

THE REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO. E345 OF 2025

BETWEEN

CHEME ADANO

HIRBO.....1ST PETITIONER

**RALIA HUSSEIN ABDULLAHI.....2ND
PETITIONER**

-VERSUS-

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

**DIRECTOR OF PUBLIC PROSECUTION.....2ND
RESPONDENT**

**DIRECTOR OF CRIMINAL
INVESTIGATIONS.....3RD RESPONDENT**

**ATTORNEY GENERAL.....4TH
RESPONDENT**

J U D G M E N T

Introduction

1. The Petition dated 9th June 2025 is supported by the 2nd Petitioner's affidavit in support of even date and a further affidavit dated 1st August 2025.
2. The Core of the instant Petition, as substantiated by the Petitioner's affidavit, is the alleged violation of the

Petitioner's rights and fundamental freedoms under Articles 25 (c), 27, 29, 31 and 50 following the 3rd Respondent's officers conduct, whom the Petitioner accuses, without a warrant, unlawfully entered and searched the Petitioners' residence, arrested the 2nd Petitioner and instituted criminal proceedings at the JKIA Magistrates Court based on the outcome of the said illegal search.

3. Accordingly, the Petitioners seeks the following reliefs:

- a) ***A conservatory order staying and/or suspending all proceedings in JKIA Chief Magistrate's Court Criminal Case No. 025 of 2025 pending the hearing and determination of this Petition.***
- b) ***A declaration that the manner in which the 1st and 3rd Respondents, jointly with their agents and/or officers, conducted the search and seizure operation on 28th January 2025 at the Petitioners' residence in Mihango, Kayole, was unconstitutional, unlawful, and a violation of Articles 25(c), 27, 29, 31, and 50 of the Constitution.***
- c) ***A declaration that the entry, search, and seizure carried out without a warrant and without due process violated the Petitioners' rights to privacy, dignity, security of the person, and a fair trial.***
- d) ***An order of certiorari to bring into this Court for purposes of quashing, and to quash, any and all evidence, exhibits, or materials obtained from the Petitioners' residence on 28th January 2025 in Mihango, Kayole, by officers or agents of the 1st and/or 3rd Respondents, for having been unconstitutionally obtained.***

- e) An order of injunction prohibiting the 1st and 2nd Respondents from relying on or producing in evidence in JKIA Chief Magistrate's Court Criminal Case No. 025 of 2025 any material or evidence obtained through the unlawful search and seizure conducted on 28th January 2025 at the Petitioners' residence.**
- f) General damages for breach of the Petitioners' constitutional rights under Articles 29, 31 of the Constitution.**
- g) An order that the costs of this Petition be borne by the Respondents jointly and severally.**
- h) Any other relief that this Court shall deem just, appropriate, and expedient to grant in the circumstances.**

Petitioners' Case

4. The 2nd Petitioner states that she is the 1st Petitioner's wife. She depones that on 28th January 2025 while at home with the family, unidentified men gained entry into their house by breaking doors and windows thereby exacting substantial damage to it.
5. She depones that these men were masked, heavily armed and did not identify themselves or show any Court warrant authorizing them to search their house. She states upon entering, they brandished their firearms at her and their children. She depones that she was heavily pregnant at the time and the incident stirred immense distress, fear and physical intimidation to both her and the family.

6. She swore that arising from the search certain items, including substances alleged to be narcotic drugs were seized from the premises. An inventory of the items they purported to have seized from the house was then shown to her which she declined to sign the inventory because she had not participated in the search and thus not privy to what had actually been taken from the house.
7. The 2nd Petitioner avers that later on; she came to learn that the men were the 3rd Respondent's officers. She contends that the material that was allegedly obtained from the said unlawful search of their home is the basis of the criminal proceedings against them in **JKIA Chief Magistrate Criminal Case No.025 of 2025** where they are facing two counts of trafficking in narcotic drugs.
8. The Petitioners also take issue with the fact that the Respondents on 27th January 2025 arrested the suspect and on the same day, sought judicial intervention through **Miscellaneous Application No. MCCRMISC/E009/2025, Republic v. Francis Mwanza**. In light of this, it is unreasonable for them to aver that the time required to obtain a warrant would have undermined the effectiveness of the search conducted the following day.
9. Accordingly, she contends that the search, seizure and arrest were unlawful, unconstitutional and conducted in violation of Article 25(c), 27, 29, 31, 47 and 50 of the Constitution. Equally, it is argued that the actions of the officers involved, under the command the 1st and 3rd Respondents, were

unreasonable, disproportionate, and manifestly unlawful. As such the 2nd Respondent's reliance on such evidence to proceed with the prosecution of the Petitioners constitutes a perpetuation of that illegality.

