



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW NO. 130 OF 2013

IN THE MATTER OF AN APPLICATION BY PATRICK MACHARIA FOR AN ORDER OF PROHIBITION

AND

IN THE MATTER OF INFRINGEMENT OF CONSTITUTIONAL RIGHTS

REPUBLICAPPLICANT

VERSUS

INSPECTOR GENERAL OF POLICE.....1ST RESPONDENT

DIRECTOR OF CID2ND RESPONDENT

EXPARTE

PATRICK MACHARIA NDERITU

JUDGEMENT

Introduction

1. By a Notice of Motion dated 13th May, 2013, the applicant herein, **Patrick Macharia Nderitu**, seeks the following orders:

- 1. THAT the application be granted an order of prohibition to prohibit the respondents by themselves and or by their agents from harassing, intimidating, threatening, charging and arresting the applicant in relation to land sale transactions involving Plot Nos. L. R. No.12565/22, 94/66 and 209/6903 situated in Nairobi.**
- 2. THAT all consequential directions be given.**
- 3. THAT the costs of the application be provided for.**

Ex Parte Applicant's Case

2. The application was supported by a verifying affidavit sworn by the applicant on 13th May, 2013.
3. According to the applicant, on diverse dates in the year 2013 he had been harassed by police officers

who kept turning up at his place of work and office. Further on several occasions the said officers from Kilimani Police Station have followed him around in town just to put him in their car and questioned him about transactions involving several parcels of land which parcels of land and or transactions are strange to him.

4. He deposed that the officers keep insisting that they have seen him in company of an unnamed person who is involved in the alleged fraudulent transactions and that he should produce him, yet the identity of the said person has not been given and the allegations are unknown to him.

5. He added that he has been to the CID Headquarters and Kilimani Police station severally where he has been interrogated over the said unnamed person and transactions but despite telling the police he does not know anything about the transactions in question they keep harassing him and the police are threatening and intimidating him with arrest unless he produces the said unknown person.

6. He averred that the officers have searched his house at ungodly hours on several occasions without a search warrant throwing his family into panic. Similar abrupt searches, he deposed have been done in his offices and his employees harassed in the process.

7. He asserted that he has not committed any crime in regard to the alleged transactions otherwise the police would have arrested and charged him by now if they had any evidence against him.

8. He therefore averred that the harassment, intimidation and threats are an infringement to his constitutional rights and to those of his family members and that he has suffered a lot both mentally and physically hence it is in the interest of justice that the respondents should be prohibited from further harassment.

9. He was apprehensive that the police would continue harassing him and arrest and incarcerate him at any time without an intention of charging him in court as they have done in the past occasioning him suffering and loss.

Respondent's Case

10. In response to the application the Respondents filed a replying affidavit sworn by James Mamai, a police officer attached to Divisional CID Kilimani Police Station and the Investigating Office in this case on 17th January, 2014.

11. According to him, the office of DCIO, Kilimani Police station is investigating a case of obtaining money by false pretences contrary to section 313 of the **Penal Code**. The said investigations commenced following a complaint lodged with the police by one **John Odiro Omo** who reported that he had been defrauded a sum of Kshs 7, 800,000.00 in a land transaction.

12. Pursuant to the powers conferred upon the National Police Service under the **National Police Service Act**, it was deposed that investigations are ongoing which investigations involve tracing, locating and interrogating all persons perceived to be connected with the alleged crime. In his view, the act of tracing and interrogating a person cannot be said to be against the law as the police were discharging their duties.

13. It was his view that the said investigations may either exonerate or implicate the applicant hence an order of prohibition is not available to the applicant as such an order issues to a public entity for acting in excess or without authority. In undertaking investigations herein, it was contended that the National Police Service is discharging its mandate under the relevant statutory enactments.

Interested Party's Case

14. In opposition to the application the Respondent filed a replying affidavit sworn by **John Odira Omo**, the Company Secretary for the Communications Commission of Kenya, on 20th May, 2014.

