



**Mutemi & 3 others v Director of Public Prosecutions & another;
Lagat & another (Interested Parties) (Criminal Petition E005 of 2025)
[2025] KEHC 14375 (KLR) (15 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14375 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL PETITION E005 OF 2025
DR KAVEDZA, J
OCTOBER 15, 2025**

BETWEEN

**PAUL MUTEMI 1ST PETITIONER
PATRICK MUTILI 2ND PETITIONER
DIANA KANDIE 3RD PETITIONER
NYIKALAND INTERNATIONAL TECHNOLOGIES GROUP LIMITED 4TH
PETITIONER**

AND

**DIRECTOR OF PUBLIC PROSECUTIONS 1ST RESPONDENT
DIRECTOR OF CRIMINAL INVESTIGATIONS 2ND RESPONDENT**

AND

**DENNIS KIPKURUI LAGAT INTERESTED PARTY
ENOCH SAIBA MANYI INTERESTED PARTY**

JUDGMENT

1. The Petition dated 17th April 2025 seek orders restraining the Respondents, whether by themselves, their officers, agents, or any persons acting under their authority, from arresting, detaining, or in any way interfering with the liberty of the 1st, 2nd, and 3rd Petitioners in connection with any complaint or allegations made by one Benjamin Kamau, pending the hearing and determination of the Petition. They further pray for orders restraining the Director of Public Prosecutions, his officers, servants, or agents from instituting, charging, or prosecuting the said Petitioners in relation to the said complaint or any matter arising therefrom, pending the final determination of the Petition.



2. The petition is supported by an affidavit sworn by the 1st Petitioner of similar date. The averments made are as follows. In March 2024, the Petitioners' company was awarded Contract No. KPI/6E.3/OT/8/22/BOII LOT 17 by the Kenya Power and Lighting Company for implementation of the Last Mile Project in Kilifi County. Following the award, the Interested Parties were appointed as directors and shareholders, having undertaken to inject capital into the company to support this and other projects. They were also made signatories to the company's bank accounts.
3. However, after their appointment, the Interested Parties failed to contribute the agreed capital and neglected their duties as directors, including persistent non-attendance at board meetings. Consequently, on 27th January 2025, the remaining directors made a resolution to remove them as bank signatories in accordance with the *Companies Act*, 2015 and the company's Articles of Association.
4. Subsequently, a routine bank visit revealed that the company's accounts had been flagged following investigations by the 2nd Respondent, allegedly pursuant to orders in Kibera Misc. Application No. E222 of 2025, authorising scrutiny of the company's bank and M-Pesa accounts. The Petitioners claim the orders lacked factual or legal basis and constituted a misuse of investigative powers.
5. They further contend that under Sections 118 and 121 of the Criminal Procedure Code, a search warrant must be supported by sufficient cause, which was not demonstrated. One Petitioner was later summoned and interrogated on allegations of forgery without an opportunity for forensic verification of the disputed documents.
6. The Petitioners maintain that the dispute is civil in nature and should be resolved under the *Companies Act* and the company's internal governance framework. They allege that the Respondents' actions amount to abuse of process and violation of their constitutional rights under Articles 27, 31, and 43 of *the Constitution*, and urge this Court to restrain the misuse of the criminal justice process to settle a civil dispute.
7. In March 2024, the Petitioners' company was awarded Contract No. KPI/6E.3/OT/8/22/BOII LOT 17 by Kenya Power and Lighting Company for the implementation of the "Last Mile Project" in Kilifi County. Following the award, the Interested Parties were onboarded as directors and shareholders, having committed to injecting capital into the company to facilitate this and other ongoing projects. They were also made signatories to the company's bank accounts.
8. However, upon appointment, the Interested Parties failed to fulfil their obligation to inject the agreed capital and neglected their duties as directors, including non-attendance at board meetings. Consequently, the remaining directors resolved to remove them as signatories to the company's bank accounts on 27th January 2025, in accordance with the *Companies Act*, 2015 and the company's Articles and Memorandum of Association.
9. Subsequently, during a routine bank visit, one of the Petitioners discovered that the company's accounts had been flagged due to investigations initiated by the 2nd Respondent, allegedly based on orders issued in Kibera Misc. Application E222 of 2025. These orders authorised scrutiny of the company's bank and M-Pesa accounts. The Petitioners contend that the orders were issued without a factual or legal basis and amounted to a misuse of investigative powers.
10. The Petitioners assert that under Sections 118 and 121 of the Criminal Procedure Code, any application for a search warrant must be supported by sufficient cause, which the police failed to provide. On 15th April 2025, one of the Petitioners was summoned and interrogated on allegations of forgery, without being given an opportunity to present the disputed documents for forensic verification.