1st, 2nd and 3rd Respondents' case

10. The 1st, 2nd and 3rd Respondents, relied on the Replying Affidavit of Corporal Felix Ndiema sworn on 15th July 2025, the investigating officer in the said criminal case.
11. He depones that on 27th January 2025, the 3rd Respondent received credible information that there was a motor vehicle suspected to be conveying narcotic drugs that was enroute from Nakuru towards Nairobi Highway. They quickly mounted a roadblock at Lari along that Highway and successfully intercepted the vehicle, a white Isuzu pickup registration Number KBK 030J which was detained at the 3rd Respondent's headquarters.
12. The vehicle was inspected and was discovered to have a false compartment under its body in which they recovered 80 packages of dry plant material-cannabis as was safely secured as an exhibit at the 3rd Respondent headquarters.
13. He deposed that on the following day; the apprehended suspect disclosed that the 1st Petitioner was his boss and that he was required to deliver the packages to his house. The suspect thus led the police officers to the Petitioners' house at Mihango where a raid was conducted.

14. He depones that following the search that was conducted, 7 packages of cannabis, similar to those recovered in the vehicle were found. In addition, they confiscated two vehicles, a Toyota passo registration number KCD 858Q and a Toyota ISIS registration number KCW 569G being part of the items included in the inventory. Following this search, they arrested the 2nd Petitioner.
15. He states that the officers conducted a further search in the estate after they were alerted that some items had been thrown to an apartment compound in the vicinity. The search unearthed an additional 9 packages of cannabis of like quality.
16. He avers that the 2nd Petitioner was arraigned in Court on 4th February 2025 and charged with the offence of trafficking in narcotic drugs. Soon after, the 1st Petitioner presented himself to the 3rd Respondent at its Headquarters. He was too arrested and arraigned in Court on 8th April 2025 and charged with a similar offense.
17. He informs that owing to the nature of the investigations, they were forced to act with speed in line with Section 73(5) of the Narcotic drugs and Psychotropic substances (Control) Act. Equally in line with Section 57(1)(a) and 60 of the National Police Service Act, he states that they were obliged to search the vehicle without a search warrant. He states that upon conclusion of their investigations, the file was forwarded to the 2nd Respondent where a decision to charge was made.

18. He thus contends that under in the light of the facts of this case, the Petitioner has not demonstrated how and if at all, these Respondents in carrying out their mandate had breached their mandate as conferred in law. For this reason, he states that the Petitioners allegations lack basis as they seek to interfere with their mandate.
19. Moreover, it is asserted that the Petitioners through this Petition seek to subvert the criminal justice system yet the system has mechanisms to secure accused persons rights. As such, the Petition an abuse of the Court process and bad in law as failed to set out with a reasonable degree of precision that which they complain about, the infringed provisions and the manner each have been violated as set out in **Anarita Karimi versus Republic (1979) 1 KLR 54.**

4th Respondent's Case

20. This Party's response and submissions to the Petition are not in the Court file or Court Online Platform (CTS).

Petitioners' Submissions

21. The Petitioners through their counsel, Ariga Olukaka and Company Advocates LLP filed submissions dated 21st September 2025.
22. On the onset, Counsel submitted that this Court by virtue of Article 22, 23 and 165(3)(b) of the Constitution has jurisdiction to entertain questions of violation of

constitutional rights and equally grant the necessary remedies.

