



REPUBLIC OF KENYA



**Mwendwa & another v Inspector General of Police & 2 others; Kuria (Interested Party)
(Petition E027 of 2025) [2025] KEHC 18314 (KLR) (5 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18314 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
PETITION E027 OF 2025
DO CHEPKWONY, J
DECEMBER 5, 2025**

**IN THE MATTER OF: ARTICLES 1, 2, 3, 10, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 36, 38,
39, 40, 47, 48, 49, 57, 165(3), 258 OF THE CONSTITUTION OF KENYA AND RULE 4 OF
THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL
FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013 (MUTUNGA RULES))**

BETWEEN

MALUKI KITILI MWENDWA 1ST PETITIONER

WINFRED NYIVA MWENDWA 2ND PETITIONER

AND

INSPECTOR GENERAL OF POLICE 1ST RESPONDENT

DIRECTOR OF PUBLIC PROSECUTION 2ND RESPONDENT

DIRECTOR OF CRIMINAL INVESTIGATIONS 3RD RESPONDENT

AND

GEOFFREY NGURUMI KURIA INTERESTED PARTY

RULING

1. Although this Court, by its directions issued on 2nd April, 2025, directed the parties to canvass the Notice of Motion dated 1st April, 2025, the record reveals that the parties proceeded to file written submissions addressing both the Application and the substantive Petition contemporaneously.
2. Be that as it may, having carefully perused the said submissions together with the affidavits and annexures filed by the respective parties, the Court is satisfied that the material on record is sufficiently comprehensive to enable it render a reasoned determination on the Substantive Petition.



3. However, for purposes of procedural orderliness, this Court shall refrain from designating this decision as the final Judgment, so as to afford the parties an opportunity to present any further evidence they may wish to rely on, for reasons stated hereinbelow. Nonetheless, should the parties fail to tender any additional evidence within the time permitted, this ruling shall stand and be deemed as the final and conclusive determination of the Court on all matters raised in the Petition.
4. The Notice of Motion filed by the Petitioner/Applicants under Articles 19, 20, 21, 22, and 258 of *the Constitution* of Kenya, Rule 4 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (Mutunga Rules), seeks the following orders: -
 - a. Spent.
 - b. That pending the hearing and determination of the Application and the Petition, a conservatory order be issued restraining the Respondents from instituting, arresting, preferring, or registering any criminal charges, or continuing with any intended prosecution against the Applicants, and if any charges have already been preferred, the same be stayed.
 - c. That pending the hearing and determination of the Petition, conservatory orders be issued preventing and/or restraining the 1st and 3rd Respondents, whether by themselves, their agents, or police officers, from arresting, detaining, or in any manner interfering with the Applicants' right to liberty and movement.
 - d. That pending determination of the Petition, conservatory orders be issued preventing and/or restraining the 1st and 3rd Respondents acting from its agents, police officers from harassing the Applicants.
 - e. That the Applicants be admitted to anticipatory bail on such reasonable terms as the Court may deem fit.
 - f. Any other remedy that the court deems fit and just.
5. The application is premised on the grounds set out on its face and supported by the Supporting Affidavit sworn by the 1st Applicant, and annexed documents marked MKM-1.
6. The factual foundation of the Application, as discerned from the affidavit, is that the Applicants are Directors and Shareholders of Chania Enterprises Limited, the registered proprietor of Land Reference Number 10890/321, comprised in Grant I.R. 18874/261, (hereinafter referred to as the suit property). It is deponed therein that by a letter of offer dated 23rd April, 2023, the Applicants, acting through the said Company, offered to sell the suit property to the Interested Party, Mr. Geoffrey Ngurumi Kuria, at a total consideration of Kshs.13,500,000. The Interested Party is said to have paid a deposit of Kshs.5,000,000, with the balance payable for over eighty-five (85) weeks through post-dated cheques.
7. Further, the Applicants further aver that at the request of the Interested Party, and in good faith, they agreed to transfer the suit property before completion so that the Interested Party could use the registered title to secure a bank facility to finance the balance of the purchase price. It is contended that pursuant to that request, the property was duly transferred and registered in the Interested Party's name on or about 17th November, 2023, after execution of the transfer documents on 19th November, 2023.
8. However, following the said transfer, the Applicants aver that the Interested Party began defaulting on his payment obligation since the cheques issued towards the balance of the purchase price were allegedly dishonoured upon presentation for lack of sufficient funds. The Applicants state that instead of fulfilling his contractual obligation, the Interested Party, in what is described as a calculated and deceitful attempt to avoid payment, lodged a false report with officers under the 1st and 3rd



Respondents, alleging that the Applicants had defrauded him by purporting to sell a non-existent property and by forging title documents.

