REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL & HUMAN RIGHTS DIVISION

PETITION NO. 92 OF 2018

CHRIS KISIRE CHEPKOIT.....PETITIONER

-VERSUS-

THE DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

JUDGEMENT

1. The Petitioner, Chris Kisire Chepkoit, vide a petition dated 12th March, 2018, is challenging the manner in which the investigations were conducted, his arrest and arraignment in court to face criminal charges as well as the prosecution by the Respondent, the Director of Public Prosecutions (DPP), and the manner in which the proceedings before the trial court in Nairobi Chief Magistrate Criminal Case No. 935 of 2017 in which he is the accused are being conducted.

2. The brief facts of the matter are that the Petitioner was an employee of the National Bank of Kenya (the bank) serving as the Chief Finance Officer (CFO) between the years 2013 to 2016. Following a purported list of shame issued publicly by his Excellency President Uhuru Kenyatta in the year 2015, the Petitioner voluntarily stepped aside as CFO on 8th April, 2015 to pave way for investigations wherein he was adversely mentioned for being involved in corrupt activities in his former employment with Mumias Sugar Company Limited.

3. In an unprecedented turn of events, his employment with the bank was terminated and he was dismissed from office on 13th April, 2016. Thereafter he instituted proceedings in the Employment & Labour Relations Court in ELRC No. 57 of 2017 challenging his termination but the suit is yet to be determined. He has been charged before the Chief Magistrate's Court, Nairobi for offences allegedly committed during his stint as the CFO of the bank. It his contention that as CFO, he worked hand in hand with the Company Secretary and Managing Director/Chief Executive Officer (CEO) in execution of his mandate and as a matter of practice he could not make any approvals and/or authorizations without the consent of the Company Secretary or the Managing Director who was his immediate supervisor. In addition, he could not sign any documents without the approval of the Managing Director or the Company Secretary.

4. He further contends that as CFO he held and exercised a power of attorney on behalf of the bank but the same was to be approved and authorized by the Company Secretary who was also a co-signatory of any such document that he was to execute. That in exercise of his mandate, he was at all material times working under the instructions of the Managing Director and the Company Secretary. Further, that between the year 2014 and 2015, the bank procured various goods and services which process led to the selection of Sygoin International Holding Ltd as one of the companies to be considered to supply furniture and Gedama Functional Empathic Company to supply assortment electrical items.

5. As a result of the said procurements, the Respondent wrote to the Officer in Charge of Banking Fraud Investigation Unit vide a letter dated 1st February, 2017 directing and authorizing the prosecution of the Petitioner who was subsequently arrested and charged with three counts being one count of conspiracy to defraud contrary to Section 317 of the Penal Code and two counts of abuse of office contrary to Section 101(1) as read with Section 102 of the Penal Code with the two counts of abuse of office having alternative charges of breach of trust against the public contrary to Section 127 of the Penal Code. Accordingly, the Petitioner is aggrieved by the actions of the DPP to singly pick and prosecute him yet the various documents and invoices being relied upon by the prosecution were executed by both the Managing Director and Company Secretary. Secondly, he accuses the DPP for singly prosecuting him for executing documents according to the Bank Procurement Policy yet the same were also executed by the Managing Director. To him, this is discriminatory, malicious and misuse of powers.

6. The Petitioner therefore seeks that:-

a) An ORDER OF CERTIORARI does issue bringing into this Court for quashing and do quash the decision by the Respondent contained in the letter dated 1st February, 2017 directing the prosecution of the Petitioner.

b) A DECLARATION THAT the initiation, maintenance and prosecution of Nairobi Chief Magistrate Criminal Case No.

