

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAROK**

**CONSTITUTIONAL PETITION NO. E002 OF 2025**

***(CORAM: HON. CHARLES M. KARIUKI – J)***

**IN THE MATTER OF ARTICLES 2, 3, 10, 40, 47 & 45(3) OF THE CONSTITUTION OF  
KENYA 2010 AND IN THE MATTER OF ARTICLES 22, 23 & 258 OF THE  
CONSTITUTION OF KENYA 2010 AND ARTICLES 163 (3) (B) OF THE  
CONSTITUTION OF KENYA 2010 AND IN THE MATTER OF RULES 4 OF THE  
CONSTITUTION OF KENYA (PROTECTION OF FUNDAMENTAL RIGHST AND  
FREEDOMS) (PRACTICE PROCEDURE) RULES, 2013**

**BETWEEN**

**SEIN FENNY KINA.....PETITIONER**

**VERSUS**

**PETER LENAI LENGEJU.....1<sup>ST</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**THE DIRECTORATE OF CRIMINAL INVESTIGATIONS.....3<sup>RD</sup> RESPONDENT**

**THE COUNTY COMMISSIONER NAROK COUNTY.....4<sup>TH</sup> RESPONDENT**

**JUDGMENT**

**A. INTRODUCTION**

- 1) This Petition raises a contest at the intersection of constitutional protection of fundamental rights and the lawful mandate of investigative agencies. The Petitioner, Sein Fenny Kina, seeks declaratory, prohibitory, and judicial review reliefs against the Respondents, alleging that criminal investigations initiated by the Directorate of Criminal Investigations and the

County Commissioner, Narok County, are unconstitutional, unlawful, and intended to undermine the enforcement of a foreign judgment adopted by this Court. The Petition is brought pursuant to Articles 2, 3, 10, 20, 22, 23, 40, 45(3), 47, 50, 165(3), and 258 of the Constitution.

- 2) The Respondents oppose the Petition on multiple fronts. The 1st Respondent raises a Preliminary Objection premised on the doctrines of *res sub judice* and *res judicata*, contending that the issues herein are directly and substantially in issue in Narok HCFCC No. E001 of 2021. All Respondents further contend that the impugned investigations fall within the lawful constitutional and statutory mandate of investigative agencies, and that the Petitioner has failed to meet the threshold for constitutional relief.
- 3) The Court is therefore called upon to determine, firstly, whether it has jurisdiction in light of the Preliminary Objection, and secondly, whether the impugned investigations violate the Petitioner's constitutional rights to warrant the grant of the reliefs sought.

#### **B. The Petition and Supporting Affidavit**

- 4) The Petitioner, Sein Fenny Kina, moved this Court by way of a Petition and a supporting affidavit, both dated 19th February 2025, brought pursuant to Articles 2, 3, 10, 22, 23, 40, 45(3), 47, 165(3) and 258 of the Constitution, as well as the Constitution of Kenya (Protection of Fundamental Rights and Freedoms) Practice and Procedure Rules, 2013.
- 5) In the Petition, the Petitioner asserts that her constitutional rights and fundamental freedoms have been violated by the Respondents, namely the 1st Respondent, Peter Lenai Lengeju, the Hon. Attorney General, the Directorate of Criminal Investigations, and the County Commissioner, Narok County. The gravamen of her case is that the Respondents have unlawfully interfered with the enforcement of a valid foreign judgment and with

subsequent proceedings in Kenya by initiating and continuing investigations targeting witnesses involved in those proceedings.

- 6) The Petitioner avers that a judgment delivered on 26th June 2020 by the Sedgwick County District Court in Kansas, United States of America, determined that matrimonial property situated in Kenya was to be shared equally between herself and the 1st Respondent. The said judgment was subsequently recognised and adopted by the High Court at Narok on 30th March 2022, thereby rendering it enforceable within the jurisdiction.
- 7) She contends that despite being aware of the judgment, the 1st Respondent has persistently frustrated its execution by dissipating assets, resisting lawful court orders, and instigating state actors to interfere with the enforcement process. In particular, she alleges that the County Criminal Investigations Officer and the County Commissioner, acting at the behest or instigation of the 1st Respondent, have initiated investigations to impeach the foreign judgment and undermine its enforcement.
- 8) The Petitioner further pleads that the said investigations have been conducted in defiance of court orders issued on 12th October 2022, which had suspended any such investigations and prohibited the arrest of an Assistant Chief connected to the proceedings. She alleges that, notwithstanding the said orders, the Assistant Chief was arrested and coerced into recanting his earlier statement. At the same time, other witnesses were intimidated, summoned, and pressured to alter their evidence.
- 9) It is also the Petitioner's case that the Respondents, through their agents, have engaged in acts of intimidation and coercion, including summoning her in connection with alleged offences, convening meetings to influence witness testimony, and directly contacting

witnesses to compel them to recant their statements. She further alleges that state officers participated in preparing statements intended to impeach the adopted foreign judgment.