15. According to him, on or around July, 2012, he was informed by a gardener in his locality at Nyari, Nairobi named **Philip Khamati** that the gardener had been informed by a friend, a **Mr. Alfred Indiaka**, that there was a piece of land for sale within the same estate and being interested on the parcel sought to be introduced to **Alfred Indiaka** who confirmed that the land was on sale, by an asian lady advocate, namely, **Ashna Vinochandra Raikundalia**, the Advocate for the Vendor while the sale agent was called a **Mr. John**.

16. On meeting the aforesaid advocate who held out herself as a legal associate with **Thomas Nyakambi Maosa** t/a Maosa and Company Advocates, the advocate for the purported sellers, **Nimish Mahendra Shah** and **Suchma Nimish Shah**, assigned to carry out the sale transaction by her senior, **Thomas Nyakambi Maosa**, who was busy in his responsibilities as a lecturer at a local university, she proceeded to hand over to the deponent documents relating to Land Reference No.12565/22 – NYARI – NAIROBI (hereinafter called ‘the suit property’).

17. The deponent then agreed the said advocate a sale price of Kshs.25,000,000/- (‘hereinafter called’ the purchase consideration) for the suit property and proceeded to appoint **Messrs Mohammed Muigai Advocates** (hereinafter referred to as ‘the Purchaser’s advocates’) as his advocates to deal with the sale. Consequently, an agreement for sale was drawn by Messrs Maosa and Company advocates and agreed upon between the applicant and the said advocates on 6th September, 2012. According to the deponent, it was an express term of the agreement that the deponent was to pay a deposit of Kshs.2,500,000/- to Messrs Maosa and Company Advocates, through the purchaser’s advocates who were to hold the sum as a stakeholder pending completion which was to be within 90 days of the date of execution of the agreement.

18. Pursuant to the said agreement, on 5th September, 2012 the purchaser’s advocates transferred through RTGS the sum of Kshs.2,500,000/- aforesaid to Maosa and Company Advocates Bank Account No. 0120 000 16410 at Family Bank, Kenyatta Avenue Branch, Nairobi and on or around 2nd October, 2012 the aforesaid **Ms Ashna Vinochandra Raikundalia**, convened a meeting between the purchaser’s advocates representative **Joan Nyambura Mutabari** advocate and the applicant at Yaya Centre with **Ashna Vinochandra Raikundalia** and a lady representing herself as **Suchma Nimish Shah**, the wife of Nimish Mahendra Shah, where the deponent was persuaded to pay another sum of Kshs.5,300,000/- towards the purchase price to enable the alleged owners pay up a loan on account in respect of which the suit property had been charged to a bank which the deponent paid vide RTGS to Maosa and Company Advocate’s aforesaid bank account bringing the deposit in respect of the purchase price to Kshs.7,800,000/-.

19. However, despite the deponent’s readiness to complete the sale transaction, no original title to the suit property and other completion documents were availed to the purchaser’s advocates, their requests and demand for the same notwithstanding, constraining them to rescind the sale transaction upon giving the requisite notice pursuant to the terms of the agreement for sale and consequently sought for refund from Maosa and Company advocates of the sum of Kshs.7,800,000/-, aforesaid but to date, no refund has been made.

20. Upon reporting the matter to the police, it was discovered that the alleged sale was fraudulent as the true owners had not put up the subject suit property for sale and in breach of the terms of the agreement for sale the monies that were deposited by the deponent’s advocates into the aforesaid account of Maosa and Company Advocates were withdrawn in cash immediately upon being deposited and converted to other use. In the course of investigations, it was discovered that **Mary Jane Kemunto**, the wife to **Thomas Maosa** advocate was the person who withdrew the entire monies being deposited in the said advocates account and in her statement to the police told the police that all the monies deposited on the deponent’s behalf by the deponent’s advocates in respect of the purchase price in the sum of Kshs.7,800,000/- were withdrawn by herself in cash from Family Bank and handed over to the Applicant herein to hand over to the Vendors. Therefore it would only be proper that the Applicant herein do explain to the criminal trial court for what consideration he received the said monies.

21. It was deposed that the Applicant was arrested on 19th December, 2013 from his Buruburu home and

arraigned before Kibera Law Court where he produced this honourable court's order dated 21st November, 2013 restraining his arrest and was consequently discharged pending the conclusion of this application.