9. It is deponed that these allegations were wholly unfounded and malicious, as the Applicants had produced genuine title documents and official searches from the Lands Registry both before and after the transfer, which confirmed Chania Enterprises Limited as the lawful proprietor of the property prior to its conveyance to the Interested Party.
10. Nonetheless, on 14th March 2025, the 1st Applicant was arrested by officers acting under the instructions or authority of the 1st and 3rd Respondents on allegations of obtaining money by false pretences and forgery, contrary to Sections 313 and 349 of the Penal Code. The Applicants assert that despite clear documentary proof of the authenticity of the transaction, the 2nd Respondent has recommended that criminal charges be instituted against them.
11. The Applicants contend that the actions of the Respondents are a clear abuse of power and a perversion of the criminal justice process, driven not by the pursuit of justice but by the Interested Party's ulterior motive to evade payment of the outstanding purchase price. They argue that the intended arrest and prosecution are not founded on any legitimate or reasonable suspicion of criminal conduct, but are instead designed to embarrass, intimidate, and exert undue pressure upon them to relinquish their lawful claim to the unpaid balance.
12. The Applicants further state that unless this Court intervenes, they face imminent violation of their fundamental rights and freedoms as guaranteed under *the Constitution*, including; the right to equality and protection of the law under Article 27(1); the right to dignity under Article 28; the right to freedom and security of the person and protection from arbitrary arrest under Article 29; the right to property under Article 40; the right to fair administrative action under Article 47 and the *Fair Administrative Action Act*; and the right to a fair trial under Article 50, all of *the Constitution* of Kenya, 2010.
13. It is further deponed that the Applicants are law-abiding citizens willing to comply with any reasonable bail or bond terms that this Honourable Court may impose, and that the balance of convenience and the interests of justice demand that they be protected by conservatory orders pending the hearing and determination of their Petition.

The Replying Affidavit

14. The Application is opposed through a Replying Affidavit sworn on 24th April, 2025 by No. 112819 Police Constable Nicodemus Musembi, an officer attached to the Directorate of Criminal Investigations (DCI) and one of the investigating officers handling the complaint forming the subject of these proceedings. The deponent states that he is duly conversant with the facts of the matter and according to him, the Applicants are persons of interest in an ongoing criminal investigation relating to the offence of obtaining money by false pretences contrary to Section 313 of the Penal Code. The investigations stem from a complaint lodged by Mr. Geoffrey Ngurumi Kuria, the Interested Party herein, which was recorded at King'eero Police Station under OB No. 17 of 16th October, 2024.
15. It is deponed that the Interested Party reported that he entered into an agreement with the Applicants, who are directors and shareholders of Chania Enterprises Limited, for the purchase of Land Reference No. 10890/321 at a consideration of Kshs.13,500,000. He made partial payments towards the transaction through bank accounts belonging to the 1st Applicant and the title document availed to him was indicated as Grant No. I.R. 265019. However, upon undertaking due diligence, the Interested Party discovered that the said parcel of land allegedly formed part of public land, and that the title presented by the Applicants was not supported by any legitimate records at the Ministry of Lands.



16. The deponent avers that upon receiving the complaint, the DCI commenced investigations and wrote to the Director of Land Administration, Ministry of Lands, Housing and Urban Development, through a letter dated 8th November, 2024, seeking verification of the authenticity of the title documents presented. In response, vide a letter dated the 10th December, 2024, the said Ministry confirmed that there were no official lease records or registration entries corresponding to Grant No. I.R. 265019.
17. The affidavit further discloses that following the Ministry's confirmation, the then Sub-County Criminal Investigations Officer (SCCIO) at Kabete, one Mr. Simon Chege, summoned the 1st Applicant in November, 2024 to record a statement and assist with investigations. However, the 1st Applicant allegedly failed to honour the summons. Consequently, on 17th December, 2024, the investigation file was forwarded to the Office of the Director of Public Prosecutions (ODPP) with a recommendation that the Applicants be charged with the offence of Obtaining Money by False Pretences under Section 313 of the Penal Code.
18. Upon reviewing the file, the DPP concurred with the recommendations and, by a letter dated 27th December, 2024, directed that the Applicants be charged accordingly. In execution of these directions, the DCI proceeded to arrest both the Applicant on 14th March, 2025, but after taking into consideration the advanced age of the 2nd Applicant, the Applicants were released on a free bond on the condition that they cooperate with the investigations and produce all relevant documentation to facilitate a conclusive inquiry.
19. The officer further avers that despite these lenient measures, the Applicants have failed to fully cooperate with the investigative process. They have allegedly disregarded subsequent summonses from the DCI, thus frustrating efforts to bring the investigation to a logical conclusion. Consequently, the Respondents maintain that they were left with no option but to consider re-arresting the Applicants to ensure compliance and completion of the investigation. The Respondents contend that the present application is premature, misconceived, and intended to stifle legitimate investigations and shield the Applicants from possible prosecution.
20. The deponent concludes by stating that the Application dated 1st April, 2025 is an abuse of the court process, devoid of merit and has been brought with unclean hands. He has therefore urged the Court to dismiss the Application with costs to allow the Respondents to conclude the investigations and ensure that justice is served to the complainant.

