



**Keter & 2 others v Republic (Constitutional Petition  
006 of 2023) [2024] KEHC 6661 (KLR) (7 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 6661 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CONSTITUTIONAL PETITION 006 OF 2023  
JRA WANANDA, J**

**JUNE 7, 2024**

**IN THE MATTER OF ARTICLE 22(1), 23, 71(1), &  
40 OF THE CONSTITUTION OF KENYA, 2010  
AND  
IN THE MATTER OF VIOLATION OF ARTICLE  
10 OF THE CONSTITUTION OF KENYA, 2010**

**BETWEEN**

**ROBERT KETER ..... 1<sup>ST</sup> PETITIONER  
DANIEL KIPKEMBOI KEMEI ..... 2<sup>ND</sup> PETITIONER  
ABRAHAM CHERUIYOT KEMEI ..... 3<sup>RD</sup> PETITIONER**

**AND**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

1. Before this Court for determination is the Petition dated 15/02/2023 filed through Messrs Bundotich Korir & Co. Advocates. It seeks orders as follows:
  - i. A conservatory order of permanent injunction restraining and or staying proceedings before Eldoret Chief Magistrates Criminal Case No. E334 of 2023 between Republic vs 1. Robert Kipkemei Keter 2. Daniel Kipkemboi Kemei 3. Abraham Cheruiyot Kemei and or any other proceedings in relation thereto.
  - ii. Costs of the Petition.
2. The Petition is supported by the Affidavit sworn by the 1<sup>st</sup> Petitioner, Robert Keter.



3. In the Petition, it is pleaded that on or about 7/10/2022, the Petitioners filed a suit seeking orders restraining Paul Samoei, Tamar Kirwa and Julius Kipkosgei who are the complainants in the said Criminal Case and who purport to own the parcel of land known as Pioneer/Ngeria Block 1 (EATEC)/1980 (hereinafter “the property”), that the Petitioners’ case is that the 1<sup>st</sup> Petitioner has been in exclusive occupation thereof without force for a duration of 12 years and as such, has by law acquired the property by adverse possession, that upon filing the suit, the 1<sup>st</sup> Petitioner noted that the complainants had filed another suit being CMELC No. E027 of 2022 against the Petitioner and 3 other persons seeking to have them evicted from the property, that the Court stayed the proceedings and ordered that the status quo ante be maintained and in CMELC No. 132 of 2022 issued an injunction against the complainants from trespassing on the property pending hearing of the Application,
4. It is deponed further that on 11/02/2023, police officers from Langas Police Station in the company of some goods invaded the Petitioner’s home where they descended on his houses and other investments on the land making destruction and in the process, the arrested the 1<sup>st</sup> Petitioner and his two sons, the 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners herein, that on 13/02/2023, the Petitioners were arraigned before the Magistrates Court and charged with the offence of forcible detainer contrary to Section 91 of the Penal Code, that before the Petitioners could take plea, they sought that the same be deferred in view of the orders issued by the Environment & Land Court (ELC), that the charges are directly in question before ELC Court, that the charging of the Petitioners is malicious and aimed at securing private vengeance or vindictiveness and is contrary to public policy and public interest, that the exercise of the powers to charge the Petitioners by the Director of Public Prosecution’ (DPP) is vexatious, oppressive and has been done for improper purposes, to achieve undue harassment, in abuse of the Court process and in violation of the Petitioners’ constitutional rights as enshrined in Article 10 and 50(2) of *the Constitution*.

#### **Respondent’s Response**

5. In opposition to the Petition, the Respondent filed a Replying Affidavit. The same was filed on 16/05/2023 through the Office of the Director of Public Prosecutions (ODPP) and was sworn by one Sergeant Sophia Ibrahim. In the Affidavit, Sergeant Ibrahim deponed that she is an Officer attached to the Directorate of Criminal Investigations (DCI) Eldoret South and the Investigating Officer in the matter, that the DCI Eldoret South is a body corporate under the mandate of the National Police Service and whose functions include collecting and providing criminal intelligence, undertaking investigations of crimes, maintenance of law and order and apprehension of offenders, among others, that the Petitioners are the accused persons in Eldoret Chief Magistrates Criminal Case No. E334 of 2023, that on 8/02/2023 the police received a report from one Tamar Cheptoo Birgen that known persons had invaded her parcel of land (the property referred herein), damaged the barbed wire fence, entered the property and erected three mabati structures, that this was after the complainants had won the case concerning the property in Court and which report was captured in the Occurrence Book vide OB No. 33/8/2/2023.
6. She deponed further that investigations commenced and the deponent established that the property was jointly owned by Paul Kirwa Samoei, Tamar Cheptoo Birgen and Julius Kipkosgey Ruto who are the complainants in Eldoret Chief Magistrates Criminal Case No. E334 of 2023, that the deponent recorded the complainants’ statements and established that the 3 complainants jointly bought the property in the year 2000 and were issued with a title deed which clearly indicates the names of the 3 complainants as owners thereof, that the complainants did not immediately develop the land and sometime in the year 2010 they visited the property and found that the 1<sup>st</sup> Petitioner had erected a structure on the property and when confronted, he insisted that the structure was temporary and that