935 of 2017 Republic versus Chris Kisire Chepkoit against the Petitioner herein is in abuse of the criminal justice system and in contravention of the Petitioner's constitutional rights.

c) AN ORDER OF CERTIORARI does issue bringing into this Court for quashing and do quash the proceedings before the trial Court in Republic versus Chris Kisire Chepkoit, Nairobi Chief Magistrate Criminal Case No. 935 of 2017.

d) A DECLARATION THAT the initiation, maintenance and prosecution of Nairobi Chief Magistrate Criminal Case No. 935 of 2017 Republic versus Chris Kisire Chepkoit, herein is oppressive, malicious and in abuse of the process of Court.

e) AN ORDER PROHIBITING the continuance of the said Nairobi Chief Magistrate Criminal Case No. 935 of 2017 herein or any further case based on similar allegations.

f) AN ORDER FOR COMPENSATION of the Petitioner for general damages for the distress and mental anguish caused by the infringement of his fundamental rights and freedoms.

g) AN ORDER awarding costs of the Petition to the Petitioner.

h) Any other or further orders, writs and directions this court considers appropriate and just to grant for the purpose of the enforcement of the petitioner's fundamental rights and freedoms.

7. In response, the Respondent filed a replying affidavit by the investigating officer Inspector of Police Julius Musoga sworn on 30th May, 2018. His deposition is that the Petitioner was the CFO and was charged with the sole responsibility of managing the finance docket of the bank. Investigations revealed that on 6th August, 2013, the Petitioner wrote a letter introducing Sygoin International Holdings Limited to be considered among listed suppliers contrary to the laid down procedures of the bank since the said company was not listed as one of the companies contracted by the bank. Also not listed as a supplier was Gedama Functional Empathic Limited. The two companies were thus not qualified to supply the bank.

8. It was further his averment that the Petitioner as the CFO under whose docket procurement fell had the opportunity to raise needs which would then be presented to the Managing Director for consideration. Further, that execution of any role in line with a power of attorney was exercised independently. In any event, the Company Secretary is not a co-signatory to any holder of power of attorney but instead played the role of advising the bank on matters of law and advises on issues raised by the department. Furthermore, the Respondent recommended prosecution of the Petitioner purely on sufficiency of evidence that connected him to the charges preferred against him and has no bearing on the termination of his employment.

9. The investigator further deponed that approvals given by the CEO and signatures by other officers of the bank arise from the user request for services or suppliers as was the position in the case. Secondly, investigations were carried out by the Banking Fraud Investigation Unit and recommendations forwarded to the Respondent who recommended prosecution whereby he was arrested and arraigned in court. It was his contention that the process of prosecution does not subject the Petitioner to prejudicial mental anguish but is a trial where he has the opportunity to cross-examine his accuser.

10. He further contends that this court would be crossing into the line of independence of the DPP if it descends into the province of finding whether there is a *prima facie* case against persons and entities to be charged. Moreover, the Petitioner is raising a defence in a constitutional petition but has not demonstrated that in making the decision to prefer criminal charges against him, the Respondent has acted without or in excess of the powers conferred upon the office by law or has infringed, violated, contravened or in any other manner failed to comply with or respect and observe the provisions of the Constitution. Accordingly, the court is urged to remit the matter to the trial court which is equipped to deal with the quality and sufficiency of the evidence gathered in support of the charges preferred against the Petitioner.

11. Mr. Nyandieka appearing together with Mr. Ochieng Oginga for the Petitioner highlighted his written submissions dated 29th May, 2018. Counsel submitted that the Petitioner's right to equal protection of the law as guaranteed under Article 27 of the Constitution has been infringed and continues to be infringed by the Respondent who has chosen to singly prosecute him yet he was acting under the instructions of the Managing Director who was his immediate supervisor. Further, that the Petitioner has a legitimate expectation that the State shall accord him the necessary protection of the law as guaranteed under the Constitution.

12. Counsel reiterates that the DPP is bound by Section 4 of the Office of the Director of Public Prosecutions Act No. 2 of 2013 (the ODPP Act) as read with Article 157 of the Constitution. To this end, he relied on the case of **Jago v District Court (NSW) 106** where the court rendered an opinion in regard to a prosecution that amounts to an abuse of court process. He further relied on the case of **Republic v Attorney General Ex-parte Kipngeno Arap Ngeny, High Court Civil application No. 406 of 2001** where the court was of the view that a criminal prosecution commenced in the absence of proper factual foundation or basis is suspect for ulterior motive. Counsel was also of the view that the decision to institute or not to institute criminal proceedings is a high calling imposed upon the Respondent by law and must be exercised in a manner that leaves no doubt that the decision was made by the DPP independently.