Further Affidavit

21. In response to the Respondents' Replying Affidavit, the 1st Applicant, Mr. Maluki Kitili Mwendwa, swore a Further Affidavit on 12th May, 2025 principally to rebut the averments made by Police Constable Nicodemus Musembi and to clarify what the Applicants describe as factual and procedural inaccuracies in the Respondents' account of the investigations.
22. The 1st Applicant deposes that he has carefully read the Replying Affidavit and strongly disputes its assertions, reiterating the position earlier set out in the supporting affidavit to the Notice of Motion. He specifically challenges the claim that the Directorate of Criminal Investigations (DCI) established that there were no records for the suit property in the Ardhi Sasa System. According to him, that assertion betrays a fundamental misunderstanding of Kenya's Land Registration Framework and demonstrates a lack of basic investigative diligence.
23. He explains that the suit property, Land Reference No. 10890/321, comprised in Grant I.R. 18874/261, is a freehold property located in Murang'a County, and as such, all records relating to



it are maintained at the Murang'a Land Registry. He avers that the Ardhi Sasa platform is centrally managed in Nairobi and primarily applies to leasehold properties, particularly those situated in Nairobi and select urban areas. Therefore, any purported search conducted by the DCI through Ardhi Sasa in Nairobi could not possibly yield results for a freehold property registered in Murang'a.

24. The deponent contends that the 3rd Respondent's failure to carry out a proper search at the Murang'a Land Registry, despite having copies of the title documents in their possession, raises doubts about the legitimacy and objectivity of the investigation. He asserts that this omission reflects either investigative incompetence or a deliberate effort to ignore readily available evidence that would have vindicated the Applicants.
25. Further, the 1st Applicant questions the propriety of the Interested Party's decision to lodge his complaint at King'eero Police Station in Kabete Sub-County, a jurisdiction geographically distant from the locus of the property in Murang'a County.
26. In response to the insinuation by the Respondents that the Applicants have failed to cooperate with the investigation, the 1st Applicant avers that he has, at all times, fully complied and furnished the investigating officers with comprehensive documentation demonstrating their genuine ownership of the land. He states that following his arrest on 14th March, 2025, he promptly provided copies of the original title deed, survey maps, and related ownership records, both physically and electronically, to the 3rd Respondent's office.
27. He denies ever being summoned prior to his arrest and maintains that he was apprehended without prior notice or an opportunity to clarify the matter, in breach of the constitutional guarantees of due process and fair administrative action. He avers that had he been afforded an opportunity to present the relevant documents before his arrest, the misunderstanding could have been resolved without the need for coercive police action.
28. The 1st Applicant further deposes that the Respondents' continued insistence on pursuing investigations, even after being provided with conclusive documentary proof of ownership, is unjustified and evidently influenced by the Interested Party's unsubstantiated and malicious allegations. He asserts that the actions of the Respondents, particularly his arrest and the persistent threats of prosecution, amount to harassment, intimidation, and psychological oppression, constituting a gross violation of their fundamental rights and freedoms under *the Constitution*.
29. The 1st Applicant emphasizes that the present Application dated 1st April, 2025 is properly before the Court and raises genuine constitutional questions concerning the abuse of investigative and prosecutorial powers. The Applicants, he maintains, are not seeking to frustrate the Interested Party's quest for justice but to protect themselves from unlawful, arbitrary, and oppressive conduct by State officers.