11. The Petitioners argue that the issues raised are purely civil and should be addressed under the *Companies Act* and the company's governance instruments. They contend that the Respondents' involvement constitutes abuse of process and violates their constitutional rights under Articles 27, 31, and 43 of *the Constitution*. They therefore urge the Court to intervene and restrain the misuse of the criminal justice system to resolve a civil dispute.
12. In response, Sgt Simon Ihaji, the investigating officer filed a replying affidavit dated 26th May 2025 for the respondents. The Respondent avers that he is investigating offences of making a document without authority, contrary to section 357(a) and (b) of the Penal Code, and stealing, contrary to section 268(1) as read with section 275 of the Penal Code. The matter was reported at Kilimani Police Station under OB No. 43/13/03/2025 by one Denis Kipkurui Langat, a director of Nyikaland International Technologies Group Limited, the 1st Interested Party.
13. He states that, in the course of investigations, he obtained orders from the Chief Magistrate's Court in Criminal Miscellaneous Application No. E222 of 2025 to examine bank and M-Pesa accounts held at Middle East Bank Kenya Limited and Safaricom Kenya Limited. The orders were duly granted and served upon the respective managers.
14. Preliminary investigations established that the Interested Parties are duly registered directors of the company, as shown in the CR12 and are signatories to the company's bank accounts, as confirmed by the bank opening documents. It was further noted that Kshs. 2,100,000 was withdrawn from the account without their consent, as indicated in the bank statement. This raised suspicion that the documents presented to the bank may have been forged. The said documents are yet to be retrieved and submitted for forensic examination.
15. The Respondent asserts that the information obtained from the bank and Safaricom was lawfully sought and used solely for investigative purposes. He maintains that the Petitioners have not demonstrated how their constitutional rights were infringed, and that the orders obtained were issued within the framework of the law. Investigations are still ongoing, and no decision has been made to arrest or charge any party. Accordingly, the Respondent urges this Honourable Court to dismiss the Petition with costs.
16. The petition was canvassed by way of written submissions. Ikua and Nyambene Advocates LLP submitted that The Petitioners submitted that the dispute before the Court is purely civil, concerning the interpretation of corporate documents and the exercise of directorial powers, and not a matter of criminal conduct. They relied on *Deepak Kamani & Another v Attorney General & 4 Others* [2019] eKLR, where the Court held that disputes of a corporate nature fall below the "civil dispute threshold" and cannot be clothed as criminal offences.
17. They contended that the Respondents' allegations of forgery and uttering false documents lack any prima facie evidence of criminality, and were instead a calculated attempt by the Interested Parties to regain control of the company through intimidation. The Respondents have not conducted any forensic analysis of the disputed documents nor sought recourse through the Companies Tribunal as provided under section 738 of the *Companies Act*. Citing *Republic v Chief Magistrate's Court at Milimani Ex Parte Apollo Mboya* [2019] eKLR, they argued that allegations of forgery must rest on expert evidence, not conjecture.
18. The Petitioners further submitted that the Respondents' actions constituted an abuse of process, invoking *Republic v Commissioner of Police & Another Ex Parte Michael Monari & Another* [2012] eKLR, where it was held that police should not be used as instruments in private disputes. They asserted that the orders obtained in Kibera Misc. Application No. E222 of 2025 to access the company's



