

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. E561 OF 2024

**IN THE MATTER OF: ARTICLES 22, 23, 27, 29, 35, 47, 73, 239 AND 259 OF THE
CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF: THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS
AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES**

AND

**IN THE MATTER OF: THE CONSTITUTIONAL AND LEGAL MANDATE OF THE
COURT TO SAFEGUARD AND UPHOLD THE CONSTITUTIONAL RIGHTS OF
CITIZENS REGARDLESS OF THEIR STANDING.**

AND

**IN THE MATTER OF: THE OPPRESSIVE, VEXATIOUS DEPLOYMENT OF POLICE
POWERS TO HARRASS AND INTIMIDATE CITIZENS IN ORDER TO ADVANCE AND
SETTLE A CIVIL DISPUTE.**

AND

**IN THE MATTER OF: THREATS TO THE FREEDOM AND LIBERTY OF THE
PETITIONERS TO ADVANCE COLLATERAL INTERESTS.**

BETWEEN

SERVICOFF LIMITED 1ST PETITIONER

PETER KIMATHI KINYUA 2ND PETITIONER

KIBET TORUT 3RD
PETITIONER

VERSUS

THE NATIONAL POLICE SERVICE 1ST RESPONDENT

THE DIRECTORATE OF CRIMINAL INVESTIGATIONS 2ND RESPONDENT

THE DIRECTOR OF PUBLIC PROSECUTIONS 3RD
RESPONDENT

THE OFFICE OF THE ATTORNEY GENERAL 4TH
RESPONDENT

JUDGMENT

INTRODUCTION

1. The dispute giving rise to this Petition stems from a contractual relationship between the 1st Petitioner and the 1st Interested Party on or about 24th January 2024. The 1st Petitioner is a Limited Liability Company trading in inter alia export of coffee around the world. The 2nd and 3rd Petitioners are directors of the 1st Petitioner. The 1st Interested Party is a Limited Liability Company registered in Kenya with the 2nd Interested Party as its director.

2. The Petitioners state that they entered into a contract dated 24th January 2024 with the 1st Interested Party for the supply of Kenya Arabica Coffee valued at USD 882,251.80. According to the Petitioners, due to matters affecting its operational and attendant business constraints they are experiencing difficulties settling the money owed to the 1st Interested Party. The Petitioners assert that they are earnestly making financial arrangements to settle the amount owed.
3. In response, the Interested Parties state that they supplied the goods which were received, acknowledged and sold by the Petitioners. That in the course of conducting their due diligence they discovered that the Petitioner had been fully paid for the sale of the coffee they sold to a third party. The Interested Parties aver that they repeatedly indulged the Petitioners and gave numerous extensions to negotiate repayment; chances they assert the Petitioners abused.
4. Following the Petitioners lack of co-operation, the 2nd Interested Party proceeded to lodge a complaint with the 1st and 2nd Respondents. In his Replying Affidavit to the Petition, he states that the complaint raised the criminal nature of the Petitioners conduct, as it involved obtaining goods and money under circumstances that suggested false representation and non-payment. Subsequently, the 2nd Interested Party states that as part of the investigation into his complaint the 2nd and 3rd Petitioners were summoned to appear for questioning and recording statements.
5. Thus, the Petition dated 15th October 2024 seeks the following reliefs:

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- a) *A declaration that the dispute between Servicoff Limited and Gilley Investments Limited over the Contract Dated 24th January 2024 between the said parties and the payments due thereunder is an entirely civil and contractual matter outside the realm of the Criminal justice system.*
- b) *A declaration that the 1st and 2nd Respondents acts in investigating the complaint by interested parties against the Petitioners over the Contract Dated 24th January 2024 between Servicoff Limited and Gilley Investments Limited and the payments thereunder was oppressive and vexatious and an abuse of the mandate between upon them.*
- c) *An Order do issue directed at the Respondents permanently restraining them from summoning, investigating, arresting, detaining, charging, and/or prosecuting the Petitioners over the contract Dated 24th January 2024 between Servicoff Limited and Gilley Investments Limited and / or the payments due thereunder.*
- d) *An Order do issue directed at the Respondents jointly and severally to release to the Petitioners any and all documents belonging to and cash bail paid by the Petitioners in the course of the investigations pertaining to the contract dated 24th January 2024 between Servicoff Limited and Gilley Investments Limited and /or payments due thereunder.*
- e) *The Honourable Court be pleased to issue any other Order or direction(s) it may seem fit in the circumstances*
- f) *The costs of the Petition be awarded to the Petitioners.*