13. Further, that there must be sufficient evidence to mount a prosecution and the initial consideration in the exercise of this discretion is whether the evidence is sufficient to justify the institution or continuation of a prosecution. Counsel submitted that it is evident that the DPP is acting selectively and has picked the Petitioner alone for prosecution despite the fact that the Petitioner was at all material times acting under the instructions and supervision of his immediate supervisors namely the Company Secretary and the Managing Director.

14. To buttress that argument, he relied on the case of **George Joshua Okungu & another v Chief Magistrate's Court Anti-Corruption Court at Nairobi & another [2014] eKLR** where selective and discriminatory prosecution was held to be unconstitutional and an abuse of the court process. Reference was also made to the case of **Bitange Ndemo v Director of Public Prosecutions & 4 others, Judicial Review Misc. Civil Application No. 192 of 2016** where the court echoed similar sentiments and held that prosecution should never be seen to be

actuated by desire to punish the applicant or oppress him into acceding to their demands by brandishing the sword of punishment under the criminal law. Further, that the decision to prosecute should be underlined by a genuine desire to punish on behalf of the public a crime that has been actually committed.

15. Relying on Article 23 of the Constitution and the case of **Joram Mwenda Guantai v The Chief Magistrate, Nairobi Civil Appeal No. 228 of 2003 (2007) 2 EA 170**, counsel submitted that this court has powers to safeguard fundamental rights and freedoms and to prevent an abuse of power by various State organs such as the Respondent herein. He further relied on the case of **Kuria & 3 others v Attorney Genral (2002) 2 KLR** and **Republic v Director of Public Prosecutions & 3 others Ex-Parte Bedan Mwangi Nduati & another, Judicial Review Application No. 332 of 2014** for the proposition that the Court has power and duty to prohibit continuation of criminal prosecution where there is an abuse of discretion. He therefore urged the Court to allow the petition.

16. Miss Mwenda appearing for the Respondent highlighted her written submissions dated 3rd September, 2018. Counsel submitted that the matters complained of by the Petitioner are prematurely before the High Court as they form the defence of the Petitioner before the trial court. As such, the decision to charge the Petitioner cannot be said to be abuse of power vested in the Respondent or irrational and/or actuated by malice. Counsel submitted that the police have a duty to investigate any complaint once such a complaint is made and they only need to establish reasonable suspicion before preferring charges as was observed in the case of **Misc. Application No. 519 of 2005 Surjit Singhhunjam v The Principle Magistrate Kibera.**

17. Similarly, she relied on the case of **Misc. Civil Application No. 152 of 2006, Republic v The Chief Magistrate, Nairobi Law Court, Ex parte Helmut Rame** where the court held that as long as the prosecution and those charged with the responsibility of making the decision to charge act in a quasi-judicial manner a court should not prohibit the prosecution. Accordingly, she submitted that this court cannot take in the evidence from a Petitioner who has been charged in the lower court and purport to grant prohibition.

18. She further relied on the case of **William S. K. Ruto & another v Attorney General & another, High Court Civil Suit No. 1192 of 2014 (unreported)** where the court held that analysis of evidence should be done before the trial court; the case of **Paul Stuart Imison & another v Attorney General & 2 others, High Court Petition No. 57 of 2009** where the Court held that it is only the trial court that can determine whether an offence was committed or not; the case of **Jacob Juma v The Director of Public Prosecution & 8 Others, High Court JR Petition No. 652 of 2009** where the Court held that investigations are an integral part of the administration of justice and it would be necessary for the applicant to convince the court why such investigations should be stopped; and the case of **Peter Ndirangu Kinuthia v Officer Commanding Kikuyu Police Station & another, Nairobi Court of Appeal Civil Application No. 173 0f 2002** where the Court held that by asking the Court to order that no police officer should charge him, the appellant was putting the cart before the horse.

19. In conclusion, counsel submitted that Article 157(6) of the Constitution vests prosecutorial powers on the Respondent and that the Petitioner must prove that the DPP exercised his discretion arbitrarily, oppressively and contrary to public policy as was held in **Githunguri v Republic (1986) LRC 618**. Similarly, that the Petitioner has not met the conditions for prohibiting a prosecution as set in the case of **Matalulu v DPP (2003) 4 LRC 712** among them being bad faith, excess of power and acting under the authority of a third party. She therefore urged Court to dismiss the petition.