23. To commence with, Counsel submitted that the Constitution protects the right to privacy under Article 31 of the Constitution by prohibiting unreasonable searches and seizures, such as those that were unlawfully conducted by the 1st and 3rd Respondents herein. Counsel stressed that it is not just the absence of a warrant that makes the search unlawful, but also the complete disregard for due process and the sanctity of the Petitioners' home by the Respondents.
24. Furthermore, Counsel submitted that the Respondents did not demonstrate any justifiable reason for failing to secure a search warrant prior to the search, which is expressly provided for under Section 118 of the Criminal Procedure Code as well as under Section 73 (1) of the Narcotic Drugs and Psychotropic Substances (Control) Act. This is especially also since the Respondents were equally able to secure the Court's intervention promptly in the suspect's case yet did not secure a search warrant.
25. To buttress this point reliance was placed in **McDonald v. United States, 355 US 451**, where the Court emphasized that the right to privacy extends universally to all individuals, regardless of guilt or innocence and that privacy protections apply especially to the sanctity of the home, which remains one of the most deeply protected spaces under the Constitution. Equally, the Court went on to aver that the right

to privacy guards against arbitrary or discretionary actions by law enforcement and serves as a critical safeguard against government overreach.

26. Comparable dependence was placed in **Hunter et al. v. Southam Inc. (1984) 2 SCR 145, R v. Somerset County Council, ex parte Fewings and Others (1995) 1 All ER 513** and **Samura Engineering Limited & 10 others v Kenya Revenue Authority [2012] eKLR.**
27. Furthermore, Counsel submitted that Section 73(5) Narcotic Drugs and Psychotropic Substances (Control) Act must be read in a manner that is consistent with the Constitution, particularly Articles 31 and 50(4), which safeguard the right to privacy and the right to a fair trial. Accordingly, Counsel submitted that this Section cannot be used to justify actions that violate the core protections guaranteed by the Constitution.
28. Turning to Articles 25(c) and 50(4) of the Constitution, Counsel submitted that the evidence obtained from the unlawful search on 28th January 2025 should be excluded from the ongoing criminal proceedings. Counsel noted that the Supreme Court in **Mue & another v. Chairperson of Independent Electoral and Boundaries Commission & 3 Others [2017] eKLR**, guided that where evidence is obtained in violation of the Constitution, it is inadmissible, as it would compromise the fairness of the proceedings. The Court further emphasized that the violation of laid-down

legal procedures and constitutional rights has a profound impact on the probative value of the evidence obtained.

29. Like dependence was placed in **Philomena Mbeti Mwilu v. Director of Public Prosecutions & 3 Others [2019] eKLR** and **Gumede vs. S (2016) ZASCA 148**.
30. To this end, Counsel submitted that the reliefs sought in this Petition are both necessary and appropriate owing to the unlawful search and seizure conducted by the 1st and 3rd Respondents. This action is argued to represent a flagrant violation of the Constitution.

1st, 2nd and 3rd Respondents' Submissions

31. Senior Prosecution Counsel, Edna Otieno filed submissions dated 12th September 2025 and underscored the issues for discussion as:
- “whether the arraignment of the Petitioners was lawful and*
- whether there has been violation of the Petitioners' Constitutional rights in the initiation of the charge against them.”*
32. Counsel referring to Article 157(6) of the Constitution stated that the 2nd Respondent is mandated to institute and undertake criminal proceedings against any person before any court. Reliance was placed in **Republic v the Commissioner of Police & the Director of Public Prosecution Ex parte Michael Monari & Another Misc. Application No. 68 of 2011** where it was held that:

“The Police have a duty to investigate 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.”

33. She also relied on **Pauline Raget Adhiambo Agot v DPP and 5 Others (2010) Petition No. 446 of 2015.**

34. Counsel submitted that the arraignment of the Petitioners in Court complied with the due process. This was following issuance of the investigation file to the 2nd Respondent who then proceeded and made a decision to charge. Counsel stressed that the decision was guided by the law under Article 157(11) of the Constitution, the Office of the Director of Public Prosecutions Act and the Decision to Charge Guidelines. Upon concluding investigations, the 3rd Respondent established that there was a reasonable suspicion that an offence had been committed thus forwarded the file to the 2nd Respondent.

35. Reliance was placed in **Cascade Company Limited vs Kenya Association of Music Production (KAMP) & Others, Petition No. 7 of 2014** where it was held that:

“In my view, as long as the enabling legislation is constitutional, the respondent’s actions ensuing therefrom are lawful unless, of course, it can be demonstrated that the ODPP and DCI have in their actions, breached those very provisions or have acted ultra vires to the act. Simply put the Respondents should not be inhibited unnecessarily from exercising their constitutional and statutory mandates.”