THE PETITIONERS' CASE

6. In support of their case, the Petitioners rely on the Petition dated 15th October, 2024, Application of even date and annextures attached thereto.
7. The Petitioners invoke the jurisdiction of this Court under Articles 22, 23, 47, 165 and 258 of the Constitution of Kenya, urging that this Court can safeguard their rights to equality, non-discrimination and protection from the abuse of the police power. It is their assertion that they have been subjected to oppressive and vexatious investigations, faced public harassment, arrest, detention and now looming malicious prosecution.
8. The Petitioners aver that they have a long-standing relationship with the 1st Interested Party having on several occasions transacted with it in coffee business. Further, they state that the agreement between them provided for arbitration for dispute resolution. In the Supporting Affidavit sworn on 15th October 2024 by the 2nd Petitioner, he depones that the summons to appear at the 2nd Respondents offices came as a surprise to them given that the transaction took place with the full knowledge of the 2nd Interested Party and this was not their first such transaction. The Petitioners maintain that the dispute is of a civil nature and not criminal in nature.
9. The Petitioners argue violation of and / or threat to violation of Articles 2(1) and (2), 3, 21, 27, 29, 35, 47, 238(1) and 239(1) of the Constitution of Kenya. The Petitioners submit the following on threat to and/or violation of their rights and fundamental freedoms:

- a) **Freedom from persons exercising state authority contrary to the Constitution of Kenya 2010 as under Articles 2(1) and (2), 3, 21, 27:** The Petitioners are apprehensive that the Respondents are likely to disregard their legitimate right not to be subjected to an oppressive and vexatious investigations on account of entirely civil matters with the ulterior motive of compelling them to settle the subject civil and contractual obligations.
- b) **Freedom and Security of the Person and Right to Access to information under Article 29 and 35 of the Constitution:** The Petitioners express fear that notwithstanding their release on bail, the 2nd Respondents directions requiring them to report to Chief Magistrates Court at Milimani on 8th October 2024, could have resulted in arrest and charging.
- c) **Right to equality and freedom from non- discrimination and to fair administrative action under Article 47(1) of the Constitution of Kenya as read with the Fair Administrative Action Act ,2015:** The Petitioners allege that the 1st and 2nd Respondents in handling the 2nd and 3rd Petitioners have shown bias and favour towards the Interested Parties against the Petitioners. Further, they argue unequal and discriminatory application of the law on the part of the 1st and 2nd Respondent. The Petitioners assert that the 1st and 2nd Respondent have breached the requirement for procedural fairness by failing to consider pertinent facts such as the existence of a

contract between the parties and their long-standing business relationship.

- d)) **Violations of Articles 238(1) and 239(1):** The Petitioners state that in general, the conduct of the 1st and 2nd Respondents disregards principles of National Security, rule of law and judicial authority.

THE RESPONDENTS' CASE

10. The 1st and 2nd Respondents neither filed a response nor submissions on the Petition. The 3rd Respondent relies on its Grounds of opposition dated 15th November 2024 and written submissions dated 29th January 2025. The 4th Respondent relies on its Grounds of Opposition dated 22nd January 2025.

The 3rd Respondents' Case

11. The 3rd Respondents strongly oppose the Petition on the premise that the Petition is premature and speculative as the investigations are yet to be concluded. Its further asserts that it is in public interest for the investigations to conclude.
12. The 3rd Respondent affirms the actions of the 2nd Respondent stating that they are in line with the principles of natural justice and Article 47 in ensuring expeditious, efficient, lawful and procedurally fair investigations. The 3rd Respondent contends that the Petitioners have failed to demonstrate how the 1st and 2nd Respondents actions violated the

Petitioners constitutional rights. That the Petition is before the court in bad faith and is an abuse of the Court process.

13. From its submissions, the 3rd Respondent identifies the following issues for determination: the whether the Petition is premature and speculative, whether the 3rd Respondent has violated or threatened to violate the Petitioners' constitutional rights, whether this Honourable Court should interfere with the ongoing investigations and constitutional mandate of the 3rd Respondent and whether the Petition meets the threshold for constitutional litigation.

