



**Sum & another v Office of the Director of Public Prosecutions & 7 others;
Independent Police Oversight Authority (IPOA) (Interested Party) (Constitutional
Petition E002 of 2022) [2023] KEHC 4120 (KLR) (9 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 4120 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CONSTITUTIONAL PETITION E002 OF 2022**

RN NYAKUNDI, J

MAY 9, 2023

**IN THE MATTER OF ARTICLES 22(1), 23, 165, 258, 259 AND 260 OF THE CONSTITUTION
AND**

**IN THE MATTER OF THE ALLEGED VIOLATION OR INFRINGEMENT AND
OR THREATENED VIOLATION AND INFRINGEMENT OF CONSTITUTIONAL
RIGHTS OF THE PETITIONERS SECURED AND GUARANTEED UNDER
ARTICLES 24, 25 (C), 27, 28, 39, 47 & 50 OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF ARTICLES 22(2) & 3 OF THE CONSTITUTION
AND THE RULES MADE THEREUNDER; THE CONSTITUTION OF
KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOM)
PRACTICE AND PROCEDURE RULES, 2013- THE MUTUNGA RULES**

BETWEEN

EDEL CHEPKORIR SUM 1ST PETITIONER

EILEEN CHEPCHUMBA SUM 2ND PETITIONER

AND

**OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS & 7
OTHERS RESPONDENT**

AND

**INDEPENDENT POLICE OVERSIGHT AUTHORITY (IPOA) INTERESTED
PARTY**



RULING

1. By a Notice of Motion dated January 25, 2022 the 1st and 2nd Petitioners/Applicants seek orders that:
 1. Spent.
 2. Pending the hearing and determination of this application inter-parties, a conservatory order does issue staying/suspending the proceedings in Eldoret Chief Magistrate's Court vide; Republic V Edel Chepkorir Sum Criminal Case No E673 of 2021; Republic V Edel Chepkorir Sum Criminal Case No 3631 of 2021 and Republic V Edel Chepkorir Sum and Eileen Chepchumba Sum Criminal Case No 3632 of 2021.
 3. Pending the hearing and determination of this application inter-partes a conservatory order does issue restraining the Respondents from stalking, arresting, charging and prosecuting the Petitioners on issues that relate to their pursuit to ensure the compliance of the Court orders given on July 24, 2020 in Succession Cause No 38 of 2018 pending at the Eldoret High Court.
 4. Pending the hearing and determination of this petition a conservatory order does issue restraining the Respondents from stalking, arresting charging and prosecuting the Petitioners on issues that relate to their pursuit to ensure the compliance of the Court orders given on July 24, 2020 in Succession Cause No 38 of 2018 pending at the Eldoret High Court.
 5. Pending the hearing and determination of this petition a conservatory order does issue staying/suspending the proceeding in Eldoret Chief Magistrate's Court vide Republic V Edel Chepkorir Sum Criminal Case No E673 of 2021; Republic V Edel Chepkorir Sum Criminal Case No 3631 of 2021 and Republic V Edel Chepkorir Sum and Eileen Chepchumba Sum Criminal Case No 3632 of 2021.
 6. Costs be in the cause.
2. The application is premised on the grounds therein and it is further supported by the joint affidavit sworn by Edel Sum and Eileen Sum on January 25, 2022.

The Petitioners' /Applicants' Case

3. The Applicants deposed that on or about July 24, 2020, the High Court vide Succession Cause No 38 of 2018; Estate of Christopher Kipchirchir Sum issued a conservatory order barring the 6th Respondent, Kenneth Kiprop Sum, his agent's servants, employees or any other person claiming through him from ploughing, leasing, sub-leasing, sub-dividing, selling or in any manner dealing with parcel of land known as LR No 2226 pending the hearing and determination of the said Succession Cause. Further that the Honourable Court further directed the 3rd Respondent, the OCS Moiben Police Station to supervise and ensure that the said orders are adhered to.
4. The Applicants further deposed that the 6th Respondent, flagrantly disobeyed the said Court orders and consequently the Court on May 20, 2021 vide its ruling issued on the same date found the 6th Respondent to be in contempt of Court and subsequently issued a warrant of arrest against him. Further that on August 21, 2021, vide a ruling delivered on the same date, the Court declined to review and or set aside the committal orders and the warrants of arrests thereof and affirmed the same.
5. The Applicants maintain that the said warrants of arrest were duly served up the 3rd Respondent who acknowledged receipt of the same.