10) Additionally, the Petitioner avers that the 1st Respondent has continued to frustrate execution by disposing of livestock that formed part of the subject matter of the judgment, thereby rendering the decree nugatory. She also alleges acts of property destruction, including the demolition of a fence erected to demarcate the subject property, allegedly carried out without lawful authority.

11) Based on the foregoing, the Petitioner contends that the actions of the Respondents violate her constitutional rights, including the right to property under Article 40, the right to equal rights in marriage under Article 45(3) and Section 3(2) of the Marriage Act, and the right to fair administrative action and fair hearing under Articles 47 and 50 of the Constitution. She further asserts that the impugned investigations offend the principle of the finality of judgments and constitute an abuse of state power.

12) Consequently, the Petitioner seeks the following orders;

- a) *A declaration that the investigations by the County Criminal Investigations Officer Narok and the County Commissioner Narok relating to witness testimony in the proceedings in the foreign judgment in 2018-DM-001680-DS and the judgment in Narok HCFCC/E001/2021 are an affront to the administration of justice as envisaged by Article 50 of the Constitution of Kenya.*
- b) *A declaration that the Petitioner's fundamental rights and freedoms as enshrined under Article 40 and 45(3) of the Constitution of Kenya, 2010, Section 3(2) of the Marriage Act have been contravened and infringed upon by the Respondents herein.*

- c) *A declaration that the investigations by the County Investigations Officer, Narok, violate the principle of finality of judgments.*
- d) *An order of Judicial Review quashing the pending investigations targeting the witnesses listed in the document marked as Exhibit 2 in 2018-DM-001680-DS.*
- e) *A prohibitory order stopping the County Criminal Investigation Officer and the County Commissioner from tracing, reaching, and intimidating witnesses listed in the document marked as Petitioner's exhibit 2 in 2018-DM-001680-DS.*
- f) *Damages for violation of the Petitioner's fundamental rights and freedoms.*
- g) *Costs of and incidental to this Petition.*
- h) *such other relief as this honourable court may deem just and fit to meet the ends of justice.*

**C. The 1st Respondent's Response, Preliminary Objection, and the 3rd Respondent's Grounds of Opposition**

13) The 1st Respondent opposed the Petition through a response dated 12th September 2025, a Notice of Preliminary Objection of even date, while the 3rd Respondent filed Grounds of Opposition dated 1st March 2025.

14) In his response, the 1st Respondent generally denied the allegations contained in the Petition and maintained that he has at all times complied with the judgment of the Sedgwick County District Court and the subsequent orders of the High Court at Narok. He contended that the Petitioner's claim is premised on a misrepresentation of facts, particularly regarding the alleged matrimonial property. It was his position that neither he nor the Petitioner owns livestock in Kenya and that the livestock targeted in execution

proceedings belongs to his father, who is not a party to the proceedings and whose property is constitutionally protected.

15) The 1st Respondent further averred that the foreign judgment did not specifically identify or describe any property in Kenya, and that the execution proceedings initiated by the Petitioner were therefore misconceived. He alleged that the foreign judgment and its adoption were influenced by a statement authored by an Assistant Chief, which he claims was forged, thereby justifying the lodging of a criminal complaint and the ensuing investigations.

16) He maintained that the Directorate of Criminal Investigations (DCI) acted within its constitutional and statutory mandate in undertaking investigations into the alleged forgery, and that such a mandate cannot be curtailed by court orders issued at an interlocutory stage. He denied any involvement in the arrest, intimidation, or coercion of witnesses, asserting that he has no control over investigative agencies, which operate independently under the Constitution and relevant statutes.

17) The 1st Respondent also denied allegations of dissipating assets or frustrating execution, contending that such claims were unsubstantiated. He reiterated that the Petitioner had failed to prove ownership or contribution to the alleged matrimonial property as required under the Matrimonial Property Act. He further asserted that the Petition does not disclose any violation of constitutional rights and is an abuse of the court process.

18) On points of law, the 1st Respondent invoked various constitutional and statutory provisions to justify the investigative mandate of the police and prosecutorial authorities, emphasising their independence. He further contended that the Petition offends the doctrine of sub judice due to the existence of Narok HCFCC/E001/2021 involving the

same parties and issues, and urged the Court to dismiss the Petition with costs. This underscores the court's commitment to procedural fairness and the proper legal process, fostering trust in the judicial system.

19) In the Notice of Preliminary Objection, the 1st Respondent raised two principal grounds: first, that this Court lacks jurisdiction to entertain the Petition on account of the doctrines of res sub judice and res judicata, given the pendency of Narok HCFCC/E001/2021 between the same parties; and second, that the Petition constitutes an abuse of the court process and ought to be struck out with costs. Recognising the court's authority reinforces the importance of respecting legal procedures and the court's role in upholding justice.

