

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KIAMBU
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. E032 OF 2023

**IN THE MATTER OF: THREATENED INFRINGEMENT AND
CONTRAVENTION OF FUNDAMENTAL RIGHTS
AND FREEDOMS UNDER ARTICLES 2(1), 2(4), 3(1),
10(1) (2), 21(1), 22(1), 23, 36 &. 49(1) (h) & 165 OF
THE CONSTITUTION OF KENYA, 2010**

AND

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF FUNDAMENTAL
RIGHTS AND FREEDOMS UNDER ARTICLES 10 (1),
(2), 20(2), 24, 36 AND 165 OF THE CONSTITUTION
OF KENYA, 2010**

AND

**IN THE MATTER OF: THREATENED CONTRAVENTION OF ARTICLES
20(2), 24, AND 27(1), (2) (4) OF THE
CONSTITUTION OF KENYA, 2010**

BETWEEN

**PIMP MY RIDE (BURU BURU)..... 1ST
PETITIONER
PATRICK MACHARIA NDERITU.....2ND
PETITIONER**

-VERSUS-

**DIRECTORATE OF CRIMINAL INVESTIGATIONS....1ST
RESPONDENT
INSPECTOR GENERAL OF POLICE2ND
RESPONDENT
THE DIRECTOR OF PUBLIC PROSECUTIONS.....3RD
RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL....4TH
RESPONDENT**

JUDGMENT

1. The Petitioners herein, **Pimp My Ride (Buruburu) and Patrick**

Macharia Nderitu filed a Petition dated the 26th June, 2023 in which

they are seeking among other, the following prayers:-

(a) A permanent injunction restraining the Respondents by themselves, their officers, servants and assigns or anyone acting on their behalf or instructions from arresting, charging or prosecuting the 2nd Petitioner and his employees herein on account of the issues raised in this Petition.

(b) A permanent injunction to issue restraining the Director of Public Prosecution by himself, his officers, servants, agents and/or anyone acting on his behalf from instituting, charging or prosecuting the 2nd Petitioner or his employees herein in respect of or in connection with the complaint or allegation(s) made arising from or in relations to this matter.

(c) General damages.

- (d) *The cost of this Petition be provided for; and,*
- (e) *Such further reliefs that this Honourable Court may deem just and fit to grant in the interest of justice.*

2. Through out the Petition and the affidavit sworn in support thereof by the 2nd Petitioner, the Petitioner's contention is that the 1st Petitioner is a duly registered garage operating in Ruiru and Buruburu within the Republic of Kenya, while the 2nd Petitioner is one of its Directors. That on or about 24th September, 2022, police officers attached to the Directorate of Criminal Investigations stormed their business premises in Ruiru under the pretext of searching for certain **Motor Vehicles Registration Numbers; KCF 754X, KCP 555G, KCJ 765Q, KDK 797Z, KDH 550K, and KDD 101G**, allegedly used as loan securities. It is averred that despite not finding any of the said vehicles, the officers are said to have arrested nine (9) employees of the 1st Petitioner, detained them, and sought custodial orders to hold them for further investigations. The Petitioners state that the employees were later released after seven (7) days without any charges being preferred against them.

3. The Petitioners further allege that notwithstanding the release of the employees, the Respondents have continued to harass and threaten the Petitioners through repeated visits to their garage and unwarranted summonses, thereby disrupting their business operations and creating an atmosphere of fear and intimidation among their staff.
4. The Petitioners contend that the actions of the Respondents amount to an abuse of power and an unlawful use of the criminal justice system to intimidate, frustrate, and embarrass them in the course of their lawful business operations. They aver that the conduct complained of constitutes a violation of their rights to equality before the law, human dignity, fair administrative action, and freedom from arbitrary arrest as protected under **Articles 27, 28, 29, 47, and 49(1)(h) of the Constitution.**
5. Aggrieved by what they perceive as arbitrary, oppressive, and unconstitutional actions, the Petitioners approached this Court seeking protection and enforcement of their

constitutional rights specifically invoking the provisions of **Articles 2, 3, 10, 19, 20, 21, 22, 23, 24, 27, and 49 of the Constitution** as the legal foundation for this Petition. On that basis, the Petitioners seek the court to allow their prayers as presented in the Petition.

