Birgen & 4 others v Director of Public Prosecutions & 8 others (Constitutional Petition E015 of 2024) [2025] KEHC 4026 (KLR) (28 March 2025) (Judgment)

Neutral citation: [2025] KEHC 4026 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

CONSTITUTIONAL PETITION E015 OF 2024

RN NYAKUNDI, J

MARCH 28, 2025

IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES 22(1), 27(1) (2) & 24, OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF FUNDAMENTAL, RIGHTS AND FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013

BETWEEN

TAMAR CHEPTOO BIRGEN ..... 1ST PETITIONER

PAUL KIRWA SAMOEI ..... 2ND PETITIONER

JULIUS KIPKOSGEI ..... 3RD PETITIONER

JACOB KIPLAGAT TOO ..... 4TH PETITIONER

PHILEMON SONGOK ..... 5TH PETITIONER

AND

DIRECTOR OF PUBLIC PROSECUTIONS ..... 1ST RESPONDENT

DIRECTORATE OF CRIMINAL INVESTIGATIONS ..... 2ND RESPONDENT

DIRECTORATE OF CRIMINAL INVESTIGATIONS LAND FRAUD INVESTIGATIONS UNIT (LFIU) ..... 3RD RESPONDENT

PHILIP K MARITIM ..... 4TH RESPONDENT

ROBERT KIPKEMEI KETER ..... 5TH RESPONDENT

JOHN KIPKEMBOI CHUMBA ..... 6TH RESPONDENT

WILLIAM KIPNGETICH BITOK ..... 7TH RESPONDENT

LENNA CHELIMO ..... 8TH RESPONDENT

EDWIN BOIT ..... 9TH RESPONDENT

JUDGMENT

1. This petition was instituted by the Petitioners who described themselves as public spirited individuals committed to the observance of national values and tenets of governance together with the Bill of Rights. The Petitioners brought the petition by dint of Articles 22(2)(c) and 258(2)(c) of *the Constitution* and Rule 4(2)(iii) of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules.

2. The Petitioners sought orders as follows:

    a. A declaration do issue that the charges preferred against the petitioners vide Eldoret MCCR No. 1238 of 2024 is an abuse of the court process and violates the Petitioners' Constitutional rights and be and are hereby declared a nullity.

    b. A declaration that the 1st – 3rd Respondent abused their offices in charging the Petitioners.

    c. A declaration that the 2nd and 3rd Respondent action of charging the petitioners and/or threatening the Petitioners with arrest and charges over allegations of fraud over land fraud over land parcel No. Pioneer/Ngeria Bock 1 (EATEC)/1980 is in contravention of Articles 40 of *the Constitution*.

    d. A declaration that the 1st – 3rd Respondent breached articles 10, 29, and 158(11) and 244 in arresting and/or threatening to arrest the petitioners contrary to the law.

    e. A declaration that the Petitioners' rights under Art. 28 of *the Constitution* have been breached on account of the manner the investigations have been conducted.

    f. General damages

    g. Costs of the petition be awarded to the petitioners.

    h. Any other relief the court may deem fit to grant.

Petitioners' case.

3. What provoked this petition is the 1st – 3rd Respondents of illegally preferring charges against the Petitioners for vide Eldoret MCCR No. E1238 OF 2024 allegations of land fraud over land parcel No. Pioneer/Ngeria Bock 1 (EATEC)/1980 contrary to the principles of the law.

4. The background of the petition is that Paul Kirwa Samoei, Julius Kipkosgei and Tamar Cheptoo Birgen are owners of land parcel known as Pioneer/Ngeria Bock 1 (EATEC)/1980. That Paul Kirwa Samoei, Julius Kipkosgei and Tamar Cheptoo Birgen complained on numerous occasions to different authorities regarding the said parcel after they were informed that their green card had been cancelled without them being informed of any reasons.

5. That investigations were conducted by the DCI together with the office of the Director of Public Prosecutions which revealed that the green card in their possession was authentic. It is for this reason that the registrar who was previously stationed at Uasin Gishu County wrote to the DCI confirming and agreed to reconstruct the file of Paul Kirwa Samoei, Julius Kipkosgei and Tamar Cheptoo Birgen.

6. Paul Kirwa Samoei, Julius Kipkosgei and Tamar Cheptoo Birgen instituted suit No. Eldoret MELC No. E027 of 2022 against Edna Jepleting and Robert Keter which judgment was delivered in their favour on 23.08.2022 and following the said decree Edna Jepleting and Robert Keter were evicted from land parcel known as Pioneer/Ngeria Bock 1 (EATEC)/1980 given that they were occupying the same illegally.

7. That Philip K. Martim, Kipkurgat Kibor Kibiego, Robert Kipkemei Keter, John Kipkemboi Chumba, William Kipngetich Bitok and Edna Jepleting despite the existence of Eldoret MELC No. E027 of 2022 illegally filed another suit being Eldoret ELC No. 53 of 2022which is pending in court in which the dispute concerns among other land parcel number Pioneer/Ngeria/Block 1 (EATEC)/1980, which is also the subject matter of criminal charges in the charge sheet before the Eldoret Criminal Case No. 1238/2024.

8. That Philip K. Martim, Kipkurgat Kibor Kibiego, Robert Kipkemei Keter, John Kipkemboi Chumba, William Kipngetich Bitok and Edna Jepleting filed Eldoret ELC No. E053 of 2022 when they sensed defeat.

9. That Philip K. Martim, Kipkurgat Kibor Kibiego, Robert Kipkemei Keter, John Kipkemboi Chumba, William Kipngetich Bitok and Edna Jepleting filed an injunction application dated 11th October, 2022 in Eldoret ELC No. E053 of 2022 to restrain Paul Kirwa Samoei, Julius Kipkosgei and Tamar Cheptoo Birgen from using the said parcel of land which application was dismissed on 19th January, 2023.

10. That the 1st Respondent preferred and/or recommended charges be instituted against the Petitioners on allegations of fraud and conspiracy to defraud and subsequently the petitioners were charged of the alleged offence vide Eldoret MCCR NO. E1238 OF 2024.

11. That the issue herein is a land dispute before the Environment and Land Court, wherein the determination of the ownership of the suit land is moot. That criminal charges have been preferred after the institution of civil cases thus the institution of the criminal process is meant to force the Petitioners to submit to the civil claim, and for the achievement of a collateral purpose other than its legally recognized aim and legitimate use.