he would remove it, that the Petitioners did not remove the structure and the complainants decided to file the said Eldoret Chief Magistrates Court Environment & Land Court No. E027 of 2022 seeking eviction orders against the Petitioner and orders were granted on 23/08/2022, that the Petitioners were evicted together with his family on 6/10/2022 and the complainants took back full ownership of the property and erected a house and fenced the property.

7. Sergeant Sofia then deponed that the Petitioners went back to the parcel of land and continued occupying the property illegally even after the Court issued eviction orders, that the Petitioners erected structures and chased away the security guards employed by the complainants to guard the property, that the deponent visited the scene on 11/02/2023 and confirmed that the Petitioners had indeed erected temporary structures and were in full occupation, that as part of her investigations, the deponent also obtained a search Report dated 30/08/2022 which indicated that the complainants were the rightful owners of the property, that from their investigations, they formed the opinion that there was sufficient evidence to sustain and charge the Petitioners and they forwarded the police file to the ODPP at Eldoret who upon perusal recommended that the Petitioners be charged with the offence of forcible detainer, that a title deed is conclusive proof of ownership and since the Petitioners do not have a title deed to the property then they have no right to possess the same, that it is not true that the Petitioners have been enjoying quiet possession since the Petitioners knew the owners of the land and had even been confronted and asked to leave the property but they refused to do so.
8. She further deponed that the existence of a civil suit is not a bar to commencement of criminal proceedings if it can be proven that a criminal offence has been committed as provided in Section 193A of the Criminal Procedure Act, that the decision to charge was made independently by the DPP and the Petition is an afterthought, frivolous and an abuse of the Court process, that the Petitioners have not demonstrated how their rights guaranteed by *the Constitution* have been abused, that the issues raised would best be determined by the trial Court as the Petitioners are basically raising issues touching on evidence that would ordinarily be adduced at the trial Court, that the Petition will occasion great prejudice to the Respondent since they will not be granted an opportunity to prove its case, that if the prayers sought are granted, then the powers of the DPP under Article 157(6)(a) of *the Constitution* will be greatly interfered with and undermined.

### **Hearing of the Appeal**

9. It was then agreed, and I directed, that the Petition be canvassed by way of written Submissions. Pursuant thereto, the Petitioners filed their Submissions which however does not bear the Court stamp and I cannot therefore determine its date of filing. It is however dated 6/07/2023. On its part, the Respondent filed on 23/01/2024.

### **Petitioner's Submissions**

10. Counsel for the Petitioner submitted that ownership of the property is subject of active proceedings before the Environment & Land Court (ELC), that the Petitioners have annexed Court Orders of active proceedings before the ELC which Court has even issued conservatory orders. Regarding the circumstances in which the Court interfere with the discretion of the Respondent to prosecute, he cited the case of Gulam and Another vs Chief Magistrates Court & Another [2006] eKLR, and also the case of Peter D'Costa vs Attorney General and Another, Petitioner No. 83/2010 (U.R.).
11. Regarding criminal proceedings on a charge of forcible detainer where the title deed of the complainant is being challenged, Counsel cited the case of Nairobi Petition No. 550 of 2014 - Bishop Zacharia Magondi vs Inspector General of Police where reliance was placed on the earlier case of High Court Petition No. 161 of 2014 - Lee Mwathi Kimani vs The Director of Public Prosecutions and Others. He



also cited the case of High Court Petition No. 547 of 2014 - Jacqueline Wangu Kariuki and Another vs The Director of Public Prosecutions and Others.