20) The 3rd Respondent, on its part, opposed the Petition through Grounds of Opposition dated 1st March 2025. It asserted that the National Police Service, including the Directorate of Criminal Investigations, is constitutionally and statutorily mandated to investigate complaints and prevent crime. It was contended that upon receipt of a complaint, the police are under a duty to investigate, and may lawfully summon, interrogate, and, where necessary, arrest individuals in accordance with the law.

21) The 3rd Respondent further argued that the Petitioner had failed to demonstrate with precision how her constitutional rights had been violated, and had not discharged the requisite legal and evidentiary burden. Emphasising the need for specificity in constitutional petitions reassures the court of the importance of clear, substantiated claims, promoting confidence in the legal process.

22) It was therefore the 3rd Respondent's position that the investigations complained of were lawful, undertaken within the framework of the Constitution and statute. It did not amount to any violation of the Petitioner's rights. Consequently, it urged the Court to find that the

Petition is incompetent, misconceived, and an abuse of the court process, and to dismiss the same with costs.

**D. Submissions.**

**i. The Petitioner's submissions in opposition to the Preliminary Objection**

23) The Petitioner's submissions in opposition to the Preliminary Objection dated 12th September 2025 are anchored on the argument that the objection is legally untenable and does not meet the threshold of a proper preliminary objection, nor does it satisfy the doctrines of *res sub judice* or *res judicata*.

24) Counsel for the Petitioner begins by outlining the nature of the objection, noting that the 1st Respondent contends that the existence of Narok HCFCC E001 of 2021 bars the present Petition. The Petitioner, however, disputes this position and submits that the objection is misconceived both in fact and in law. It is argued that the present proceedings are constitutional in nature, seeking enforcement of fundamental rights under Articles 20, 22, 23, 47, and 165(3) of the Constitution, whereas the cited matrimonial cause concerns private rights arising from a dissolved marriage. Consequently, the two matters are said to be distinct in subject matter, parties, and reliefs sought.

25) On the applicable legal principles, the Petitioner emphasises the constitutional foundation of the Court's jurisdiction, citing Articles 20, 22, 23, 47, and 165(3) of the Constitution, which empower the High Court to hear claims of fundamental rights violations and grant appropriate remedies, thereby reinforcing the court's authority and the importance of constitutional protections in this case.

26) About the doctrine of *sub judice* under Section 6 of the Civil Procedure Act, the Petitioner submits that the threshold for its application has not been met. Reliance is placed on **Kenya National Commission on Human Rights v Attorney General; IEBC & 16 others (2020) eKLR**, where the Court outlined the essential elements of *sub judice*, including sameness of parties, subject matter, and the existence of parallel proceedings before competent courts. The Petitioner contends that the 1st Respondent failed to provide pleadings or evidence from the alleged earlier suit to demonstrate these elements, thereby failing to discharge the burden of proof.

27) Similarly, on the doctrine of *res judicata* under Section 7 of the Civil Procedure Act, the Petitioner argues that there is no evidence that the issues raised in the present Petition were previously heard and finally determined by a court of competent jurisdiction. In support of this position, reliance is placed on **John Florence Maritime Services Limited & another v Cabinet Secretary Transport & Infrastructure & 3 Others (2021) KESC 39 (KLR)**, where the Supreme Court underscored that *res judicata* is a substantive doctrine requiring identity of issues, parties, title, jurisdiction, and a final determination. The Petitioner asserts that none of these elements has been established.

28) Further reliance is placed on **Independent Electoral & Boundaries Commission v Maina Kiai & 5 Others [2017] eKLR**, where the Supreme Court held that all elements of *res judicata* must be satisfied conjunctively. The Petitioner maintains that the 1st Respondent has not demonstrated that the present constitutional issues were directly and substantially in issue in the prior matrimonial proceedings.

29) On the nature of a preliminary objection, the Petitioner submits that the objection raised does not qualify as a pure point of law. The Petitioner relies on **Mukisa Biscuit**

**Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA 696**, as affirmed in **Hassan Ali Joho & another v Suleiman Said Shahbal & 2 others [2014] eKLR**, to argue that a preliminary objection must be based on uncontested facts and should not require evidentiary proof. This position is reinforced by **Oraro v Mbaja [2005] 1 KLR 141**, where the Court held that any objection requiring ascertainment of facts cannot be a valid preliminary objection. The Petitioner contends that the 1st Respondent's objection necessitates examination of facts and pleadings from another suit, thereby disqualifying it as a proper preliminary objection.