12. That the institution of criminal against petitioners is tainted with illegality, irrationality, procedural impropriety, ultra vires and unreasonable. That the use of the criminal process was in the circumstances oppressive and vexatious, and that all the persons had to be treated fairly and equally before the law and there was thus need to prevent an abuse of the process of the court.

13. That the charge sheet read that the suit property then belonged to Robert Keter and William Bitok therefore vesting the ownership of a disputed land to one of the parties in the pending suit in the Environment and Land Court on the same subject property.

14. That the process of investigations, framing of charges and the prosecution before the criminal court is meant to "steal a match" the Petitioners and to vest the disputed land to the complainants in Eldoret Criminal Case No. 1238 of 2024.

15. That the criminal complaint and prosecution on the face of it is one made without jurisdiction or in consequence of an error of law, and in abuse or use excess of power by the Respondents.

16. That the criminal case was meant to frustrate the petitioners claim to the land before the Environment and Land Court, and no one is allowed to use criminal proceedings to interfere with a fair trial.

17. That while the Director of Public Prosecutions is given an inherent discretion to institute and undertake criminal proceedings against any person, that discretion should not be exercised arbitrarily, oppressively or contrary to public policy.

18. That it is contrary to public policy when prosecution is undertaken selectively, oppressively and for collateral purposes namely an advancement of a civil case of one party when litigations before the Environment and Land Court is still pending.

19. That while section 193A of the *Criminal Procedure Code* allows the concurrent litigation of Civil and Criminal Proceedings arising from the same issues and while it is the prerogative of the police to investigate crime, it is fundamental that the power must be exercised responsibly, in accordance with the law of the land and in good faith.

20. That the it is not in the public interest or in the interest of administration of justice to use criminal justice process as pawn in civil disputes, and that it is unconscionable and a travesty of justice for the police to be involved in settlement of what is purely a dispute litigated in civil court.

21. That the matters of land ownership are clearly matters for Environment and Land Court which would determine its ownership with finality with all the safeguards of cross-examination and attendant re-examination. That there was in place a maintenance of status quo order in ELC No. E053 of 2022, by which all the parties, were ordered to maintain status quo on and not to assert ownership of land while the suit was still pending.

22. That the 1st – 3rd Respondents are working in cahoots with the 4th – 9th Respondent hence amounting to the misuse of the legal process. That the petitioners are now being threatened with illegal arrest and prosecution. That the Petitioners' right under *the Constitution* to own property is guaranteed under Art. 40 of *the Constitution* which right is unfettered.

23. The petitioners aver that due process was not followed in preferring charges against the petitioners as there is no legal basis that the petitioner has violated the law thus the decision by the 1st and 2nd Respondent to prefer criminal charges against the Respondents is unreasonable and arbitrarily. That the respondents have constantly been harassing, intimidating and frequently intruding on the petitioner's said land without any justification conducting arbitrary inspection without the Petitioners' knowledge.

24. That the Petitioner have been subjected to harassments, intimidations, constant inspections and outright discrimination by the 1st – 3rd Respondents on the account that they are not natives contrary to *the Constitution*.

25. The Petitioners stated that the actions by the 1st – 3rd Respondents are a nullity, unlawful and unconstitutional for reasons that:

    a. The Petitioners have been charged for a criminal offense arising from a civil dispute of the land thus article 40 of *the Constitution* has been violated.

    b. To the extent that the petitioners have been charged and/or arrested then article 158(11) and 244 has been violated.

    c. To the extent that the Petitioners have been charged with full knowledge that a civil suit on land exists between the petitioners and the 4th – 9th Respondents, the provisions of Article 10 and 244 have been violated.

d. The Respondents' actions amount to arbitrary deprivation of property or an interest in it contrary to article 40 of *the Constitution*.

e. The Respondents' actions amount to unwarranted interruption and infringement with Petitioners economic rights under Art. 43 of *the Constitution* which poses serious security threats to the petitioner and his businesses.

26. The Petitioners averred that the action and omission of the Respondents have occasioned the Petitioner loss of business and damage, which the petitioners holds the Respondents liable and the petitioner will be asking the court to quantify and the Respondents be made to pay damages equivalent to such loss together with damages for the trauma and psychological torture to the petitioner.

27. That the Respondents actions are malicious and inspired by other factors aside from the law thereby warranting intervention by this honorable court as the said actions have occasioned the petitioners great losses and extreme prejudice by way of halting of the petitioners mega projects which is unfair and unjust in an open and democratic society governed by the rule of law.

The 1st – 3rd Respondents' case

28. The 1st – 3rd Respondents in response to the petition filed a replying affidavit dated 19th August, 2024 sworn by one Dominic Kibet, a police officer based at the Land Fraud Investigation Unit of the Directorate of Criminal Investigations. He deposed that on 31st January, 2024 the 5th, 6th and 7th, respondents made a formal complaint to the Director of Criminal investigations vide a letter dated 31st January, 2024 requesting the DCI to investigate alleged suspicious fraudulent acquisition of parcel Pioneer/Ngeria Bock 1 (EATEC)/190.

29. That the DCI also received another letter of complaint from the 2nd Petitioner through the Office of the Director of Public Prosecution (ODPP) dated 6th February, 2024, with the ODPP directing the DCI to carry out investigations over the complaint of malicious destruction of property on parcel of land Pioneer/Ngeria Bock 1 (EATEC)/1980.

30. That investigations commenced based on the two letters with the resultant findings and recommendation forwarded to the ODPP who recommended that the 1st, 2nd, 3rd, 4th and 5th petitioners be charged with criminal offences as per the charge sheet, having satisfied himself there was fraud orchestrated by the Petitioners who fraudulently registered the parcel of land Pioneer/Ngeria Bock 1 (EATEC)/1980 into their names. It was his position that the investigations and the resultant criminal charges were as a result of complaints from both parties and the pendency of the civil process in Environment and Land Court cannot bar the criminal process.

