

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KIBERA
PETITION NO. E003 OF 2025

DANIEL FAUSTINE

OMUYA.....PETITIONER

-VERSUS-

INSPECTOR GENERAL OF POLICE.....1ST

RESPONDENT

DIRECTORATE OF CRIMINAL INVESTIGATIONS.....2ND

RESPONDENT

DIRECTOR OF PUBLIC PROSECUTIONS.....3RD

RESPONDENT

THE HON. ATTORNEY GENERAL.....4TH

RESPONDENT

AND

NJONGE PENINAH

WANJIRU.....INTERESTED PARTY

JUDGEMENT

1. The Petitioner moved this Court by a Petition dated 18th March 2025 seeking declaratory and injunctive reliefs arising from investigations commenced by the 1st Respondent at the instance of the Interested Party. He prays, inter alia, for declarations that the Respondents violated his rights under Articles 31, 47 and 50 of the Constitution, permanent injunctions restraining further summons, arrest or prosecution arising from the impugned complaint, general damages, and costs.

2. The Petition is opposed by the Respondents through a replying affidavit sworn on 19th May 2025 by PC Gregory Malkwen, and by the Interested Party through an undated replying affidavit.
3. The Petitioner avers that he and the Interested Party were in a personal and business relationship which collapsed in November 2024. They had jointly established several business ventures, including Thrive Medispa Limited and Thrive Aesthetic. He contends that following the breakdown of the relationship, the Interested Party unlawfully excluded him from the businesses, removed equipment and funds from the premises, and initiated a series of police complaints at different stations with the object of harassing and pressuring him. He states that he was summoned, arrested, and moved between Mariguini, Industrial Area and Dandora Police Stations without being informed of the nature or basis of the investigations. On 22nd March 2025, he was arrested by plainclothes officers without a warrant and detained before being released on cash bail.
4. He maintains that the dispute was purely civil, arising from partnership and employment relations, and that the criminal process was being abused to settle private scores. He asserts violations of his right to privacy, dignity, fair administrative action, access to information, and freedom from psychological torture.
5. PC Malkwen depones that on 21st January 2025 a report was lodged at Dandora Police Station by Peninnah Wanjiru Njoge concerning misappropriation of funds amounting to Kshs. 37,776,136 paid to the Petitioner for purchase of business assets. Investigations revealed that vehicles and equipment purchased using the Interested Party's funds were registered in the

Petitioner's name, and that additional monies were received without supporting documentation. Bank records, auditors' reports, NTSA and Companies Registry confirmations were annexed.

6. The Petitioner was arrested on 15th March 2025, released on cash bail, and required to furnish documents, which he failed to do. The file was forwarded to the Director of Public Prosecutions for possible charges under section 268 read with section 275 of the Penal Code.
7. It is contended that all actions were within the mandate of the National Police Service Act, that no harassment was proved, the Petition raises disputed facts better resolved at trial, and that the Court should not interfere with ongoing investigations absent manifest illegality.
8. The Interested Party contends that the Petition seeks to restrain lawful investigations and is incompetent for want of statutory notice. She avers that the complaint concerns fraud and obtaining money by false pretences. Further, civil and criminal proceedings may proceed concurrently under section 181 of the Criminal Procedure Code and that the application is vague, speculative, and an abuse of process.
9. The petition was canvassed by way of written submissions which have been duly considered and there no need to rehash them. The issues for determination therefore are:
 - a. Whether the Respondents acted within their constitutional and statutory mandate to investigate.
 - b. Whether the manner of investigation violated the Petitioner's right to fair administrative action under Article 47.
 - c. Whether any constitutional rights were infringed.

d. Appropriate reliefs.