### Respondent's Submissions

12. On her part, on behalf of the said Respondent, Senior Prosecution Counsel, Ms Emma Okok, submitted that Sergeant Sofia Ibrahim has clearly demonstrated how investigations were carried out, that the file was forwarded to the ODPP and upon thorough investigations, the DPP was satisfied that a criminal offence had been committed, that the decision to charge was within the law, that the Petitioners have not demonstrated that the DPP acted with bias or maliciously, that it is trite law that he who alleges must prove and the Petitioners have not done so, that the Petitioners have been charged with an offence known in law, the decision to charge was based on sufficiency of evidence with a realistic prospect of conviction, that the complainants also have a right of justice, and that the issues raised by the Petitioners are issues touching on evidence. The rest of the matters submitted upon were already deponed in the Replying Affidavit.

### Determination

13. The issue for determination herein is “whether the ongoing criminal prosecution of the Petitioner is in violation of his constitutional rights and whether the same should be terminated”.
14. Regarding whether the ongoing criminal prosecution infringes the Petitioner’s constitutional rights, it is trite that although the Director of Public Prosecution (DPP) is not subject to the control of any person or authority in exercising his mandate as conferred by *the Constitution*, the exercise of that power and discretion must be exercised in accordance with the law. Where it is demonstrated that the DPP has overstepped his mandate by misusing his powers, the High Court is empowered to, and should intervene. Abuse of such discretionary powers would include, for instance, the employment of extraneous factors to achieve ulterior goals separate from ends of justice. On this point, I cite the case of Kuria -vs- Attorney General [2002], where the Court stated as follows:

“The court has power and indeed the duty to prohibit the continuation of the criminal prosecution if extraneous matters divorced from the goals of justice guide their instigation. It is the duty of the court to ensure that its process does not degenerate into tools for personal score-settling or vilification on issues not pertaining to that which the system was even formed to perform ..... a stay (by an order of prohibition) should be granted where compelling an accused to stand trial would violate the fundamental principles which underlie the society’s sense of fair play and decency and/or where the proceedings are oppressive or vexatious .....

15. Similarly, in Joram Mwenda Guantai vs. The Chief Magistrate, Nairobi Civil Appeal No. 228 of 2003 [2007] 2 EA 170, the Court of Appeal held as follows:

“...the High Court has inherent jurisdiction to grant an order of prohibition to a person charged before a subordinate court and considers himself to be a victim of oppression. If the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious, the Judge has the power to intervene and the High Court has an inherent power and the duty to secure fair treatment for all persons who are brought before the court or to a subordinate court and to prevent an abuse of the process of the court.”

16. It is however not in dispute that the mandate to prosecute rests with the DPP as enshrined under Article 157 of *the Constitution*. In exercising this mandate, the DPP is required to review and determine



the “prosecutability” of cases forwarded for his action. As aforesaid, he is under obligation to exercise this discretion judiciously.

17. In this instant case, the Petitioners’ complaint is on the DPP’s decision to charge them on matters that, according to them, are under active civil litigation before the ELC Court. In regard to arguments such as the one preferred by the Petitioners, it is important to mention that Section 193A of the Penal Code contemplates both civil and criminal proceedings going on side by side without interfering with each other. It provides as follows:

“Concurrent criminal and civil proceedings:

Notwithstanding the provisions of any other written law, the fact that any matter in issue in any criminal proceedings is also directly or substantially in issue in any pending civil proceedings shall not be a ground for any stay, prohibition or delay of the criminal proceedings.”

18. In analyzing Section 193A above, the Court of Appeal in the case of Commissioner of Police and Director of Criminal Investigations Department vs. Kenya Commercial Bank and Others Nairobi Civil Appeal No. 56 of 2012 [2013] eKLR stated as follows:

“While the law (section 193A of the Criminal Procedure Code) allows the concurrent litigation of civil and criminal proceedings arising from the same issues, and while it is the prerogative of the police to investigate crime, we reiterate that the power must be exercised responsibly, in accordance with the laws of the land and in good faith. What is it that the company was not able to do to prove its claim against the bank in the previous and present civil cases that must be done through the institution of criminal proceedings? It is not in the public interest or in the interest of administration of justice to use criminal justice process as a pawn in civil disputes. It is unconscionable and travesty of justice for the police to be involved in the settlement of what is purely dispute litigated in court. This is a case more suitable for determination in the civil court where it has been since 1992, than in a criminal court. Indeed, the civil process has its own mechanisms of obtaining the information now being sought through the challenged criminal investigations.