30) The Petitioner further cites **Aviation & Allied Workers Union Kenya v Kenya Airways Limited & 3 Others [2015] eKLR** to emphasise that a preliminary objection must raise a pure question of law without factual contestation, which is not the case herein.

31) In applying the law to the facts, the Petitioner submits that the current Petition seeks constitutional remedies against State actors for alleged violations of rights, including fair administrative action under Article 47 and the Fair Administrative Action Act, 2015. It is argued that these issues are neither directly nor substantially in issue in the matrimonial cause, which concerns the enforcement of a foreign judgment and division of matrimonial property. The Petitioner also highlights that the parties in the two proceedings are different, as the Petition involves State organs that are not parties to the matrimonial cause.

32) In conclusion, the Petitioner submits that the Preliminary Objection is devoid of merit, fails to meet the legal threshold for *res sub judice* and *res judicata*, and does not constitute a proper preliminary objection in law. The Court is therefore urged to dismiss the objection with costs and allow the Petition to proceed to a hearing on its merits.

## **ii. The petitioner's submissions on the petition**

- 33) The Petitioner's submissions are anchored on the contention that the impugned investigations by the County Criminal Investigations Officer and the County Commissioner are unlawful, unconstitutional, and amount to an abuse of legal process aimed at undermining a valid foreign judgment adopted by the High Court.
- 34) The Petitioner begins by outlining the reliefs sought in the Petition, including declarations that the investigations violate her constitutional rights under Articles 40, 45(3), and 50 of the Constitution of Kenya, as well as orders of judicial review to quash and prohibit the ongoing investigations. She further seeks damages for alleged violations of her fundamental rights. In framing the legal basis of the Petition, the Petitioner relies heavily on the constitutional architecture governing enforcement of rights, particularly Articles 20, 22, 23, and 165(3) of the Constitution, which affirm that the Bill of Rights binds all persons and state organs, and vests the High Court with jurisdiction to hear and determine claims of violation or threatened violation of fundamental rights and freedoms. Article 259 is invoked to urge a purposive interpretation of the Constitution that promotes the rule of law and the protection of rights.
- 35) The Petitioner further invokes Article 47 of the Constitution and Section 4 of the Fair Administrative Action Act, 2015, to argue that the investigative actions complained of fall within the realm of administrative action and must therefore meet the threshold of lawfulness, reasonableness, and procedural fairness. It is submitted that the Respondents failed to accord her fair administrative treatment, including notice, an opportunity to be heard, and reasons for their actions.
- 36) On the substance of the dispute, the Petitioner contends that following the adoption of the foreign judgment by the High Court in Narok, the 1st Respondent, in collusion with

officers of the 3rd and 4th Respondents, initiated investigations with the ulterior motive of intimidating witnesses and impeaching the integrity of that judgment. She asserts that, despite court orders issued on 12th October 2022 suspending investigations into the Assistant Chief, the Respondents proceeded to summon witnesses and allegedly coerce them into recanting their earlier statements. The Petitioner relies on audio and video evidence annexed to her affidavit to demonstrate alleged intimidation and coercion of witnesses.

37) It is the Petitioner's case that the investigations are not bona fide but are instead actuated by malice and aimed at frustrating her enjoyment of the fruits of the judgment. She submits that the timing and sequence of events—particularly the initiation of investigations following efforts to execute the decree—demonstrate a retaliatory and collateral purpose. As such, the investigations are said to constitute an abuse of the criminal justice process.

38) In support of the Court's power to intervene, the Petitioner relies on the decision in **Republic v Director of Public Prosecution & 3 others Ex Parte Juma Nyatieko & 2 others; Maurice Onyango Oketch (Interested Party) [2021] KEHC 1775 (KLR)**, where the Court held that although investigative and prosecutorial bodies have constitutional mandates, the High Court may intervene where such powers are exercised unlawfully, in bad faith, or for collateral purposes. Similarly, reliance is placed on **George Joshua Okungu & Another v Chief Magistrate's Court, Nairobi & another [2014] eKLR**, which affirms that while courts should not usurp the mandate of investigative authorities, they will intervene where criminal proceedings are used to violate constitutional rights or amount to an abuse of process.