36. Similarly, Counsel relied on **Maina & 4 others vs Director of Public Prosecutions & 4 Others (2022) KEHC 15 (KLR)**.
37. Counsel stressed that the Petitioners had failed to demonstrate how the 2nd Respondent acted contrary to public interest, the interest of the administration of justice or failed to prevent and avoid abuse of the legal process yet is also under a public duty to ensure that offences are prosecuted.
38. On the second issue, Counsel submitted that it is an established principle that where a party alleges a breach of fundamental rights and freedoms, he or she must state and identify the rights with precision and how the same have been infringed. Reliance was placed in **Leonard Otieno v Airtel Kenya Limited [2018] eKLR** where it was held that:

“It is a fundamental principle of law that a litigant bears the burden (or onus) of proof in respect of the propositions he asserts to prove his claim. Decisions on violation of constitutional rights should not and must not be made in a factual vacuum. To attempt to do so would trivialize the constitution and inevitably result in ill-considered opinions. The presentation of clear evidence in support of violation of constitutional rights is not, a mere technicality; rather, it is essential to a proper consideration of constitutional issues. Decisions on violation of constitutional rights cannot be based upon the unsupported hypotheses.”

39. Similar reliance was placed in **William and Others v Spautz [1993] 2 LRC 659 at 667, Anarita Karimi Njeru**(supra) and **Mumo Matemo v Trusted Society of Human Rights alliance [2014] eKLR**.

40. Counsel emphasized that the Petitioners had not set out with precision the manner in which the 1st, 2nd and 3rd Respondents had infringed their fundamental rights and freedoms to warrant the intervention of this Court. In the same manner, Counsel submitted that the Petitioner's fundamental rights are not absolute and must be balanced with the rights of others and public interest. To this end, Counsel submitted that the Petition is frivolous, vexatious, incompetent and an abuse of the Court process.

Analysis and Determination

41. It is my considered opinion that the issues that arise for determination are as follows:

- i) Whether the search conducted at the Petitioner's house by the 3rd Respondents in the absence of search warrant was a violation of the Petitioners rights under Articles 25(c), 27,29,31,47 and 50 of the Constitution.***
- ii) Whether the Petitioners are entitled to the reliefs sought.***

Whether the search conducted at the Petitioner's house by the 3rd Respondents in the absence of search warrant was a violation of the Petitioners rights under Articles 25(c), 27 ,29, 31, 47 and 50 of the Constitution

42. The Petitioner complained that, without a warrant, the 3rd Respondent's officers unlawfully and forcefully entered and searched their residence on 28/1/2025, arrested the 2nd Petitioner and subsequently charged them in Criminal Case

No. 025 of 2025 at the JKIA Magistrates Court as a consequence of the said illegal search.

43. The 3rd Respondent explained that the search was occasioned by credible information that was received about a motor vehicle, Isuzu Pick up KBK 030J that was suspected to be conveying narcotic drugs was enroute from Nakuru towards Nairobi Highway. It was successfully nabbed at a roadblock mounted at Lari along the Nakuru- Nairobi Highway and upon inspection, found to be carrying 80 packages of dry cannabis concealed in a false compartment under the vehicle's body. The suspect who was apprehended disclosed to the 3rd Respondent's officers that the 1st Petitioner was his boss and that the package was to be delivered to his house, hence the said suspect led the 3rd Respondents officers to the Petitioners' house at Mihango where a raid into the house yielded further recoveries of similar nature.
44. According to the 3rd Respondent, the 3rd Respondent Officers were compelled by circumstances to act with speed and thus proceeded under Section 73(5) of the Narcotic drugs and Psychotropic substances (Control) Act and also, Section 57(1) (a) and 60 of the National Police Service Act so as not to impair the investigation.
45. **Article 31 of the Constitution** protects the right to privacy, in particular, it states:

31. Privacy =

'Every person has the right to privacy, which includes the right not to have-
a) *their person, home or property searched.*

46. This notwithstanding, the right to privacy is not absolute. Article 24 of the Constitution prescribes the conditions under which a right or fundamental freedom in the Bill of Rights may be limited. **Article 24 (1)** thus provides:

'A right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including-

- a) *the nature of the right or fundamental freedom*
- b) *importance of the purpose of limitation*
- c) *the nature and extent of the limitation*
- d) *the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and*
- e) *the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.*