19. Further, in regard to Section 193A above, in the case of Kuria & 3 Others vs. AG (2002) 2 KLR, the following was stated:

“.... The normal procedure in the co-existence of civil and criminal proceedings is to stay the civil proceedings pending the determination of the criminal case as the determination of civil rights and obligations are not the subject of a criminal prosecution ... A prerogative order should only be granted where there is an abuse of the process of the law, which will have the effect of stopping the prosecution already commenced. There should be concrete grounds for supposing that the continued prosecution of criminal case manifests an abuse of the judicial procedure, much that the public interest would be best served by the staying of the prosecution .... It is not enough to state that because there is an existence of a civil dispute or suit, the entire criminal proceedings commenced based on the same set of facts are an abuse of the court process. There is a need to show how the process of the court is being abused or misused and a need to indicate or show the basis upon which the rights of the Applicant are under serious threat of being undermined by the criminal prosecution. In the absence of concrete grounds... it is not mechanical enough that the existence of a civil suit precluded the institution of criminal proceedings based on the same set of facts. The



effect of criminal prosecution on an accused person is adverse but so also are their purpose in the society, which are immense... an order of prohibition cannot also be given without any evidence that there is manipulation, abuse or misuse of court process or that there is a danger to the right of the accused person to have a fair trial. (emphasis added).

20. Similarly, in the case of Amir Lodges Ltd & another v Mohammed Omar Shariff & another [2022] eKLR, Mrima J stated as follows:

“ 43. From the discussions in the superior Courts decisions and the other comparative decisions from foreign jurisdictions, the rule of the thumb in respect of concurrent criminal and civil proceedings based on similar set of facts and circumstances is that the criminal case ought to proceed unless it can be demonstrated that the prosecution of the criminal case will either result to infringement of the rights and fundamental freedoms of the accused persons or will lead to the contravention of *the Constitution*.

44. In agreeing with the above position, I will attempt two practical assumptions based on the facts in this matter. The assumptions are on terminating the investigations or staying the civil case in favour of the investigations.

.....

49. From the two scenarios, there is, therefore, logic in the general position that where there are concurrent criminal and civil cases based on similar facts and circumstances, the criminal case or investigations ought to be first dealt with.

50. Having said so, it remains clear in the mind of this Court that the foregoing general position is subject to exceptions including whether the criminal case infringes the rights and fundamental freedoms of the accused or is in contravention of *the Constitution*.

51. This Court, therefore, finds and hold that a Court cannot terminate a criminal case or criminal investigations solely on the basis of a pending civil case based on similar facts and circumstances.

52. For a Court to so halt a criminal case or investigations, there must be more to the pendency of a civil claim. In this case, the Petitioners attempted to demonstrate how the investigations will prejudice the civil case and infringe their right to fair trial. However, from the foregoing analysis, this Court is unable to agree with the Petitioners. I say so because the Petitioner’s claim is largely based on the fact that they filed a civil claim. The allegations of impropriety on the part of the Respondents remain too remote, if any.

53. In the end, this Court is persuaded that the Petitioners have not demonstrated any prima facie case at the moment. The position may, however, change at the main hearing of the Petition.”

21. It is therefore not in doubt, that in spite of the provisions of Section 193A above, in appropriate cases, the High Court can stop a criminal prosecution if the issues involved are matters already under active litigation in the civil Courts. However, a Court will not terminate a criminal case solely on the basis of a pending civil case being based on similar facts and circumstances. It must be clearly demonstrated that



the criminal case infringes the rights and fundamental freedoms of the accused or is in contravention of *the Constitution*.

22. In prosecutions, the procedure is that prosecution is preceded by an investigation which answers the question as to whether there was an offence committed and *the Constitution* and the *National Police Service Act* give the Police the mandate to conduct the investigations. On this aspect, I refer to the remarks of Warsame J (as he then was) made in the case of Republic vs. Commissioner of Police and Another ex-parte Michael Monari & Another [2012] eKLR, as follows:

“The Police have a duty to investigate once a complaint is made. Indeed, the police would be failing in their constitutional mandate to detect and prevent crime. The police only need to establish reasonable suspicion before preferring charges. The rest is left to the trial court. The predominant reason for the institution of the criminal case cannot therefore be said to have been the vindication of the criminal justice. As long as the prosecution and those charged with the responsibility of making the decisions to charge act in a reasonable manner, the High Court would be reluctant to intervene.”
23. As long as the DPP and the Police therefore act in a reasonable manner in reaching the decision to charge, the High Court will not interfere.
24. In this case, the suit that the Petitioners allege to be under active litigation is said to be Eldoret ELC No. 56A of 2022 in which the Petitioners have sued the complainants. That case is however a fresh suit filed after the determination of an earlier suit, namely Eldoret Chief Magistrates Court ELC Case No. E027 of 2022 between the same parties and over more or less similar issues as the fresh suit. The concluded suit was filed by the complainants against the Petitioners. Although the Petitioners claim that the concluded suit proceeded ex parte and that they were never served to enable them participate therein, that Judgment has not been set aside. From the record, there is some indication that the 1<sup>st</sup> Petitioner and his co-Defendants have applied to set aside the Judgment. However, until the Judgment is set aside, it remains a valid Court decision. As aforesaid, one of the prayers in the fresh suit is for the setting aside of the Judgment made in the concluded suit. It is however not an Appeal and it has not been explained how the fresh suit will be the basis for setting aside the existing lower Court judgement.
25. Further, although the Petitioners claim that the concluded lower Court suit Eldoret Chief Magistrates Court ELC Case No. E027 of 2022 and another related lower Court suit Eldoret Chief Magistrates Court ELC Case No. E027 of 2022 were transferred to the said Eldoret ELC No. 56A of 2022, it has also not been explained how an already concluded suit can be transferred for consolidation with another one filed at the superior Court before the Judgment entered in the lower Court suit has been aside. Further, the alleged order of transfer has not been exhibited. Also not exhibited are copies of the Plaints and/or defences filed in any of the 3 cases cited to be ongoing in Court. In the circumstances, this Court is unable to verify most of the matters alleged by the Petitioners and cannot therefore fully determine whether indeed the matters in issue in those cases are the same as those in contention in the criminal Court.
26. Be that as it may, I note that, without even supplying a copy of the Complaint, the Petitioners have stated that their claim before the ELC is for adverse possession because they have occupied the property for 12 years. The Petitioners then allude that the criminal trial should not proceed because it will entail proving ownership of the property and which is the same issue for determination in the ongoing civil cases. This argument is not however entirely true. In this case, the copy of title deed and the search Report exhibited expressly demonstrate that the complainants are the undisputed owners of the property having obtained the title deed way back in the year 2008. Ownership by the complainants is therefore not in dispute and the Petitioners are not even challenging such ownership. All they are



claiming before the ELC is that it should be declared that they should have now become the owners by adverse possession. That is a totally different scenario from one where the legality of the complainant's title deed is under challenge. The Petitioners' case herein would have been stronger if say, they were in the ELC suit, challenging the manner or procedure by which the complainants obtained the title deed and if they were alleging fraud or irregularities in obtaining of the title deed. If that were the case, then it would have been clear that the ELC would have been interrogating ownership of the property. In this case, in determining the suit before it, the ELC will not be strictly determining ownership of the property or its legality, that is not in dispute. What the ELC will be determining is whether indeed the Petitioners have occupied the property for 12 years, and if so, whether they should now be declared the owners. I therefore find that although both the proceedings before the criminal Court and those before the ELC relate to the property herein, the matters in issue in the two proceedings are entirely different.

27. I cannot accept the argument that whenever a registered owner of a parcel of land seeks to remove a "squatter" from his land and makes a criminal report to the police about it then all that such squatter needs to do to stop the criminal process is to run to the ELC and file a suit for adverse possession. That will be to sanction abuse of the Court process and I refuse to accept that it is proper.
28. The Petitioners have tried to draw this Court into determining whether or not they were evicted while there were Court orders in existence staying such eviction and whether therefore the eviction was legal. First, that issue has nothing to do with the issues before this Court – i.e. whether the decision by the DPP to charge was exercised lawfully – and secondly, if the said orders were disobeyed, the Petitioners' recourse is to take out contempt of Court proceedings before the ELC which issued the orders.
29. Applying the principles set out in the various authorities cited, in my view, the Petitioners have not provided sufficient evidence to demonstrate that there was any malice or impropriety in the decision by the police and the DPP to charge him. In *Douglas Maina Mwangi vs. KRA & Another*, 213 eKLR, Majanja J addressed the issue as follows:

“ 15. The office of the Director of Public Prosecution under Article 157 of *the Constitution* is an independent office under *the Constitution* like its predecessor office, the office of the Attorney General under section 26 of the former Constitution. When dealing with the decision as to whether or not to prosecute, the office exercises independent judgment and this court cannot interfere unless it is shown that the exercise is contrary to *the Constitution*, in bad faith or amounts to an abuse of process. This has been the holding of this court in several decided cases .....