- 39) The Petitioner further cites **Republic v Chief Magistrate’s Court at Mombasa ex parte Ganijee & Another [2002] eKLR**, for the principle that criminal proceedings should not be used to advance civil disputes or achieve ulterior purposes. The courts must halt such proceedings where they are oppressive or vexatious. Additionally, in **Republic v Director of Public Prosecution & 2 others ex parte Azim Jiwa Rajwani & another [2022] eKLR**, the Court emphasised that judicial review will lie where a decision is tainted by illegality, irrationality, or procedural impropriety, adopting the test set out in **Pastoli v Kabale District Local Government Council & Others (2008) 2 EA 300**.
- 40) Applying these principles, the Petitioner argues that the investigations in question are tainted by illegality and procedural impropriety, as they disregard existing court orders, lack a legitimate evidential basis, and are pursued for ulterior motives. She maintains that the conduct of the Respondents violates her right to a fair hearing under Article 50, her property rights under Article 40, and her equality rights in marriage under Article 45(3), as well as the statutory protections under Section 3(2) of the Marriage Act.
- 41) The Petitioner concludes that the High Court, in exercise of its supervisory and constitutional jurisdiction, ought to intervene to prevent abuse of the criminal justice system. She urges the Court to find that the investigations are unlawful, oppressive, and intended to defeat justice, and therefore to grant the declaratory, prohibitory, and judicial review orders sought, together with costs. She also indicates reliance on **Republic v Director of Public Prosecution & 2 others; Rutto & another (Interested Parties); Toroitich (Ex parte Applicant) (Judicial Review Application E105 of 2024) [2025] KEHC 5041 (KLR)**, which reinforces the Court’s role in curbing abuse of investigative and prosecutorial powers.

**iii. The 1st Respondent's Submissions on the Preliminary Objection**

- 42) The 1st Respondent filed submissions dated 1st October 2025 in support of the Notice of Preliminary Objection dated 12th September 2025, urging the Court to strike out the Petition on grounds of **sub judice, res judicata**, and abuse of the court process.
- 43) Counsel for the 1st Respondent submitted that the issues raised in the present Petition are directly and substantially in issue in **Narok High Court Family Civil Case No. HCFCC/E001/2021, Sein Fenny Kina v Peter Lenai Lengeju**, which was instituted earlier and remains pending before a court of competent jurisdiction. It was argued that the Petition constitutes a duplication of proceedings, as it challenges the same investigations and enforcement processes already the subject of applications in the said earlier suit.
- 44) Reliance was placed on Section 6 of the Civil Procedure Act (Cap 21), which codifies the doctrine of *sub judice* and bars courts from proceeding with a matter where the issues in dispute are directly and substantially in issue in a previously instituted suit between the same parties. Counsel submitted that all the elements of *sub judice* had been satisfied, namely: identity of parties, similarity of subject matter, pendency of the earlier suit, and competence of the court seized of the earlier matter.
- 45) To buttress the nature of a preliminary objection, the 1st Respondent relied on the decision in **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd**, where the Court defined a preliminary objection as a pure point of law which, if successfully argued, may dispose of the suit.
- 46) On the doctrine of *sub judice*, reliance was further placed on the Supreme Court decision in **Kenya National Commission on Human Rights v Attorney General, IEBC & 16 others**, where the Court explained that the doctrine is intended to prevent multiplicity of

suits, avoid conflicting decisions, and protect the integrity of the judicial process. The 1st Respondent submitted that the present Petition offends these principles, as it was filed during the pendency of HCFCC/E001/2021 and raises substantially similar questions concerning the legality of investigations and enforcement of the foreign judgment.

47) The 1st Respondent also cited the Ugandan High Court decision in *Nyanza Garage v Attorney General*, for the proposition that multiplicity of suits between the same parties over the same subject matter should be avoided as it burdens parties, clogs the justice system, and leads to inefficiency and possible conflicting outcomes.

48) It was further submitted that the Petitioner had already moved the court in HCFCC/E001/2021 through an application dated 19th December 2024 seeking, inter alia, suspension of investigations and committal of the Respondents for alleged disobedience of court orders. According to the 1st Respondent, the reliefs sought in that application are substantially similar to those sought in the present Petition, particularly regarding the legality of investigations by the Directorate of Criminal Investigations and the County Commissioner.

49) Counsel argued that the filing of the present Petition while the earlier proceedings were still pending amounts to forum shopping and an abuse of the court process. It was contended that the Petitioner is improperly attempting to re-litigate issues already before the Court under the guise of a constitutional petition.

50) On the concept of abuse of process, the 1st Respondent submitted that the Court has inherent jurisdiction to prevent misuse of its processes. It was argued that abuse arises where a party institutes multiple suits over the same subject matter, pursues parallel

proceedings, or seeks relief in a subsequent suit that could have been obtained in an earlier one.

51) In conclusion, the 1st Respondent submitted that this Court lacks jurisdiction to entertain the Petition by virtue of the doctrine of *sub judice*, and that allowing the proceedings to continue would amount to an abuse of the court process. The Court was therefore urged to uphold the Preliminary Objection and strike out the Petition with costs.

**iv. The 1st Respondent's Submissions in Opposition to the Petition**

52) The 1st Respondent filed written submissions dated 28th January 2026 opposing the Petition dated 19th February 2025 and urging the Court to dismiss it with costs.

