



Kering v Inspector General of Police & another; Langat (Interested Party) (Criminal Petition E039 of 2023) [2025] KEHC 4913 (KLR) (25 April 2025) (Judgment)

Neutral citation: [2025] KEHC 4913 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL PETITION E039 OF 2023**

JRA WANANDA, J

APRIL 25, 2025

**IN THE MATTER OF ALLEGED CONTRAVENTION AND/OR INTENDED BREACH
OF ARTICLES 50, 157 AND 159 OF THE CONSTITUTION OF KENYA, 2010**

**IN THE MATTER OF THE OFFICE OF THE DIRECTOR
OF PUBLIC PROSECUTION ACT NO. 2 OF 2013**

IN THE MATTER OF THE NATIONAL PROSECUTION POLICY

BETWEEN

KIBOR MARU KERING PETITIONER

AND

INSPECTOR GENERAL OF POLICE 1ST RESPONDENT

THE DIRECTOR OF PUBLIC PROSECUTIONS 2ND RESPONDENT

AND

JACKSON LANGAT INTERESTED PARTY

JUDGMENT

1. The subject of this Judgment is the Petition dated 20/07/2023. The same is filed through Messrs Wambua Kigamwa & Co., and seeks orders premised as follows:
 - i. That a declaration do issue that the Respondents have violated and/or are threatening to violate the provisions of Article 47 and 50 of *the Constitution* of Kenya 2010 with regard to fair administrative action, fair hearing, the principle of *the Constitution* and Article 245 and 157(11) of *the Constitution* of Kenya, 2010 on abuse of legal process couples with an award of damages to the Petitioner.



- ii. That an order of certiorari do issue to remove into this Honourable Court and quash the decision to prosecute the Petitioner and any charges that may be preferred by the 1st and 2nd Respondents as evidenced by their intention to charge the Petitioner with the offence of stealing and/or obtaining by false pretence.
 - iii. That an order of prohibition do issue against the Respondents from proceeding to prosecute and entertain any criminal trial brought against the Petitioner in respect to stealing and or obtaining money by false pretence as alleged by the Respondent and the Interested party.
 - iv. That costs and interests be granted to the Petitioner.
2. Together with the Petition, the Petitioner also filed an Application seeking conservatory orders. However, upon deliberations with the Court, the parties agreed to hold the Application in abeyance, have the conservatory orders granted in the interim, and instead, proceed directly to canvassing the Petition. This was aimed at saving judicial time and to prevent duplication. I therefore so ordered.
3. In the Supporting Affidavit sworn by the Petitioner, he deponed that on the evening of 8/07/2023 at around 1900 hours, he was arrested by police officers from Eldoret Central Police Station at the instigation of the Interested party, on account of an alleged offence of obtaining/stealing of Kshs 51,000/- from the Interested party, he was locked at Eldoret Central Police Station from 8/07/2023 to 9/07/2023 when the Interested Party showed up at the Station and insisted that they write an agreement on how the Petitioner would pay the money to avert his prosecution. The Petitioner deponed that he asked for time to consult his Advocates and was released on the said 9/07/2023 with a directive to report back at the station on 14/07/2023, that on 14/07/2023, he reported back at the station and explained to the Investigating Officer that the events leading to his arrest arose from a contractual agreement between himself and the Interested Party executed into on 27/07/2022, whereof the Interested Party had, under Clause No. 1 (a) thereof, paid to the Petitioner the said sum of Kshs 51,000/- as part-settlement of the contractual obligation, and that the motive of the Interested party in instigating his arrest was a demand made to the Interested Party to honour his contractual obligation.
4. He deponed further that the 2nd Respondent failed to uphold the provisions of Section 14(5)(c) of the Office of the Director of Public Prosecution Act, 2013 by failing to consider all the relevant circumstances, that on 17/07/2023, he received a call from the Interested party while at the police station warning him that he must make the agreement on how he intends to pay the money, which the Petitioner declined, and that he has since received threats from the Interested Party and the Investigating Officer that if he does not execute the agreement, his cash bail of Kshs 10,000/- will be cancelled and he will be arraigned in Court. He contended that the Interested party is using the Respondents to compel him to execute the agreement, the fact that the Respondents kept him in the cells and failed to present him in Court demonstrates that the intention is to frustrate, intimidate and infringe on his rights to freedom and liberty on matters that ought to be pursued through the civil process, that he is a teacher by profession and the constant threat from the Respondents and the Interested Party has interfered with his teaching duties, that he is apprehensive that he may be re-arrested anytime again and charged.
5. He deponed that the setting in motion of the criminal process over a dispute falling within the ambit of the civil process is an abuse of the Court process, and amounts to a breach of his right to fair hearing under Article 50 of *the Constitution*, and a travesty of the Respondent's powers under Articles 245 and 157 as it is not in the public interest nor of the administration of justice, that there is need to prevent and avoid abuse of the legal process and that the prosecution runs contrary to paragraphs 4(B)(1) and (2) of the National Prosecution Policy as it has no reasonable prospect of a conviction.