14. Placing reliance on *Limo v Director of Criminal investigations & 2 others [2025] KEHC 1781* the 3rd Respondent submits that Courts have consistently held that Courts ought not interfere in investigations or prosecutorial process before a decision to charge is made. The 3rd Respondent posits that since the investigation is yet to be concluded and a file forwarded to their offices for consideration; a decision on whether or not to charge cannot be made at this stage. Therefore, the 3rd Respondent submits that the Petition is founded on apprehension and conjecture.

15. The 3rd Respondent relies on Article 157 (6) and (10) to affirm its independence in exercising its constitutional mandate. The 3rd Respondent argues that the orders sought by the Petitioners if granted will effectively restrain it from exercising its constitutional discretion before it crystalizes. Additionally, it submits that granting the orders sought would amount to encroachment and offend the doctrine of separation of powers.

16. On specificity of pleadings, the 3rd Respondent submits that the Petitioner has failed to demonstrate any illegality, procedural impropriety or bad faith on the part of the 3rd Respondent. Relying on *Njuguna Ndung'u v Ethics & Anti-Corruption Commission & 3 Others [2018]*, the 3rd Respondent submits that the Petitioners have failed to meet the threshold for constitutional litigation and therefore pray that the Petition be dismissed with costs.

The 4th Respondents' Case

17. The 4th Respondents strenuously oppose the Petition stating that the 1st and 2nd Respondents acted within their mandate as per section 24 of the National Police Service Act. Further, that the Petition has not been pleaded with precision as they do not provide the particulars of the claim relating to the alleged violations of constitutional rights. The 4th Respondent urges this Honourable Court to dismiss the Petition with costs.

THE INTERESTED PARTIES CASE

18. Their case places reliance on a Replying Affidavit dated 28th January, 2026 sworn by the 2nd Interested Party, written submissions dated 28th February 2026 and List of Authorities of even date in support of its submissions.

19. The Interested Parties are in support of the pleadings filed by the 3rd and 4th Respondents. The 2nd Interested Party's position is that the Petition before the court is vexatious and an abuse of the court process as it does not

disclose material facts giving rise to the dispute and has not demonstrated any threat to violation or violation of their Constitutional rights under Articles 22, 23, 27, 29, 35, 47, 73, 239 and 259 of the Constitution.

20. He affirms that pursuant to Article 157(10) of the Constitution the 3rd Respondent acts independently when making the decision to charge. Similarly, he emphasizes that under Articles 245 (2) (b) and (4) (a) and (b) of the Constitution, the 2nd Respondent conducts investigations independently.

21. Turning to their submissions: on whether the Petition is premature and speculative, they submit that it is not in dispute that investigations by the 2nd Respondent are ongoing and that the investigations file is yet to be forwarded to the 3rd Respondent. Reliance is placed on ***Kenya Tea Development Agency Holdings Limited & another v Directorate of Criminal Investigations & 2 others (Petition E060 of 2023) [2024] KEHC 8899 (KLR)*** and ***Limo v Director of Criminal Investigations & 2 others [2025] KEHC 1781***, to demonstrate that courts have consistently taken the position of restraint in interfering with the investigative powers of the police.

22. Placing reliance on ***Republic vs Commissioner of Police and Another ex parte Michael Monari and Another [2012] eKLR*** and Article 245 and 157(10) of the Constitution; the Interested Parties submit that the 2nd and 3rd Respondent are mandated to exercise their power independently and without interference unless exceptional circumstances have been

demonstrated. It is their submission that the Petitioners have not placed before the court any evidence demonstrating such exceptional circumstances.

23. On whether the dispute is not purely civil in nature, they submit that the Petitioner has not produced any credible evidence showing that the ongoing investigations are oppressive, vexatious or an abuse of court process. Relying on ***Kuria and 3 Others Vs Attorney General [2002] 2 KLR 69*** and ***Kabogo & Another v Office of the Director of Public Prosecutions and 3 Others (Constitutional Petition E003/2023) [2024] KEHC16843 (KLR)*** where the Courts affirmed the principle that the bar for interference with criminal proceedings is high, and that mere inconvenience or speculative allegations of harassment do not meet the threshold to stop a lawful investigation.

24. Lastly, the Interested Parties submit that the Petitioners have failed to demonstrate with any precision or supporting evidence how the rights alleged have been infringed. That the Petitioners have failed to demonstrate how the 2nd Petitioner being summoned for investigations, while the Criminal inquiry is ongoing and no charges have been preferred constitutes a violation of the rights alleged. Reliance was placed on ***Anarita Karimi Njeri v Republic [1979] eKLR***.