53) Counsel submitted that the Petition is devoid of merit and does not meet the threshold of a constitutional petition, arguing that the Petitioner has merely alleged violations without demonstrating with precision the specific rights infringed or the manner of such infringement. It was contended that the Petition is improperly framed as a constitutional matter, yet fundamentally revolves around issues already canvassed in Narok HCFCC/E001/2021, particularly concerning the enforcement of a foreign judgment and the legality of ongoing investigations.

54) On the legal threshold for constitutional petitions, the 1st Respondent relied on the decision in **Anarita Karimi Njeru v Republic**, as affirmed by the Supreme Court in **Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others**, for the principle that a petitioner must clearly set out the constitutional provisions alleged to have been violated and demonstrate the manner of such violation. Counsel emphasised that there must be a clear nexus between the alleged infringement and the respondents' actions.

- 55) Further reliance was placed on **James Ngochi Ngugi t/a Ngugi & Company Advocates & Another v Insurance Regulatory Authority & Another**, where the Court underscored that a proper constitutional petition must explicitly identify the rights violated and cannot be based on vague or generalised allegations. The 1st Respondent also cited **Elizabeth v President of the Republic of Seychelles** for the proposition that a petitioner must establish the existence of a constitutional right, its violation, and the liability of the respondent.
- 56) Applying the above principles, the 1st Respondent argued that the Petitioner has failed to demonstrate any actual violation of her rights under Articles 40, 45(3), 47, or 50 of the Constitution. Instead, the Petition was described as a strategic attempt to cloak ordinary civil disputes and enforcement challenges in constitutional language.
- 57) On the factual matrix, the 1st Respondent reiterated that the dispute originates from a foreign judgment delivered in the Sedgwick County District Court, Kansas, and subsequently adopted in Kenya. He maintained that investigations by the Directorate of Criminal Investigations (DCI) were triggered by a complaint of forgery and false information, particularly regarding an affidavit allegedly authored by an Assistant Chief concerning ownership of livestock.
- 58) It was submitted that the DCI acted within its constitutional and statutory mandate in undertaking investigations, and that interim court orders cannot curtail such a mandate. Counsel emphasised that investigations into alleged criminal conduct are lawful and necessary, especially where there are allegations of forgery affecting judicial proceedings.
- 59) The 1st Respondent further submitted that the Petitioner had already sought similar reliefs in HCFCC/E001/2021, including an application dated 19th December 2024 seeking to

suspend investigations and to cite the Respondents for contempt. According to counsel, the present Petition raises substantially similar issues and was filed before the determination of that application, thereby demonstrating an attempt to relitigate those issues through a different procedural avenue.

60) It was therefore contended that the Petition is not only misconceived but also constitutes an abuse of the court process, aimed at frustrating lawful investigations and preventing the 1st Respondent from pursuing justice through appropriate legal channels.

61) In conclusion, the 1st Respondent urged the Court to find that the Petition does not disclose any constitutional violation, is improperly before the Court, and should be dismissed with costs. On costs, it was submitted that the Petitioner should bear the same, having instituted unmeritorious proceedings.

**v. The 2<sup>nd</sup> and 4<sup>th</sup> respondents' submissions on the petition**

62) The 2nd and 4th Respondents oppose the Petition and contend that it is fundamentally misconceived, unsupported by evidence, and does not disclose any constitutional violation. They begin by outlining the factual background, noting that the dispute originates from a foreign judgment issued in Sedgwick County, Kansas (Case No. 2018-DM-001680-DS), which was subsequently recognised and adopted by the High Court at Narok in HCFCC/E001/2021. According to the Respondents, the 1st Respondent lodged a complaint alleging that false information regarding ownership of livestock in Kenya had been presented to the U.S. court through an affidavit authored by an Assistant Chief, Mr Sylvester Mepukori, thereby influencing the outcome of the foreign proceedings. This complaint prompted the County Commissioner to refer the matter to the Directorate of Criminal Investigations (DCI) for inquiry.

63) The Respondents submit that the actions undertaken by the investigative agencies were lawful and squarely within their constitutional and statutory mandate. They rely on Section 24 of the National Police Service Act, which outlines the functions of the police, including the investigation of crimes, maintenance of law and order, and enforcement of all laws. They further invoke Sections 49 and 52 of the same Act to justify the summoning and interrogation of individuals, as well as the recording of statements during investigations. In addition, reliance is placed on Article 245(4)(a) and (b) of the Constitution of Kenya, 2010, which safeguards the independence of the police in conducting investigations, as well as Sections 21, 29, and 36 of the Criminal Procedure Code and Sections 58 and 59 of the National Police Service Act, which authorise arrests under prescribed circumstances. On this basis, the Respondents argue that the summoning of the Petitioner and other witnesses, and the ongoing investigations, were lawful exercises of statutory power and cannot constitute a violation of rights.