6. The Applicants contend that 6th Respondent and one Fiona Jerono, the 7th Respondent have continued to disobey the said Court orders by cultivating, leasing and constructing on the suit land. Further that they have started constructing a sic bedroom house on the suit property in utter disobedience of the said orders.
7. The Applicants maintain that despite their numerous complaints to the 3rd Respondent, no action has been taken to ensure that the Court orders that were issued on July 24, 2020 are complied with. The Applicants further contend that the police officers at Moiben Police Station having continued to encourage the said contemptuous actions by the 6th and 7th Respondents by entertaining their false and petty accusations against them. Further that the 3rd Respondent has refused and neglected to enforce the warrants of arrest against the 6th Respondent despite being served with the same.
8. The Applicants further deposed that from the time when the orders of January 24, 2020 were issued, they have registered several complaints with Moiben Police Station regarding the enforcement of the said orders but despite being registered in the occurrence book (OB) no action has ever been taken against the respective Respondents but they have been falsely arrested, detained and maliciously prosecuted on petty and false accusations by the Respondents. The Applicants further contend that they have on several occasions tried reaching out to the OCPD at Moiben Police Station but she has also been reluctant to assist them.
9. The Applicant further deposed that they having been maliciously arrested and charged in Eldoret Chief Magistrate's Court in the following cases; Eldoret Chief Magistrate's Criminal Case No E673/2021, Eldoret Chief Magistrate's Criminal Case No E3621/2021 and Eldoret Chief Magistrate's Criminal Case No 3632/2021. Further that they have been illegally detained by the police officers at Moiben Police Station on diverse dates between February 22, 2021, April 4, 2021 and November 1, 2021.
10. According to the Applicants, it is now apparent that the police officers at Moiben Police Station have either been compromised by the 6th Respondent or have neglected and or refused to ensure compliance of the orders of this Court that were issued on July 24, 2020 in Succession Cause No 38 of 2018.
11. The Applicants contend that there is no doubt that the police officers at Moiben Police Station are protecting the 6th Respondent and are encouraging him to disobey the Court orders of July 24, 2020 while continuously stalking, threatening arresting them without any justifiable reasons.
12. The Applicants further contend that the DPP and police officers herein have failed to follow the due process of the law and as such have compromised the cardinal principles of criminal justice with regard to fair trial by maliciously arresting, detaining and prosecuting them on baseless charges as a means of intimidating and frustrating them in their quest of enforce the Court orders that were issued against the 6th Respondent.
13. The Applicants urged the Court to restrain the Respondents herein by way of injunction from arresting, detaining charging and prosecuting them on issues that relate to contemptuous activities of the 6th Respondent in respect of the orders that were issued on July 24, 2020.
14. The Applicants further contend that the 8th Respondent sitting as a criminal Court lacks capacity, authority, mandate, power and jurisdiction to deliberate on issues relating to parcel of land registered as LR No 2226 being the subject matter in the Succession Cause No 38 of 2018.
15. The Applicants maintain that from the criminal proceedings instituted against them it clear that there is conflict of interest of the part of the police herein as they are both the complainants, investigators and at the same time the prosecutors who have one failed to enforce the court orders of July 24, 2020 against the 6th Respondent while selectively and falsely prosecuting them in favour of the 6th Respondent.



16. The Applicants contend that they now live in fear and cannot enjoy their freedom at all.
17. The Applicants urged the Court to suspend the criminal charges, prosecutions and or proceedings at the Eldoret Chief Magistrate's Court pending the hearing and determination of this instant petition.
18. The Applicants further urged the Court to order that the Respondents compensate them for the damages they have suffered as a result of the Respondents illegalities.
19. The Applicants further urged the Court to declare that their arrest, detention and subsequent prosecution at the Eldoret Chief Magistrates Court is unconstitutional.
20. Finally, the Applicants maintain that unless the orders sought are granted, they stand to suffer irreparable damage.