ISSUES FOR DETERMINATION

25. Having considered all the pleadings and submissions on record, the following are the issues for determination:

- i. Whether the Petition meets the threshold for constitutional litigation.
- ii. Whether the conduct of the 2nd Respondent amounts to harassment or a breach of the Petitioners rights under Articles 3, 21, 27, 28, 29, 35, 47, 238(1) and 239 of the Constitution.

Whether the Petition meets the threshold for constitutional litigation.

26. The principle is well settled in the landmark case of **Anarita Karimi Njeru v Republic [1979] KLR 154**, where the court laid down the fundamental rule that a Constitutional petition must be precise. It stated:

“We would, however, again stress that if a person is seeking redress from the High Court on a matter which involves a reference to the Constitution, it is important (if any to ensure that justice is done to his case) 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.”

27. This principle was reaffirmed by the Court of Appeal in **Timothy Njoya v Attorney General & Another [2017] KECA 264 KLR**, where the Court held that the onus is on a Petitioner to demonstrate with reasonable precision the provision of the Constitution violated and the manner of such violation. This requirement is not a mere technicality; it is essential for defining the scope of the dispute, informing the Respondents of the case they must meet, and guiding the court in its adjudication.

28. The Petition before this Court alleges violations of Articles 3, 21, 27, 28, 29, 35, 47, 238(1) and 239 of the Constitution. The 3rd and 4th Respondents

together with the Interested Parties argue that the Petition is speculative and fails to demonstrate how the actions of the 2nd Respondent infringe on their right to freedom and security of the person and equality and freedom from non-discrimination. The Petitioners state that they are apprehensive that left unchecked the Respondents shall sanction and cause their arrest and charging thereby curtailing their liberty arbitrarily without just cause. The Petitioners also allege that the 1st and 2nd Respondents have in the course of the investigations shown bias and favour towards the Interested Parties against the Petitioners. The fact that the Petitioners are the subject of an investigation is not in itself proof of unequal application of the law or discrimination; there must be some indication that they were unfairly singled out. The Petitioners have not demonstrated that others similarly situated (if any) were treated differently, nor did they show malice on the part of investigators beyond their own perception of bias.

29. The principles articulated in the *Anarita case (supra)* were enforced by the Court of Appeal in *Mumo Matemu v Trusted Society for Human Rights Alliance & 5 Others [2013] KECA 445 KLR*. In that decision, the Court underscored that precision in pleadings though not synonymous with mathematical exactitude, requires sufficient clarity to define the issues in dispute. The Court held that the petition before it invoked several articles of the Constitution but failed to specify the nature of the alleged violations or the manner in which they occurred did not satisfy the standard test set in *Anarita Karimi Njeru (supra)*.

30. This Court draws guidance from *Momo Mateus (supra)*, which affirms that the requirement of reasonable precision in constitutional pleadings is an extension of the fundamental principle that pleadings serve to give fair notice to the opposing party. As Jesal M.R. observed in *Thorp v Holdsworth (1876) 3 Ch. D. 637 at 639*, pleadings exist to crystallize the issues, prevent their enlargement, and narrow the scope of contestation, thereby reducing expense and delay.

31. Applying these principles to the present Petition, this Court finds that the Petition does not meet the threshold set out in constitutional litigation.

Whether the conduct of the 2nd Respondent amounts to harassment or a breach of the Petitioners Constitutional rights.

32. It is common ground that the Interested Parties filed a complaint with the 2nd Respondent which subsequently led to the 2nd and 3rd Petitioners being summoned as part of the investigations. It is also uncontested that the 2nd and 3rd Petitioners recorded statements on the matter.

33. Section 24 of the National Police Service Act, Cap 84 provides as follows:

“24. Functions of the Kenya Police Service

The functions of the Kenya Police Service shall be the—

(a) provision of assistance to the public when in need;

(b) maintenance of law and order;

(c) preservation of peace:

(d) protection of life and property:

(e) investigation of crimes;

(f)

34. Section 35 of the National Police Service Act, provides:

“35. Functions of the Directorate

The Directorate shall—

(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;

(c)”

35. The 1st and 2nd Respondents have a duty to inter alia maintain law and order, investigate crimes and protection of life and property. Article 238(2) of the Constitution provides that in discharging their duties, the 1st and 2nd Respondents shall be do so in a manner compliant with the law, with utmost respect for the rule of law, democracy, human rights and fundamental freedoms.