- bank and M-Pesa records violated Article 31 of *the Constitution*, which guarantees the right to privacy. Relying on *Okiya Omtatah v Communications Authority of Kenya* [2022] eKLR and *Republic v Safaricom Ltd Ex Parte Privacy International* [2020] eKLR, they argued that the orders failed to meet the constitutional tests of necessity, proportionality, and particularised suspicion.
19. They further submitted that the unlawful intrusion into financial data had a chilling effect on business confidence, citing *Wafula v Safaricom Ltd* [2023] eKLR. Finally, invoking *Mitu-Bell Welfare Society v Attorney General* [2021] eKLR, they urged the Court to protect their economic rights under Article 43, arguing that the Respondents' actions threaten livelihoods and misuse the criminal process for private gain.
 20. The Respondents, through learned prosecution counsel, opposed the application and filed grounds of opposition dated 26 May 2025. They submitted that the petition lacks merit and is an attempt to obstruct lawful investigations.
 21. The Respondents argued that under Article 245 of *the Constitution* and section 35 of the *National Police Service Act*, the police are empowered to collect intelligence, investigate crimes, apprehend offenders, and enforce the law. They act independently and only take written directions from the Director of Public Prosecutions (DPP). Since no evidence was presented to show external interference, the investigations were presumed lawful. Citing *Dr. Alfred N. Mutua v EACC & Others* [2016]eKLR and *Republic v Commissioner of Police Ex Parte Monari* [2011], counsel submitted that once a complaint is made, the police are duty-bound to investigate, provided there is reasonable suspicion of an offence.
 22. The Respondents relied on Article 157 of *the Constitution* and section 5 of the ODPP Act, which confer independent prosecutorial powers upon the DPP. The DPP exercises this discretion free from interference. In *Hon. James Ondicho Gesami v AG* [2011]eKLR and *Mohamed Ali Swaleh v DPP* [2017]eKLR the courts affirmed that the DPP may prosecute any person where sufficient evidence exists. It is not the court's role to assess the sufficiency of evidence or determine who should be charged, as doing so would usurp the DPP's mandate. Citing *AG v AG & Others Ex Parte Thomas Ng'ang'a Munene* (2014)eKLR, they noted that trial courts are best placed to test the evidence and ensure fair trial guarantees.
 23. Counsel emphasised that each constitutional organ must operate independently. They argued that judicial interference with investigative or prosecutorial powers undermines constitutional balance and could lead to paralysis in governance. The Respondents urged the Court to find that the petition is an abuse of process aimed at derailing lawful investigations, and to dismiss it with costs.
 24. Having looked at the petition and the submissions by parties, the following consequential issues call for determination:
 - I. Whether this Court has jurisdiction to interfere with the decision of the Director of Public Prosecution to approve and institute criminal proceedings or the investigations of the National Police Service?
 - II. Whether the Respondents in commencing the Investigations against the Petitioners violated their powers under Articles 157 and 245 of *the Constitution* and thereby abused their powers
 - III. What reliefs should the Court issue



I. Whether this Court has jurisdiction to interfere with the decision of the Director of Public Prosecution to approve and institute criminal proceedings or the investigations of the National Police Service?

25. This Court, as the custodian of the Bill of Rights, is entitled to intervene where the facts disclose a violation of the rights and fundamental freedoms guaranteed under *the Constitution*. The Court in Miscellaneous Application 40 of 2016 Republic v Director of Public Prosecutions & 2 others ex parte Zablon Agwata Mabea [2017] eKLR while citing the case of Kuria & 3 Others vs. Attorney General [2002] 2 KLR 69, stated that:

“...The Court has the power and indeed the duty to prohibit the continuation of the criminal prosecution if extraneous matters divorced from the goals of justice guide their instigation. It is a duty of the court to ensure that its process does not degenerate into tools for personal score-settling or vilification on issues not pertaining to that which the system was even formed to perform..... ”

26. The court further held that selective prosecution may be misused for unfair and unreasonable purposes. It stated;

“.... It would be a travesty to justice, a sad day for justice should the procedures or the processes of court be allowed to be manipulated, abused and/or misused, all in the name that the court simply has no say in the matter because the decision to so utilise the procedures has already been made. It has never been argued that because a decision has already been made to charge the accused persons, the court should simply as it were fold its arms and stare at the squabbling litigants/ disputants parade themselves...”

27. The power to institute criminal proceedings is a constitutional power under Article 157 of *the Constitution*. The power is not absolute and is capped by Article 157(11). Article 157(11) requires the DPP to exercise prosecutorial powers while taking into consideration the public interest, the interests of the administration of justice, and the need to prevent and avoid abuse of the legal process. When a petition is filed contending that the intended exercise of prosecutorial powers is an abuse of the legal process, this Court is effectively equipped under Article 165 to consider any question of whether anything said to be done under the authority of *the Constitution* is constitutional. The Supreme Court has endorsed this view in *Cyrus Shakhhalanga Khwa Jirongo v Soy Developers Ltd & 9 others* [2021] eKLR that

(82) ‘Although the DPP is thus not bound by any directions, control or recommendations made by any institution or body, being an independent public office, where it is shown that the expectations of Article 157(11) have not been met, then the High Court under Article 165(3)(d)(ii) can properly interrogate any question arising therefrom and make appropriate orders.’

