



**Luka v Maasai Mara University & 7 others (Constitutional Petition  
E014 of 2023) [2025] KEHC 12772 (KLR) (18 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12772 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAROK  
CONSTITUTIONAL PETITION E014 OF 2023  
CM KARIUKI, J  
SEPTEMBER 18, 2025**

**BETWEEN**

**JIMMY PARNYUMBE LUKA ..... PETITIONER**

**AND**

**MAASAI MARA UNIVERSITY ..... 1<sup>ST</sup> RESPONDENT**

**THE VICE CHANCELLOR MAASAI MARA UNIVERSITY . 2<sup>ND</sup> RESPONDENT**

**CHAIRMAN MAASAI MARA UNIVERSITY COUNCIL ..... 3<sup>RD</sup> RESPONDENT**

**ETHICS AND ANTI-CORRUPTION COMMISSION ..... 4<sup>TH</sup> RESPONDENT**

**PUBLIC PROCUREMENT REGULATORY AUTHORITY .... 5<sup>TH</sup> RESPONDENT**

**DIRECTOR OF CRIMINAL INVESTIGATION ..... 6<sup>TH</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 7<sup>TH</sup> RESPONDENT**

**THE DIRECTOR OF PUBLIC PROSECUTION ..... 8<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. The Petitioner, Jimmy Parnyumbe Luka, is a Kenyan citizen and the Chairman of Persons Living with Disabilities in Narok County. He brings this Petition in the public interest pursuant to Articles 22 and 258 of *the Constitution*, contending that the 1st to 3rd Respondents—Maasai Mara University, its Vice Chancellor, and the Chairman of its Council—have engaged in corruption, abuse of office, nepotism, discrimination, and mismanagement of public resources, contrary to *the Constitution* and statutory provisions.
2. He avers that, despite repeated verbal and written requests, the 1st to 3rd Respondents declined to provide him with information relating to procurement, tender awards for the past three years, and recruitment, promotion, and termination of staff, including data concerning persons with disabilities.



He claims that this refusal violated Article 35 of *the Constitution*, which guarantees every citizen the right of access to information.

3. The Petition catalogues a range of alleged irregularities. On procurement and tendering, the Petitioner accuses the Respondents of manipulating processes through threats to junior staff, discriminatory practices, and breaches of the *Public Procurement and Asset Disposal Act*, 2015. He cites, in particular, tenders awarded to Leshuta Naboisho, a community-based organization allegedly linked to a university staff member, and refers to the Auditor General's report flagging an overpayment of Kshs. 26,465,243.72 to Vee Vee Enterprises for a tuition block project.
4. The Petitioner also relies on Auditor General reports showing that the University Council held meetings far in excess of the number permitted by government circulars, thereby inflating expenditure. Council spending, he says, rose from 4% in the 2019/2020 financial year to between 7–8% in the subsequent two years, contrary to principles of prudent financial management. He further complains that the Acting Vice Chancellor and Acting Deputy Vice Chancellor were irregularly paid allowances equivalent to substantive office holders, in breach of human resource policies, with cumulative payments exceeding Kshs. 40 million.
5. On recruitment, the Petitioner alleges nepotism and the hiring of ghost workers. He cites the case of Davis Njuguna Kamau, said to be a relative of a Council member, who allegedly lacked qualifications and a recognised position yet received a monthly salary of Kshs. 130,400. He also names George Kerei, alleged to be the brother of the Council Chairman, as another beneficiary of irregular recruitment, in violation of Article 232 of *the Constitution*.
6. The Petitioner further alleges that the outsourcing of legal services was deliberately manipulated to favour certain law firms, particularly Mirugi Kariuki & Co. Advocates, resulting in inflated litigation costs and suspected kickbacks. He points to Auditor General reports showing that the University paid Kshs. 127 million in legal fees between 2021 and 2023 without adequate documentation of cases handled.
7. Allegations of financial mismanagement are also raised, specifically against the Acting Deputy Vice Chancellor (Administration, Finance and Strategy), Prof. James Simeren Ole Nampushi, who is accused of presiding over reckless expenditure and mismanagement of University finances. The Petitioner asserts that under his watch, the University accumulated pending bills amounting to Kshs. 650 million, thereby crippling its financial health and undermining its academic mandate.
8. Despite forwarding complaints and copies of Auditor General reports to the Ethics and Anti-Corruption Commission (EACC), the Public Procurement Regulatory Authority (PPRA), and the Directorate of Criminal Investigations (DCI), the Petitioner contends that no meaningful action has been taken. He argues that the inaction of these oversight bodies amounts to a dereliction of their constitutional obligations under Articles 47 and 252.
9. On the basis of these allegations, the Petitioner prays for a raft of reliefs. He seeks declarations that the 1st to 3rd Respondents violated Articles 35, 201, 232, and 181 of *the Constitution* and the *Anti-Corruption and Economic Crimes Act*, and that the 4th to 6th Respondents violated Articles 47 and 252 by failing to investigate the complaints. He also seeks orders of mandamus compelling the EACC and DCI to investigate the alleged misconduct and submit their findings to the Director of Public Prosecutions within 30 days, together with reasons in writing. Additionally, he prays for a mandatory order holding the 1st to 3rd Respondents personally liable for misappropriated funds, costs of the Petition, and any other relief that the Court may deem just.