Supplementary Affidavit

31. The Petitioners through the 1st petitioner in further response to the Respondent's Replying affidavit averred as follows:

a. That in further response to the paragraph 5 of the 1st-3rd respondents replying affidavit, I aver that the complaint was lodged by the 5th,6th and 7th respondents on 31st January 2024 following a complaint letter that was written by Paul Kirwa Samoei-2nd petitioner on and /or about 18th January 2024 addressed to the 1st Respondent complaining about the interference on land parcel known as Pioneer/Ngeria Bock 1 (EATEC)/1980 by Honourable Oscar Sudi the honourable member of parliament of Kapsaret constituency who had stormed the said parcel of land with 200 goons where under the instructions of the honourable member of parliament, he ordered the goons to destroy and steal properties of the petitioners in full glare

of the camera and evicted the petitioners unlawfully from the said land and in contempt of existing valid court orders vide ruling delivered 19th January 2023 referred to as annexture JCB-9 to the affidavit in support of the instant petition. The honorable member of parliament went ahead and dared the petitioners with dire consequences should they try to compete with him and also dared the petitioners to take him to court.

b. That in order to silence the petitioners, illegal complaint was made against the petitioners vide OB NO.64/16/01/2024 and OB 42/17/2/2020.

c. That following the trespass onto land parcel known as PIONEER /NGERIA BLOCK 1 (EATEC)/1980 aforesaid 200 goons, we reported the complaint of trespass, theft and threats to our life to Langas Police station vide OB NO.44/17/01.2024 which complaint has never been acted to date.

d. That land disputes before environment and land court having existed for a very long time between the petitioners and the 4th-9th respondents and title of land parcel known as Pioneer/ Ngeria Bock 1 (EATEC)/1980 having been acquired way back in the year 2001, the criminal charges were only levelled against the petitioners following the altercation with honorable Oscar Sudi on 17th January 2024 and on 31st January 2024 unfounded complaint against the petitioners was made to the police by the 5th, 6th and 7th respondents.

e. That forensic document examination relating to land parcel known as Pioneer/Ngeria Bock 1 (EATEC)/1980 was also done 23rd September 2020 which confirmed that the title in possession of the petitioners was authentic and genuine.

f. That there is an improper use of the criminal process as to charge the petitioners hereto with obtaining by fraud and conspiracy to defraud while acquisition of land parcel known as Pioneer/Ngeria Bock 1 (EATEC)/1980 procedural and regular.

g. That the criminal justice system is being put to motion for a collateral civil purpose and to settle political scores given that Eldoret MELC No. E027 of 2022 and Eldoret ELC No. 53 of 2022 exists which are pending before the superior court /Environment and Land Court which is interrogating ownership of land parcel known as Pioneer/Ngeria Bock 1 (EATEC)/1980 and which court has the powers bequeathed under *the constitution* to determine issues of land.

h. That the prosecution against the petitioners has been mounted in breach of the evidential and public interest considerations as laid down in the Guidelines on the Decision to Charge, 2019.

    i. That the petitioners petition hereto challenges the breach of constitutional guarantees and improper exercise of prosecution authority propelled by political interest and interference.

j. That the criminal justice system is being put to motion for a collateral civil purpose and to settle political scores given that Eldoret MELC No. E027 of 2022 and Eldoret ELC No. 53 of 2022 exists which are pending before the superior court /Environment and Land Court which is interrogating ownership of land parcel known as Pioneer/Ngeria Bock 1 (EATEC)/1980 and which court has the powers bequeathed under *the constitution* to determine issues of land.

k. That in this matter, the criminal justice system is being abused to persecute the petitioners as innocent persons who are the legal owners of land parcel known as PIONEER /NGERIA BLOCK 1 (EATEC)/1980 and who are exercising their right and/or defending their lawfully acquired title through the civil process vide Eldoret MELC No. E027 of 2022 and Eldoret

ELC No. 53 of 2022 which is pending in court in furtherance of their right to property under article 40 of *the Constitution* of Kenya, 2010.

Petitioner's submissions

32. Learned Counsel Mr. Kaguza started by giving a factual background and presented the following arguments:

    a. The issue at hand is a land dispute before the Environment and Land Court, wherein the determination of the ownership of the land is moot, making the criminal charges improper.

    b. The criminal charges have been preferred after the institution of civil cases, indicating that the institution of the criminal process is meant to force the petitioners to submit to the civil claim and for "collateral purposes."

    c. That the institution of criminal charges against the petitioners is tainted with illegality, irrationality, procedural impropriety, ultra vires action, and is unreasonable.

    d. The criminal process is being used in an oppressive and vexatious manner, violating the principle that all persons should be treated fairly and equally before the law.

    e. That the charge sheet improperly attributes ownership of the disputed land to Robert Keter and William Bitok, thereby attempting to settle a matter that is still pending in the Environment and Land Court.

33. In support of his arguments, counsel relied on the following cases:

    a. Counsel cited the case of Njuguna S. Ndung'u v Ethics & Anti-Corruption Commission (EACC) & 3 others [2018] eKLR, where Justice Githinji held that DPP must apply constitutional criteria prescribed by Article 157(11) when reviewing decisions to prosecute.

    b. Counsel cited Commissioner of Police & the Director of Criminal Investigation Department & Another v Kenya Commercial Bank Ltd & 4 Others [2013] eKLR, which emphasized that the power of the police to investigate crime must be exercised responsibly, in accordance with the laws of the land, and in good faith.

    c. Counsel referred to Diamond Hasham Lalji & another v Attorney General & 4 others [2018] eKLR, where the Court of Appeal examined improper use of prosecutorial discretion, particularly when prosecution is undertaken to achieve purposes other than vindication of criminal justice.

    d. Counsel cited Republic v Chief Magistrate's Court at Mombasa – ex parte Ganijee & Another [2002] eKLR, which held that it is not the purpose of criminal investigation or prosecution to help individuals in the advancement or frustration of their civil cases.

1st – 3rd Respondents' submissions

34. Learned Counsel Mr. Kwame in submitting on behalf of the Respondents couched the following issues for determination:

    a. Whether there has been a violation of the Petitioners' constitutional rights in the initiation of the charges against them.

    b. Whether the DCI and ODPP followed due process in initiating the charges against the Petitioners.

c. Whether the Petitioner is entitled to reliefs sought.