Applicants' Submissions

30. The Application dated 1st April 2025 was canvassed by way of written submissions. Both parties duly complied and filed their respective submissions, which the Court has carefully considered.
31. The Applicants' submissions are dated 30th May, 2025 and were filed in support of the Notice of Motion, the Petition both dated 1st April, 2025. Therein, counsel for the Applicants has submitted that the present Application arises from a violation and threatened violation of the Applicants' fundamental rights and freedoms under *the Constitution* of Kenya, occasioned by the Respondents' arbitrary actions following a civil and commercial land transaction between the Applicants and the Interested Party. He has identified the following issues for this court to determine;



- a. Whether the Petition and Application are competent before this Court;
 - b. Whether the Respondents' actions constitute a violation or threatened violation of the Applicants' constitutional rights;
 - c. Whether the Respondents conducted proper and lawful investigations; and
 - d. Whether the Applicants are entitled to the reliefs sought.
32. On whether the Petition and application are competent, counsel submitted that the Petition and Application are competently before this Honourable Court, which is duly clothed with jurisdiction under Article 165(3) of *the Constitution* to hear and determine questions relating to the enforcement of fundamental rights and freedoms.
33. The Applicants have invoked Article 19(1) of *the Constitution* in emphasizing that the Bill of Rights forms an integral part of Kenya's democratic state and serves as the framework for the social, economic, and cultural policies of the nation. Reliance has been placed on the case of *John Juma & 2 Others –vs- Patrick Lihanda & Another; Zedekiah Orera & 4 Others (Interested Parties)* [2018] eKLR, where the Court held that aggrieved persons alleging infringement of constitutional rights have no other recourse but to approach the High Court for redress. On that basis, the Applicants have maintained that their Application is properly before a competent constitutional forum.
34. With regard to whether the Respondents' actions constitute a violation of Constitutional Rights, the Applicants have contended that the Respondents' conduct, particularly the arrest and threats of prosecution, have violated or threaten to violate their fundamental rights and freedoms as guaranteed under *the Constitution*, including but not limited to Articles 27, 28, 29, 40, and 47 of *the Constitution*.
35. On Article 27, the Applicants have argued that every Kenyan is equal before the law and entitled to equal protection and benefit of the law. They have contended that the Respondents, by acting solely on the Interested Party's unsubstantiated allegations and disregarding the documentary evidence of ownership provided by the Applicants, treated them unfairly and unequally in comparison to the Interested Party. This, they have argued, amounts to a clear violation of the right to equality before the law.
36. The Applicants have further relied on Article 28, which guarantees the right to inherent human dignity. They have submitted that human dignity constitutes the intrinsic worth and value of every person, by virtue of being human. The Applicants have maintained that the manner in which the Respondents have handled the matter, citing the arbitrary arrest of the 1st Applicant without just cause or verification of facts, was humiliating and degrading, and amounts to a denial of their right to be treated with respect and dignity. They have asserted that the Respondents' actions demonstrate a lack of fairness and civility in dealing with them, contrary to the constitutional obligation to uphold the dignity of all persons.
37. With regard to Article 29, the Applicants have submitted that every Kenyan has the right to freedom and security of the person. They have emphasized that the right under Article 29 encompasses both freedom from physical restraint and protection against violations of bodily and psychological integrity. The Applicants have contended that the 1st Applicant's arrest was unlawful, arbitrary, and unjustified, as it was effected without any reasonable or probable cause and in complete disregard of due process. They have further submitted that the Respondents, without any colour of right or justification, have continuously threatened to arrest and arbitrarily detain them without just cause, thereby denying them their constitutional right to freedom and security of the person.