6. In response to the Petition, the 2nd to 4th Respondents filed Grounds of Opposition dated 20th February, 2025 opposing the Petition in its entirety. The Respondents contend that the Petition as filed is misconceived, frivolous, and devoid of any constitutional substance capable of adjudication by this Honourable Court. They asserted that the Petitioners have failed to demonstrate with clarity the specific constitutional provisions allegedly infringed or threatened with infringement by the 2nd, 3rd, or 4th Respondents, and that no factual or evidentiary basis has been laid to sustain the allegations made.

7. It is the Respondents' position that the Petition does not raise any genuine constitutional controversy against them and falls far short of the legal threshold established in the case of

Anarita Karimi Njeru -vs- Republic [1979] KLR 154 and reaffirmed in **Mumo Matemu -vs- Trusted Society of Human Rights Alliance & 5 Others [2013] eKLR**.

8. The Respondents further contended that the Petition is anchored on mere conjecture and unsubstantiated assertions without any cogent evidence linking them to the alleged violations. They relied on **Sections 107 and 109, both of the Evidence Act, Cap 80 Laws of Kenya**, to argue that he who alleges must prove. They asserted that the Petitioners had failed to discharge this evidentiary burden, and that the bare allegations of harassment and intimidation cannot justify the invocation of the extraordinary jurisdiction of this Court under **Articles 22 and 23, both of the Constitution**.
9. The Respondents have asserted that the investigations complained of were being undertaken lawfully within the powers conferred upon the 2nd Respondent under **Articles 244 and 245, both of the Constitution as read with Sections 24, 27, and 35, all of the National Police**

Service Act, Cap 84. However, no evidence has been tendered to show that these agencies had acted beyond the scope of their statutory or constitutional mandate. The Respondents maintained that their statutory powers cannot be curtailed merely because an individual perceives the investigation as inconvenient or intrusive.

10. It has further been contended that an impending arrest or prosecution does not in itself amount to a violation of constitutional rights. They have asserted that the powers of arrest, search, seizure, and detention are all actions expressly sanctioned by law and subject to the procedural and substantive safeguards set out in the Constitution and relevant statutes. They have submitted that such powers are legitimate limitations on rights as envisaged under **Article 24 of the Constitution** and do not amount to violations unless exercised arbitrarily, maliciously, or in bad faith, none of which had been demonstrated in this case.

11. Additionally, the 2nd Respondent invoked the provisions of **Article 245(4)(a) and (b) of the Constitution**, which insulates the Inspector General from direction or control by any person or authority in the discharge of his duties concerning investigations or enforcement of the law. They have urged that this Honourable Court ought not to issue any orders that would have the effect of fettering or micromanaging the lawful discharge of those duties.

12. The Respondents have also contended that the Petitioners have not demonstrated any prejudice, loss, or injury suffered as a result of the ongoing investigations. They have argued that mere apprehension or fear of possible arrest cannot amount to a constitutional violation hence without tangible proof of infringement, this Court has no legal basis upon which to grant the declaratory and injunctive reliefs sought.

13. Finally, the Respondents have urged the Court to find that the Petition is nothing more than a calculated attempt to shield the Petitioners from lawful criminal investigation and

potential prosecution. Thus, the Respondents have contended that the Petition is frivolous, vexatious, an abuse of the court process, and should be dismissed.

14. The court directed and the Petition was canvassed by way of written submissions. The record confirms that the Petitioner filed a set of submissions dated 2nd June, 2025 whilst the 2nd to 4th Respondents submissions are dated 20th February, 2025.