28. These views were also expressed by Justice Majanja who echoed this principle of law in *Kenya Commercial Bank Limited & 2 Others vs. Commissioner of Police and Another*, Nairobi Petition No. 218 of 2012 (2013) eKLR, where he held that:

“The office of the Director of Public Prosecution and Inspector General of the National Police Service are independent and this court would not ordinarily interfere in the running of their offices and exercise of their discretion within the limits provided by the law. But these



offices are subject to *the Constitution* and the Bill of Rights contained therein and, in every case, the High Court as the custodian of the Bill of Rights is entitled to intervene where the facts disclose a violation of the rights and fundamental freedoms guaranteed under *the constitution*."

29. Further, the mere fact that a person will be charged before a court is not a bar and cannot stop the Court from exercising its supervisory and constitutional jurisdiction. A flawed criminal process can be stopped at any time without waiting for the trial to conclude. The Court in *Republic v Attorney-General & 9 others Ex Parte Cyrus Shakhalaga Khwa Jirongo* (2017) eKLR stated that:

"Therefore the people placed in charge of investigation and prosecution must in deciding whether to prefer criminal charges ask themselves whether, in the circumstances, a fair trial is possible notwithstanding the material placed before them. In other words, the police and the DPP ought not to conduct themselves as if they are an appendage of the complainants. In exercising their discretion to charge a person both the police and the DPP's office must take into account and must exercise the discretion on the evidence of sound legal principles....It is now clear that the mere fact that the applicant will be subject to a criminal process where he will get an opportunity to defend himself is not reason for allowing a clearly flawed, unlawful, and unfair trial to run its course."

30. The Supreme Court has also similarly endorsed the position that the Court can stop a constitutionally/statutory process where the same is being used to violate the Bill of Rights. The apex Court held in *Zacharia Okoth Obado vs. Edward Akong'o Oyugi & 2 others* [2014] eKLR where it was held that:

"Article 3(1) of *the Constitution* imposes an obligation on everyone, without exception, to respect, uphold and defend *the Constitution*. This obligation is further emphasized with regard to the exercise of judicial authority, by Article 159(2) (e) which requires that in the exercise of judicial authority the Courts must pay heed to the purpose and principles of *the Constitution* being protected and promoted. However, all statutes flow from *the Constitution*, and all acts done have to be anchored in law and be constitutional, lest they be declared unconstitutional, hence null and void. Thus, it cannot be said that this Court cannot stop a constitutionally-guided process."

31. Therefore, and as it was held recently in *Aperera v Officer Commanding Langata Police Station & 2 others; Maina (Interested Party)* (Constitutional Petition E008 of 2024) [2025] KEHC 4472 (KLR) (8 April 2025) (Judgment) when the criminal process is set in motion to serve adverse purposes and is an indictment of the objectives of a criminal proceeding, this court has jurisdiction to intervene. No court of law or constitutional judge should sit and fold its arms when constitutional powers are being abused. To do so would be a betrayal of the oath of office. I am not prepared to commit that constitutional wrong and I therefore hold that this court has jurisdiction to entertain the petition herein.

II. Whether the Respondents in commencing the Investigations against the Petitioners violated their powers under Articles 157 and 245 of *the Constitution* and thereby abused their powers

32. The court observes that our jurisprudence is replete with decisions which identify with a non-intrusive approach on the basis that courts must grant a measure of deference to the DPP's exercise of prosecutorial discretion and the investigative powers of the police. Such decisions include *Thuita Mwangi & 2 Others v Ethics & Anti-Corruption Commission and 3 Others* [2013]eKLR. and *Republic v Commissioner of Police and Another ex parte Michael Monari & Another* [2012] eKLR



where Warsame J (as he then was) addressed the mandate of the police to mount investigations as follows:

“The police have a duty to investigate on (sic) 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.”

33. Yet, the tenet of the proposition that a review on the DPP’s decision should confine itself only to process has come under some strain lately. There is an emerging view that a substantive review of the exercise of the DPP’s decision must necessarily involve an assessment of the merit of the decision in the context of the threshold set for the DPP by *the Constitution*.

34. That in fact is the approach advocated by the Court of Appeal in the decision of the majority in Njuguna S. Ndungu in Petition No. 39 of 2019 (As Consolidated with Petition 40 of 2019 in which the court held as follows:

“(23) I have referred to the reasoning of the High Court in paras. 9, 10 and 11 above. It is apparent that the High Court left the matters raised by the appellant and the respondents to the trial court for determination without making any tentative and objective finding on the legality of the charges and the prospect of a conviction.