38. The Applicants have also invoked Article 40 of *the Constitution*, which protects the right to property. They have argued that the ongoing investigations and threats of criminal prosecution have the effect of undermining their proprietary rights and enabling fraudulent conduct. It is their position that the 1st and 3rd Respondents, through their unwarranted actions, appear to be aiding the Interested Party in his scheme to defraud the Applicants of their legitimate enjoyment of the proceeds of the suit property. They have maintained that the Respondents' conduct in disregarding the authenticity of the property documents provided by the Applicants amounts to a violation of their right to property as guaranteed under *the Constitution*.
39. On Article 47 concerning the right to fair administrative action, the Applicants have submitted that the Respondents have violated this constitutional safeguard through their arbitrary actions. They have argued that the Respondents arrested and harassed the Applicants without following the proper investigative process and have continued to threaten them without lawful justification. Counsel for the Applicants have emphasized that, as a general rule, an arrest should not be made unless and until sufficient evidence has been gathered through proper investigations to justify such action. The investigating officer's starting point, they have submitted, should always be the enforcement of the right to a fair hearing and due process. The Applicants have argued that the arrest of the 1st Applicant, effected without prior summons or a reasonable opportunity to provide relevant information, amounting to a gross violation of his right to fair administrative action and due process under Article 47.
40. To underscore the sanctity of human dignity, the Applicants have cited the South African decision in the case of *S –vs- Makwanyane & Another (CCT3/94) [1995] ZACC 3*, which affirmed that human dignity is the foundation of all other rights, and that every person must be treated with respect and concern.
41. The Applicants have also relied on the case of *Mohamed Feisal & 19 Others –vs- Henry Kandie, Chief Inspector of Police, OCS Ongata Rongai Police Station & 7 Others; National Police Service Commission & Another (Interested Party) [2018] eKLR*, where the Court reiterated that arbitrary arrest and harassment of citizens offend constitutional principles and amount to abuse of police powers.
42. On whether the Respondents conducted proper and lawful investigations, counsel for the Applicants have submitted that the investigations leading to the 1st Applicant's arrest were fundamentally flawed, reckless, and unlawful. It has been argued that the 3rd Respondent's reliance on a search conducted through the Ardhi Sasa System in Nairobi, rather than a search at the Murang'a Land Registry, was a glaring procedural error and demonstrated gross incompetence and lack of due diligence.
43. The Applicants have maintained that the suit property is a freehold parcel situated in Murang'a County, and as such, all its records are held at the Murang'a Land Registry. A purported search at Ardhi Sasa could not have yielded any valid results. The failure to verify ownership at the correct registry, despite possession of the title documents, has been cited as evidence of bad faith and a deliberate attempt to ignore exculpatory evidence.
44. It has further been submitted that the Respondents have acted in a manner inconsistent with their constitutional duties under Article 244, which requires the National Police Service to observe the highest standards of professionalism, respect human rights, and maintain public confidence.
45. The Applicants have relied on *Republic –vs- Communications Authority of Kenya Ex parte ICT Association of Kenya (ICTAK) [2021] eKLR* and *Pastoli –vs- Kabale District Local Government Council & Others [2008] 2 EA 300*, for the proposition that administrative or investigative actions



undertaken without jurisdiction, in bad faith, or contrary to the law are illegal, irrational, and procedurally improper, and therefore amenable to constitutional challenge.

46. And whether the Applicants are entitled to the reliefs sought, it is the Applicants' position that they have demonstrated a clear and imminent threat to their constitutional rights. They have cited continuous harassment, intimidation, and mental anguish resulting from the Respondents' conduct, and maintain that the Court should intervene to preserve their liberty and dignity. On that basis, they have urged the Court to grant the conservatory and declaratory reliefs sought in the application.
47. In conclusion, Counsel for the Applicants have submitted that the Respondents' conduct amounts to a gross abuse of power and a violation of the Bill of Rights. The Applicants have established a prima facie case showing that their constitutional rights under Articles 27, 28, 29, 40, 47, and 50, all of *the Constitution* have been violated or are under imminent threat.
48. Accordingly, they have urged this Honourable Court to allow the Application dated 1st April, 2025 and grant all the reliefs sought therein, together with such further orders as may be necessary to preserve and protect their constitutional rights.

Respondents' and Interested Party's Submissions

49. The Respondents and the Interested Party filed their written submissions dated 9th June, 2025 in opposition to the Applicants' Petition and Application dated 1st April, 2025. The submissions, collectively contend that the Application is misconceived, premature, and an abuse of the court process. They have maintained that the investigations and any intended prosecution of the Applicants are lawful, justified, and within their respective constitutional mandates. They have identified the following issues for determination:-
 - a. Whether the court can entertain the issues raised by the Applicants.
 - b. Whether there existed/exists a proper factual and legal basis for the investigations.
 - c. What is the role of the Director of Public Prosecution, whether the investigations were properly conducted.
50. On the issue of whether the court can entertain the issues raised by the Applicants, the Respondents have contended that this Court is not the appropriate forum to test the veracity of allegations relating to ownership, transfer, and validity of land documents, all of which are heavily contested. These are matters of fact requiring detailed examination of documentary evidence and witness testimony. The Court, it has been argued, should resist the temptation to determine the merits of the Applicants' defence to the complaint at this interlocutory stage without hearing the parties on the merits of their respective cases.
51. Counsel have submitted that *the Constitution* and the *Fair Administrative Action Act*, 2015, set clear parameters on the scope of Judicial Review and constitutional intervention, which are limited to assessing procedural fairness, legality, and jurisdiction, not to conducting factual trials or evaluating the sufficiency of evidence. Accordingly, they have urged the Court to decline converting itself into a trial forum or to usurp the lawful mandate of investigative and prosecutorial agencies.
52. With regard to the issue on whether there existed a proper factual and legal basis for the investigations, the Respondents have maintained that the Directorate of Criminal Investigations (DCI) and the Director of Public Prosecutions (DPP) acted within their lawful authority in investigating and recommending the intended prosecution of the Applicants for the offence of obtaining money by false pretences contrary to Section 313 of the Penal Code.