22. The deponent was therefore dismayed at the contents and the method of recording of the consent order dated 21st November, 2013 before this court wherein the Honourable Attorney General's Office and that of the Directorate of Public Prosecutions consented alongside the Applicant's advocates hereof to an order restraining the arrest, remand in police custody or charging in court of the Applicant hereof for the reason that, to his understanding, the office of the Attorney General and that of the Directorate of Public Prosecutions exist to preserve and promote public good as well as execute, aid and or promote the administration and preservation of law and order. Therefore he could not countenance how such offices would cooperate, collaborate and appear for all intents and purposes to enter into an arrangement or agreement to shield the Applicant herein from the process of the law.

23. Contrary to the directions given by the Court herein on the grant of leave for service on him of the application, the deponent averred that he was never served with the substantive application, hence the said consent orders are null and void *ab initio*. In his view, upon the court ordering that service of the substantive motion be served upon him, he became a party to the criminal proceedings and that no consent order executed between the other parties to his exclusion can stand.

24. It was contended that upon keen perusal of the application herein and from the perusal of the statement recorded by **Mary Jane Kemunto** with Kilimani Police, the Applicant hereof is guilty of material non-disclosure of his actual involvement in the fraudulent transaction and therefore does not deserve any reliefs from this court.

25. It was disclosed that the Applicant herein seeks prohibitory orders against his arrest and arraignment in court in respect of that Land Title No. Nairobi Block 94/66 which is the subject of Kibera Criminal Court Case No.6161 of 2013, **Republic – Versus Ashna Vinochandra Raikundalia, Mary Jane Kemunto and Thomas Nyakambi Maosa** and which the Applicant herein had preciously filed in this court a Judicial Review Application No.424 of 2012, and which application he withdrew on 2nd May, 2013 after the advocates for the complainants therein, **Puthucode Krishnaiyer Seshadri** and **Prema Seshadri**, and who are also his advocates herein, appeared before **Justice Weldon Korir** in a disingenuous way of avoiding an interrogation of his application before the said court on merits. He therefore believed that the inclusion of the said Title No. Nairobi Block 94/66 in this matter is a clear abuse of the court process and the same should not be entertained.

26. It was contended that upon investigations, criminal charges in Kibera Criminal Court Case No.624 of 2013, **Republic – versus – Ashan Vinochandra Raikundalia, Mary Jane Kemunto, Thomas Nyakambi Maosa and Patrick Nderitu Macharia** were preferred as against the Applicant herein but the same were put on hold pending the determination of this Judicial Review application. To the deponent, this application is an attempt by the Applicant to scuttle the criminal charges brought against him for his active participation in the fraud committed against the deponent. He therefore prayed that this court should restrain itself from allowing the Applicant herein from seeking a sanctuary in this court but instead order the Applicant to appear before the criminal trial court and defend himself against the charges facing him, thus upholding the rule of the law.

Determination

27. In order to succeed in an application for judicial review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality or procedural impropriety. Illegality is when the decision-making authority commits an error of law in the process of taking or making the act, the subject of the complaint. Acting without jurisdiction or *ultra vires*, or contrary to the provisions of a law or its principles are instances of illegality. Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards. Procedural impropriety is when there is a failure to act fairly on the part of the decision-making

authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision. See **Pastoli vs. Kabale District Local Government Council and Others [2008] 2 EA 300**, **Council of Civil Unions vs. Minister for the Civil Service [1985] AC 2** and **An Application by Bukoba Gymkhana Club [1963] EA 478 at 479**

28. The applicant is seeking an order of prohibition to prohibit respondents by themselves and or by their agents from harassing, intimidating, threatening, charging and arresting the applicant in relation to land sale transactions involving Plot Nos. L. R. No.12565/22, 94/66 and 209/6903 situated in Nairobi. If the Court was to grant the order in the manner sought it would mean that the applicant would in effect be granted permanent immunity from being arrested and prosecuted in relation to the two parcels of lands.