The jurisprudence show that the standard of review of the discretion of DPP to prosecute or not to prosecute is high and courts will interfere with the exercise of discretion sparingly. In Diamond’s case (supra), the court said in part at para. 42:

“The burden of proof rests with the person alleging unconstitutional exercise of prosecutorial power. However, if sufficient evidence is adduced to establish a breach, the evidential burden shifts to the DPP to justify the prosecutorial decision.”

35. In Diamond Hasham Lalji & Another v Attorney General and 4 others [2018] eKLR where the Court of Appeal citing Njuguna S. Ndung’u, held:

“(45) In considering the evidential test, the court should only be satisfied that the evidence collected by the investigative agency upon which DPP’s decision is made establishes a prima facie case necessitating prosecution. At this stage, the courts should not hold a fully-fledged inquiry to find if evidence would end in conviction or acquittal. That is the function of the trial court. However, a proper scrutiny of facts and circumstances of the case are absolutely imperative. State of Maharashtra Ors v Arun Gulab Gawall & Ors – Supreme Court of India – Criminal Appeal No. 590 of 2007 para 18 and 24, Meixner & Another v Attorney General [2005] 2 KLR 189.”

36. Indeed, there is a real danger of courts overreaching if they were to routinely question the merit of the DPP’s decisions. However, there are circumstances where the type of scrutiny set out in the



majority decision of Njuguna S. Ndungu (supra) is called for. Should there be credible evidence that the prosecution is being used or may appear to a reasonable man to be deployed for an ulterior motive other than for advancing the ends of justice, then a scrutiny of the facts and circumstances of the case is not only necessary but desirable. This is because it would enhance the administration of justice if the challenged intended charges were to be properly tested so that any fears of ill motive are dispelled.

37. To be underscored is that judicial review of the foundational basis of a charge should only be undertaken when an applicant has first established that there are reasonable grounds that the challenged proceedings are a vehicle for a purpose other than a true pursuit of criminal justice. To allow a casual review of the foundational basis of criminal charges would be to turn the petitions of this nature into criminal mini-trials, a prospect that anyone keen to stop a criminal trial would relish. The question is whether the present case fits into the latter scenario.
38. At the heart of this Petition lies the contention that the actions taken by the Respondents against the Petitioners form part of a pattern of harassment and misuse of investigative powers to settle what is, in essence, a civil and commercial dispute. The Petitioners maintain that the purported criminal investigations were instigated following internal company disagreements and were intended to exert pressure on them after the removal of the Interested Parties as bank signatories and directors.
39. It is not in dispute that in March 2024, the Petitioners' company was awarded Contract No. KPI/6E.3/OT/8/22/BOII LOT 17 by the Kenya Power and Lighting Company for implementation of the Last Mile Project in Kilifi County. Following the award, the Interested Parties were appointed as directors and shareholders on the understanding that they would inject capital into the company to facilitate the project. They were also made signatories to the company's bank accounts.
40. The Petitioners aver that soon after their appointment, the Interested Parties failed to honour their capital commitments and consistently absented themselves from board meetings. Consequently, on 27th January 2025, the remaining directors passed a resolution removing them as bank signatories, in accordance with the *Companies Act*, 2015, and the company's Articles of Association. It is following this decision, they allege, that the Interested Parties lodged complaints leading to the involvement of the 2nd Respondent.
41. The Petitioners state that during a routine visit to the bank, they discovered that the company's accounts had been frozen on the basis of orders allegedly issued in Kibera Misc. Application No. E222 of 2025, permitting the 2nd Respondent to scrutinise the company's bank and M-Pesa accounts. They contend that these orders were obtained without any factual or legal foundation and were an overreach of the investigative mandate conferred by law.
42. As in any allegation of misuse of investigative authority, the Petitioners bear the duty of demonstrating that the actions complained of were tainted by illegality, irrationality, or procedural impropriety. They assert that under Sections 118 and 121 of the Criminal Procedure Code, a search warrant must be supported by sufficient cause which, in their view, was neither demonstrated nor recorded. One of the Petitioners was thereafter summoned and questioned on allegations of forgery, yet was denied an opportunity to subject the disputed documents to forensic verification.
43. The Petitioners contend that there exists no nexus between the alleged criminal offences and the internal management decisions of the company, and that the dispute, being commercial in nature, falls squarely within the jurisdiction of the *Companies Act* and the company's internal governance framework. They argue that the Respondents' involvement amounts to an abuse of process and a violation of their constitutional rights under Articles 27, 31 and 43 of *the Constitution*.