The Petitioners Submissions

15. The Petitioners filed their written submissions dated 2nd June, 2025 in support of the Petition wherein they reiterated the factual background of the Petition, emphasizing that the cause of action arose from acts of harassment, intimidation, and arbitrary arrests by officers attached to the Directorate of Criminal Investigations, allegedly acting under the instruction or authority of the Respondents. The Petitioners have contended that the said actions were unlawful,

unconstitutional, and amounted to an abuse of the criminal justice process. They have then pointed out two issues for this court's determination, that is, *whether the Petition herein has met the threshold for grant of the orders sought; and which party ought to bear the costs of the Petition.*

16. On the first question, it is the Petitioners' case that on or about 24th September, 2022, police officers from the DCI Headquarters in Kiambu County stormed their business premises, **Pimp My Ride (Buruburu)**, and arrested several employees without informing them of the reasons for their arrest. The Petitioners have asserted that the officers alleged they were searching for certain **Motor Vehicles Registration Numbers KCF 754X, KCP 555G, KCJ 765Q, KDK 797Z, KDH 550K, and KDD 101G** which were allegedly used as securities in loan transactions. Following the arrest, the said employees were detained at Kilimani Police Station and subsequently arraigned before the court, where the 3rd Respondent sought custodial orders to continue holding them for seven days pending investigations. However,

after the lapse of that period, the charges were withdrawn for lack of evidence.

17. The Petitioners have argued that the actions of the Respondents amounted to a gross violation of their fundamental rights and freedoms guaranteed under **Articles 10, 20, 24, 27, 36, 47, and 49 of the Constitution of Kenya, 2010**. They have submitted that the Respondents' conduct was arbitrary and without any lawful basis, and was actuated by malice and bad faith with the intention of tarnishing their reputation and crippling their business operations. Citing the decision in the case of **Platinum Distillers Limited -vs- Kenya Revenue Authority (2019) eKLR**, the Petitioners have submitted that for a party to be entitled to conservatory orders, it must demonstrate that unless such orders are granted, there exists a real danger that the party will suffer prejudice as a result of the violation or threatened violation of the Constitution. They have argued that their circumstances fell squarely within that principle, as

continued harassment and threats of arrest posed a real danger to their liberty and livelihood.

18. The Petitioners have further relied on the provisions of **Articles 157(10) and (11) of the Constitution** to submit that although the Director of Public Prosecutions is constitutionally independent in the exercise of prosecutorial powers, such powers must at all times be exercised with regard to public interest, the administration of justice, and the need to prevent and avoid abuse of the legal process.

19. It is their submission that **Article 10 of the Constitution** binds all state organs and public officers to uphold the national values and principles of governance, including human dignity, equality, non-discrimination, integrity, transparency, and accountability. According to the Petitioners, the Respondents' arbitrary actions and unwarranted arrests were contrary to these principles and therefore unconstitutional.

20. The Petitioners have also invoked the provisions of **Article 9 of the International Covenant on Civil and Political**

Rights (ICCPR), which guarantees every person's right to liberty and security of person, and prohibits arbitrary arrest or detention except in accordance with law. They argued that by virtue of **Article 2(6) of the Constitution**, this Covenant forms part of the Kenyan law, and thus the Respondents' conduct offended both domestic and international human rights obligations warranting the Court's intervention.

21. To buttress their argument, the Petitioners have cited the case of **Keroche Industries Limited -vs- Kenya Revenue Authority & 5 Others**, where the court held that **public authorities must not abuse their powers by engaging in arbitrary or unfair conduct that frustrates legitimate expectations or violates the rule of law**. The Petitioners have submitted that the arbitrary and unsubstantiated arrests in their case mirrored the abuse of power condemned in that decision.

22. Further reliance has been placed on the Court of Appeal decision in the case of **Judicial Service Commission -vs-**

Mbalu Mutava & Another [2014] eKLR, where it was held that **Article 47 of the Constitution** entrenches the right to fair administrative action as part of the Bill of Rights, reflecting national values such as the rule of law, human dignity, social justice, and accountability. The Petitioners have submitted that the Respondents' conduct was a blatant violation of their right to fair administrative action as contemplated under **Article 47 of the Constitution**.

23. The Petitioners have further submitted that failure by this Honourable Court to intervene and grant the conservatory orders sought would expose the Petitioners to continued harassment, arbitrary arrests and unwarranted criminal proceedings, which would amount to deprivation of liberty and violation of their constitutional rights.

24. In further support of their case, the Petitioners have cited the decision of the Supreme Court in the case of **Gatirau Peter Munya -vs- Dickson Mwenda Kithinji & 2 Others (2014) eKLR**, where the Court clarified the nature of

conservatory orders as public law remedies meant to safeguard constitutional values, protect public interest, and ensure the ordered functioning of public institutions. They submitted that their application met the criteria established in that case.