10. The Petition is supported by the affidavit of the Petitioner, who reiterates that he is a Kenyan citizen, a resident of Narok County, and the Chairman of Persons Living with Disabilities. In his deposition he restates the allegations of corruption, nepotism, discrimination, fraud, and financial mismanagement, and avers that unless the Court intervenes, the Respondents will continue to perpetrate corruption and wastage of public resources, to the detriment of the public interest.

### **The 1st to 3rd Respondents' Case**

11. The 1st to 3rd Respondents opposed the Petition through a Replying Affidavit sworn on 20th December 2023 by Samuel K. Partoip, the Registrar (Administration and Strategy) of the 1st Respondent, who was duly authorized to swear the affidavit on their behalf. They took the preliminary position that the Petition and the accompanying application are fatally defective, misconceived, frivolous, and an abuse of the court process, and should therefore be struck out with costs. In their view, the Petitioner is a habitual litigant who has previously instituted frivolous suits against the University and, having failed in those endeavours, has now resorted to blackmail and self-serving demands, including requests for land and employment opportunities for himself and his associates.
12. On the merits of the Petition, the Respondents categorically deny any violation of procurement laws, stressing that the Petitioner has produced no evidence to substantiate such claims. They further contend that any disputes relating to tendering fall within the exclusive jurisdiction of the Public Procurement Administrative Review Board under the *Public Procurement and Asset Disposal Act*, and no such request for review has ever been filed against the University.
13. With respect to corruption and mismanagement, the Respondents dismiss the allegations as malicious, speculative, and based solely on the Auditor-General's report for the financial year ending 30th June 2020. They emphasize that the current University Council only assumed office on 20th March 2020, after most of the issues cited in the report had already occurred, and that any concerns flagged were addressed administratively and resolved.
14. Regarding the alleged employment irregularities, they assert that the claims of nepotism and discrimination are unfounded. They maintain that the Petitioner's principal grievance arises from the University's refusal to absorb his wife, who had been engaged as a casual labourer, into permanent employment. According to the Respondents, the Petitioner has not presented any evidence of irregularities, and in any event, employment disputes properly fall within the jurisdiction of the Employment and Labour Relations Court pursuant to Article 162(2)(a) of *the Constitution*.
15. The Respondents also contend that the complaints levelled against the oversight institutions, namely the 4th to 8th Respondents, are wholly misplaced, as those bodies operate strictly within their constitutional and statutory mandates and have no bearing on these proceedings.
16. In conclusion, the 1st to 3rd Respondents urge the Court to find the Petition unsubstantiated, self-serving, and an abuse of the judicial process, and to dismiss it with costs in the interests of justice.

### **The 4th Respondent's Case**

17. The 4th Respondent, the Ethics and Anti-Corruption Commission (EACC), opposed the Petition through Grounds of Opposition and written submissions filed by its counsel, Ms. Mildred Amojong. Its position is that it has not failed or neglected to investigate the allegations raised by the Petitioner. The Commission contends that no material has been placed before the Court to demonstrate that it has declined to act on the Petitioner's complaint. In its view, the orders sought would effectively amount to



the Court directing the manner and outcome of its investigations, thereby fettering its constitutional and statutory mandate.