53. They have argued that the investigations were triggered by a formal complaint lodged by the Interested Party, Mr. Geoffrey Ngurumi Kuria, who alleged that the Applicants had fraudulently received money from him under the guise of selling to him Land Reference No. 10890/321, which later turned out to be situated on public land. It has been submitted that upon receipt of this complaint, the police had a constitutional and statutory duty to investigate the same as mandated under Article 243 of *the Constitution* and Section 51 of the *National Police Service Act*, which outlines the functions of police officers to detect, prevent, and investigate crime.
54. Counsel has submitted that there was therefore a sufficient factual and legal basis for the impugned investigations and that no evidence has been tendered to show that the Respondents acted with malice, bias, or ulterior motive. It has further emphasized that the 2nd Respondent, (the DPP) made an independent decision to recommend prosecution after reviewing the investigation file in line with the ODP Decision to Charge Guidelines, 2019, which set out the principles of reasonable suspicion, sufficiency of evidence, and public interest in prosecution.
55. The Respondents have contended that before the institution of criminal proceedings, there must be reasonable and probable cause, but the sufficiency and reliability of that evidence are matters reserved for the trial court. They have argued that the Applicants' assertions of innocence are defences properly ventilated before the trial court and not through a constitutional petition seeking anticipatory bail or conservatory reliefs.
56. On the review and the role of the Director of Public Prosecutions, counsel further submitted that under Article 157(4) of *the Constitution*, the DPP exercises independent authority in deciding whether or not to prosecute, and that such discretion can only be interfered with in exceptional cases, such as where there is proof of bad faith, malice, or abuse of process. They have argued that no such evidence has been adduced in the present case.
57. The Respondents have highlighted that the decision to charge the Applicants was arrived at after careful review of the evidence and consideration of the applicable law. That the DPP considered the seriousness of the allegations, the sufficiency of evidence, and the public interest in prosecuting the matter to ensure justice is done for both the complainant and the accused. They have reiterated that the Applicants have not shown that the DPP acted outside his constitutional or statutory powers, nor that he was improperly influenced by the Interested Party.

SUBDIVISION - Whether the Investigations Were Properly Conducted

58. Lastly, on whether the investigations were properly conducted, relying on Paragraphs 6 and 7 of the Replying Affidavit of PC Nicodemus Musembi, the Respondents maintained that the complaint was properly lodged at King'ero Police Station under OB No. 17 of 16th October 2024, and that the investigations were lawfully conducted. That the DCI sought clarification from the Director of Land Administration at the Ministry of Lands, who confirmed that the land in question was public land and that the purported grant could not be authenticated.
59. The Respondents have insisted that the Applicants were summoned to record statements and were thereafter released on free bond, demonstrating that due process was followed hence the Applicants' allegations of harassment, malice, or violation of rights were therefore unfounded.
60. The Respondents have relied on the decision in the case of Republic –vs- Commissioner of Police & Another Ex parte Michael Monari & Another [2012] eKLR, where the Court held that the police have a duty to investigate any complaint once it is made, and that so long as investigations and subsequent prosecution are carried out reasonably and in good faith, the High Court should be slow to interfere with that process.



61. The Respondents have submitted that the ongoing investigations are lawful, impartial, and conducted in accordance with the *National Police Service Act*, No. 11A of 2011, and *the Constitution*. They have emphasized that the Applicants' rights have not been violated and that any alleged prejudice can be adequately addressed within the criminal justice process.