64) To reinforce the duty of the police to investigate complaints, the Respondents rely on the decision in **Republic v Commissioner of Police & Another Ex Parte Michael Monari & Another [2012] eKLR**, where the Court held that the police are under a duty to investigate any complaint once made, and that they only need to establish reasonable suspicion before preferring charges. They argue that, having received a complaint from the 1st Respondent, the investigative agencies were not only entitled but obligated to act, and any attempt to restrain them would undermine their constitutional function.

65) On the question of alleged constitutional violations, the Respondents submit that the Petition fails to meet the threshold of a proper constitutional claim. They rely on **Anarita Karimi Njeru v Republic (1979) KLR 1272**, which established the principle that a

petitioner must precisely identify the constitutional provisions alleged to have been violated and demonstrate the manner of such violation. It is their position that the Petitioner has merely made broad and generalised allegations without demonstrating how the Respondents' actions amount to infringement of her rights.

66) Further, the Respondents contend that the Petitioner has failed to discharge both the legal and evidential burden of proof. In this regard, they rely on **Raila Odinga & 5 Others v Independent Electoral and Boundaries Commission & 3 Others [2013] eKLR and Kiambu County Tenants Welfare Association v Attorney General & Another [2017] eKLR**, which affirm that a party alleging a violation must present cogent and credible evidence. They argue that the Petitioner's claims—such as allegations of witness intimidation, abuse of office, and sale of livestock—are speculative and unsupported by any tangible evidence, and therefore cannot form a basis for the reliefs sought.

67) The Respondents further maintain that the investigations in question do not violate any court orders or the principle of finality of judgments. Rather, they stem from independent criminal complaints alleging forgery and are therefore distinct from the enforcement of the foreign judgment. They emphasise that the County Commissioner's role was merely administrative and facilitative, aimed at ensuring that the complaint was investigated, and did not amount to any unlawful interference.

68) In conclusion, the 2nd and 4th Respondents submit that the Petition is frivolous, vexatious, and an abuse of the court process. They argue that it has been brought not to vindicate constitutional rights, but to shield the Petitioner from lawful investigations and to frustrate the administration of justice. Accordingly, they urge the Court to find that no

constitutional violation has been established, that the Respondents acted within the law, and that the Petition lacks merit. They pray that the same be dismissed with costs.

#### **E. ISSUES FOR DETERMINATION**

69) Having considered the pleadings, affidavits, and submissions on record, the issues that arise for determination are:

- i. Whether the Preliminary Objection founded on the doctrines of res sub judice and res judicata is merited.**
- ii. Whether the Petition meets the constitutional threshold for the enforcement of fundamental rights.**
- iii. Whether the investigations undertaken by the 3rd and 4th Respondents are unlawful, unconstitutional, or amount to an abuse of process.**
- iv. Whether the Petitioner is entitled to the reliefs sought.**
- v. Who should bear the costs of the Petition?**

#### **F. ANALYSIS AND DETERMINATION**

##### **I. Whether the Preliminary Objection is merited**

70) The law on preliminary objections is settled. In **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA 696**, the Court held that a preliminary objection must raise a pure point of law capable of disposing of the suit without recourse to evidence. This position was affirmed by the Supreme Court in **Hassan Ali Joho & another v Suleiman Said Shahbal & 2 others [2014] eKLR**, and further elaborated in **Oraro v Mbaja [2005] 1 KLR 141**, where it was held that any matter requiring ascertainment of facts cannot qualify as a proper preliminary objection.

- 71) The 1st Respondent's objection is premised on Sections 6 and 7 of the Civil Procedure Act. Section 6 codifies the doctrine of *sub judice*, while Section 7 codifies the doctrine of *res judicata*.
- 72) On *sub judice*, the Supreme Court in **Kenya National Commission on Human Rights v Attorney General; IEBC & 16 others [2020] eKLR** held that a party must establish: identity of parties, sameness of subject matter, pendency of the earlier suit, and competence of the court seized of the earlier matter.
- 73) Similarly, on *res judicata*, the Supreme Court in **Independent Electoral & Boundaries Commission v Maina Kiai & 5 Others [2017] eKLR** and **John Florence Maritime Services Limited & another v Cabinet Secretary for Transport & Infrastructure & 3 Others [2021] KESC 39 (KLR)** emphasized that the elements of identity of issues, parties, title, jurisdiction, and final determination must be satisfied conjunctively.
- 74) In the present case, the objection invites the Court to compare the Petition with *Narok HCFCC No. E001 of 2021* to ascertain the similarity of issues and parties. However, no pleadings or record of the alleged suit were placed before the Court to enable such comparison. Determining whether the issues are “directly and substantially the same” would therefore require factual interrogation, which falls outside the scope of a pure point of law.
- 75) Further, the Petition herein is a constitutional claim alleging violation of rights under Articles 40, 45(3), 47 and 50 of the Constitution. In contrast, the cited suit is a matrimonial cause concerning the enforcement of a foreign judgment. The causes of action, reliefs sought, and parties—particularly the inclusion of State organs in the present Petition—are materially distinct.