30. Regarding the charge of “forcible detainer” preferred against the Petitioners, the same is provided under Section 91 of the Penal and which provides as follows;

“ Forcible detainer

Any person who, being in actual possession of land without colour of right, holds possession of it, in a manner likely to cause a breach of the peace or reasonable apprehension of a breach of the peace, against a person entitled by law to the possession of the land is guilty of the misdemeanour termed forcible detainer.”



31. Regarding the same, Riechi J, in the case of Julius Edapal Ekai v Republic [2018] eKLR, High Court Criminal Appeal No. 31 of 2017, stated as follows;

“ A literal reading of Section 91 of the penal code shows that the prosecution will only prove an offence of forceful detainer against an accused person if it demonstrates that:-

- (a) A person has actual possession of land
- (b) The person has no right over the land
- (c) The act of possession is against the interests of the legal owner or the person legally entitled to the land; and
- (d) The act of possession of the land is, therefore, likely to cause a breach of the peace or a reasonable apprehension of the breach of the peace.”

32. The Petitioners have therefore been charged with an offence known in law and juxtaposing the facts of this case to the ingredients of the charge of “forcible detainer” as set out above, I cannot say that the charge laid fails to meet the threshold required it. Whether the charge will or will not lead to a conviction will then be a matter of evidence.

33. In the end, it is my considered view that the Petitioners have failed to satisfy this Court that the DPP acted in bad faith or has abused his discretion in exercising its prosecutorial powers. From my assessment of the facts, I am satisfied that it has been sufficiently demonstrated that the criminal charges were preferred after the conducting of proper investigations.

34. As already stated, it is not doubt that this Court has the constitutional mandate and power to stop any criminal prosecution which has been demonstrated to have been preferred maliciously, with ulterior or selfish reasons. That is not in doubt. However, in exercising that power, the Court must also be cautious and careful not to overstep or exceed its mandate by usurping or unduly interfering with the prosecutorial powers of the Director of Public Prosecutions similarly donated by the same Constitution. For the need for such caution, I again refer to the case of Republic vs. Commissioner of Police and Another ex-parte Michael Monari (supra) where Warsame J (as he then was), expressed himself as follows:

“Under Article 157(4) of *the Constitution*, the Director shall have power to direct police to investigate any information or allegation of a criminal conduct and it is mandatory for the police to comply with any directions or instructions given by the Director of Public Prosecution. Under article 157(10) the Director of Public Prosecution shall not require the consent of any person or authority for commencement of criminal proceedings and shall not be under the direction or control of any person. ....

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



determine finally whether the accused has engaged in conduct which amounts to an offence and on that account is deserving punishment.”

35. As aforesaid, the police only need to establish that there was reasonable suspicion justifying preferring of the criminal charges. As long as the Police and the DPP act in a reasonable manner, the High Court will have no basis to intervene. Having considered all the material placed before me and the exhaustive account given by Sergeant Sofia Ibrahim, I am satisfied that the police and the DPP had reasonable grounds to charge the Petitioners. The material presented by the Respondent discloses prima facie evidence of possible criminal acts allegedly committed by the Petitioner which, having been investigated by the relevant authorities mandated to do so, and found to meet the required threshold, merit to be interrogated and the truth thereof determined in criminal proceedings. At the hearing, the Petitioners will have the opportunity to test the veracity of the complainant’s allegations.
36. The nature of the complaints raised by the Petitioner is that he is inviting this Court to stray into the realm of deeply dissecting the merits and demerits of the charges preferred against him. For this Court to agree to do so will be to usurp the function of the trial Court before which the charge has been placed and which is the one conducting the trial. It is not the function of this Court, hearing a constitutional Petition, to determine the veracity or the merits of any evidence to be tendered against an accused person. It is therefore my finding that it is not appropriate for this Court to intervene at all. In the circumstances, I do not find any exceptional circumstances that would warrant grant of the orders sought in the Petition.

#### **Final Orders**

37. In the premises, the Petition dated 15/02/2023 is hereby dismissed with costs to the Respondent.

**DELIVERED, DATED AND SIGNED AT ELDORET THIS 7<sup>TH</sup> DAY OF JUNE 2024**

.....

**WANANDA J. R. ANURO**

**JUDGE**

Delivered in the Presence of:

Mr. Korir for the Petitioners

Mr. Mugun for the State