35. On the first issue, learned Counsel Mr. Kwame argued that when a party claims their fundamental rights and freedoms have been breached, they bear the responsibility of identifying those rights with precision and articulating exactly how such rights have been or will be infringed. In support of this position, Counsel referenced the seminal case of Anarita Karimi Njeru v the Republic (1976-1980) KLR 1272, which established several guiding principles for constitutional litigation. This precedent requires that constitutional violations must be pleaded with a reasonable degree of precision, not with vague or generalized assertions. Furthermore, petitioners must specifically enumerate which Articles of *the constitution* entitle them to the rights they claim and explain the basis of their entitlement. The case also established that alleged violations must be particularized clearly and precisely, detailing the exact manner in which these violations were committed and the extent of infringement on the petitioner's rights. According to Counsel, these requirements serve the essential function of providing adequate notice to respondents and enabling the court to properly adjudicate constitutional claims.

36. Counsel contended that the Petitioners had failed the test, as they merely stated their rights without demonstrating specifically how each of these rights under the espoused Articles had been violated by the 1st-3rd Respondents. He maintained that the due process of investigations, arrest, and prosecution do not amount to a violation of rights.

37. On the 2nd issue, learned Counsel explained that the mandate of the DCI is derived from Sections 28 and 35 of the *National Police Service Act* No 11 A of 2011, which empowers the DCI to collect and provide criminal intelligence, undertake investigations on serious crimes, maintain law and order, detect and prevent crime, apprehend offenders, maintain criminal records, conduct forensic analysis, and execute directions given by the DPP.

38. Counsel emphasized that the DCI did not overstep its mandate but discharged its duties pursuant to legal dictates under Section 35 of the *National Police Service Act*. As for the Director of Public Prosecutions, Counsel noted that he is empowered by *the Constitution* under Article 157(6) and Section 6 of the *Office of the Director of Public Prosecutions Act* to institute, undertake, and take over prosecutions of all criminal proceedings.

39. Counsel highlighted that Article 157(10) of *the Constitution* precludes the DPP from requiring consent of any person or authority to commence criminal proceedings and reiterates that the Director shall not be under the direction or control of any person or authority. He added that the key considerations for decisions to prosecute are provided under Article 157(11), which requires the DPP to have regard to public interest, interests of administration of justice, and the need to prevent and avoid abuse of legal process.

40. In his submissions, Learned Counsel drew the Court's attention to the case of Matalulu versus DPP [2003] 4 LRC 712, which authoritatively established the limited grounds upon which the Director of Public Prosecutions' powers might be subject to judicial review. These grounds include instances where the DPP acts in excess of constitutional or statutory powers, contrary to constitutional provisions by acting under external direction or control, in bad faith, in abuse of court process, or where discretion has been improperly fettered by rigid policy. Counsel contended that the Petitioners had failed to demonstrate any of these grounds, particularly noting the absence of evidence showing the DPP lacked authority, exceeded jurisdiction, or violated principles of natural justice in the decision to prosecute.

41. On concurrent civil and criminal proceedings, Counsel cited JR 561 of 2016 eKLR where Judge Odunga held:

> " Facts constituting the basis of a criminal proceeding may similarly be a basis for a civil suit, is no ground for staying the criminal process if the same can similarly be a basis for a criminal offence. Therefore, the concurrent existence of the criminal proceedings and civil proceedings would not, ipso facto, constitute an abuse of the process of the court unless the commencement of the criminal proceedings is meant to force the appellant to submit to the civil claim in which case the institution of the criminal process would have been for the achievement of a collateral purpose other than its legally recognized aim."

42. Learned Counsel maintained that there was no evidence of misuse of power or contravention of rules of natural justice as alleged by the Petitioners. He submitted that prosecution of the Petitioners is not of itself an unlawful process and cannot be prejudicial to them, as they are presumed innocent until proven guilty with constitutional safeguards ensuring a fair trial.

43. Counsel argued that the Prosecution of the Petitioners was undertaken pursuant to Section 193A of the *Criminal Procedure Code*, based on criminal liability and not for settlement of any civil claim. He referred to Samwel Bigingi Ouko & another v Walterson Atinda Okwoyo & 4 others [2018] eKLR and Republic v Commissioner of Police and Another ex parte Michael Monari & Another [2012] eKLR to support his position that the police have a duty to investigate complaints and that a mere criminal proceeding is not grounds to quash proceedings.

44. In concluding, learned Counsel Mr. Kwame concluded that the High Court will only intervene in the clearest of cases where there is manifest violation of *the Constitution*, abuse of process, or where prosecution is instituted for improper purposes other than to meet the ends of justice. He submitted that orders sought against the 1st - 3rd Respondents to restrain them from prosecuting the petitioners in relation to criminal case Eldoret CMCCR E1238 OF 2024 must only be granted in exceptional circumstances, which are not present in this case.

45. Counsel maintained that the Petitioners had not shown nor adduced evidence to demonstrate that the Respondents would abuse process should prosecutions continue. He prayed that the petition be dismissed in its entirety with costs to the Respondents, characterizing it as frivolous, vexatious, and an abuse of court process.

Analysis and determination

46. This is a seminal case on judicial review filed by the Petitioners and asked the court inter alia to scrutinize the following issues:

    a. The lawfulness of the purported exercise of powers of investigation bestowed upon the National Police Service in Art. 244 of *the Constitution* which led to the arrest and recommendations to be charged with the offence of allegations of fraud over land fraud over land parcel No. Pioneer/Ngeria Bock 1 (EATEC)/1980.

    b. The review of the lawfulness of the purported exercise of powers to charge them by the Director of Public Prosecutions as underpinned in Art. 157(6),(7),(8),(9) & (10) of *the Constitution*.

47. To borrow from the learned author Albert in his book commonwealth Caribbean Public law third edition which statement resonates well with our jurisprudence:

> "The power of judicial review may be defined as the jurisdiction of the superior court to review laws, decisions, acts and omissions of public authorities in order to ensure that the act within their given powers. Broadly speaking it is the power of the courts to keep public authorities within proper bounds and legality within proper bounds and legality. Its jurisdiction is always involved at the instance of a person who is prejudiced or aggravated by an act or omission of public authority. Once an applicant satisfies the requirements of locus standi, an applicant may bring proceedings for judicial review even if there is no decision on which a prerogative order can legally rest. This is because judicial review is wider than the old prerogative orders. Accordingly, one can seek redress in judicial review by the most suitable remedy and there will be no obstacle to the grant, say, a declaration merely because certioarari could not be granted or was inappropriate. Accordingly, the court has power in a judicial review application to declare as unconstitutional, law or government action which is inconsistent with *the constitution*. This involves reviewing government action in the form of laws or acts of executive for consistency with *the constitution*. It is well established that judicial review is a remedy of last resort, so that where a suitable statutory appeal is available, the court will exercise its discretion in all but exceptional cases by declining to entertain an application of judicial review. The adequacy of the alternative remedy to deal with the question that is raised in the given case is a vital consideration."