18. Counsel for the Commission submitted that an order of mandamus issues only where a public body has expressly refused or neglected to perform a statutory duty. Reliance was placed on the Court of Appeal decision in *Kenya National Examination Council v Republic ex parte Geoffrey Gathenji Njoroge & 9 Others* [1997] eKLR, where mandamus was described as a remedy to enforce performance of a public duty that has been refused. The Commission emphasized that it has not refused to act; rather, investigations are ongoing but are by their nature complex and time-consuming, especially given the multiplicity of complaints before it.
19. The Commission further stressed its independence under Article 79 of *the Constitution*, section 11 of the EACC Act, 2011, and section 35 of the *Anti-Corruption and Economic Crimes Act* (ACECA), which empower it to investigate and forward recommendations to the Director of Public Prosecutions (DPP). It argued that courts are generally slow to interfere with investigative mandates absent proof of bad faith, citing *R v Anti-Counterfeit Agency & 2 Others ex parte Surgipharm* [2015] eKLR and *R v Commissioner of Police & Another ex parte Monari* [2012] eKLR. It also emphasized that under section 35 of ACECA, its reports are to be submitted to the DPP and not to private citizens, and therefore the Petitioner cannot lawfully demand direct reports or timelines.
20. On the allegation that delay or failure to conclude investigations violated Articles 47 and 252 of *the Constitution*, the Commission relied on the Supreme Court decision in *EACC & Another v Tom Ojienda SC t/a Prof. Tom Ojienda & Associates Advocates & 2 Others*; Petition Nos. 30 & 31 of 2019 (Consolidated) [2022] KESC 59 (KLR), where the Court held that investigations by the Commission constitute “administrative action” under Article 47, but that a party alleging violation must prove actual infringement of rights. It argued that the Petitioner had failed to meet this threshold.
21. The Commission also submitted that in conducting investigations, it is obliged to respect the dignity and privacy rights of persons under investigation as guaranteed under Articles 28 and 31 of *the Constitution*, hence the need for confidentiality until recommendations are forwarded to the DPP.
22. In conclusion, the EACC maintained that it is diligently executing its statutory mandate, that the Petition is an abuse of process, and that no prima facie case has been disclosed to justify the declaratory and mandatory orders sought. It therefore urged the Court to dismiss the Petition with costs.

### **The 5th Respondent’s Case**

23. The 5th Respondent opposed the Petition through a Replying Affidavit sworn by Peter Kimani Ndung’u, a duly authorized officer of the Public Procurement Regulatory Authority (PPRA). He explained that the Authority is a statutory body established under section 8 of the *Public Procurement and Asset Disposal Act*, 2015 (PPADA), with the mandate to ensure compliance with procurement procedures as contemplated under Article 227 of *the Constitution*.
24. Addressing the Petitioner’s claims, the deponent noted that it had been alleged that several complaint letters, including one dated 25th April 2023, had been addressed to the Authority regarding purported breaches of procurement laws, corruption, and abuse of office in tender awards at Maasai Mara University. He firmly denied this assertion, clarifying that the Authority’s records reflect no such letters ever having been received. He emphasized that the Petitioner had provided no evidence—such as a stamped copy, email confirmation, or any other form of acknowledgment—to prove service upon the Authority.



25. The 5th Respondent maintained that all requests for investigations, audits, and reviews that are properly lodged with the Authority are handled diligently and expeditiously in accordance with section 35 of the PPADA. In the absence of proof of service, the allegation that the Authority failed or refused to act was, in his view, unfounded, speculative, and misleading.
26. On that basis, the 5th Respondent argued that no case has been established against it and that its participation in these proceedings is unnecessary for the determination of the constitutional issues raised between the Petitioner and the other Respondents. It therefore prayed that the Petition and the application, insofar as they relate to it, be dismissed with costs.