36. Petitioners allege that the investigations conducted by the 1st and 2nd Respondents are harassing, oppressive and marred with procedural unfairness and bias. The Petitioners narrative of harassment and oppression is characterized by being summoned to record statements and threats of arrest and charging. Further, they maintain that bias is demonstrated by the failure of the 1st and 2nd Respondents to consider: the

contract between the 1st Petitioner and 1st Interested Party, the history of the parties and its commitment to fulfill its contractual obligation. It is incumbent upon the Court to separate investigative measures that are lawful and routine from conduct that would qualify as harassment.

37. In the investigation of crimes summons or even arrest is not uncommon; suspects may be called upon to provide information and investigators may execute search warrants. When such actions are undertaken lawfully and with respect, they cannot be deemed harassment but are part of the standard investigative practice.

38. The Petitioners have not adduced any evidence to support their claims of harassment and oppressive investigations. It is not disputed that the 1st and 2nd Respondents acted based on the complaint made by the Interested Parties. This establishes a clear and legitimate link between the Petitioners and the subject matter of the investigations demonstrating that investigative actions are based on objective considerations rather than any ulterior motive. In *Pauline Adhiambo Raget v DPP & 5 Others [2016] eKLR*, the Court rightly observed that investigations even if unsuccessful in proving an offence cannot of itself be deemed malicious; there must be proof of malice in fact. For instance; malice may be inferred when investigators persist in pursuing a matter without justification or deliberately contravene the law in order to cause injury to the suspect.

39. In the instant Petition, the 2nd Respondent cannot be said to have harassed or violated the Petitioners constitutional rights.

40. The Court accordingly finds that the Petitioner has failed to demonstrate that the Respondents, whether acting together or individually, engaged in harassment, discriminatory and oppressive investigations. The record instead reveals that the Respondents undertook investigations concerning the Petitioner and are contemplating prosecutorial measures that fall squarely within their lawful mandate. On the evidence presented, these actions were carried out properly and in accordance with due process. The allegations of harassment, threat of violation or actual violation of their rights to freedom and security of the person, equality and freedom from nondiscrimination and fair administrative action; are therefore unproven and cannot sustain the relief sought.

CONCLUSION

41. The Petitioners have failed to prove, to the required standard, their allegations of violations of the Constitution. Furthermore, the Petitioners have not successfully demonstrated that permitting the continuance of criminal investigations with the possibility of criminal proceedings being instituted against them as a result would be unjust and would result in the Respondents having acted unconstitutionally, illegally, irrationally, or in abuse of their powers and authority.

42. That being said, the Court notes that there were efforts between the Petitioners and the Interested Parties to explore the possibility of a potential out-of-court settlement of the issues between them. However, the same did not crystallize during the pendency of the proceedings, with the Petitioners missing various self-imposed milestones.

43. That notwithstanding, there is still, perhaps, an opportunity for the Petitioners to redeem themselves, if they so wish. In that regard, while the Petition must necessarily fail, it is just and expedient that the Petitioners be granted an opportunity to attempt to reach a settlement with the ostensible criminal complainants being the Interested Parties.

44. In that regard, and for the foregoing reasons, this Court issues the following orders:

- a) Petition dated 15/10/2024 and the underlying Petitioners' Application be and are hereby dismissed for lack of merit;
- b) However, and in the interest of justice, the 1st - 3rd Respondents be and are hereby restrained from taking any adverse actions or decisions against the Petitioners with respect to the complaints and/or grievances of the Interested Parties as against the Petitioners, jointly or severally, but strictly for a period of seventy-five (75) days from the date hereof after which they shall be at liberty to act;
- c) Costs of the Petition are awarded to the Interested Parties, and shall be borne by the Petitioners.

Orders Accordingly and File Closed Accordingly.

DATED, SIGNED, AND DELIVERED VIRTUALLY ON THIS 19TH DAY OF MARCH,
2026.

BAHATI MWAMUYE MBS

JUDGE

In the presence of: -;

Counsel for the Petitioner: Mr. Marete

Counsel for the 3rd Respondent: Mr. Mulati

Counsel for the Interested Parties: Mr. Kimani

Court Assistant: Ms. Lwambia