20. I have carefully considered the substance of the petition, the parties' rival affidavits and submissions and the issue the Court is called upon to determine is whether the Respondent's action in charging the Petitioner is tainted with irrationality, unreasonableness and procedural impropriety necessitating the intervention of the Court and if so, what remedies are available to the Petitioner.

21. The Petitioner contends that by selectively preferring charges against him alone while he was acting under the instructions of the Managing Director being his immediate supervisor is an infringement of the right to equal protection under the law and the right to human dignity as guaranteed by articles 27 and 28 of the Constitution. The Respondent on the other hand holds the view that the petition is basically an assortment of facts and evidence seeking to establish a defence to the prosecution's case against the Petitioner. As such, it is the DPP's view that the matter should be dismissed as the Petitioner will have a full opportunity to defend himself and adduce whatever evidence he deems necessary at the trial.

22. As clearly seen from the authorities provided by the parties, it is settled law that the role of the court in petitions of this nature is to ensure that a petitioner is not dragged willy-nilly into court on criminal charges when there is no substantial evidence to sustain prosecution case. The DPP has the authority and discretion to decide who, when and how to prosecute within the bounds of legal reasonableness. That role cannot be usurped by the court. If the DPP acts outside the bounds of legal reasonableness, however, he acts *ultra vires* and the court can intervene, because it is the court's constitutional duty and responsibility to secure fair treatment for all persons brought before the court and to prevent an abuse of the court's process.

23. In the case of **George Joshua Okungu (supra)** cited by the Petitioner, a bench of two judges held that:-

> **"The law is that the Court ought not to usurp the Constitutional mandate of the Director of Public Prosecutions to investigate and undertake prosecution in the exercise of the discretion conferred upon that office. The mere fact that the intended or ongoing criminal proceedings are in all likelihood bound to fail, it has been held time and again, is not a ground for halting those proceedings by way of judicial review since judicial review proceedings are not concerned with the merits but with the decision making process. That an applicant has a good defence in the criminal process is a ground that ought not to be relied upon by a Court in order to halt criminal process undertaken bona fides since that defence is open to the applicant in those proceedings. However, if the Petitioner demonstrates that the intended or ongoing criminal proceedings constitute an abuse of process or are being carried out in breach of or threatened breach of the Petitioner's Constitutional rights, the Court will not hesitate in putting a halt to such proceedings. The fact however that the facts constituting the basis of a criminal proceeding may similarly be a basis for a civil suit, is no ground for staying the criminal process if the same can similarly be a basis for a criminal offence. Therefore the concurrent existence of the criminal proceedings and civil proceedings would not, ipso facto, constitute an abuse of the process of the court unless the commencement of the criminal proceedings is meant to force the Petitioner to submit to the civil claim in which case the institution of the criminal process**

would have been for the achievement of a collateral purpose other than its legally recognised aim. In the exercise of the discretion on whether or not to grant an order of prohibition, the court takes into account the needs of good administration."

24. Similarly, in **Republic v CS, In Charge of Internal Security & 3 others Ex-Parte Jean Eleanor Margaritis Otto [2015] eKLR** the Court held that:-

> **"The principles which guide the grant of the orders in the nature sought herein are now well crystallized in this jurisdiction. What is important is the application of the same to the facts of each case. Several decisions have been handed down which, in my view, correctly set out the law relating to circumstances in which the Court would be entitled to prohibit, bring to a halt or quash criminal proceedings. However while applying the said principles to a particular case, the Court must always be cautious in its findings so as not to prejudice the intended or pending criminal proceedings so as not to transform itself into a trial court. The Court in judicial review proceedings is therefore not permitted to delve into the merits or otherwise of the criminal process as that would amount to unnecessarily trespassing into the arena specially reserved for the criminal or trial Court. This Court in determining the issues raised therefore ought not to usurp the Constitutional and statutory mandate of the Respondents to investigate and undertake prosecution in the exercise of the undoubted discretion conferred upon them."**