### **The 8th Respondent's Case**

27. The 8th Respondent, the Office of the Director of Public Prosecutions (ODPP), opposed the Petition through a Replying Affidavit sworn by Peninah Mwaniki, a Principal Prosecution Counsel stationed in Narok. She explained that the Petitioner primarily seeks an order of mandamus compelling the Ethics and Anti-Corruption Commission (EACC) and the Directorate of Criminal Investigations (DCI) to investigate allegations of corruption, embezzlement of public funds, and abuse of office by the 1st to 3rd Respondents, as highlighted in the Auditor-General's reports for the years 2020 to 2023.
28. Ms. Mwaniki deponed that both the EACC and the DCI are the investigative bodies with statutory mandates to handle such complaints. Once investigations are commenced, she noted, the law requires that the agencies be given sufficient time to complete their inquiries and forward their findings to the ODPP for prosecutorial consideration. She stressed that there is no statutory limitation period for prosecuting offences of the nature alleged, and that the issues raised by the Petitioner are serious and warrant thorough interrogation by the appropriate investigative bodies.
29. She further observed that under section 5 of the ODPP Act, the ODPP may direct investigative agencies to carry out inquiries, but since the EACC is already seized of the matter, the Petitioner must await the outcome of those investigations before any prosecutorial decision can be made. She affirmed that the ODPP stands ready to provide prosecution-guided investigations should the EACC request such support.
30. On this basis, the 8th Respondent urged the Court to allow the EACC to conclude its investigations and thereafter forward the resultant file to the ODPP for further action.

### **Petitioner's Supplementary Affidavit**

31. In response to the Replying Affidavits and Grounds of Opposition filed by the Respondents, the Petitioner, Jimmy Parnyumbé Luka, filed a Supplementary Affidavit in which he insisted that both the Petition and the application dated 20th November 2023 are meritorious and properly before the Court under Article 22(1) of *the Constitution*.
32. With respect to the 1st, 2nd, and 3rd Respondents, the Petitioner challenged the Replying Affidavit sworn by Samuel K. Partoip, arguing that it is fatally defective as it is neither signed, dated, nor commissioned in accordance with the *Oaths and Statutory Declarations Act*. He relied on the decision in Gideon Sitelu Konchellah v Julius Lekakeny Ole Sunkuli & 2 Others [2018] eKLR, to assert that such an affidavit is of no legal effect. In his view, the document does not respond to the substance of the Petition but instead raises extraneous matters, leaving the claims against the 1st to 3rd Respondents uncontroverted.
33. Turning to the 4th Respondent, the Petitioner argued that the Ethics and Anti-Corruption Commission has failed to exercise its mandate under Article 252(1)(a) of *the Constitution* and section



- 13 of the EACC Act. He maintained that despite overwhelming evidence annexed to his Supporting Affidavit, there is no indication that any active investigations have been undertaken into his complaint.
34. Regarding the 5th Respondent, the Petitioner submitted that the Replying Affidavit sworn by Peter Kimani Ndung'u is similarly fatally defective for want of a date and proper commissioning. He reiterated that he lodged a complaint letter dated 25th April 2023, duly served and copied to the Authority, but no action was taken as required under section 35(1) of the *Public Procurement and Asset Disposal Act*, 2015. On that basis, he argued that the Petition remains unchallenged against the 5th Respondent.
35. As against the 8th Respondent, the Petitioner faulted the Replying Affidavit sworn by Peninah Mwaniki on the ground that it failed to demonstrate any investigation or prosecution initiated against the 1st to 3rd Respondents. He contended that the ODPP has abdicated its constitutional mandate despite the requests and evidence placed before it.
36. In conclusion, the Petitioner reiterated that there is overwhelming and uncontroverted evidence showing that the 1st, 2nd, and 3rd Respondents have engaged in corruption, money laundering, abuse of office, nepotism, tribalism, and other acts contrary to *the Constitution* and the law. He maintained that unless the Court intervenes and grants the reliefs sought, the Respondents will continue to perpetrate acts of corruption while the investigative and prosecutorial agencies fail to discharge their constitutional obligations. He therefore urged the Court, in the interest of justice and public accountability, to allow the Petition and application as prayed.