29. However, in this case, the interested party's contention that he lost a colossal sum of money in the said fraudulent transaction has not been controverted. The Respondents contend that the matter is under investigations. No one ones what the said investigations will eventually unearth. To grant orders permanently halting any prosecution against the applicant notwithstanding the results of the said investigations would in my view amount to usurping the powers of the police and the Director of Public Prosecutions. To do so would require very cogent evidence that the actions of the said institutions amount to abuse of the legal process.

30. Section 24 of the ***National Police Service Act No 11 A of 2011*** sets out functions of the Kenya Police Service as being the—

(a) Provision of assistance to the public when in need;

(b) Maintenance of law and order;

(c) Preservation of peace;

(d) Protection of life and property;

(e) Investigation of crimes;

(f) Collection of criminal intelligence;

(g) Prevention and detection of crime;

(h) Apprehension of offenders;

(i) Enforcement of all laws and regulations with which it is charged; and

(j) Performance of any other duties that may be prescribed by the Inspector-General under this Act or any other written law from time to time.

31. The word “investigate” is defined in the ***Black's Law Dictionary 9th Edition*** as: ***“To inquire into a matter systematically; to make an official inquiry.”***

32. In **Republic vs. Chief Magistrate Milimani & another Ex-parte Tusker mattresses Ltd & 3 others [2013] eKLR** this Court expressed itself as follows:

“The Court must in such circumstances take care not to trespass into the jurisdiction of the investigators or the Court which may eventually be called upon to determine the issues hence the Court ought not to make determinations which may affect the investigations or the yet to be conducted trial. That this Court has power to quash impugned warrants cannot be

doubted. However, it is upon the ex parte applicant to satisfy the Court that the discretion given to the police to investigate allegations of commission of a criminal offence ought to be interfered with. It is not enough to simply inform the Court that the intended trial is bound to fail or that the complaints constitute both criminal offence as well civil liability. The High Court ought not to interfere with the investigative powers conferred upon the police or the Director of Public Prosecution unless cogent reasons are given for doing so... The warrants were issued to enable the allegations be investigated. Whether or not the investigations will unearth material which will be a basis upon which a decision will be made to commence prosecution of the ex parte applicants or any of them is a matter which is premature at this stage to dwell on.”

33. It is trite that the Court ought not to usurp the mandate of the Respondents to investigate any matter that, in the Respondents’ view raises suspicion of the occurrence or imminent occurrence of a crime. Just like in cases of prosecution, the mere fact that the allegations made are likely to be found worthless, is not a ground for halting investigations into the complaints made or brought to the attention of the Respondents since the purpose of criminal investigations conducted *bona fide* is to consider both incriminating and exculpatory material and not just to collect evidence on the basis of which a criminal charge may be laid.

34. It must always be noted that judicial review proceedings are not concerned with the merits but with the decision making process. That an applicant has a good defence to the complaint 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 to bring to the attention of the investigators in the course of the conduct of the investigations.

35. However, if the applicant demonstrates that the investigations that the Respondents intend to carry out constitute an abuse of process, the Court will not hesitate in putting a halt to such investigations since investigations must be carried out independently and must be carried out in good faith without malice or for the purpose of achieving some collateral goal divorced from the purpose for which the investigatory powers are given to the 3rd Respondent.

36. In Joram Mwenda Guantai vs. The Chief Magistrate, Nairobi Civil Appeal No. 228 of 2003 [2007] 2 EA 170, 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...”

37. In Meixner & Another vs. Attorney General [2005] 2 KLR 189, the same Court expressed itself as hereunder:

“The Attorney General has charged the appellants with the offence of murder in the exercise of his discretion under section 26(3)(a) of the Constitution. The Attorney General is not subject to the control of any other person or authority in exercising that discretion (section 26(8) of the Constitution). Indeed, the High Court cannot interfere with the exercise of the discretion if the Attorney General, in exercising his discretion is acting lawfully. The High Court can, however, interfere with the exercise of the discretion if the Attorney General, in prosecuting the appellants, is contravening their fundamental rights and freedoms enshrined in the Constitution particularly the right to the protection by law enshrined in section 77 of the Constitution... Judicial review is concerned with the decision making process and not with the merits of the decision itself. Judicial review deals with the legality of the decisions of bodies or persons whose decisions are susceptible to judicial review. A decision can be upset through certiorari on a matter of law if on the face of it, it is made without jurisdiction or in