25. In **Republic v Attorney General & 4 others Ex-Parte Kenneth Kariuki Githii [2014] eKLR** the Court cited with approval the case of **Joram Mwenda Guantai v The Chief Magistrate, Nairobi Civil Appeal No. 228 of 2003 [2007] 2 EA 170,** where the Court of Appeal held:-

> **"It is trite that an Order of Prohibition is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. It lies, not only in excess of jurisdiction or absence of it but also for a departure from the rules of natural justice. It does not, however, lie to correct the course, practice or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings...Equally so, 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 the 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."**

26. The Petitioner is seeking to rely on the case of **George Joshua Okungu** (supra) where selective and discriminatory prosecution was held to be unconstitutional and an abuse of the court process. To distinguish that case from the present one, in the **George Okungu** case, the petitioners took issue with the respondents on the following grounds: firstly, that the petitioners were charged for failing to adhere to non-existent regulations hence the charge in question was unknown to law; secondly, that the process giving rise to the criminal proceedings followed all the laid down regulations and was approved by the company's board; thirdly, that despite the said approval, the respondents decided to discriminate against the petitioners by preferring criminal charges against them for the actions approved by the company's board as a whole; fourthly, that in preferring the said charges, the respondents intended to call as witnesses some of the people who participated in the approval of the resolution made by the board; fifthly, that the said charges were being brought after a long period of time when the investigations thereon had been closed; and, sixthly, that the decision to prefer the said charges was malicious and actuated by extraneous motives to fend off public outcry in respect of a matter unrelated to the said charges.

27. In the present case however, the Petitioner being the CFO was tasked with the mandate of managing the procurement process effectively and efficiently, identify opportunities, manage internal operations and achieve results and the role of the CEO whom the Petitioner claims was his immediate supervisor, was limited to signing payment of amounts applicable pursuant to a request by the Petitioner. Secondly, the approvals given by the CEO and signatures of other officers of the bank arose from the user request for services or suppliers. It is on this basis that the Petitioner claims that the Respondent charged him single handedly without a proper factual basis. The facts as outlined therefore demonstrates that the **George Okungu** case was premised on an entirely different set of facts and the Petitioner's allegation of selective prosecution is without basis. The prosecution's allegation is that he solely initiated the acts that have led to his trial and whether this is true or false is a matter to be determined at the trial.

28. In the case of **Kuria & 3 others v Attorney General [2001] 2 KLR 69,** which was cited with approval in the case of **Johnson Kamau Njuguna & Another v Director of Public Prosecutions [2018] eKLR** the Court stated as follows:-

> **"A criminal prosecution which is commenced in the absence of proper factual foundation or basis is always suspect for ulterior motive or improper purpose. Before instituting criminal proceedings there must be in existence material evidence on which the prosecution can say with certainty that they have a prosecutable case. A prudent and cautious prosecutor must be able to demonstrate that he has a reasonable and probable cause for mounting criminal prosecution otherwise the prosecution will be malicious and actionable"**

29. In the case of **Peter Ngunjiri Maina v DPP & 2 others [2017] eKLR**, Prof. Ngugi, J, aptly summarized eight scenarios where the duty and authority of the Court in reviewing the exercise of the discretion of the executive is warranted relative to the unfettered discretion of the DPP. Rephrasing Odunga, J, in **R v DPP & 2 others Ex parte Nomoni Saisi [2016] eKLR**, he stated:-

> **"It is now clear that even in the exercise of what may appear to be prima facie absolute discretion conferred on the executive, the court may interfere. The court can only intervene in the following situations:**
>
> **1. Where there is an abuse of discretion;**
>
> **2. Where the decision-maker exercises discretion for an improper purpose;**

3. Whether the decision-maker is in breach of the duty to act fairly;

4. Whether the decision-maker has failed to exercise statutory discretion reasonably;

5. Where the decision-maker acts in a manner to frustrate the purpose of the Act donating the power;

6. Where the decision-maker fetters the discretion given;

7. Where the decision-maker fails to exercise discretion;

8. Where the decision-maker is irrational and unreasonable."

30. It is upon these criteria that the actions of the DPP in this case must be tested. The Petitioner has been charged with the offence of conspiracy to defraud contrary to Section 317 of the Penal Code which states as follows:-

"Any person who conspires with another by deceit or any fraudulent means to affect the market price of anything publicly sold, or to defraud the public or any person, whether a particular person or not, or to extort any property from any person, is guilty of a misdemeanour and is liable to imprisonment for three years."