The 1st, 2nd, 3rd 4th and 5th Respondents' Case

21. The application is opposed vide the replying affidavit sworn by Number xxxx Inspector Arnold Chiro, the 5th Respondent dated March 7, 2022.
22. The 5th Respondent deposed that he is the deputy OCS attached to Moiben Police Station. That 1st Petitioner herein is accused person Eldoret Chief Magistrate's Court Criminal Case No E673 of 2021. That 1st Petitioner is also the accused person in Eldoret Chief Magistrate's Court Criminal Case No E3631 of 2021. That the Petitioners are the two accused in Eldoret Chief Magistrate's Court Criminal Case No E3632 of 2021. That the 6th and 7th Respondents are the complainants in the aforementioned cases.
23. The 5th Respondent further deposed that 2nd and the 3rd Respondents are offices under the mandate of the National Police Service and whose co-functions among others include collecting and providing criminal intelligence, undertaking investigations on crimes including homicide, narcotic crimes, human trafficking, money laundering, terrorism, economic crimes, piracy, organized crime, cyber-crime among others.
24. The 5th Respondent further deposed that on February 22, 2021 they received a call from one Elijah Biwott and the 6th Respondent stating that the 1st Applicant in company of her mother had come to the 7th Respondent's parcel of land and had poured petrol to a structure set up with the 7th Respondent with the intention of setting it a blaze but had been chased away by the carpenters who were on site. That the 1st Applicant then proceeded to where Elijah's tractor was while armed with a match box and petrol and started to pour the said petrol to the tractor but was subdued by the driver of the said tractor.
25. The 5th Respondent further deposed that after receiving the said call, they then proceeded to the scene where they found the 1st Applicant and managed to arrest her and also recover 20 litres jerrycan containing petrol and four match boxes containing lighting sticks which were retained as exhibits. That they then recorded statements of the 7th Respondent, Elijah Biwott who was the eye witness and owner of the said tractor and one Jackson Koech.
26. The 5th Respondent maintains that from their investigations through witnesses' statements and what was recovered at the scene, they formed the opinion that there was sufficient evidence to sustain and charge the 1st Applicant and forwarded the said file to the 1st Respondent who recommended that the 1st Applicant be charged with two counts of the offence arson.
27. The 5th Respondent further deposed that on April 4, 2021 they also received another call from the 6th Respondent who informed them he had been accosted in his farm by the 1st Applicant and 6 other



- people. That he then instructed police officers to proceed to the scene whereby they found the 1st Petitioner and six other people armed with machetes, rubber whips and metal rod. Further that the 1st Petitioner and her accomplices were arrested and taken to the police station and their weapons retained as exhibits. Subsequently, the 1st Petitioner and her accomplices were on the same day released from custody on free bond.
28. The 5th Respondent maintains that from their investigations through witnesses' statements and what was recovered at the scene, they formed the opinion that there was sufficient evidence to sustain and charge the 1st Applicant and forwarded the said file to the 1st Respondent who recommended that the 1st Applicant be charged with the offence of creating disturbance.
 29. The 5th Respondent further deposed that on October 21, 2021, they received a complaint from one Faith Jelimo a thirteen-year-old girl who stated that she had been bit by her neighbour's dog and sustained injuries on her buttocks. That they then conducted investigations which then revealed that on the material date the complainant while in company of other people were in the shamba harvesting maize when the 1st and 2nd Petitioners came to the shamba accompanied by their two dogs and called the complainant and the other people in her company and when they refused to go they unleashed the dogs on them and while the complainant tried to escape she was bitten twice on her buttocks by the dogs. That on October 23, 2021, the Petitioners were arrested and placed in police custody and on the same day were released pending further investigations.
 30. The 5th Respondent maintains that from their investigations through witnesses' statements they formed the opinion that there was sufficient evidence to sustain and charge the 1st and 2nd Applicants and forwarded the said file to the 1st Respondent who recommended that the 1st and 2nd Applicants be charged with the offence of reckless and negligent act causing harm.
 31. The 5th Respondent contends that the 7th Respondent herein is not a party to Succession Cause No 38 of 2018 and thus not bound by the Court order therein. Further that their efforts to arrest the 6th Respondent have been frustrated as the 6th Respondent relocated shortly after the incident that occurred on February 22, 2021. In addition, the 5th Respondent contends that the warrant of arrest herein was issued on May 28, 2021 and was served upon them on June 5, 2021, this is long after they had received the complaint by the 6th Respondent who they are yet to arrest.
 32. The 5th Respondent by admission confirms that they had received several complaints from the 1st Petitioner, however investigations have revealed insufficient details that cannot lead to successful prosecutions.
 33. The 5th Respondent further maintains that the Petitioners were not maliciously charged as investigations revealed offences known in law and the charges against the Petitioners were approved by the 1st Respondent.
 34. The 5th Respondent further deposed that the 1st Petitioner was arrested on February 22, 2021 and arraigned in Court for pleas taking on February 23, 2021 after being charged in Eldoret Chief Magistrate's Court Criminal Case No E673/2021 which was well within the 24-hour period stipulated by Article 49(f) of the Constitution of Kenya.
 35. The 5th Respondent further deposed that the Petitioners were detained at the police station for plea taking as it was being done virtually and that further they were also detained for a few hours as they processed bond with respect to Eldoret Chief Magistrate's Court Criminal Case No E3631/2021 and E3632/2021.