10. There is no dispute that, under Article 244 of the Constitution and sections 24 and 35 of the National Police Service Act, the police are mandated to investigate criminal complaints. That mandate is not dependent on whether a dispute also gives rise to civil proceedings, and the mere existence of parallel civil suits does not bar the institution or continuation of criminal investigations or prosecutions.
11. The evidence placed before the Court discloses a prima facie basis for investigation. Substantial sums were transferred to the Petitioner being that certain assets were registered in his name and documentation remained outstanding. This Court finds no basis to restrain the police from investigating the petitioner.
12. The gravamen of the Petition, however, lies in the manner in which the investigations were conducted.

Article 47(1) provides:

“Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.”

Article 47(2) provides:

“If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.”

13. It is not disputed that the Petitioner was summoned, arrested, and required to attend at multiple police stations. The Respondents did not demonstrate that he was informed, in writing or otherwise, why parallel investigations were being conducted in different jurisdictions over the same subject matter.

14. The National Police Service Act establishes defined geographical jurisdictions for police stations. This framework secures predictability, certainty, and order in the administration of criminal justice. Departure from that framework is permissible where justified by technical complexity, manpower constraints, or specialisation, but such departure must be rational, disclosed, and justifiable.
15. From the record, no evidence was tendered to explain why a complaint first reported in one station was subsequently handled across several stations. The Court is satisfied that this exposed the Petitioner to repeated movements, uncertainty, and anxiety, without procedural safeguards.
16. Article 24 permits limitation of rights only where such limitation is reasonable and justifiable in an open and democratic society. The Respondents did not demonstrate that subjecting the Petitioner to investigations across multiple stations was necessary, proportionate, or justified.
17. Further, Article 28 provides:
- “Every person has inherent dignity and the right to have that dignity respected and protected.”**
18. Human dignity is the foundation of all rights. Investigative processes that are opaque, fragmented, and unexplained are an affront to dignity.
19. The Court also takes note that the investigations were initiated by the Interested Party following a collapsed personal and business relationship. That fact does not invalidate the complaint. However, it places the process under heightened scrutiny to ensure that criminal investigations are not deployed as instruments of private pressure.

20. The Court is therefore persuaded that while the Respondents acted within their mandate to investigate, the failure to inform the Petitioner of the reasons for subjecting him to investigations in multiple stations violated his right to fair administrative action under Article 47, and infringed his dignity under Article 28.

21. The allegations of violation of the right to privacy, threats to life, and psychological torture were not proved to the standard required. No cogent evidence was tendered of unlawful tracking, threats, or torture.

22. Equally, this Court declines to restrain the Director of Public Prosecutions from exercising prosecutorial discretion. No evidence of bad faith, malice, or extraneous influence sufficient to warrant prohibition was established.

23. In the premises, I hereby find that the Respondents had lawful authority to investigate the complaint. However, the manner in which the investigations were conducted, by subjecting the Petitioner to unexplained investigations across multiple police stations, violated Article 47 of the Constitution. Consequently, the petition partially succeeds in the following terms:

(i) A declaration is hereby issued that the Respondents violated the Petitioner's right to fair administrative action under Article 47 of the Constitution, by failing to inform him of the reasons for conducting investigations across multiple police stations.

(ii) An order is hereby issued directing that any further investigations arising from the impugned complaint shall be conducted through a single designated police station, being the station where the complaint was first reported, unless a reasoned written decision is made by the Directorate of

Criminal Investigations to transfer the investigations for technical or jurisdictional reasons.

(iii) The Respondents shall furnish the Petitioner, in writing, with reasons for any future transfer or escalation of the investigations.

(iv) The prayers seeking to restrain investigations, arrest, prosecution, and to prohibit the Director of Public Prosecutions are hereby declined.

(v) Each party shall bear their own costs.

Orders accordingly.

**Judgement dated and delivered virtually this 21st day of
January 2026**

**D. KAVEDZA
JUDGE**

In the presence of:

Mr. Mabeya for the Petitioner

Ms. Chibole for the 1st, 2nd and 4th Respondents

3rd Respondent Absent

Ms. Valentine Khamimwa for the Interested party

Ms. Karimi Court Assistant.