31. He's further being charged with abuse of office contrary to Section 101(1) as read with Sections 102 of the Penal Code and in the alternative breach of trust by persons employed in the public service contrary to Section 127 of the Penal Code. Those sections read as follows:-

"101(1). Any person who, being employed in the public service, does or directs to be done, in abuse of the authority of his office, any arbitrary act prejudicial to the rights of another is guilty of a felony.

102. Any person who, being authorized or required by law to give any certificate touching any matter by virtue whereof the rights of any person may be prejudicially affected, gives a certificate which is, to his knowledge, false in any material particular, is guilty of a felony.

127.

(1) Any person employed in the public service who, in the discharge of the duties of his office, commits any fraud or breach of trust affecting the public, whether the fraud or breach of trust would have been criminal or not if committed against a private person, is guilty of a felony.

(2) A person convicted of an offence under this section shall be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding ten years or to both."

32. In respect to the charges above, the Petitioner contends that for a charge of conspiracy to defraud, the Respondent can only charge him with another for the charge to stand. Secondly, that the bank though partially owned by government is not a State entity and on that basis counts two and three cannot stand since he was not a public servant. Although the Petitioner's assertions may be right, delving into the veracity of the charges, the merits or otherwise of the criminal process would amount to unnecessarily trespassing into the arena specially reserved for the criminal trial Court. This Court ought not to usurp the constitutional or statutory mandate of the respondents. Further, it was revealed to this Court that there is an intention to consolidate the Petitioner's case with that of other accused persons. His claim that the charge of conspiracy to defraud cannot stand is thus not factual in the circumstances.

33. In the case of **Beatrice Ngonyo Kamau v Commissioner of Police and DPP & others [2013] eKLR** Lenaola, J, (as he then was) declined to interrogate the merits of the case before him stating:-

"In the instant case I am not going to delve into the merits of the case, the evidence tendered before me is sufficient at a prima facie level to show that the DPP had reasonable grounds to suspect that the ex parte applicant and the interested party may have by negligent criminal action caused collapse of the building on LR Number 149…. And this court cannot purport to turn into a trial court to determine their value"

34. In my view, this Court should not act as if it were exercising its appellate jurisdiction which would involve going into the merits of the decision itself as to whether or not there was sufficient evidence to support the decision. Even where an applicant has seemingly plausible retorts to each of the charges made against him, it remains that such answers can only be interrogated at the trial arena vis-à-vis the evidence adduced by the prosecution. The criminal trial process is constitutionally sanctioned and there is nothing unconstitutional when a person is tried in a process that is within the confines of the Constitution and the law. The material and arguments tendered by the Petitioner are not sufficient to raise the antenna of this Court that the Petitioner's constitutional rights have been violated or are about to be breached. I therefore hold the view that it is not within the Court's province to consider the detailed evidence which the Petitioner has availed to show that he is not culpable. Proceeding to delve into that evidence would not only amount to usurpation of the trial Court's jurisdiction but may actually prejudice the Petitioner for any comments I make on the evidence will be binding on the trial Court.

35. I agree with the position taken by Prof. Ngugi, J in the **Peter Ngunjiri Maina** (supra) where he stated as follows:-

> **"The task of this court is only to determine, based on the facts and the evidence before it whether there is any sense in which one could say, in context, the decision by the DPP to charge the applicant in this case is irrational, an abuse of discretion, a failure to act fairly in the exercise of discretion, [was] actuated by malice or other relevant considerations, against public interests, does not cohere with the interests of the due administration of justice, is oppressive, or is an abuse of the legal process."**

36. I am of the view that the Petitioner has not demonstrated any of the grounds espoused in the already cited case of **Peter Ngunjiri Maina.** The Petitioner has therefore failed to convince this court that it should exercise its supervisory jurisdiction over the Respondent. He has not demonstrated breach of the Constitution or the law by the Respondent. The end result is that this petition is without merit and it fails in its entirety. It is therefore dismissed.

Dated, signed and delivered at Nairobi this 6th day of June, 2019.

W. Korir,

Judge of the High Court