48. This court in the ensuing analysis would be making an assessment inter alia on the seriousness of the case as pleaded by the petitioners, the importance of the investigations surrounding the subject suit land, the public interest considerations and the particular circumstances in which the incident occurred with regard to the registration of title of the impugned property referenced land parcel No. Pioneer/Ngeria Bock 1 (EATEC)/1980.

49. In the case of Council for Civil Service Unions v Minister for Civil Service [1985] A.C. 374, at 401D Lord Diplock held inter alia as follows:

> "Judicial review as I think developed to a stage today when one can conveniently classify under three heads the grounds upon which administrative action is subject to control a judicial review. The first ground I will call illegality. The second, irrationality and the third procedural impropriety. By illegality as a ground for judicial review, I mean that the decision maker must understand correctly the law regulates its decision making power and must give effect to it. By irrationality, I mean what can now be succinctly referred to as wednesbury unreasonableness. It applies to a decision which is so outrageous in its deviance of logic or of accepted moral standard that no sensible person who had applied his mind to the question to be decided could have arrived at it. I have described the third head as procedural impropriety rather than failure to observe basic rule of natural justice or failure to act with procedural fairness towards the person who would be affected by the decision." (see also Pastoli v Kabale District Local Government Council and others [2008] 2 EA 300.)

50. Having considered the submissions of both parties, it is evident that this matter sits at the intersection of criminal prosecution and civil disputes, a delicate crossroad that implicates fundamental constitutional principles. At its core, this petition challenges the propriety of utilizing criminal processes in what appears to be essentially a land dispute currently pending before the Environment and Land Court. The chronology of events is instructive: the criminal charges against the Petitioners

emerged only after the civil proceedings had been initiated, with one judgment already delivered in favor of the Petitioners. The temporal sequence raises legitimate questions about whether the criminal process is being deployed as an instrument to gain advantage in parallel civil litigation, thereby subverting its legitimate purpose of achieving criminal justice.

51. This Court must therefore carefully examine whether the prosecutorial discretion exercised by the 1st Respondent meets the constitutional threshold established under Article 157(11), which demands that such discretion be guided by public interest, the interests of administration of justice, and the imperative to prevent abuse of legal process.

52. The threshold issue which the petitioners must discharge involves the legal validity of the decision to investigate a mandate conferred by *the constitution* upon the National Police Service in Art. 244 of *the Constitution* and the decision to charge by the Director of Public Prosecution provided for under Art. 157(6) & (7) of *the Constitution*. This jurisdiction does not allow the court to examine the evidence with a view to forming its own view about the substantial merit of the criminal case. The petitioners must also demonstrate that the National Police Service and the Director of Public Prosecution whose decisions they are challenging have done something which they had no lawful authority under *the Constitution* or statute to do so.

53. The superior courts have held now and again on the role of the police as one of the main players. In the Criminal Justice system in the case of Republic v Commissioner of Police and Another exparte Michael Monari [2012] eKLR where it was held that:

> "The police have a duty to investigate on any complaint once that complaint has been made to the respective police stations or director of Criminal Investigations across the country (underlined emphasis mine). Indeed, the police will 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 then left to the prosecution and the trial court. The predominant reason for the institution of the criminal case cannot therefore be said to be an infringement of the fundamental rights and freedoms of the petitioners but it is for the public interest and vindication of the criminal justice system. As long as the prosecution and those charged with the responsibilities of making the decisions to charge, act in a legal, regular, with propriety and in a reasonable manner the High Court would be reluctant to invoke the provisions of Art. 165(6) & (7) of *the Constitution* to intervene in the making of those decisions to grant the prerogative writs of prohibition or certiorari."

54. The law on judicial review further stipulates that in both cases being a remedy of last resort, each of these constitutional organ abused or misused, the constitutional powers with its subsequent enabling statutes, they may have departed from the procedures in the making of the impugned decision. It is therefore perfectly clear in a case for judicial review, it is a distinct remedy which must be distinguished from an ordinary appeal. Generally speaking, where the National Police Service under the which the Director of Criminal Investigations falls finds that the matter which gave rise to the investigation does not constitute an act of forgery or fraud or any wrong doing procedurally, he shall recommend to the DPP that the person of concern or the suspect be exonerated of any culpability. It is obvious that before the mandatory requirement to recommend to the Director of Public Prosecution that the matter under investigations constitutes a breach of the Penal Laws, there must be definitive finding on the elements of that offense. There is an irrefutable presumption that by the Director of Public Prosecution arriving at a decision to charge, the threshold test had been met connected with the investigation report from the National Police Service. The scope of this case revolves also around the decision made by the ELC court on the factual findings which can be described as twinning with the criminal proceedings before

the magistrate courts. Therefore, there is a strong feeling among the petitioners that the National Police Service and the Director of Public Prosecutions are encroaching on their fundamental rights and freedoms. Hence this country being a constitutional democracy built on the rule of law, they ride on the protocol of legitimate expectation that there may be apparent bias on the part of the decision makers to have them prosecuted on the set of similar facts on the suit land. Therefore, the subject of some controversy before this court is that the petitioners as a result of the outcome in the ELC court, they have a legitimate expectation that they will be treated in one way by the public bodies being the National Police Service and the Director of Public Prosecution given the circumstances. The question which this court must ask, what was their legitimate expectation? That there will be no further proceedings with regard to the suit property. In this case, the 1st – 3rd Respondents have advanced evidential material taking into account the complaint lodged for purposes of investigations. The test of rationality for this court would be whether the 1st 2nd and 3rd Respondents have given proper weight to the implications of not fulfilling the legitimate expectations to the petitioners. In the category of this case, the court is of the considered view that there is sufficient overriding interest in the criminal prosecution to justify a departure by the 1st-3rd Respondents to limit the petitioners' legitimate expectations. It is further the view of this court that the procedural fairness has not been impeached by the 1st – 3rd Respondents. It is clear that before a judicial review court grants the prerogative writs of prohibition or certiorari, it must satisfy itself that the reasons for the decisions are intelligible and are adequate given the task of the court is not to look at the merits of the decision makers.