25. Therefore, the Petitioners have urged the Court to find that the Respondents' conduct amounted to a violation of their constitutional rights and freedoms, and to grant the orders sought in the Petition.

26. On the issue of costs, the Petitioners have submitted that costs should follow the event pursuant to the provisions of **Section 27 of the Civil Procedure Act (Cap 21)**, and as affirmed in the **Halsbury's Laws of England (4th Edition, Vol. 37 at P. 552)**, which provides that the successful party is ordinarily entitled to costs unless the court finds reason to

order otherwise. They have therefore prayed that costs of the Petition be awarded to them on a full indemnity basis.

Respondents submissions

27. The 2nd and 4th Respondents filed their written submissions dated 20th February 2025 in opposition to the Petition dated 26th June, 2023. Counsel for the Respondents have begun by setting out the grounds contained in their Grounds of Opposition and submitted that the Petition failed to raise any constitutional issue against the 2nd and 4th Respondents capable of invoking this Court's jurisdiction. Counsel thereafter identified the following issues as arising for the court's determination:-

(a) Whether the 2nd Respondent contravened Articles 243 and 244 of the Constitution of Kenya, 2010 and Section 24, 54 and 58 of the National Police Service Act No. 11A of 2011.

(b) Whether the Petition has been pleaded with specific particularity thus meeting the threshold on how the 2nd and 4th Respondents have violated their rights?

(c) Whether the Petition offends the provisions of Section 107 and 108 of the Evidence Act on the burden of proof; and,

(d) Whether the Petitioners are entitled to the remedies sought?

28. In answering the above questions, it is the Respondents' position that the Petitioners had not demonstrated, with the requisite specificity, any act or omission on the part of the 2nd to 4th Respondents that constituted a violation of their constitutional rights and freedoms. As such, they have argued that the Petition has not met the threshold established in the case of **Anarita Karimi Njeru -vs-Republic [1979] 1 KLR 154**, as reaffirmed in the case of **Mumo Matemu -vs-Trusted Society of Human Rights Alliance [2013] eKLR**, which requires a Petitioner alleging violation of constitutional rights to plead with particularity the specific provisions alleged to have been violated, the nature of such violation, and the manner in which it was occasioned.

29. Counsel has submitted that the Petitioners merely made generalized and

unsubstantiated allegations of harassment, arrest, and intimidation without presenting any factual matrix or evidence linking the 2nd and 4th Respondents to such alleged violations.

30. It has therefore been contended that the Petition is fundamentally defective and contrary to the provisions of **Sections 107 and 109 of the Evidence Act (Cap 80, Laws of Kenya)** on the burden of proof. The Respondents maintained that mere assertions, suspicions, or apprehensions cannot suffice to discharge the legal burden imposed upon a petitioner in constitutional litigation. They have cited the decision in the case of **Evans Nyakwana -vs- Cleophas Bwana Ongaro [2015] eKLR**, where the Court held that *'the legal burden of proof lies upon the party who invokes the aid of the law and asserts the affirmative of the issue'*.

31. The Respondents have further submitted that the 2nd Respondent, being the Inspector General of the National Police Service, derives constitutional and statutory authority under **Articles 243 and 244 of the Constitution** and

Sections 24, 27, and 35 of the National Police Service Act (No. 11A of 2011) to investigate crimes, enforce the law, apprehend offenders, and maintain public order. In the performance of these functions, the police are not subject to the direction or control of any person or authority, save as provided by law.

32. It is their argument that the ongoing or contemplated investigations into the Petitioners' conduct fall squarely within the constitutional mandate of the police and cannot, therefore, be construed as a violation of any right or freedom. In support of this position, the Respondents relied on the provisions under **Article 24 of the Constitution**, in noting that rights and fundamental freedoms are not absolute and may be limited by law provided such limitation is reasonable and justifiable. They have argued that actions such as arrest, detention, search, and seizure are all lawful investigative tools expressly permitted by the Constitution and statute, and therefore cannot, without more, amount to a violation of rights.