Conclusion

62. In conclusion, the Respondents and the Interested Party have submitted that the Applicants have failed to meet the threshold for the grant of conservatory or anticipatory relief. They have argued that the Application is speculative, premature, and aimed at insulating the Applicants from legitimate criminal accountability.
63. The Respondents have thus urged the Court to find that no violation or threatened violation of the Applicants' rights has been demonstrated, and that the Application and Petition amount to an abuse of the court process. They have relied on the decision in the case of *Njuguna –vs- Republic* [2004] eKLR 520, where the Court held that the mere existence of investigations or pending prosecution is not in itself a violation of rights unless it is shown to be actuated by malice or bad faith.
64. Accordingly, the Respondents have prayed that the Notice of Motion dated 1st April, 2025 and the accompanying Petition be dismissed with costs, to allow the Respondents to complete the investigations and the DPP to exercise his independent constitutional mandate without interference.

Analysis and Determination

65. I have considered the Notice of Motion dated 1st April, 2025, the Supporting, Replying and further Affidavits filed by the respective parties, and the written submissions together with the authorities relied upon. The single broad question that emerges for determination is whether, in the circumstances presented, the Applicants have established a sufficient basis to warrant the grant of the conservatory reliefs sought pending the hearing and determination of their Petition.
66. It is trite that the jurisdiction of this Court to issue conservatory orders is anchored in Articles 23(3) and 165(3)(b) of *the Constitution*, as read together with Rule 23 of the Mutunga Rules, 2013. In essence, an applicant must demonstrate a prima facie case with a likelihood of success; that unless the conservatory orders are granted there is a real danger that he will suffer prejudice of a constitutional nature; and that the grant of such orders will enhance rather than obstruct the ends of justice.
67. Applying those principles to the present application, the key question that comes in mind is whether the Applicants have established a prima facie case to demonstrate that their rights under *the Constitution* have been, or are under imminent threat of being, violated by the Respondents' actions. In answering this, the Court is not required to delve into the merits of any potential criminal charges but rather to assess whether the impugned actions disclose illegality, bad faith, or procedural impropriety sufficient to warrant constitutional protection at this stage.
68. The uncontested evidence before this Court is that the Applicants, through their Company, Chania Enterprises Limited, were the registered proprietors of Land Reference No. 10890/321 comprised in Grant I.R. 18874/261. They have annexed a copy of the original title deed bearing the Company's name, which, upon their own admission, was subsequently transferred to the Interested Party pursuant to a letter of offer dated 23rd April, 2023. The Interested Party has not denied that upon the said transfer, he is currently in possession of the title to the said parcel. Indeed, his grievance, as captured in the Respondents' Replying Affidavit, is that upon conducting due diligence, he allegedly established that the parcel forms part of public land and that the Applicants' title was forged.



69. However, what remains unexplained, is when and how the Interested Party came to this realisation and, more importantly, why he accepted the transfer, took possession of the property, and retained the title for months without raising any objection. The documents presented by the Applicants show that the transfer was completed on or about 17th November, 2023, and the complaint to the police lodged almost a year later, on 16th October, 2024. Nonetheless, in opposition of the application, the Respondents have heavily relied on the letter dated 10th December, 2024 from the Director of Land Administration, which indicated that there were no corresponding records for the grant number as per the Ardhi Sasa database.
70. In response to those assertions, the Applicants have pointed out that, the Ardhi Sasa platform is a centralized digital registry that primarily covers leasehold titles, and its records do not encompass all freehold parcels registered in county registries. As such, details on the subject title are held in Murang'a Land Registry and there was an official Search from the said registry confirming the same.
71. As such, given the controverted positions advanced by the parties, it is the court's view that the letter presented by the Respondent cannot be taken as a conclusive statement on the authenticity of the Applicants' title at this Juncture. Indeed, the said letter neither declared the title fraudulent nor nullified it; it simply stated that the particular grant number could not be traced within the Office of the Directorate of Land Administration. It did not address the Applicants' assertion that the property records were maintained at the Murang'a Land Registry, nor did it challenge the authenticity of the documentation exhibited by the Applicants. Therefore, the Court finds that the letter, while forming part of the investigative record, does not amount to a conclusive rebuttal of the Applicants' claim of lawful ownership prior to the transfer of the said land parcel to the Interested Party.
72. On the basis of the evidence before this Court, I am persuaded that the Applicants have presented a prima facie case that their title to the suit property existed and was duly registered prior to its transfer to the Interested Party. That title has not been substantively impugned by any competent authority, nor has any evidence been produced to show that it was forged or unlawfully procured. The Interested Party's complaint to the police, alleging that he was defrauded into purchasing a non-existent or public parcel of land, therefore appears to be based on contested facts that are better addressed through the civil process rather than by the invocation of criminal justice system.
73. While this Court is alive to the constitutional independence of the Office of the Director of Public Prosecutions under Article 157(10) of *the Constitution*, that independence is not absolute. The DPP's discretion to prosecute must always be exercised in a manner that is consistent with the values and principles of *the Constitution* and must not be used to aid private vendettas or settle civil disputes under the guise of criminal prosecution. The Court must intervene where it is apparent that the criminal process is being invoked for an ulterior purpose or in bad faith, or where it threatens to violate fundamental rights and freedoms.
74. In this case, the Applicants have demonstrated that they provided the Respondents with ownership documents and official search results from the Land Registry. The Respondents have not shown that they conducted any verification with the Land Registry at Murang'a or that they obtained any contradictory official record from the same. The decision to arrest the 1st Applicant, therefore, appears to have been made prematurely and without the benefit of full verification of facts. The letter of 10th December 2024 from the Ministry of Lands, relied upon by the Respondents, fell short of conclusively disproving the Applicants' ownership as per the copy of title represented.
75. The Court further finds it troubling that the Interested Party, having been the direct beneficiary of the transfer and registration of the suit property into his own name, has failed to explain at what stage he