6. The Petition opposed the Petition vide the Grounds of Opposition dated 8/10/2023 together with the Replying Affidavit sworn on the same date by one Police Constable (PC) Wilbert Bett. Both are filed through Prosecution Counsel Mr. Leonard Okaka from the office of the 2nd Respondent, but it is not however clear whether he is also representing the 1st Respondent.
7. Be that as it may, the matters listed in the Grounds of Opposition are that State powers of Prosecution vest in the 2nd Respondent who may institute criminal proceedings against anyone as provided under Article 157(6) and 10, the decision whether or not to charge is exercised by the 2nd Respondent upon independent review of outcome of investigations, the existence of a contract (s) does not ipso facto oust preference of a charge if evidence of criminal culpability becomes available, the Petition is preemptive as the decision to charge is yet to be made, the 2nd Respondent's mandate has neither been misused nor overstepped to warrant grant of the orders sought, and that the Petition is bereft of merit and is wholly intended to delay or pre-empt ongoing investigations.
8. In the Affidavit, PC Wilbert Bett deponed that he is the Investigating Officer in this matter, that the Interested Party filed a Report of obtaining money by false pretence and theft which he was tasked to investigate, he opened investigations and recorded statements with the intention to serve justice and without extraneous or ulterior motives, in the course of investigations, he discovered that sometimes in 27/06/2022, the Petitioner and the Interested party entered into an agreement in which the Petitioner agreed to sell a parcel of land to the Interested Party at Kshs 1,600,000/-, upon receiving Kshs 51,000/- through Mpesa, the Petitioner covenanted to, and took possession of a log-book plus the Interested Party's motor vehicle valued at Kshs 1,050,000/- as the deposit, leaving a balance of Kshs 499,000/- payable within 6 months, that however, before lapse of such 6 months, the Petitioner, in rescission, returned the vehicle to the Interested party without the log-book claiming that the vehicle's worth was far less than initially covenanted.
9. PC Bett deponed further that the Interested Party later received information that the Petitioner had already sold the parcel of land to another person, but still used the log-book to secure a loan from a shylock, that being of the view that the information raised probable cause for criminal fraud or false representation, he summoned the Petitioner to the police station and recorded a plain statement from him. He added that having become aware that police intervention had been sought by the Interested Party, the Petitioner surrendered the log-book to the Interested Party and undertook to repay back the Kshs 51,000/- in an amicable settlement which he did not however honour and that efforts to establish the "shylock", and ascertain whether the Petitioner had already sold the land were still a subject of ongoing investigations.
10. He deponed that he has successfully filed Eldoret CM Criminal Misc. Case No. E413 of 2023 seeking Orders to investigate the parties' respective Mpesa Account numbers and he established the payment of Kshs.51,000/- was made. He maintained that in conducting investigations, he is merely discharging his statutory obligations as the issue at hand revolves around fraud.

Hearing of the Petition

11. As agreed by the parties, the Petition was directed to be canvassed by way of written Submissions. The Petitioner's Advocates had earlier, on 11/03/2024, filed their Submissions in support of the Application for conservatory orders but despite the Court granting them time to file substituted or fresh Submissions specifically in respect to the Petition, they do not seem to have filed any such Submissions as I have not found any, either in the Court file or in the Judiciary Case Tracking System (CTS) online Portal. I will therefore adopt the earlier Submissions as also constituting the Appellant's Submissions on the Petition.