76) Accordingly, the Court finds that the Preliminary Objection does not meet the threshold set in **Mukisa Biscuit** (supra) and that the doctrines of *sub judice* and res judicata have not been established.

77) The Preliminary Objection is hereby dismissed.

## **II. Whether the Petition meets the constitutional threshold**

78) The applicable principle is that a constitutional petition must be pleaded with precision. In **Anarita Karimi Njeru v Republic (1979) KLR 1272**, the Court held that a petitioner must set out, with reasonable precision, the rights alleged to have been violated and the manner of their violation. This principle was affirmed by the Supreme Court in **Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others [2014] eKLR**.

79) The Petitioner has identified specific constitutional provisions—Articles 40, 45(3), 47, and 50—and has particularised the alleged violations, including unlawful investigations, intimidation of witnesses, and interference with the enforcement of a court-adopted foreign judgment.

80) The Court is satisfied that the Petition meets the threshold of a constitutional claim.

## **III. Whether the investigations are unlawful or an abuse of process**

81) There is no dispute that the Directorate of Criminal Investigations derives its mandate from the Constitution and statute. Article 245(4) of the Constitution safeguards the independence of the police, while Section 24 of the National Police Service Act mandates the police to investigate crimes.

82) In **Republic v Commissioner of Police & Another ex parte Michael Monari & Another [2012] eKLR**, the Court held that the police have a duty to investigate any complaint once made.

- 83) However, that mandate is not absolute. The High Court retains supervisory jurisdiction to intervene where investigative powers are exercised unlawfully, in bad faith, or for ulterior purposes. In **Republic v Director of Public Prosecutions & 3 others Ex Parte Juma Nyatieko & 2 others [2021] KEHC 1775 (KLR)**, the Court held that intervention is warranted where there is abuse of discretion or use of the criminal process for collateral purposes.
- 84) Similarly, in **George Joshua Okungu & Another v Chief Magistrate's Court, Nairobi & another [2014] eKLR**, the Court held that criminal proceedings will be halted where they are used to violate constitutional rights or amount to an abuse of process. In **Republic v Chief Magistrate's Court at Mombasa ex parte Ganijee & Another [2002] eKLR**, the Court emphasised that criminal proceedings should not be used to advance civil disputes.
- 85) The test for judicial review intervention was succinctly stated in **Pastoli v Kabale District Local Government Council & Others (2008) 2 EA 300**, as adopted in **Republic v Director of Public Prosecutions & 2 others ex parte Azim Jiwa Rajwani & another [2022] eKLR**, namely illegality, irrationality, and procedural impropriety.
- 86) Applying these principles, the Petitioner alleges that: investigations were initiated after enforcement efforts commenced; witnesses were intimidated and coerced to recant evidence; the investigations were conducted in defiance of subsisting court orders.
- 87) While these allegations are serious, the burden of proof rests on the Petitioner. As held in **Raila Odinga & 5 Others v IEBC & 3 Others [2013] eKLR**, a party alleging a violation must present cogent and credible evidence.
- 88) Upon evaluation of the material placed before the Court, the evidence of illegality or bad faith is not sufficiently demonstrated to the required standard. The existence of a

complaint alleging forgery provides a lawful basis for investigations. The Court must be cautious not to usurp the investigative agencies' mandate unless clear abuse is established.

89) Further, the mere existence of parallel civil proceedings does not bar criminal investigations, unless it is shown that the criminal process is being used for a collateral purpose. That threshold has not been conclusively met.

#### **IV. Whether the Petitioner is entitled to reliefs**

90) Given the foregoing findings:

- i. The threshold for quashing or prohibiting investigations has not been met.
- ii. The Petitioner has not demonstrated illegality, irrationality, or procedural impropriety to warrant judicial review orders.
- iii. The claims for declaratory relief and damages are not sufficiently proved.

91) Accordingly, the reliefs sought cannot issue.

#### **V. Costs**

92) Costs follow the event but remain in the discretion of the Court. Given the constitutional nature of the Petition, a balanced approach is warranted.

#### **G. FINAL ORDERS**

- i. The Preliminary Objection dated 12th September 2025 is dismissed.**
- ii. The Petition dated 19th February 2025 is dismissed for lack of merit.**
- iii. Each party shall bear its own costs.**

93) Orders accordingly.

**DATED, SIGNED, AND DELIVERED AT NAROK THROUGH TEAMS**

**APPLICATION, THIS 27<sup>TH</sup> DAY OF APRIL, 2025.**

**CHARLES KARIUKI**

**JUDGE**