47. The 1st Respondents', is established pursuant to Article 239 (1) (c) of the Constitution and is included as a national security organ and specifically established under Article 243 of the Constitution. The National Police Service Act, 2011, enacted to give effect to this Article as required under Article 243 (4) details the National Police Service's mandate of

which Section 24 (e) is *the investigation of crimes*. Further Section 35 of the Act, authorizes the 3rd Respondent, a Directorate of the National Police Service under the said Act to perform the following functions among others:

- a. *collect and provide criminal intelligence;*
- b. *undertake investigations on serious crimes including homicide, **narcotic crimes**, human trafficking, money laundering, terrorism, economic crimes, piracy, organized crime, and cybercrime among others;*

48. The search and seizure upon the premises of the Petitioners was, according to the 3rd Respondent, carried out without a warrant, due to the exigencies of the investigation under the enabling provisions of the **Narcotic Drugs and Psychotropic Substances (Control Act), Cap 245**.

49. The power to conduct search on premises is provided for under **section 73** of the Narcotic Drugs and Psychotropic (Control Act) Cap as follows:

73. Power to search premises

- (1) *Where information on oath is laid before a magistrate alleging that there is reasonable ground for suspecting that—*
 - (a) *an offence under this Act has been, or is being or is planned to be, committed and that evidence of the commission of, or plan to commit the offence is to be found on any premises or other place; or*
 - (b) *any document or other material directly or indirectly relating to, or connected with, any*

transaction or dealing which is, or any intended transaction or dealing which, if carried out, would be—

- (i) an offence under this Act; or*
 - (ii) in the case of a transaction or dealing carried out or intended to be carried out in any place outside Kenya, an offence against any corresponding law in force in that place, is in the possession of or under the control of any person in any premises or other place, the magistrate may, by warrant under his hand, authorize any police officer named in the warrant, with such assistance as that police officer thinks reasonable, at any time or times within one month from the date of the warrant, to enter and search the premises or other place named in the warrant.*
- (2) A police officer authorized by any warrant under subsection (1) to search any premises or other place may enter and search such premises or other place (including any receptacle found therein) and every person found therein or who the police officer has reasonable ground to believe, has recently left those premises or that other place, and for that purpose may use such assistance and such force as may be reasonable and may break open any lock, and may seize any narcotic drug or psychotropic substance, or document or other material referred to in subsection (1), found therein or on any such person, and any other article or thing which has reasonable ground to believe to be evidence of the commission or intended commission of any offence under this Act.*
- (3) Where information on oath is laid before a magistrate alleging that there is reasonable ground for suspecting that there is concealed on*

any person, animal or thing or in any receptacle, premises or other place, any movable property—

- (a) liable for forfeiture under Part IV;
 - (b) in respect of which a restraint order has been made under [Section 26](#); or
 - (c) liable for forfeiture under [Section 36](#), the magistrate may, by warrant under his hand, authorize any police officer named in the warrant, with such assistance as that police officer thinks reasonable, at any time or times within one month from the date of the warrant, to enter and search the premises or other place or to search any person, animal, thing or receptacle.
- (4) A police officer authorized by any warrant under subsection (3) to search any person, animal, thing, receptacles premises or other place may search the person, animal, thing or receptacle or may enter and search any building or other place, and for that purpose may use such assistance and such force as may be reasonable, and may break open any lock, and seize any movable property, referred to in subsection (3) found thereon or therein.
- (5) **Where any police officer not below such rank as may be specified by regulations is, for reasons to be recorded in writing, satisfied that the delay caused by the time required to apply for and obtain a warrant to enter and search under subsection (1) or (3) would defeat the purpose of the search he may exercise the powers conferred on him by subsection (2) or (4) in relation to search and seizure without obtaining any warrant for search under subsection (1) or (3).**

50. Considering that the authority to conduct searches on premises suspected to be harbouring narcotics and psychotropic substances is authorized by law= including the authority to break any lock where necessary, the law in place having not been challenged or declared unconstitutional, the 3rd Respondents conduct would only be unlawful only if it is can be established that it was unreasonable, arbitrary or disproportionate as to depart from the provisions of Article 24 of the Constitution on limitation of a right or fundamental freedom.
51. However, if the actions complained of were done in conformity with the law authorizing the Respondents to carry out the mandate, it would be an act of overreach for this Court to attempt to resist the Respondent from executing its lawful mandate. The question thus becomes, have the Petitioners proved that the Respondents acted outside the confines permitted by the law in the manner they undertook the alleged search?
52. The Petitioners complained that the search was conducted without a warrant and that their property- doors and windows were broken by the Respondent to gain entry.
53. Legally, the Respondent could act without a warrant and search premises reasonably suspected to be harbouring drugs if the condition outlined in Section 73 (5) of the Narcotics and Psychotropic Substances (Control Act) was shown to exist, namely-