realised that the land was allegedly public land. He has not rebutted the fact that he holds the original title in his name, having obtained the same through a transfer voluntarily executed by the Applicants. The absence of such a rebuttal raises doubts about the bona fides of his complaint and lends credence to the Applicants' claim that the criminal complaint was motivated by a desire to avoid paying the balance of the purchase price.

76. On the totality of the evidence and arguments before this Court, it is clear that the Respondents' conduct, in arresting and threatening continued prosecution without conclusive verification of the authenticity of the title, poses a real and imminent danger to the Applicants' constitutional rights; particularly their right to liberty, dignity, and fair administrative action. The criminal process should never be used as a tool of intimidation or coercion in matters that are fundamentally civil and contractual in nature.
77. Nevertheless, this Court must also remain cognizant of the constitutional limitations on its power to interfere with the mandate of the Director of Public Prosecutions. Article 157(4) of *the Constitution* empowers the DPP to institute and undertake criminal proceedings against any person before any court in respect of any offence alleged to have been committed. This power can only be interfered with in cases of clear abuse of process, bad faith, or where the prosecution is being used oppress a party(ies). At this stage, the Court has not been seized of oes not have sufficient basis to conclusively determine the propriety of any intended charges given the contested factual assertions by the parties.
78. Guided by this balance, the appropriate course is to preserve the Applicants' constitutional rights while allowing the Respondents, if they deem it fit, to pursue their statutory mandate in accordance with the law. Consequently, while the Court can issue conservatory orders to restrain arbitrary arrest, harassment, or intimidation of the Applicants, it cannot not bar the DPP from exercising his constitutional duty should sufficient evidence be found to sustain lawful charges.
79. In view of the foregoing analysis, this Court is satisfied that the Applicants have demonstrated a prima facie case of violation and threatened violation of their constitutional rights and that the balance of convenience tilts in favour of preserving those rights pending the determination of the Petition should additional evidence be adduced. Accordingly, the Court proceeds to order that:-
- a. A conservatory order be and is hereby issued restraining the 1st 2nd, and 3rd Respondents, whether by themselves, their officers, agents, or any person acting under their direction, from arresting, intimidating, harassing, or in any way interfering with the liberty, movement, or personal security of the Applicants pending the hearing and determination of the Petition herein or until such other time additional evidence shall be adduced as herein above directed.
 - b. Should the Respondents, upon completion of investigations and adducing further evidence as discussed in this ruling, deem it fit to proceed with the institution of any criminal proceedings against the Applicants, the Applicants shall be admitted to free bail on personal recognizance and shall present themselves to answer to any lawful summons issued in accordance with the law.
 - c. For avoidance of doubt, the Respondents and the Interested Party are at liberty to present further rebuttal evidence including but not limited to contradictory official records from Muranga Land Registry where the Original title was allegedly processed.
 - d. Each party shall bear its own costs.
- It is so ordered.



RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 5TH DAY OF DECEMBER , 2025.

D. O. CHEPKWONY

JUDGE

In the presence of:

M/S Maina holding brief for Mr. Osiemo counsel for Applicants/Petitioners

Court Assistant – Martin/Sakina