36. The 5th Respondent maintains that the arrest of suspects is a lawful procedure provided for in law and that the arrests of the Petitioners was done in accordance with the law and that the Petitioner were not prejudice in any way.
37. The 5th Respondent maintains that the Court order dated July 24, 2021 is not a breakage order and the Petitioners committed criminal offences while trying to enforce the Court order by themselves without exhausting the available legal mechanisms including institution of contempt proceedings.
38. The 5th Respondents contends that the complainants in Eldoret Chief Magistrate's Court Criminal Case No E3631/2021 and E3632/2021 are not parties to Succession Cause No 38 of 2018 and thus will be greatly prejudiced if criminal proceedings were to be stayed. The 5th Respondent maintains that they two have a right to be heard and their matter determined expeditiously.
39. According to the 5th Respondent, this instant application is an afterthought, misconceived, unfounded in law, frivolous and a gross abuse of Court process. That the Petitioners have not demonstrated how their rights have been violated and whether indeed the prosecution is malicious as the criminal proceedings against them were instituted in public interest.
40. The 5th Respondent further deposed that some of the issues being raised by the Petitioners herein would be best be determined by the trial Court as the Petitioner are basically raising issues touching on the evidence that would ordinarily be adduced at the trial Court.
41. The 5th Respondent contends that if the prayers sought are granted then the powers of the 1st Respondent to institute criminal proceedings under Article 157 (6) (a) of the Constitution will be greatly interfered with and undermined.
42. The 5th Respondent urged that in the interest of justice this application be dismisses and the matter in Eldoret Chief Magistrate's Court Criminal Case Nos E673/2021, E3631/2021 and E3632/2021 be allowed to proceed to their logical conclusion.

The 6th & 7th Respondent's Case

43. The application is opposed vide the replying affidavit sworn by Kenneth Kiprop Sum, the 6th Respondent, on March 8, 2022.
44. The 6th Respondent contends that the Applicants herein are not parties to Succession Cause No 38 of 2018 which is this petition is premised on. That cause is with respect to family land being LR No 2226 situated at Moiben and registered in the name of Ernest Kimngetich Sum (Deceased) and Veronica Chepsat Sum his widow and administrator of the said estate. The 6th Respondent further deposed that suit property has not been fully distributed although in the year 1985, Veronica Chepsat Sum made a temporarily distribution in terms of shares to the family members but the said process was never completed.
45. According to the 6th Respondent there are several applications pending in Succession Cause No 38 of 2018 and other several causes that are to be consolidated with this cause being; Succession Cause No n23 of 1985 and Succession Cause No 268 of 2000 in order to finalize the distribution of the estate herein.
46. The 6th Respondent maintains that he is the only son of Christopher Kipchirchir Sum and that the 7th Respondent is his cousin their fathers being brothers. That the said Christopher Kipchirchir Sum was a son of Ernest Kimngetich Sum. That the Applicants are daughters of Veronica Chepsat and Ernest Kimngetich Sum and therefore aunts to him and the 7th Respondent.