### **Petitioner's Submissions**

37. The Petitioner, Jimmy Parnyumbé Luka, filed written submissions dated 14th June 2024 in support of both the application and the Petition of 20th November 2023. He argued that his case is anchored on Articles 22, 23, 27, 35, 40, and 54 of *the Constitution*, alongside the relevant provisions of the *Civil Procedure Act* and Rules.
38. He submitted that the 1st to 3rd Respondents have, for more than a year, engaged in acts of corruption, money laundering, abuse of office, nepotism, fraud, and discrimination against minorities and persons with disabilities. These actions, in his view, have resulted in wastage of public resources and a decline in the standards of education at Maasai Mara University. Despite repeated complaints, the 4th to 8th Respondents have failed to investigate or take action, thereby abdicating their constitutional and statutory mandates.
39. On the question of locus standi, the Petitioner relied on Articles 22(1) and 258(1) of *the Constitution*, which allow any person to institute proceedings to enforce the Bill of Rights or to protect *the Constitution*. He cited *Okiya Omtatah Okoiti & 2 Others v Attorney General & 3 Others* [2014] eKLR, *Tononoka Steels Ltd v PTA Bank CA No. 255 of 1998*, and *Anarita Karimi Njeru v Republic (1976–1980) KLR 1272*, among others, to demonstrate that he had properly pleaded the constitutional violations alleged.
40. The Petitioner identified specific irregularities, including manipulation of procurement processes to benefit connected parties such as Leshuta Naboisho CBO; overpayment of Kshs. 26,465,243.72 to Vee Vee Enterprises in the Tuition Block project, as confirmed by the Auditor-General's report; irregular payments of allowances to acting officials; nepotistic appointments, such as that of Davis Njuguna, in violation of Article 232 of *the Constitution* and the Public Service Human Resource Manual; and failure to reserve 30% of tenders to women, youth, and persons with disabilities, contrary to Legal Notice No. 114 of 2013 and Article 227 of *the Constitution*.



41. On evidentiary burden, he relied on *Miller v Minister of Pensions* [1947] and *D.T. Dobie & Co. (K) Ltd v Wanyonyi Wafula Chebukati* [2014] eKLR, to argue that he had discharged his obligation on a balance of probabilities. He contended that the Respondents' replies were defective, evasive, and unsupported by evidence, and that the Petition therefore remains uncontroverted.
42. In conclusion, the Petitioner urged the Court to allow the application and the Petition as prayed, and to issue orders compelling disclosure of information, institution of investigations, and other reliefs necessary to uphold the public interest.

### **1st to 3rd Respondents' Submissions**

43. The 1st to 3rd Respondents, through submissions filed by Prof. Tom Ojienda & Associates on 5th July 2024, opposed the Petition.
44. On the question of competence, they contended that the Petition is fatally defective for want of specificity. Relying on *Anarita Karimi Njeru v Republic* (1979) 1 KLR 154, *Mumo Matemu v Trusted Society of Human Rights Alliance* [2013] eKLR, and *David Mathu Kiminal v SMEC International PTY Limited* [2021] eKLR, they argued that the Petitioner merely cited constitutional provisions without setting out with precision the manner of their alleged violation. In their view, the Petition fails to disclose any constitutional questions for determination and should therefore be struck out.
45. On whether the Petition constitutes public interest litigation, the Respondents invoked *Kayoga & Another v Kioko & 2 Others* (Petition E017 of 2022) [2022] KEHC 10703 and *TWW v KIH & 2 Others* (Petition E267 of 2021) [2023] KEHC 1602 (KLR), submitting that such litigation must be genuine and not driven by private gain. They argued that the Petitioner is a vexatious litigant with ulterior motives, pointing to his history of filing frivolous petitions against the University and its Council, including *Narok ELC Petition No. E001 of 2021* and *Narok Constitutional Petition No. E004 of 2023*. They contended that the present Petition was motivated by bad faith, following the University's refusal to cede land or offer employment opportunities to the Petitioner and his associates, and as retaliation for the non-absorption of his wife into permanent employment.
46. On the merits, the Respondents maintained that the allegations of corruption, procurement irregularities, and mismanagement are unsupported by evidence. They pointed out that the Petitioner abandoned his earlier application for the production of documents, and without proof, there exists no basis upon which the Court can compel investigative or prosecutorial action. They relied on *Raila Amolo Odinga & Another v IEBC & 2 Others* [2017] eKLR to underscore the distinction between legal and evidentiary burden, insisting that the Petitioner has failed to discharge the initial legal burden.
47. The Respondents further argued that the Court lacks jurisdiction to entertain the remedies sought, invoking the doctrine of exhaustion. They submitted that disputes concerning access to information fall within the jurisdiction of the Commission on Administrative Justice under section 14 of the [\*Access to Information Act\*](#); procurement disputes are to be lodged before the Public Procurement Administrative Review Board under section 27 of the PPADA; employment grievances belong to the Employment and Labour Relations Court under Article 162(2)(a) of [\*the Constitution\*](#); and matters relating to University finances fall under the remit of the University Council pursuant to section 60 of the [\*Universities Act\*](#).
48. Finally, they argued that the Director of Public Prosecutions acts independently under Article 157 of [\*the Constitution\*](#) and cannot be compelled to institute criminal proceedings absent sufficient evidence.
49. In conclusion, the 1st to 3rd Respondents urged the Court to dismiss the Petition with costs, terming it incompetent, frivolous, and an abuse of the judicial process.