consequence of an error of law. Prohibition restrains abuse or excess of power. Having regard to the law, the finding of the learned judge that the sufficiency or otherwise of the evidence to support the charge of murder goes to the merits of the decision of the Attorney General and not to the legality of the decision is correct. The other grounds, which the appellants claim were ignored ultimately, raise the question whether the evidence gathered by the prosecution is sufficient to support the charge. The criminal trial process is regulated by statutes, particularly the Criminal Procedure Code and the Evidence Act. There are also constitutional safeguards stipulated in section 77 of the Constitution to be observed in respect of both criminal prosecutions and during trials. It is the trial court, which is best equipped to deal with the quality and sufficiency of the evidence gathered to support the charge. Had leave been granted in this case, the appellants would have caused the judicial review court to embark upon examination and appraisal of the evidence of about 40 witnesses with a view to show their innocence and that is hardly the function of the judicial review court. It would indeed, be a subversion of the law regulating criminal trials if the judicial review court was to usurp the function of a trial court.”

38. The duty and mandate of the police was appreciated in Republic vs. Commissioner of Police and Another ex parte Michael Monari & Another [2012] eKLR where it was held:

“The police have a duty to investigate on any complaint 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”.

39. It is therefore clear that whereas the discretion given to the respondents to investigate criminal offences is not to be lightly interfered with, that discretion must be properly exercised and where the Court finds that the discretion is being abused or is being used to achieve some collateral purposes which are not geared towards the vindication of the commission of a criminal offence, the Court will not hesitate to bring such proceedings to a halt. However, the Court in judicial review proceedings is mainly concerned with the question of fairness to the applicant in the institution and continuation of the criminal proceedings and once the Court is satisfied that the same are *bona fides* and that the same are being conducted in a fair manner, the High Court ought not to usurp the powers of the police by halting otherwise proper complaints made before them. Therefore if what the applicants mean by harassment is the investigation of the complaint made by the interested party, then this Court would be abusing its supervisory jurisdiction by granting the orders sought.

40. In this case, the applicant has contended that the Respondent have unceasingly embarked on the process of continuously harassing him in an attempt to produce a person unknown to him. For the police to resort to a process of harassment in order to intimidate and harass a person with a view to obtaining information may well amount to torture. To subject a person to constant harassment and threat of incarceration for an unreasonably long period of time without arraigning that person before a Court of law in my view amounts to mental torture and degrading treatment contrary to Article 29 of the Constitution and such treatment becomes even more reprehensive when inflicted upon a family person as the applicant alleges. See Marete vs. Attorney General [1987] KLR 690.

41. Torture has been defined to mean ‘infliction of intense pain to the body or mind; to punish, to extract a confession or information or to obtain sadistic pleasure. It means infliction of physically founded suffering or the threat to immediately inflict it, where such infliction or threat is intended to elicit or such infliction is incidental to means adopted to elicit, matter of intelligence or forensic proof and the motive is one of military, civic or ecclesiastical interest. It is a deliberate inhuman treatment causing very serious and cruel suffering. “Inhuman treatment” is physical or mental cruelty so severe that it endangers life or health. It is an intentional act which, judged objectively, is deliberate and not accidental, which causes serious mental or physical suffering or injury or constitutes a serious attack on human dignity. See

Black's Dictionary (8th Edn); Torture and English Law 2 (1982) By James Heath; Ireland vs. United Kingdom [1978] 2 EHRR (European Court of Human Rights); Celebici Camp Case No. IT-95-14/2PT (1999) page 44.