12. On his part, Mr. Okaka filed his Submissions in respect to the Petition on 12/11/2024.

Appellant's Submissions

13. The Appellant basically reiterated the matters already stated and cited the case of Commissioner of Police & the Director of Criminal Investigations Department & Another [2013] eKLR and also the case of Lalchand Fulchand Shah v Investment & Mortgages Bank Limited & 5 Others 2018] eKLR, and submitted that the dispute the subject of the police intervention emanated from a contractual agreement and the correct channel should have been taken before a civil Court. He also reiterated that the 2nd Respondent acted in breach of the considerations set out at Section 14(5) of the [Office of the Director of Public Prosecutions Act, 2013](#).

Respondent's Submissions

14. On his part, Mr. Okaka submitted that the probable cause for opening investigations, summoning, interrogating and/or arresting the Petitioner could be discernible from the Occurrence Book excerpt exhibited by the 1st Respondent. He cited the case of Alfred N. Mutua V E.A.C.C & 4 Others [2016] eKLR and submitted that one could find it difficult to ascertain which of the rights of the Petitioner have been violated, bare allegations are insufficient and that the threshold of what a Constitutional Petition ought to be has not been met as was set out in case of Anarita Karimi. Regarding the writ of Certiorari, he submitted that unless a decision is shown to exist, certiorari as a writ, should not lie, that in this case, there is no decision by the 2nd Respondent but mere apprehension of what the 2nd Respondent will likely do, that minus a decision, granting prayer (2) will amount to quashing that which has not been made. Regarding the prayer for Prohibition, he cited Section 193A of the [Criminal Procedure Code](#) and submitted that the section envisages that criminal investigations by the 1st Respondent could be carried out in respect of matters which may present themselves as civil claims, that no civil suit or criminal charge is pending, and that the cases cited by the Petitioner might not be analogous with the circumstances at hand.
15. He maintained that unless investigations would prejudice a civil suit or infringe constitutional rights, Courts have generally declined to terminate criminal investigations solely on the basis of potential similar facts and circumstances. He cited the case of Amir Lodges Ltd & Another vs. Mohamed Omar Sharif & anor Nrb, Pet No E 292 of 2023 KLR and the case of [Robert v Inspector General of Police & another; Chemweno & another Petition E10 of 2023](#) [2023] KEHC 22991 (KLR). Regarding costs, he submitted that although that they have not sought any, could as well be awarded to the Respondents. He again cited the case of Robert v Inspector General of Police (supra).

Determination

16. The broad issue that arises for determination herein is “whether the Petitioner has demonstrated that his constitutional rights have been infringed or threatened so as to justify the issuance of an order prohibiting his criminal prosecution.”
17. The National Police Service is established under Article 243 of [the Constitution](#), while the office of the Inspector-General of the National Police Service is established under Article 245(1). The latter is an independent office with the power to investigate any offence in Kenya and in respect thereto, Article 245(4) provides as follows:

“(4) The Cabinet secretary responsible for police services may lawfully give a direction to the Inspector- General with respect to any matter of policy for the



National Police Service, but no person may give a direction to the Inspector-General with respect to—

- (a) the investigation of any particular offence or offences;
- (b) the enforcement of the law against any particular person or persons; or
- (c)

18. Section 24 of the [National Police Service Act](#), Cap. 84 then outlines the functions of the Service to be as follows:

- a. provision of assistance to the public when in need;
- b. maintenance of law and order;
- c. preservation of peace;
- d. protection of life and property;
- e. investigation of crimes;
- f. collection of criminal intelligence;
- g. prevention and detection of crime;
- h. apprehension of offenders;
- i. enforcement of all laws and regulations with which it is charged; and
- j. performance of any other duties that may be prescribed by the Inspector-General under this Act or any other written law from time to time.