44. On their part, the Respondents, through the investigating officer Sgt Simon Ihaji, deny any wrongdoing or external influence in the conduct of investigations. They assert that the inquiry was initiated following a complaint lodged at Kilimani Police Station by one of the Interested Parties and that the orders to obtain bank and M-Pesa statements were lawfully issued by the Chief Magistrate's Court. Preliminary findings, they say, revealed withdrawal of company funds without the consent of all directors, raising suspicion of document forgery.
45. This court is mindful that under *the Constitution*, the Director of Public Prosecutions exercises prosecutorial discretion independently. There is no evidence before this Court suggesting that the DPP or the DCI acted at the behest of any private or external party, or that they conspired with the Interested Parties to achieve a predetermined outcome. However, the Court cannot ignore that the impugned investigations arose in the context of a bitter commercial fallout among company directors.
46. While the Respondents' power to investigate criminal offences is beyond question, such power must not be used to settle private or commercial disputes.
47. In this case, there is a complaint lodged at Kilimani Police Station under OB No. 43/13/03/2025, alleging the commission of offences under Sections 357(a) and (b) and 268(1) as read with Section 275 of the Penal Code. Upon receipt of the complaint, the Directorate of Criminal Investigations (DCI), acting pursuant to its statutory mandate under Sections 35 and 52 of the *National Police Service Act* and Article 245(4)(a) of *the Constitution*, commenced investigations.
48. The DCI thereafter sought and obtained lawful orders from the Chief Magistrate's Court in Kibera Criminal Miscellaneous Application No. E222 of 2025, issued under Sections 118 and 121 of the Criminal Procedure Code, authorising access to the company's bank and M-Pesa accounts. These provisions empower a court, upon being satisfied by information on oath that there is reasonable cause to believe that evidence relevant to an offence may be found, to issue a search or inspection warrant.
49. The record shows that the orders were duly granted and executed. At this stage, the Court finds no material to suggest that the Respondents acted outside the scope of their investigative powers or that the orders were procured through misrepresentation or mala fides. The Petitioners have not demonstrated violation of Articles 27, 31 or 47 of *the Constitution*, nor have they shown that the DCI or the DPP acted contrary to their constitutional and statutory obligations. The mere fact that the dispute also bears civil elements under the *Companies Act*, 2015, does not by itself oust the jurisdiction of the investigative and prosecutorial agencies to inquire into conduct that may disclose criminal culpability.
50. I am constrained to agree with the Respondents argument that they were inclined to investigate pursuant to the complaint. The court in *Jacob Juma & another v Commissioner of Police & another* (2013) eKLR stated as follows:

“..... However, the mere fact that a complaint is lodged does not justify the institution of a criminal prosecution. Law enforcement agencies are required to investigate the complaint before preferring a charge against a person suspected of having committed an offence. In other words, the police or any other prosecution arm of the Government is not a mere conduit for complainants. The police must act impartially and independently on receipt of a complaint and are expected to carry out thorough investigations which would ordinarily involve taking into account the versions presented by both the complainant and the suspect. I say ordinarily because the mere fact that the version of one of the parties is not considered does not make the subsequent prosecution malicious. However, where the police deliberately decide not to take into account the version of the suspect and acts on a story



that eventually turn out to be improbable and which no ordinary prudent and cautious man would have relied upon, that failure may constitute a lack of reasonable and probable cause for the purposes of malicious prosecution.” (Emphasis added)

51. Article 157(6) of *the Constitution* vests the Director of Public Prosecutions with the power to institute and undertake criminal proceedings against any person before any court, while Article 157(10) underscores that the DPP shall not require the consent of any person or authority and shall not be under the direction or control of any other person or authority. Equally, the National Police Service, under Article 244 of *the Constitution*, has the mandate to investigate offences and enforce the law in accordance with due process. The Court cannot usurp these constitutional functions unless it is shown that the power is being exercised in bad faith, for an ulterior motive, or in violation of *the Constitution*. No such evidence has been placed before the Court. The Petitioners’ apprehensions, while raising legitimate concerns about possible commercial motivations behind the complaint, do not meet the threshold for judicial intervention in an active criminal investigation.
52. In view of the foregoing, this Court finds no basis to interfere with the ongoing investigations by the Respondents.

III. Reliefs

53. Accordingly, the Petition is found to be without merit and is hereby dismissed. Each party shall bear its own costs.

Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 15TH DAY OF OCTOBER 2025

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D. KAVEDZA

JUDGE

In the presence of:

In the absence of the Parties

Karimi Court Assistant.

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