42. Therefore whereas mere police interrogation may not *ipso facto* amount to “torture” or “cruel, inhuman or degrading treatment” a continuous interrogation extending for a long period of time meant to extract vague information for the purposes of prosecution of a person other than the subject may well fall under the rubric of “torture, cruel, inhuman and degrading” treatment. A person faced by such a threat is properly entitled to invoke the supervisory jurisdiction of this Court to bring such conduct to a halt as the same is a threat to fundamental rights and freedoms. As was held in **Re Bivac International Sa (Bureau Veritas) [2005] 2 EA 43**, judicial review has become the most powerful enforcer of constitutionalism, one of the greatest promoters of the rule of law and perhaps one of the most powerful tools against abuse of power and arbitrariness.

43. Therefore whereas the Court may not unless cogent evidence is adduced grant orders whose effect would be to halt investigations, it ought to be appreciated that under Article 28 of the Constitution, every person has inherent dignity and the right to have that dignity respected and protected. To conduct a search in a person's residence in the unholy hours of the day thus interfering with a person's private and domestic life unless under exceptional circumstances, deprives such a person of his or her dignity.

44. Apart from that Article 50 of the Constitution provides:

Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.

2. It is therefore my view that criminal investigations ought to be carried and finalised with expedition and a decision made one way or another as soon as possible so as to avoid subjecting a person to unnecessary anxiety. In **George Joshua Okungu & Another vs. Chief Magistrate's Court Anti-Corruption Court at Nairobi & another [2014] eKLR** this Court expressed itself as follows:

“The Petitioners further contend that the said charges are being brought after a long period of time after the investigations thereon had been closed. Under Article 47(1) of the Constitution, “every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.” It is therefore imperative that criminal investigations be conducted expeditiously and a decision made either way as soon as possible. Where prosecution is undertaken long after investigations are concluded, the fairness of the process may be brought into question where the Petitioner proves as was the case in *Githunguri vs. Republic* Case, that as a result of the long delay of commencing the prosecution, the Petitioner may not be able to adequately defend himself. Whereas the decision whether or not the action was expeditiously taken must necessarily depend on the circumstances of a particular case, on our part we are not satisfied that the issues forming the subject of the criminal proceedings were so complex that preference of charges arising from the investigations therefrom should take a year after the completion of the investigations. From the charges leveled against the Petitioners, the issues seemed to stem from the failure to follow the laid down regulations and procedures in arriving at the decision to sell the company's idle/surplus non core assets. In our view ordinarily it does not require a year after completion of investigations in such a matter for a decision to prosecute to be made.”

45. Having considered the issues raised before this Court whereas this Court declines to grant an order prohibiting the Applicant from being arrested and charged with offences relating to land sale transactions involving Plot Nos. L. R. No.12565/22, 94/66 and 209/6903, this Court finds that the Respondent's conduct of putting pressure on the applicant to avail a person believed to have defrauded the interested party is clearly irrational. As this Court appreciated in **Republic vs. Registrar of Motor Vehicles Nairobi High Court Misc. Appl. No. 373 of 2013**:

“To compel a private person to produce another person unless it is shown that the person being compelled has the person to be produced in his custody would in my view be irrational since such a person may not have the capacity to apprehend and produce the person sought. It is the police who have the capacity to apprehend persons suspected of having committed an offence and any person with information on how to apprehend such suspects would only be obliged to furnish the same...It follows that the directive by the Respondent to the Applicant to present his driver was clearly not within the powers conferred upon the Respondent. By usurping powers which did not belong to the Respondent the Respondent was clearly acting illegally. Similarly the said decision was so grossly unreasonable as to amount to irrationality.”

46. In this case, the Respondents have had sufficient time to trace the person alleged to have committed the offence. They ought not to be allowed to indefinitely subject the applicant to harassment. If they have evidence that the applicant is involved in the commission of the alleged offence(s) they ought to charge him in court as provided under Article 50.

47. Accordingly, I prohibit the Respondents from subjecting the applicant to acts of harassment. If any further investigations are required in which the applicant is required to furnish information let the respondents do so with dignity and in strict adherence to the due process and the rule of law.

48. As it is clear that the applicant had in fact been charged which charges were eventually withdrawn as a result of these proceedings, there will be no order as to costs.

Dated at Nairobi this 9th day of March, 2015

G V ODUNGA

JUDGE

Delivered in the presence of:

Mr Juma for Mrs Ngarua for the Applicant

Cc Patricia