19. On its part, the office of the Director of Public Prosecutions (DPP) is established under Article 157 of [the Constitution](#) and its mandate is provided in sub-articles (4), (6), (10) and (11) as follows:

- (4) The Director of Public Prosecutions shall have power to direct the Inspector-General of the National Police Service to investigate any information or allegation of criminal conduct and the Inspector-General shall comply with any such direction.
- (5)
- (6) The Director of Public Prosecutions shall exercise State powers of prosecution and may—
 - (a) institute and undertake criminal proceedings against any person before any Court (other than a Court martial) in respect of any offence alleged to have been committed;
- (10) The Director of Public Prosecutions shall not require the consent of any person or authority for the commencement of criminal proceedings and in the exercise of his or her powers or functions, shall not be under the direction or control of any person or authority.
- (11) 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.”



20. From the foregoing, it is clear that the Respondents are not subject to the control of any person or authority in the exercise of their mandate as conferred by *the Constitution* except in the manner set out therein. Nonetheless, in the exercise of those powers, the discretion must be exercised in accordance with the law. Where it is demonstrated that they have overstepped their mandate by misusing their powers, the High Court is empowered to, and should intervene. Abuse of such discretionary powers would include, for instance, the employment of extraneous factors to achieve ulterior goals separate from ends of justice. On this point, I cite the case of *Kuria -vs- Attorney General* [2002], in which the Court stated as follows:

“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 the 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 which underlie the society's sense of fair play and decency and/or where the proceedings are oppressive or vexatious”

21. Similarly, in the case of *Joram Mwenda Guantai vs. The Chief Magistrate, Nairobi Civil Appeal No. 228 of 2003* [2007] 2 EA 170, the Court of Appeal held as follows:

“... the High Court has inherent jurisdiction to grant an order of prohibition to a person charged before a subordinate court and considers himself to be a victim of oppression. If the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious, the Judge has the power to intervene and the High Court has an inherent power and the duty to secure fair treatment for all persons who are brought before the court or to a subordinate court and to prevent an abuse of the process of the court.”

22. In regard to prosecution of criminal cases, although the mandate thereon rests with the DPP as enshrined under Article 157 of *the Constitution*, in exercising this mandate, the DPP is required to review and determine the “prosecutability” of cases forwarded for his action. As aforesaid, the DPP is under obligation to exercise this discretion judiciously.

23. The procedure is that prosecution is preceded by an investigation which tackles the question whether there was an offence committed and *the Constitution* and the *National Police Service Act* give the Police the mandate to conduct such investigations. On this aspect, I refer to the following remarks of Warsame J (as he then was) made in the case of *Republic vs. Commissioner of Police and Another ex-parte Michael Monari & Another* [2012] eKLR:

“The Police have a duty to investigate once a complaint is made. Indeed, the police would be failing in their constitutional mandate to detect and prevent crime. The police only need to establish reasonable suspicion before preferring charges. The rest is left to the trial court. The predominant reason for the institution of the criminal case cannot therefore be said to have been the vindication of the criminal justice. As long as the prosecution and those charged with the responsibility of making the decisions to charge act in a reasonable manner, the High Court would be reluctant to intervene.”



24. In Douglas Maina Mwangi vs. KRA & Another, 213 eKLR, Majanja J also addressed the same issue in the follow manner:

“ 15. The office of the Director of Public Prosecution under Article 157 of *the Constitution* is an independent office under *the Constitution* like its predecessor office, the office of the Attorney General under section 26 of the former Constitution. When dealing with the decision as to whether or not to prosecute, the office exercises independent judgment and this court cannot interfere unless it is shown that the exercise is contrary to *the Constitution*, in bad faith or amounts to an abuse of process. This has been the holding of this court in several decided cases

25. As already stated therefore, this Court has the constitutional mandate and power to stop any criminal prosecution which has been demonstrated to have been preferred maliciously, with ulterior or selfish reasons. That is not in doubt. However, in exercising that power, the Court must also be cautious and careful not to overstep or exceed its mandate by usurping or unduly interfering with the prosecutorial powers of the DPP similarly donated by the same Constitution. For the need for such caution, I again refer to the case of Republic vs. Commissioner of Police and Another ex-parte Michael Monari (supra) where Warsame J (as he then was), expressed himself as follows:

“Under Article 157(4) of *the Constitution*, the Director shall have power to direct police to investigate any information or allegation of a criminal conduct and it is mandatory for the police to comply with any directions or instructions given by the Director of Public Prosecution. Under article 157(10) the Director of Public Prosecution shall not require the consent of any person or authority for commencement of criminal proceedings and shall not be under the direction or control of any person.