47. The 6th Respondent maintains that him and the said Fiona Jerono Sum have been ploughing the portions of land due to their respective parents with full knowledge of Veronica Chepsat Sum. The 6th Respondent contends that each time they plough their land, the Applicants having been coming to their land with goons to disrupt them and many times they have even involved the police.
48. The 6th Respondent further deposed that the Court issued clear orders regarding the Succession Cause. Further that the Applicants have taken up the said Cause and are using it as their own yet the orders issues therein do not concern them.
49. The 6th Respondent further deposed that he has since filed an appeal against the ruling on contempt and that there is an application of stay pending appeal yet to be determined.
50. According to the 6th Respondent, this court cannot properly determine or issue any orders in this petition without taking the core facts from Succession Cause No 38 of 2018, which forms the basis of the issues herein. That the issue on contempt can only be addressed in the Succession Cause because the orders lie therein.
51. The 6th Respondent maintains that the claim by the Petitioners of violation of their Constitutional rights is far feted. That the Applicants were first charged in Eldoret Chief Magistrate Court Case No 673 of 2021 for threatening him and the 7th Respondent and their workers who were ploughing the land. That the 1st Applicant was again charged in Eldoret Chief Magistrate's Court Case No 3631 of 2021 for creating disturbances by threatening the 6th Respondent while armed with a Somali sword, whips and metal rods while he was ploughing the land. Lastly, the 6th Respondent deposed that the Applicants are also jointly charged with reckless negligence act causing harm by releasing their dogs which bit the daughter of one of their workers who was ploughing his share of land.
52. The 6th Respondent contends that the charges facing the petitioners cannot be said to be a violation of their constitutional rights. That the Applicants are properly charged and the Courts should be allowed to hear and determine the cases therein on merit. That the burden of proving the unconstitutionality of the charges lies with the two Petitioners. that the trial of the criminal cases aforementioned cannot be determined as they are proper before Court.
53. The 6th Respondent finally deposed that this is a purely family matter with the Petitioners herein being the ones fuelling the fire on the ground by attempting to stop him and the 7th Respondent from ploughing the land.
54. The application was canvassed vide written submissions; the 1st and 2nd Petitioner filed submissions dated September 8, 2022, the 1st, 2nd, 3rd, 4th and 5th Respondents filed submissions dated March 27, 2023 whereas the 6th and 7th Respondents filed their submissions dated April 11, 2022 which I have duly read and taken consideration of.

Determination

55. I have carefully considered the application and rival affidavits and submissions together with the cited case law. In my view the only issue for determination is whether the orders sought can be issued.
56. The general principles guiding Courts in determining applications for conservatory orders were set out in the case of *Small Scale Farmers Forum vs Cabinet Secretary Ministry of Education Science and Technology* (supra) as follows:
 - [30] The principles which govern a court considering an application for interim or conservatory relief [are considered] to be the following: The applicant ought to demonstrate a prima facie



case with a likelihood of success and that he is likely to suffer prejudice as a result of the violation or threatened violation if the conservatory order is not granted: see Centre for Rights Education and Awareness & 7 Others vs The Attorney General HCCP No 16 of 2011. It is not enough to show that the prima facie case is potentially arguable but rather that there is a likelihood of success: see Godfrey Mutahi Ngunyi vs The Director of Public Prosecution & 4 Others NBI HCCP No 428 of 2015 and also Muslims for Human Rights and Others vs Attorney General & Others HCCP No 7 of 2011. The grant or denial of the conservatory relief ought to enhance Constitutional values and objects specific to the rights or freedoms in the Bill of Rights: see Satrose Ayuma & 11 Others vs Registered Trustees of Kenya Railways Staff Benefits scheme [2011] eKLR and also Peter Musimba vs The National Land Commission & 4 Others (No 1) [2015] eKLR. If the conservatory order is not granted, the Petition or its substratum will be rendered nugatory: see Martin Nyaga Wambora vs speaker of the County Assembly of Embu & 3 Others HCCP No 7 of 2014. The Public interest should favour a grant of the conservatory order: see the Supreme Court of Kenya's decision in Gatarau Peer Munya vs Dickson Mwenda Githinji & 2 Others [2014] eKLR. The circumstances dictate that the discretion of the court be exercised in favour of applicant after a consideration of all material facts and avoidance of immaterial matters: See Centre for Human Rights and Democracy & 2 Others vs Judges and Magistrates Vetting Board & 2 Others HCCP No 11 of 2012 as well as Suleiman vs Amboseli Resort Ltd [2004] 2 KLR 589.

57. From onset I must mention that it is the duty of the Court to protect citizens against harsh and unfair treatment and to grant appropriate relief as mandated by Article 23 (3). This was aptly captured in *Reginal vs. Ittosbat (1970) CRNS, 385* where the court held that;

'This court not only has a right but a duty to protect citizens against harsh and unfair treatment. The duty of this court is not only to see that the law is applied but also, which is of equal importance, that the law is applied in a just and equitable manner.'

58. Article 157 of the Constitution, enjoins the 1st Respondent herein, the Director of Public Prosecution (DPP) to order investigations into any alleged Criminal conduct or activities. The DPP is also granted powers to institute, continue, take over and or discontinue any criminal proceedings.

59. Article 245(4), (a) of the Constitution provides that:

(4) The Cabinet secretary responsible for police services may lawfully give a direction to the Inspector-General with respect to any matter of policy for the National Police Service, but no person may give a direction to the Inspector-General with respect to—

- (a) The investigation of any particular offence or offences;
- (b) The enforcement of the law against any particular person or persons;
- (c) .