55. The impugned criminal case by the Petitioners would be a subject of Art. 50 of *the Constitution* on the rights of a fair hearing. What does that involve?

    a. The right to be informed of the case against each one of them such as the charge or allegations.

    b. The right to prepare a response in a reasonable time and notice

    c. The right to make representations against the allegations or charge.

    d. The right to cross examine any witnesses summoned by the prosecution

    e. The right to be legally represented and if they can't afford a legal counsel if substantial injustice will occur to be provided one by the state at its own expense.

    f. The right by the trial court to give reasons for the decision.

56. As a component of due process, the Petitioners have already been charged before in the magistrate court in Criminal Case No. 1238 of 2024 which lays the basis of the allegations against each one of them. As a general rule before an offender or a suspect is arraigned before a criminal court, elementary justice demands that one be given full information on the case and a reasonable opportunity to record a statement touching on the allegations before he pleads to the indictment. In the case of Hussein Khalid and 16 others v Attorney General [2019] eKLR where the Supreme court held as follows:

> "It is not in dispute that every statutory definition of an offence comprises ingredients or elements of the offence prove of which against the accused leads to conviction for the offence. inevitably proof or otherwise of elements of an offence is a question of fact and that largely depends on the evidence first adduced by the prosecution and where the accused is placed on his/her defense, the accused evidence in rebuttal is admitted in answer to the charge. This in our view is an issue best left to the trial court as it would not only have the benefit of the evidence adduced but will weigh it against the elements of the offence in issue. It is not an automatic conclusion that once a person is charged with an offence(s) he/she must be convicted. Every trial is specific to the parties involved and a blanket condemnation

of the statutory provisions is in our view overreaching. The presumption of innocence remains paramount." (underlined emphasis mine)

57. On the surface of it, notice and prior information on the status of investigations and the decision to charge is always provided for to the intended accused person(s). This is done before the actual hearing of the case. Why is this important to the Judicial Review Court? the constitutional imperative in Art. 47 as read with section 4(3) of the Fair Administrative Actions Act expressly provides that notice must be served by the decision maker disclosing the nature and reasons for the proposed administrative action and in our case here, for the petitioners being informed of the criminal allegations with regard to the suit property. Similarly, in Art. 47, it enshrined the rights of every person to have fair administrative action which must be read conjunctively with Art. 232 which enunciates various values and principles of public service including responsive, prompt, effective, impartial and equitable provision of services, transparency, and provision of the public of timely, accurate information. The review of the evidential material in the Petition fails to discharge the burden of proof that the 1st – 3rd Respondents in the decision making process to investigate and prefer a criminal charge were in breach of the provisions of Art. 10, 47 and 232 of *the Constitution* as read with section 4(3) and (7) of the Fair Administrative Actions Act. In the case of Kelly Kases Bunjika v Director of Public Prosecutions (DPP) & Another [2018] eKLR the court observed that for a petitioner to succeed in challenging the constitutional validity of the action taken by the DPP where he initiates or refuses to institute or continue or discontinue a prosecution, an applicant must show that the DPP has failed to given effect in a particular case to public interest, the interest of the administration of justice and the need to prevent and avoid abuse of the legal process. This court is being asked to prohibit the ongoing criminal proceedings at the chief magistrate's court. For this court to answer the petitioners in the affirmative, they must bring their case within the scope of the guidelines outlined in the case of Kenya National Examination Council v Republic Exparte Geoffrey Gathenji Njoroge and 9 others [1997] eKLR. where the court held that a prohibition order will issue by the High court to an inferior tribunal or body to forbid that tribunal or body to continue proceedings therein commenced in excess of its jurisdiction or in contravention of the laws of the land. This prerogative writ of prohibition lies not only for excess of jurisdiction or absence of it but also for a departure from the rules of natural justice. It does not however lie to correct the course, practice or procedure of an inferior tribunal or body or a wrong decision on the merits of the proceedings.

58. In a constitutional democracy, the authority to prosecute is not absolute but constrained by constitutional principles and values. When analyzing the permissibility of concurrent civil and criminal proceedings stemming from identical factual matrices, this Court must apply heightened scrutiny to ensure that criminal processes are not weaponized to secure advantages in civil disputes. The facts presented suggest a concerning pattern: the Petitioners secured a favorable judgment in Eldoret MELC No. E027 of 2022, resulting in the eviction of certain Respondents; subsequently, new civil proceedings were initiated by these Respondents; with the dismissal of their injunction application, criminal charges followed. This sequence compels the Court to determine whether the criminal prosecution serves a legitimate public interest in advancing criminal justice or instead represents an impermissible collateral purpose of circumventing established civil processes for determining land ownership. *The Constitution* demands that instruments of state power, particularly coercive ones like criminal prosecution be deployed with fidelity to their intended purposes and not as tactical weapons in private disputes. This principle stands as a bulwark against the arbitrary exercise of state power and sustains public confidence in the administration of justice.

59. In Republic v Director of Public Prosecution & 2 others Exparte Francis Njakwe Maina & another [2015] eKLR it was stated that;

> " The Court ought not to usurp the Constitutional mandate of the Director of prosecutions to investigate and undertake prosecution in the exercise of the discretion conferred upon that office. The mere fact that the intended or ongoing criminal proceedings are in all likelihood bound to fail is not a ground for halting those proceedings...However, if the applicant demonstrates that the criminal proceedings that the police intend to carry out constitute an abuse of process, the Court will not hesitate in putting a halt to such proceedings. The fact however that the facts constituting the basis of a criminal proceeding may similarly be a basis for a civil suit, is no ground for staying the criminal process if the same can similarly be a basis for a criminal offence. Therefore, the concurrent existence of the criminal proceedings and civil proceedings would not, ipso facto, constitute an abuse of the process of the court unless the commencement of the criminal proceedings is meant to force the applicant to submit to the civil claim in which case the institution of the criminal process would have been for the achievement of a collateral purpose other than its legally recognized aim."