It is not the duty of the court to go into the merits and demerits of any intended charges to be preferred against any party. It is the function of the court before which the charge shall be placed and which shall conduct the intended trial to determine the veracity and the merit of any evidence to be tendered against an accused person. It would be improper for this court to try and/or attempt to determine the intended criminal case which is not before it. There is no evidence to show that the respondents exceeded jurisdiction, breached rules of natural justice or considered extraneous matters or were actuated by malice in undertaking the investigations against the applicants. The purpose of criminal proceedings is to hear and determine finally whether the accused has engaged in conduct which amounts to an offence and on that account is deserving punishment.”

26. In this case, the Petitioner’s complaint is against the Respondent’s alleged intention to charge him on matters that, according to him, are civil in nature. It is however important to mention that Section 193A of the *Criminal Procedure Code* contemplates both civil and criminal proceedings proceeding side by side without interfering with each other. It provides that:

“ Concurrent criminal and civil proceedings:

Notwithstanding the provisions of any other written law, the fact that any matter in issue in any criminal proceedings is also directly or substantially in issue in any pending civil proceedings shall not be a ground for any stay, prohibition or delay of the criminal proceedings.”



27. In analyzing Section 193A above, the Court of Appeal in the case of Commissioner of Police and Director of Criminal Investigations Department vs. Kenya Commercial Bank and Others Nairobi Civil Appeal No. 56 of 2012 [2013] eKLR stated as follows:

“While the law (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, we reiterate that the power must be exercised responsibly, in accordance with the laws of the land and in good faith. What is it that the company was not able to do to prove its claim against the bank in the previous and present civil cases that must be done through the institution of criminal proceedings? It is not in the public interest or in the interest of administration of justice to use criminal justice process as a pawn in civil disputes. It is unconscionable and travesty of justice for the police to be involved in the settlement of what is purely dispute litigated in court. This is a case more suitable for determination in the civil court where it has been since 1992, than in a criminal court. Indeed, the civil process has its own mechanisms of obtaining the information now being sought through the challenged criminal investigations.

28. Further, in regard to Section 193A above, in the case of Kuria & 3 Others vs. AG (2002) 2 KLR, the following was stated:

“... The normal procedure in the co-existence of civil and criminal proceedings is to stay the civil proceedings pending the determination of the criminal case as the determination of civil rights and obligations are not the subject of a criminal prosecution ... A prerogative order should only be granted where there is an abuse of the process of the law, which will have the effect of stopping the prosecution already commenced. There should be concrete grounds for supposing that the continued prosecution of criminal case manifests an abuse of the judicial procedure, much that the public interest would be best served by the staying of the prosecution It is not enough to state that because there is an existence of a civil dispute or suit, the entire criminal proceedings commenced based on the same set of facts are an abuse of the court process. There is a need to show how the process of the court is being abused or misused and a need to indicate or show the basis upon which the rights of the Applicant are under serious threat of being undermined by the criminal prosecution. In the absence of concrete grounds it is not mechanical enough that the existence of a civil suit precluded the institution of criminal proceedings based on the same set of facts. The effect of criminal prosecution on an accused person is adverse but so also are their purpose in the society, which are immense... an order of prohibition cannot also be given without any evidence that there is manipulation, abuse or misuse of court process or that there is a danger to the right of the accused person to have a fair trial. (emphasis added).

29. Similarly, in the case of Amir Lodges Ltd & another v Mohammed Omar Shariff & another [2022] eKLR, Mrima J stated as follows:

“43. From the discussions in the superior Courts decisions and the other comparative decisions from foreign jurisdictions, the rule of the thumb in respect of concurrent criminal and civil proceedings based on similar set of facts and circumstances is that the criminal case ought to proceed unless it can be demonstrated that the prosecution of the criminal case will either result to infringement of the rights and fundamental freedoms of the accused persons or will lead to the contravention of *the Constitution*.



