of Public Prosecutions and another* [2012] eKLR).
52. The decision by the police whether to investigate a complaint or by the DPP to prefer charges and prosecute, is at the discretion of the police and the DPP and courts will only come in where there is evidence of abuse, malice or ulterior motive in exercising their respective mandate. That is, investigation and institution of criminal prosecution which exhibits abuse of discretion or undermines the essence of criminal justice system, will be interfered with by the court.
53. In this petition, the petitioner was not charged and is not being prosecuted. His claim is that the 1<sup>st</sup> respondent's action of reporting him to the police and the subsequent police investigations violated his rights and fundamental freedoms. He argued that he had constantly lived in fear of being arrested due to the 1<sup>st</sup> respondent's cation of reporting the matter to the police despite the same issue having been reported to a different administrative body which had concluded that it was a civil matter.
54. Article 22 of *the Constitution* allows a party to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed or is threatened. Article 23(1) as read with article 165 then confers on this court jurisdiction to determine such claims while under article 23(3) the court may grant appropriate relief to redress denial, violation or infringement of, or threat to, a right or fundamental freedom. The essence of such relief must be to ensure that rights enshrined in *the Constitution* are protected and enforced. (*Fose v Minister of safety and Security* (CCT 14/96) [1997] ZACC 6).
55. In this respect, a petitioner has to demonstrate to the satisfaction of the court violation of his 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."
56. I have considered the pleadings and arguments by parties on this issue. The petitioner's grievance is that a complaint was made to the police against him following which he was subjected to malicious investigations even after the same complaint had been made to another disciplinary body. The respondents on their part, argued that the petitioner had not demonstrated that his rights and fundamental freedoms had been violated.
57. A claim for violation of rights and fundamental freedoms is first a matter of fact, and once established, it becomes a question of law that a petitioner has to prove to the satisfaction of the Court. In *Communication Commission of Kenya & 5 others v Royal Media Services Limited & 5 others* [2014] eKLR the Supreme Court stated that there is need for a link between the aggrieved party, the provisions of *the Constitution* alleged to have been contravened, and the 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.

58. Flowing from the above decision, a party claiming violation of rights and fundamental freedoms should plead with precision, the constitutional rights violated and demonstrate the manner of such violation so that there is a link between the alleged violation, the rights infringed and the constitutional provisions violated to put the respondent on notice over the claim in order to respond appropriately.
59. In this petition, the 1<sup>st</sup> respondent's complaint to the police against the petitioner was in exercise of her right to report a complaint if she thought the petitioner had committed a crime. The police on their part, had an obligation to investigate the complaint to determine its veracity and basis. The investigations were in discharge of a statutory mandate.
60. The investigations did not however lead to any arrest and or prosecution since the police found no fault against the petitioner and concluded that this was a civil matter. The petitioner did not demonstrate that the 1<sup>st</sup> respondent's act of reporting a complaint to the police violated any of the rights or fundamental freedoms in the Bill of Rights. The petitioner did not also show how the police act of investigating the complaint violated his rights or fundamental freedoms since investigations did not lead to any arrest or prosecution. The petitioner did not also prove that there was malice in lodging the complaint or the commencement of the investigations.
61. The petitioner did not even suggest or prove that in conducting investigations, the police did not exercise their powers and discharge their functions in accordance with the constitutional safeguards of human rights and fundamental freedoms in article 244 of *the Constitution*.
62. The petitioner's argument that he had lived under constant fear of arrest was not demonstrated since the police officer visited the petitioner once and there was no evidence that police officers were stalking him, or that they acted in a manner that was contrary to *the Constitution* or the law. The police reached the same conclusion as the other disciplinary body (Advocates Complaints Commission) that the issues were civil in nature to be determined in the civil suits.
63. A party who claims that his rights and fundamental freedoms have been violated, must discharge the burden placed on him and show that indeed there was violation and the manner of such violation. It is not enough for a petitioner to argue that his/her rights were violated. Violation will be demonstrated if a petitioner shows that the respondents acted contrary to constitutional provisions that protect rights and fundamental freedom. Without this demonstration, there cannot be a claim of violation of rights and fundamental freedoms. In this petition, the petitioner failed to prove that the respondents and interested parties violated any of the constitutional provisions that safeguard rights and fundamental freedoms.

## Conclusion

64. Having considered the pleadings and arguments by parties in this matter, the court is not satisfied that any of the petitioner's rights and fundamental freedoms were violated. The fact that the 1<sup>st</sup> respondent reported a complaint to more than one body and to the police, was not on its own, a violation of the petitioner's rights and fundamental freedoms. The 1<sup>st</sup> respondent exercised her right to complain and the relevant bodies discharged their constitutional and or statutory mandate in addressing and determining the complaints in the manner they did. No action was taken against the petitioner following the complaints as no offence was disclosed thus, no rights were violated.
65. In other words, the petitioner did not show that in carrying out investigations the police acted in any way outside *the Constitution* or the law. This is because as pointed out earlier, when investigating, the



police were discharging their statutory mandate, functions or duties and have to observe the highest standards of human rights and fundamental freedoms. The petitioner failed to demonstrate that the police did not observe these constitutional safeguards.

**Disposal**

66. The petition is declined and dismissed. Each party will bear their own costs.

**DATED AND DELIVERED AT NAIROBI THIS 29<sup>TH</sup> DAY OF JULY 2025**

**E C MWITA**

**JUDGE**