60. And in the case of Kuria & 3 Others v Attorney General [2002] 2 KLR 6 it was held that;

> " The Court has power and indeed the duty to prohibit the continuation of the criminal prosecution if extraneous matters divorced from the goals of justice guide their instigation. It is a duty of the court to ensure that its process does not degenerate into tools for personal score-settling or vilification on issues not pertaining to that which the system was even formed to perform...A stay (by an order of prohibition) should be granted where compelling an accused to stand trial would violate the fundamental principles of justice which underlie the society's senses of fair play and decency and/or where the proceedings are oppressive or vexatious...The machinery of criminal justice is not to be allowed to become a pawn in personal civil feuds and individual vendetta."

61. After going through the record and the pleadings filed, I find myself compelled to consider the fundamental principle that while the Director of Public Prosecutions is vested with prosecutorial powers under Article 157 of *the Constitution*, this power is not unfettered. *The Constitution* itself establishes a framework within which this discretion must be exercised, with Article 157(11) explicitly requiring that "in exercising the powers conferred by this article, the director of public prosecutions shall have regard to the public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process." The tripartite considerations in this provision form the bedrock upon which prosecutorial discretion must firmly stand. Where any of these pillars is compromised, the exercise of prosecutorial power lacks constitutional legitimacy.

62. The unfolding circumstances of this case raise serious questions about whether all three considerations have been properly observed. The petitioners maintain that their rights to property under Article 40 of *the Constitution* are at stake, and that the criminal process is being wielded not to vindicate a genuine criminal wrong but to circumvent established processes for determining land ownership. While section 193A of the *Criminal Procedure Code* indeed permits concurrent civil and criminal proceedings relating to the same subject matter, this provision cannot be invoked to sanitize a process that undermines constitutional imperatives. As the law has evolved in our jurisdiction, it has become clear that the provision allowing concurrent proceedings does not grant immunity from judicial scrutiny where such proceedings appear to be deployed for purposes alien to the criminal justice system.

63. It bears emphasis that the interest of administration of justice dictates that only those whom the Director of Public Prosecutions believes to have a prosecutable case against them be arraigned in court, while those against whom no prosecutable case exists should be left free. This is the very essence of Article 159(2) of *the Constitution*, which mandates that "justice shall be done to all, irrespective of status." Justice demands that it should not flow differently for different people, but rather in a single, consistent stream for all members of society. This principle would be substantially undermined if criminal processes could be initiated without proper foundation or deployed tactically to influence concurrent civil litigation.

64. In that regard, the Court of Appeal in the case of Commissioner of Police & another v Kenya Commercial Bank Ltd & 4 others [2013] eKLR persuasively found that the High Court can stop a process that may lead to abuse of power and held that: -

> "Whereas there can be no doubt that the field of investigation of criminal offences is exclusively within the domain of the police, it is too fairly well settled and needs no restatement at our hands that the aforesaid powers are designed to achieve a solitary public purpose, of inquiring into alleged crimes and, where necessary, calling upon the suspects to account before the law. That is why courts in this country have consistently held that it would be an unfortunate result for courts to interfere with the police in matters which are within their province and into which the law imposes upon them the duty of enquiry. The courts must wait for the investigations to be complete and the suspect charged.
>
> By the same token and in terms of article 157(11) of *the Constitution*, quoted above, in exercising powers donated by the law, including the power to direct the Inspector General to investigate an allegation of criminal conduct, the DPP is enjoined, among other considerations, to have regard to the need to prevent and avoid abuse of the legal process. The court on the other hand is required to oversee that the DPP and the inspector general undertake these functions in accordance and compliance with the law. If it comes to the attention of the court that there has been a serious abuse of power, it should, in our view, express its disapproval by stopping it, in order to secure the ends of justice, and restrain abuse of power that may lead to harassment or persecution. See Githunguri v Republic [1985] KLR 3090. It has further been held that an oppressive or vexatious investigation is contrary to public policy and that the police in conducting criminal investigations are bound by the law and the decision to investigate a crime (or prosecute in the case of the DPP) must not be unreasonable or made in bad faith, or intended to achieve ulterior motive or used as a tool for personal score-settling or vilification. The court has inherent power to interfere with such investigation or prosecution process. See Ndarua v R [2002] 1 EA 205. See also Kuria & 3 others v Attorney General [2002] 2 KLR.
>
> (84) Furthermore, the Supreme Court of India in RP Kapur v State of Punjab AIR 1960 SC 866 laid down guidelines to be considered by the court on when the High Court may review prosecutorial powers. They are as follows:
>
> (I) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice; or

(II) Where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g. want of sanction; or

(III) Where the allegations in the first information report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; or

(IV) Where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.

(85) We are persuaded that this is a good guide in the interrogation of alleged abuse of prosecutorial powers and read alongside article 157(11) of *the Constitution*, we have sufficiently expressed ourselves elsewhere in this Judgment to show that the unconstitutional continuance of the criminal proceedings against the appellant amounts to abuse of court process and that, balancing the scales of justice, the weight would favor the appellant and not the respondents.

65. The petitioners have presented a timeline showing they secured a favorable judgment in EldoretMELC No.E027 of2022, resulting in the eviction of certain respondents from the suit property. These respondents subsequently initiated new civil proceedings in ELDORET ELC NO. 53 OF 2022, and when their application for an injunction was dismissed on 19th January, 2023, criminal charges followed. While this chronology might raise initial concerns about the motivation behind the criminal prosecution, this Court must exercise caution not to unduly interfere with the constitutional mandate of the Director of Public Prosecutions. The mere temporal proximity between civil proceedings and criminal charges does not, in itself, establish improper purpose or abuse of process. Indeed, many criminal matters naturally arise from disputes that also give rise to civil litigation, particularly in cases involving property.

66. Article 40 of *the Constitution* guarantees protection of the right to property, a right which the petitioners assert is being infringed through the alleged misuse of criminal process. However, this right must be balanced against the public interest in investigating and prosecuting criminal conduct, even when such conduct relates to property. Where criminal elements such as fraud or conspiracy are alleged in relation to property transactions, the criminal justice system has both the authority and the duty to investigate and, where appropriate, prosecute such matters. The existence of civil proceedings concerning the same property does not immunize parties from criminal liability for their actions in relation to that property.