44. In agreeing with the above position, I will attempt two practical assumptions based on the facts in this matter. The assumptions are on terminating the investigations or staying the civil case in favour of the investigations.

.....

49. From the two scenarios, there is, therefore, logic in the general position that where there are concurrent criminal and civil cases based on similar facts and circumstances, the criminal case or investigations ought to be first dealt with.

50. Having said so, it remains clear in the mind of this Court that the foregoing general position is subject to exceptions including whether the criminal case infringes the rights and fundamental freedoms of the accused or is in contravention of *the Constitution*.

51. This Court, therefore, finds and hold that a Court cannot terminate a criminal case or criminal investigations solely on the basis of a pending civil case based on similar facts and circumstances.

52. For a Court to so halt a criminal case or investigations, there must be more to the pendency of a civil claim. In this case, the Petitioners attempted to demonstrate how the investigations will prejudice the civil case and infringe their right to fair trial. However, from the foregoing analysis, this Court is unable to agree with the Petitioners. I say so because the Petitioner's claim is largely based on the fact that they filed a civil claim. The allegations of impropriety on the part of the Respondents remain too remote, if any.

53. In the end, this Court is persuaded that the Petitioners have not demonstrated any prima facie case at the moment. The position may, however, change at the main hearing of the Petition."

30. It is therefore not in doubt, that in spite of the provisions of Section 193A above, in appropriate cases, the High Court can still stop a criminal prosecution if the issues involved are matters that are civil in nature. However, a Court will not terminate a criminal case solely on the basis of a civil dispute being based on similar facts and circumstances. It must be clearly demonstrated that the criminal case infringes the rights and fundamental freedoms of the accused or is in contravention of *the Constitution*.

31. Regarding the exercise of prosecutorial discretion by the DPP, the Court of Appeal in the case of *Diamond Hasham Lalji & another v Attorney General & 4 others* [2018] eKLR stated as follows:

"(41) Thus, the exercise of prosecutorial discretion enjoys some measure of judicial deference and as numerous authorities establish, the Courts will interfere with the exercise of discretion sparingly and in the exceptional and clearest of cases. However, as the Privy Council said in *Mohit v Director of Public Prosecutions of Mauritius* [2006] 5LRC 234:

"these factors necessarily mean that the threshold of a successful challenge is a high one. It is however one thing to conclude that the Courts must be sparing in their grant of relief to seek to challenge the DPP's decision to prosecute or to discontinue a prosecution,



and quite another to hold that such decisions are immune from any such review at all ...”