33. In further support of the Respondents' case, counsel has also cited the decisions in the cases of **Kulraj Singh Bhangra -vs- Director General, Kenya Citizens and Foreign National Management Service [2014] eKLR** and **Kamal Jadval Vekeria -vs- Director General, Kenya Citizens and Foreign National Management Service [2016] eKLR**, where the courts emphasized that a *party alleging constitutional violations must provide clear particulars and supporting evidence*. Similarly, in the case of **Daniel Chacha Muriri -vs- Attorney General [2012] eKLR**, the Court held that a *Petitioner must not only specify the rights allegedly violated but must also demonstrate the manner and the actor responsible for such violation*.

34. The Respondents have submitted that in the present case, the Petitioners had not presented any credible evidence of prejudice, damage, or infringement arising from the police investigations, and that their allegations of harassment were speculative and unsupported. Therefore, the Respondents

have maintained that the Petition was premature and amounted to an attempt to curtail the constitutional powers of investigative and prosecutorial agencies and referred the court to the case of **Daniel Toroitich Arap Moi -vs- Mwangi Stephen Muriithi & Another [2014] eKLR**, where the Court underscored that *even in the absence of a defence or rebuttal, a claimant must still adduce credible evidence sufficient to meet the standard of proof on a balance of probabilities.*

35. Counsel has further submitted that the Petitioners have not demonstrated their entitlement to the remedies sought. They have relied on the reasoning in the case of **Palace Investment Ltd -vs- Geoffrey Kariuki Mwenda & Another [2015] eKLR**, where the court, quoting **Miller v Minister of Pensions (1947) 2 All ER 372**, stated that the burden is discharged only where the evidence makes it more probable than not that the Petitioner's assertions are true. In this instance, the Respondents assert that the Petitioners' evidence falls short of that standard.

36. The Respondents have also cited the case of **David Bagine -vs- Martin Bundi [1997] eKLR**, where the Court of Appeal while in adopting the decision in the case of **Bonham Carter -vs- Hyde Park Hotel Ltd (1948) 64 TLR 177**, held that *a party claiming damages must prove actual loss suffered and cannot merely throw figures at the court without evidential backing*. They have added that in the case of **Anne Wambui Ndiritu -vs- Joseph Kiprono Ropkoi & Another [2005] 1 EA 334**, the Court of Appeal reiterated that both the legal and evidential burdens lie upon the party asserting the affirmative, and failure to discharge that burden is fatal to the claim.

37. It is thus the Respondents' submission that the Petitioners have not adduced any evidence to establish that the actions of the 2nd and 4th Respondents were arbitrary, malicious, or beyond the scope of their constitutional mandate. They have contended that investigations are part of the normal exercise of police powers and cannot, by themselves, be deemed unconstitutional. They have also submitted that the Petitioners

have failed to prove any violation or threatened violation of their fundamental rights and freedoms and that the orders sought, if granted, would unjustly curtail the lawful exercise of constitutional and statutory powers vested in the National Police Service.

38. In conclusion, the Respondents have urged this Court to find that the Petition is frivolous, devoid of merit, and an abuse of the court process. Accordingly, they have prayed that the Petition be dismissed with costs to the 2nd and 4th Respondents.

Analysis and Determination

39. I have carefully considered the Petition dated 26th June, 2023, the supporting affidavits, the Grounds of Opposition dated 20th February, 2025, and the rival written submissions by both the Petitioners and the 2nd and 4th Respondents respectively. From the pleadings and submissions on record, the court finds that the broad issues that fall for this Court's determination are as follows:-

a) Whether the Petition meets the constitutional threshold for a Constitutional Petition;

b) Whether the actions of the 2nd and 4th Respondents violated or threatened to violate the Petitioners' constitutional rights and freedoms;

c) Whether the Petitioners have proved their case to the requisite standard; and

d) Whether the Petitioners are entitled to the reliefs sought.

a) Whether the Petition meets the Constitutional Threshold

40. In determining Constitutional Petitions alleging violation of fundamental rights, the starting point is the question of whether the petition meets the basic threshold established by precedent. The guiding principle as clearly pointed out by the counsel for the 2nd to the 4th Respondents is found in the case of **Anarita Karimi Njeru -vs- Republic [1979] 1 KLR 154**, where the Court held *that if a person is seeking redress from the High Court on a matter which involves a reference to the Constitution, it is important that he should set out with a reasonable degree of precision that of which he complains, the*

provisions said to be infringed, and the manner in which they are alleged to be infringed.