'Where any police officer not below such rank as may be specified by regulations is, for reasons to be recorded in writing, satisfied that the delay caused by the time required to apply for and obtain a warrant to enter and search under subsection (1) or (3) would defeat the purpose of the search he may exercise the powers conferred on him by subsection (2) or (4) in relation to search and seizure without obtaining any warrant for search under subsection (1) or (3).'

54. In the instant case, the 3rd Respondent explained that its decision to carry out the search without a warrant was dictated by the immediate need to ensure their investigation was not compromised as it was after they intercepted a vehicle that was in transit- KBK 030J- Isuzu Pick up at Lari along Nakuru-Nairobi Highway, and found it to be carrying cannabis sativa concealed under a false compartment under the body, that the suspect volunteered information regarding his 'boss' and the actual destination he intended to deliver the consignment, which he offered to take the 3rd Respondents officers, hence the quick decision to carry out the raid and search on the Petitioner's premises without a warrant.

55. In my view, the Respondent ably demonstrated that the search on the Petitioners residence was premised on reasonable and justifiable grounds, in that it was triggered by exigent circumstances under Section 73 (5) justifying the warrantless search namely-*interception on the Highway of the vehicle conveying cannabis, suspect volunteering information about his 'boss' and the delivery destination, and*

the urgent decision to prevent evidence impairment. The statutory power, under the circumstances invoked based was on reasonable suspicion and exigencies of the time, was reasonable and justifiably employed.

56. As to whether it was exercised in the strict conformity with the requirements set out in the section itself, that becomes the sole responsibility of the trial court to determine, for instance, whether the officer of the requisite rank (as specified in the regulations) conducted the said search and seizure or if he had prior to conducting the raid, recorded reasons the justifying the raid, are matters of fact to be inquired into by the trial court when denying on the question of admissibility of the evidence.
57. However, the specific constitutional question that this Petition presented, that is unjustifiable infringement of the right to privacy under Article 31 (a) of the Constitution on the basis of the alleged warrantless search of the Petitioner's premises on 28/1/2025 has not been demonstrated by the Petitioners in the circumstances of this case.
58. I cannot direct the trial court to exclude the evidence on the basis that it was obtained in a manner that violates any right or fundamental freedom in the Bill of rights by dint of Article 50 (4) of the Constitution. The Respondent have demonstrated exigencies of the case compelled them to move under Section 73 (5) which is section is not challenged for unconstitutionality. In any event, the Section 73 (5) represents a delicate balance that must be maintained

between ensuring the protection of the right to privacy and the public interest in ensuring that curbing the drug peril that not only threatens public health but also security and the rule of law. Consequently, while the right to privacy and protection against unauthorized searches is constitutionally guaranteed, it must go hand in hand with the reasonable limitations that meet the threshold set out in Article 24 of the Constitution under which I place Section 73 (5) of the Narcotics and Psychotropic Substance (Control) Act, Cap 245.

59. Prima facie, the Respondent has demonstrated that there was reasonable suspicion to move with speed under Section 73 (5) of the Narcotics and Psychotropic Substances (Control) Act and thus actions in broad, were done under the law and did not constitute unjustified violation of the right to privacy under Article 31 (a) of the Constitution.
60. Nevertheless, Section 73 (5) of the Narcotics and Psychotropic Substances (Control Act) has specific conditions that must be satisfied for the evidence to be admissible. For example, the officer of the rank prescribed in the regulations must have conducted the search, that he must have recorded reasons justifying the search, all those preconditions for the admissibility of evidence remain the exclusive preserve of the trial court.
61. That being so, the claim of the unconstitutional violation of the right to privacy under Article 31 (a) having failed, this being the substratum upon which this Constitutional Petition

is based, it is the finding of this Court that this Petition lacks merit and is hereby dismissed.

62. Costs are awarded at the discretion of the Court; I make no orders as to costs.

Dated, signed and delivered virtually at Nairobi this 26th day of February, 2026.

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L N MUGAMBI

JUDGE

ORIGINAL