32. It has been said that the burden of proof rests with the person alleging unconstitutional exercise of prosecutorial power but that if sufficient evidence is adduced to establish a breach, then the evidential burden shifts to the DPP to justify the prosecutorial decision.
33. In this case, the Petitioner alleges that the Interested party is using the Respondents to compel him to execute a debt repayment agreement that arose out of a botched agreement for sale of land. He alleges that the fact that the Respondents kept him in the cells for one day and failed to present him in Court demonstrates that the intention is to frustrate, intimidate and infringe on his rights on matters that ought to be pursued through the civil process.
34. In his Replying Affidavit, PC Wilbert Bett deponed that the Interested Party filed a complaint against the Petitioner relating to a claim of obtaining money by false pretence and theft, that in the course of investigations, he discovered that sometimes in 27/06/022, the Petitioner and the Interested party entered into an agreement in which the Petitioner agreed to sell a parcel of land to the Interested Party at Kshs 1,600,000/-, that upon receiving Kshs 51,000/-, the Petitioner took possession of a log-book plus the Interested Party's motor vehicle valued at Kshs 1,050,000/- as a deposit, leaving a balance of Kshs 499,000/- payable within 6 months, but that, before lapse of such 6 months, the Petitioner returned the vehicle to the Interested party without the log-book claiming that the vehicle's worth was far less than initially covenanted. PC Bett deponed further that the Interested Party learnt that the Petitioner had already sold the parcel of land to another person, but still proceeded to use the log-book to secure a loan from a shylock. PC Bett deponed further that he summoned the Petitioner and recorded a plain statement from him, that having become aware that the matter had been reported to the police, the Petitioner surrendered the log-book to the Interested Party and undertook to repay back the Kshs 51,000/- in an amicable settlement which promise he did not however honour. According to him, he is still continuing with investigations.
35. As aforesaid, Section 193A of the *Criminal Procedure Code* permits civil and criminal proceedings to proceed concurrently. The Petitioner alleges violation of his Constitutional rights under Articles 47 in with respect to the right to fair administrative action and in respect to Article 50. From the pleadings on record, it is evident that the Interested party made a complaint to the police against the Petitioner prompting the police to commence investigations. As further stated, the process of establishing whether to prosecute takes effect when the police present their investigative report to the DPP who then evaluates the evidence and independently decides whether to prosecute. In this case, according to the Respondents, the police are yet to forward the investigation file to the DPP. If that is the case, then it means that there is not yet any decision made on whether to charge the Petitioner or not. This Court can only intervene where there is proven breach of *the Constitution* or the law. A review of the material presented before me does not show any indication that, in carrying out the investigations, the police exceeded its mandate or has breached the Petitioner's rights under Articles 47 and 50 of *the Constitution* as alleged.
36. It is well settled that a Constitutional Petition must set out with a degree of precision the Petitioner's complaint, the provisions infringed, and the manner in which they are alleged to be or to have been infringed. This principle was enunciated in the leading case in such matters, namely, Anarita Karimi Njeru -vs- The Republic (1979) eKLR. The same has been restated in numerous cases, most notably, in the Court of Appeal case of Mumo Matemo -vs- Trusted Society of Human Rights Alliance & 5 others (2013) eKLR in which the following was stated:

“



“(39) The issue was raised that the 1st respondent had omitted to frame their case or complaint with precision as required under the High Court’s pronouncement in *Anarita Karimi Njeru v The Republic (1976-1980) KLR 1272*. Counsel for the appellant submitted that the petition failed the requirement as it did not state the alleged constitutional provisions violated and the acts or omissions complained of with reasonable precision. Apart from citing omnibus provisions of *the Constitution*, the petition provided neither particulars of the alleged complaints, the manner of alleged infringements or the jurisdictional basis of the action before the court. He maintained that such failure to draft the petition with precision had prejudiced the appellant and the other respondents.

.....

(44) We wish to reaffirm the principle holding on this question in *Anarita Karimi Njeru (supra)*. In view of this, we find that the Petition before the High Court did not meet the threshold established in that case. At the very least, the 1st Respondent should have seen the need to amend the Petition so as to provide sufficient particulars to which the Respondents could reply. Viewed thus, the Petition fell short of the very substantive test to which the High Court made reference to.”

37. Further at paragraph 87(3) in the same Judgment, the Court stated that:

“It is our finding that the Petition before the High Court was not pleaded with precision as required in Constitutional Petitions. Having reviewed the Petition and supporting affidavit we have concluded, that they did not provide adequate particulars of the claims relating to the alleged violations of *the Constitution* of Kenya and the *Ethics and Anti-corruption Commission Act, 2011*, accordingly the Petition did not meet the standard enunciated in the *Anarita Karimi Njeru* case.”

38. In this case, all that has been presented before this Court are bare allegations without demonstration of the exact violations complained against. In my view, it has not been demonstrated that the Respondents have in any way acted illegally or in excess of their powers or that their actions are tainted with procedural impropriety

39. Regarding the prayer for a writ of Certiorari, the Petitioner is asking the Court to quash the decision to prosecute him and prefer charges against him. As aforesaid, it has not been shown that any such decision to charge him has been made. In the circumstances, what is there to quash?

Final Orders

40. In premises, it is my finding that the Petition dated 20/07/2023 lacks merit and the same is hereby dismissed with costs to the Respondents.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 25TH DAY OF APRIL 2025

WANANDA J. R. ANURO

JUDGE

Delivered in the presence of:

Mr. Mogambi for the Petitioner



Mr. Okaka for the Respondents

Court Assistant: Brian Kimathi