41. As such, Constitutional Petitions must not only cite the allegedly violated provisions, but must also demonstrate by evidence, the factual basis of the alleged infringements. It is therefore not enough for a petitioner to cite several provisions of the Constitution without explaining how they were violated. Applying the foregoing principles to the instant Petition, it is apparent that the Petitioners have cited various constitutional provisions, including **Articles 10, 19, 20, 21, 22, 23, 24, 27, 36, 47, and 49, all of the Constitution.**

42. However, beyond stating that some of the 1st Petitioner's employees were arrested on grounds of a search conducted by allegedly acting on instructions of the 2nd Respondents, the Petitioners have not stated with precision how their personal constitutional rights and not those of their employees, were infringed or threatened by the Respondents. The Petitioners have also not provided sufficient factual detail to establish how

and what specific acts by the 2nd and 4th Respondents infringed or threatened their rights. Further they have neither annexed any affidavits from the allegedly arrested employees, nor have they presented any documentation or contemporaneous evidence showing unlawful or arbitrary police conduct or even evidence on the alleged continued threats.

43. While this Court appreciates that constitutional pleadings are to be approached with a measure of liberal interpretation, as held in the case of **John Harun Mwau -vs- Peter Gastrow & 3 Others [2014] eKLR**, the Court held that *such liberality cannot extend to condoning vague and unsubstantiated allegations*. So that though invoking constitutional provisions, the Petitioner before this Court fails to demonstrate with precision how the Respondents' acts or omissions infringed their rights and those of their employees. This Court is therefore persuaded that the Petition has not fully met the constitutional threshold as established vide the decisions in **Anarita Karimi Njeru (supra) and Mumo Matemu (supra)**.

44. On this finding alone, the Petition would stand to be dismissed for want of precision, specificity, and evidential foundation, as it has failed to disclose any actionable constitutional controversy against the 2nd and 4th Respondents. It is worth noting that the Court cannot be invited to engage in speculative or abstract constitutional inquiry where no demonstrable violation has been shown.

45. However, for the sake of completeness and in the interest of judicial conclusiveness, were this Court to find otherwise, it would have proceeded to address the remaining issues framed for determination, not as a concession of merit, but purely to demonstrate that even on their substance, the Petition remains legally untenable and without merit, as will be discussed hereunder.

b) Whether the actions of the 2nd and 4th Respondents violated or threatened to violate the Petitioners' rights

44. The Petitioners' principal grievance is that officers attached to the **Directorate of Criminal Investigations (DCI)** invaded their premises and arrested several employees, allegedly without lawful cause, and that the continued threat of arrest amounts to harassment and violation of their rights under **Articles 36, 47, and 49 of the Constitution.**

45. The Respondents, on the other hand, have contended that they acted within their constitutional and statutory mandate to investigate criminal complaints. They have relied on the provisions under **Articles 243 and 244** of the Constitution, as well as **Sections 24, 27, and 35 of the National Police Service Act**, which empower the National Police Service to maintain law and order, prevent and detect crime, apprehend offenders, and enforce all laws.

46. **Article 244 of the Constitution** provides in part that the **National Police Service** *shall strive to "prevent corruption and promote and practice transparency and accountability;* and comply with constitutional standards of

human rights and fundamental freedoms.” Thus, while the police have wide investigative powers, those powers must be exercised within the bounds of the law and respect for constitutional safeguards.

47. In elaborating the same, the court in the case of **Republic -vs- Commissioner of Police & Another Ex parte Michael Monari & Another [2012] KEHC 4595 (KLR)** expressed itself that the police have a duty to investigate any complaint once a complaint is made and it suffices for the police to establish reasonable suspicion before preferring charges.