60. To give effect to the constitutional mandate of investigation of crimes under the aforesaid Articles, the National Police Service Act under Section 24 provides for the functions of the Police to include investigation of crimes and apprehension of offenders as follows: -

24. Functions of the Kenya Police Service

The functions of the Kenya Police Service shall be the—

- (a) .



(e) Investigation of crimes;

61. In the exercise of its supervisory jurisdiction under Article 165 of the Constitution, the Courts must ensure that they do not interfere with the powers of other independent offices and in this regard, the court must exercise its powers only in exceptional circumstances since the constitutional functions performed by the state organs are geared towards serving the wider public interest as opposed to the perceived private right of one individual as is the case in the instant petition. See Diana Ketbi Kilonzo vs IEBC & 2 Others NBI HCCP No 359 of 2013.
62. In the case of Gitarau Peter Munya vs Dickson Mwenda Githinji & 2 Others [2014] eKLR, the Supreme Court explained the place of conservatory orders in legal proceedings as follows:

'Conservatory Orders' bear a more decided public law connotation: for these are orders to facilitate ordered functioning within public agencies, as well as to uphold adjudicatory authority of the court, in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions linked to such private-party issues on the 'prospects of irreparable harm occurring during the pendency of a case; or 'high probability of success' in the Applicants case for orders of stay. Conservatory orders consequently, should be granted on the inherent merit of the case bearing in mind the public interest, the Constitutional values and the proportionate magnitudes, and priority levels attributable to the relevant causes.'
63. In the present case, the Applicants seek conservatory orders against the Respondents who they allege they have been stalking, arresting, charging and prosecuting them on issues that relate to their pursuit to ensure the compliance of Court orders issued on July 24, 2020 in Succession Cause No 38 of 2020 pending before this Court.
64. From the evidence that has been tendered before this Court there is not doubt that the dispute at hand emanates from members of the same family and surrounds matters with regard to distribution of the estate of the deceased herein. As a result of the orders granted in the said cause the Petitioners herein, have engaged in acts that have led to their arrest, detention and prosecution.
65. The Applicants contend that the arrests, detentions and subsequent prosecutions have been founded on malice and have even gone further to allege that the police herein have even become biased and impartial in their line of duty. The Applicants fault the police officers situated at Moiben Police Station for failing to enforce the orders of July 24, 2021 whereas they have blamed them for stalking, arresting, charging and prosecuting them without any justifiable cause. The Applicants whoever have not tender any evidence whatsoever to show how the Respondents have infringed on their Constitutional rights.
66. From evidence on record the Applicants herein were only arrested by the police officers stationed at Moiben Police Station upon receipt of various complaints from 6th Respondent, the 7th Respondent and one Faith Jelimo who accused the Petitioners of various acts of omissions and or commission. Pursuant to their mandate as enshrined in the Constitution and other supporting legislations the police officers arrested the Petitioners with the view of carrying out investigations on the alleged complaints. There is no indication that the Applicant was harassed during the said investigations.
67. I must point out that every trial process begins with a complaint being made to the police, who then initiate investigations before arresting the suspect person if there are compelling reasons to do so. The accused person is then arraigned in court. In my view there is no reason why the Applicants should not go through that process. The police in this particular case were only doing that which is within their mandate.



68. There is nothing placed before this Court that suggests that the 1st Respondent, in exercising his discretion to prefer charges against the Petitioners in this matter, acted under the control of any person or body, or that he acted in a manner that was not consistent with the public interest or the interests of the administration of justice. There is no evidence also, in my view, to suggest that the actions of the 1st Respondent are inimical to the need to prevent and avoid abuse of the legal process. I do not see any malice, abuse of office nor ill motive in recommending the prosecution herein. The Respondents executed properly their mandate and the rest is for the trial Court to determine after hearing evidence from both sides.
69. The Applicants have not demonstrated that their rights are under threat of infringement or violation. I find that the Applicants have not proved through any factual or other evidence that the Respondents have acted illegally, arbitrarily, unjustly, irregularly, or oppressively. I therefore see no merit in the Application. The Applicants have not demonstrated any exceptional circumstances to warrant the granting conservatory orders.

It is so ordered.

DATED AND DELIVERED AT ELDORET THIS 9TH DAY OF MAY, 2023.

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R. NYAKUNDI

JUDGE

In the presence:

Coram: Before Hon. Justice R. Nyakundi

Momanyi Gichana Advocates

Miyianda & Company Advocates

Kutto & Kiara Nabasenge Advocates

Office of the DPP