#### 4th Respondent's Submissions

50. The 4th Respondent, the Ethics and Anti-Corruption Commission (EACC), opposed the Petition and maintained that it has not neglected, refused, or failed to discharge its constitutional and statutory mandate to investigate the allegations raised. It argued that it remains committed to carrying out investigations, but underscored that it receives thousands of complaints annually, and the nature of the allegations made by the Petitioner is broad and complex, requiring considerable time to conclude. The Commission emphasized that the Petitioner had not demonstrated any refusal on its part to investigate nor adduced evidence showing a violation of Articles 47 and 252 of *the Constitution*.
51. The 4th Respondent further submitted that the relief sought in the nature of mandamus is inapplicable since the Commission has not declined to act. In support of this position, reliance was placed on Kenya National Examinations Council v Republic ex parte Geoffrey Gathenji Njoroge & 9 Others [1997] eKLR, which elaborated the principles guiding the grant of mandamus. The Commission also cited section 3(1) and 11(4) of the *Ethics and Anti-Corruption Commission Act, 2011*, sections 11(1)(d) and 28 of the same Act, and section 35 of the *Anti-Corruption and Economic Crimes Act* (ACECA), to underscore its statutory powers and procedures.
52. To reinforce its submissions, the 4th Respondent referred to several authorities, including Republic v Anti-Counterfeit Agency & 2 Others ex parte Surgipharm [2015] eKLR, Republic v Commissioner of Police & Another ex parte Monari & Another [2012] eKLR, and Ethics and Anti-Corruption Commission & Another v Tom Ojienda, SC t/a Prof. Tom Ojienda & Associates Advocates & 2 Others (Petitions 30 & 31 of 2019, Consolidated) [2022] KESC 59 (KLR). It maintained that these decisions affirm the independence of investigative bodies and the impropriety of judicial interference absent clear evidence of dereliction of duty.

#### Analysis And Determination.

53. Issues for Determination
54. Having considered the pleadings, the rival submissions, and the authorities cited, the following issues arise for determination:
- i. Whether the Petition meets the constitutional threshold for precision and competence.
  - ii. Whether the Petitioner has locus standi and whether the Petition qualifies as public interest litigation.
  - iii. Whether the 1st to 3rd Respondents engaged in corruption, maladministration, abuse of office, or discrimination in violation of *the Constitution* and the law.
  - iv. Whether the 4th to 8th Respondents failed to discharge their constitutional and statutory mandates in respect of the complaints raised by the Petitioner.
  - v. Whether the remedies sought are available in the circumstances of this case.

#### Competence and Precision of the Petition

55. The 1st to 3rd Respondents argued that the Petition is incurably defective for want of specificity, relying on Anarita Karimi Njeru v Republic (1979) 1 KLR 154 and Mumo Matemu v Trusted Society of Human Rights Alliance [2013] eKLR. The law is settled that a Petitioner alleging a violation of constitutional rights must plead with reasonable precision the provisions infringed, the manner of violation, and the nature of the injury suffered.



56. In the present case, the Petitioner invoked Articles 22 and 258 of *the Constitution* and particularized allegations of procurement irregularities, nepotism, overpayments in specific projects, and failure to allocate tenders to special interest groups. While the Petition may not have been drafted with textbook elegance, it nonetheless identifies the constitutional provisions relied upon and provides sufficient factual basis to enable the Respondents to respond. Consistent with the purposive approach espoused in *Trusted Society of Human Rights Alliance v Attorney General & 2 Others* [2012] eKLR, I am satisfied that the Petition meets the minimum threshold and cannot be struck out at the preliminary stage.