48. Therefore, this Court can only interfere with that mandate if it is

shown that the police are acting in bad faith, for ulterior motives, or in violation of the Constitution. This is so since it is not the duty of the Court to interfere with the powers of the police or the Director of Public Prosecutions to investigate and prosecute unless cogent evidence is presented to demonstrate that such powers are being

exercised unlawfully, in bad faith, or for purposes other than those intended by law.

49. In the present case, the Petitioners have not demonstrated that the actions of the Respondents were arbitrary, malicious, or outside the scope of their statutory duties. Instead, the Petitioners have alleged that after their employees were detained, they were brought before a court of law and later discharged when no probable evidence could be found to sustain the charges against them. They have however not pointed out how this sequence of events is indicative of malice or abuse of power bestowed upon the Respondents by the Constitution.

50. In this court's view, the mere fact of being investigated or the prospect of arrest does not in itself constitute a violation of constitutional rights. The right provided under **Article 49(1)(a)** of the Constitution protects against arbitrary arrest, but it does not insulate individuals from lawful investigations or prosecution. A court will not intervene to stop investigations or prosecution merely

because an individual perceives them as harassing or inconvenient.

51. Additionally, **Article 245(4)(a) and (b) of the Constitution** expressly prohibits any person or authority, including this Court, from directing the Inspector General with respect to the investigation of any particular offence or enforcement of the law against any person. Thus, intervention by the courts is only justified where the process is shown to be unconstitutional, oppressive, or actuated by malice, which circumstances have not been demonstrated and proven herein.

c) Whether the Petitioners have proved their case to the requisite standard

52. The law on burden of proof in constitutional Petitions mirrors that provides for in civil proceedings. **Section 107(1) of the Evidence Act** provides that *whoever desires the Court to give judgment as to any legal right dependent on the existence of facts must prove that those*

facts exist. This principle was reaffirmed in the case of **Hassan Ahmed Ibrahim -vs- Kenya National Bureau of Statistics & 2 Others [2019] eKLR**, where the Court held that a *Petitioner must prove, by credible evidence, the infringement of rights in the manner alleged.*

53. The Petitioners herein have not provided sufficient evidence to demonstrate that the 2nd to 4th Respondent personally ordered, directed, or condoned any unlawful action. There is no evidence adduced to support the alleged persisted harassment or unwarranted summons issued by either of the Respondents. The Petitioners have the onus to show that it is more probable than not that a violation occurred through actions of either of the respondents which they failed to do so.

d) Whether the Petitioners are entitled to the Reliefs sought

55. In the instant Petition, the Petitioners seek *permanent injunctions restraining the Respondents from arresting,*

charging, or prosecuting them or their employees, as well as an award of general damages.

56. The power to grant such reliefs is discretionary and must be exercised judicially. However, the Court must be satisfied that the Applicant's rights are either violated or threatened with imminent violation or where the court is persuaded that public interest and the balance of convenience tilt in favour of granting such orders.

57. From the evidence presented, there is no proof of an ongoing or imminent violation of the Petitioners' rights. The investigations complained of appear to have concluded, and no criminal charges have been instituted against the Petitioners. The prayer for a permanent injunction would therefore amount to pre-empting the lawful exercise of constitutional powers vested in the 2nd and 3rd Respondents.

58. On the issue of general damages, it is trite law that damages for violation of constitutional rights are compensatory in nature and must be based on proof of

actual or probable harm. They are not awarded as a matter of course but must be grounded on cogent evidence of actual violation and demonstrable loss. In this case, no evidence of any quantifiable or intangible loss suffered by the Petitioners has been adduced. Accordingly, the prayer for general damages cannot stand.

59. The upshot is that, this Court finds that no violation of constitutional rights has been made out by the Petitioners and in the circumstances, the Court finds no merit in this Petition. The court then proceeds to dismiss the Petitioner dated 26th June, 2024 with no order as to costs.

It is so ordered.

**JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT
KIAMBU THIS 3RD DAY OF NOVEMBER, 2025.**

**D. O. CHEPKWONY
JUDGE**

In the presence of:

M/S Anyiela holding brief for Mr. Okatch counsel for Petitioners

No appearance for and by the Respondents

Court Assistant – Martin/Sakina

ORIGINAL