67. In matters concerning discretion, our constitutional jurisprudence has established that powers conferred on public authorities must be exercised in accordance with the law and for proper purposes. However, this Court must be mindful not to substitute its own judgment for that of constitutionally mandated authorities. Article 157(10) of *the Constitution* explicitly provides that the Director of Public Prosecutions shall not require the consent of any person or authority for the commencement of criminal proceedings, and shall not be under the direction or control of any person or authority. This provision enshrines the independence of the prosecutorial function, a principle that this Court must respect absent the clearest evidence of abuse.

68. The Court's inherent power to prevent abuse of its process is indeed a constitutional imperative, but it must be exercised with restraint and only in exceptional circumstances. The threshold for judicial intervention in prosecutorial decisions is deliberately high, requiring clear and convincing evidence

that the criminal process is being used for wholly improper purposes unrelated to the legitimate aims of criminal justice. As articulated in Republic v Director of Public Prosecution & 2 others Exparte Francis Njakwe Maina & another (supra), the concurrent existence of the criminal proceedings and civil proceedings would not, ipso facto, constitute an abuse of the process of the court unless the commencement of the criminal proceedings is meant to force the applicant to submit to the civil claim. The petitioners' allegations in this regard remain speculative and unsupported by concrete evidence that would warrant such extraordinary intervention.

69. Section 193A of the *Criminal Procedure Code* explicitly permits concurrent civil and criminal proceedings relating to the same subject matter. This provision reflects the legislative recognition that civil and criminal processes serve distinct but complementary purposes in our legal system. Civil proceedings primarily aim to resolve disputes between parties and provide compensation or other remedies, while criminal proceedings serve the public interest in deterring and punishing conduct deemed harmful to society. The explicit legislative permission for concurrent proceedings weighs heavily against judicial intervention absent exceptional circumstances not present here.

70. The evidence before this Court does not establish the clearest of cases that would justify interference with the prosecutorial discretion vested in the Director of Public Prosecutions. While the petitioners assert that the criminal charges were preferred after they had successfully defended their property rights in civil proceedings, this temporal sequence does not, in itself, establish improper purpose. Criminal investigations often take time, and the timing of charges may reflect the natural progression of the investigative process rather than any improper design. Moreover, the 1st-3rd Respondents have provided evidence that their investigations were initiated based on formal complaints and were conducted in accordance with established procedures.

71. The Director of Public Prosecutions possesses the constitutional authority to institute criminal proceedings, and this authority must be presumed to be exercised in accordance with constitutional principles unless clearly shown otherwise. The Court in Githunguri v Republic [1985] KLR 3090 established that interference with prosecutorial discretion should be reserved for cases where there is a serious abuse of power leading to harassment or persecution. The petitioners have not presented sufficient evidence to establish such abuse, harassment, or persecution in this case.

72. In evaluating the right to fair administrative action under Article 47 of *the Constitution*, this Court recognizes this as a substantive constitutional right that subjects the powers of state organs and administrative bodies to constitutional principles. However, fair administrative action does not mean that administrative decisions must align with the preferences of those affected. Rather, it requires that decisions be made in accordance with the law, based on relevant considerations, and through fair procedures. The petitioners have not demonstrated that the decision to prosecute failed to meet these standards. The fact that investigations were conducted, evidence gathered, and recommendations made to the DPP suggests a process consistent with administrative fairness.

73. Article 50 of *the Constitution* enshrines the right to a fair hearing, which is indeed non-derogable under Article 25(c). However, this right is primarily concerned with fairness in the conduct of proceedings once initiated, rather than with the decision to initiate proceedings. The proper forum for testing the evidentiary basis of criminal charges is the criminal trial itself, where the petitioners will have the full protection of the presumption of innocence and other fair trial guarantees. Pre-emptive termination of criminal proceedings should be reserved for the clearest cases of abuse, which have not been established here.

74. The petitioners also allege violations of Articles 28 and 29 of *the Constitution*, which protect inherent dignity and freedom and security of the person. While these are indeed fundamental rights, they do not

confer immunity from legitimate legal processes. Criminal prosecution based on a reasonable suspicion of criminal conduct, following proper investigative procedures, does not per se violate these rights. Indeed, the public interest in investigating and prosecuting potential criminal conduct serves to protect the dignity and security of all persons in society.

75. The gist of this petition cannot escape a mention on the concept of proportionality. The model of proportionality review in our constitutional interpretation when it comes to review jurisdiction comprises of the following elements:

> " 1. Whether the legislative objective is sufficiently important to justify limiting a fundamental rights;
>
> 2. Whether the measures designed to meeting the legislative objective are rationally connected to it; and
>
> 3. Whether the means used to impair the right or freedom are no more than is necessary to accomplish the objective."

76. From this point on, with regard to the facts of this petition, proportionality review becomes progressively more demanding in answering the question whether the measure taken by the 1st – 3rd Respondent is necessary to achieve its stated goal in the administration of criminal charges. This necessity inquiry is often operationalized as a least restrictive means test, in other words could the government purpose or the executive organs of state purpose also be achieved by alternative measures that infringe less on the fundamental rights and freedoms of the petitioners. If the answer is yes, then the 1st – 3rd Respondents' action is a disproportionate measure and hence impermissible. This court has weighed the benefits of the challenged measure taken by the 1st 2nd and 3rd Respondents which has already been found to be appropriately tailored within the scope of Art. 157(6) & (7) as read with section 8, 9, 10 and 11 of *the Constitution* rendering the benefits of the decision to exceed the burden it imposes upon the petitioners. Generally speaking, the principle of proportionality in our legal system deals with the relationship between end and means and it demands there should be a reasonable relationship of proportionality between the means employed and the aim sought to be realized. In light this purpose to this case, the decision to investigate and charge the petitioners was designed to protect the legitimate public interest.

77. I conclude by saying that I am of the view on the reasons elucidated elsewhere in this judgment in the event this petition is allowed, it is likely to cause substantial hardship, prejudice or injustice to the human rights of the complainant and the same time doing detriment to the fair administration of justice. In this regard, I am compelled to exercise discretion to dismiss the Petition seeking grant of prerogative writs of prohibition and certiorari with no orders as to costs.

78. It is so ordered.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 28TH DAY OF MARCH 2025.

In the presence of:

Mr. Kagunza, Advocate for the Petitioners

Mr. Ramo Kwame, Advocate for the Attorney General.

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R. NYAKUNDI

JUDGE