### **Locus Standi and Public Interest Litigation**

57. The Petitioner anchored his standing on Articles 22(1) and 258(1) of *the Constitution*, which confer broad access to courts in matters of enforcement of the Bill of Rights and protection of *the Constitution*. The jurisprudence in *Okiya Omtatah Okoiti & 2 Others v Attorney General & 3 Others* [2014] eKLR affirms that a Petitioner need not demonstrate personal injury if acting in the public interest.
58. The 1st to 3rd Respondents have labelled the Petitioner a vexatious litigant with ulterior motives. While this Court is alive to the principle in *Kayoga & Another v Kioko & 2 Others* [2022] KEHC 10703 that public interest litigation must not be abused for private gain, there is no cogent evidence before me to demonstrate that the Petition is actuated by malice. The matters raised touch on governance, integrity in public procurement, and protection of public resources—matters squarely within the realm of public interest. I therefore find that the Petitioner has locus standi.

### **Allegations of Corruption and Maladministration by the 1st to 3rd Respondents**

59. The Petitioner cited instances of procurement manipulation, overpayment of Kshs. 26,465,243.72 to Vee Vee Enterprises, nepotistic appointments, and irregular allowances. These allegations, if proven, would implicate Articles 10, 27, 73, 201, and 232 of *the Constitution*. However, as emphasized in *Raila Amolo Odinga & Another v IEBC & 2 Others* [2017] eKLR, the legal burden of proof rests with the party alleging.
60. The Petitioner did not annex primary documents, audit queries, or official reports beyond references in submissions. Indeed, he abandoned his interlocutory application for the discovery of documents. Without concrete evidence, the Court cannot make definitive findings of corruption or malfeasance. Allegations, however grave, must be proved through credible evidence.

### **Mandates of the 4th to 8th Respondents**

61. The Petitioner accuses the 4th to 8th Respondents—EACC, PPRA, CAJ, and the DPP—of abdicating their mandates. The 4th Respondent demonstrated that it is seized of the complaints, but investigations are ongoing. Jurisprudence, including *Republic v Commissioner of Police & Another ex parte Monari* [2012] eKLR, affirms that investigative bodies enjoy operational independence and courts will not compel the manner or timeline of investigations absent proof of refusal to act. Similarly, in *Kenya National Examinations Council v Republic ex parte Geoffrey Gathenji Njoroge & 9 Others* [1997] eKLR, the Court underscored that mandamus issues only where there is clear evidence of failure to act. No such evidence was presented.
62. As regards procurement disputes, section 27 of the PPADA directs aggrieved parties to the Public Procurement Administrative Review Board. Employment grievances lie with the Employment and Labour Relations Court under Article 162(2)(a) of *the Constitution*. The exhaustion doctrine, restated



in *Geoffrey Muthinja Kabiru & 2 Others v Samuel Henry Kinyanjui & 2 Others* [2015] eKLR, applies. The Petitioner bypassed these mechanisms without justification.

63. On the 8th Respondent, Article 157(10) of *the Constitution* secures the independence of the Director of Public Prosecutions. This Court cannot compel prosecution absent evidence establishing a prima facie case.

### **Availability of Remedies**

64. The cumulative effect of the foregoing is that while the Petition raises weighty issues of governance, the evidentiary foundation is insufficient, the doctrine of exhaustion or the constitutional independence of investigative agencies bars many of the reliefs sought. The Court cannot usurp the mandates of EACC, PPRA, CAJ, or the DPP.

### **Final Orders**

65. In light of the foregoing analysis, this Court reaches the following conclusions:
- i. The Petition as framed meets the constitutional threshold on competence, and the Petitioner has locus standi to institute the proceedings in the public interest.
  - ii. However, the Petitioner has not adduced cogent evidence to establish the alleged acts of corruption, maladministration, nepotism, or abuse of office by the 1st to 3rd Respondents.
  - iii. The 4th to 8th Respondents have not been shown to have abdicated their constitutional and statutory mandates; rather, some of the complaints remain under active investigation while others fall within specialized statutory forums.
  - iv. Consequently, the substantive reliefs sought in the Petition cannot issue.
    - a. Accordingly, the Petition dated 20th November 2023 is hereby dismissed. For avoidance of doubt, this dismissal does not extinguish or preclude ongoing investigations by the relevant agencies, nor does it bar the Petitioner or any other person from pursuing appropriate remedies before competent forums established under statute.
    - b. Given the public interest element of the Petition, each party shall bear its own costs.
    - c. Orders accordingly.

**DATED, SIGNED, AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION, THIS 18<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

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**CHARLES KARIUKI**

**JUDGE**

