



**Abey & another v Directorate of Criminal Investigations & another (Petition E613 of 2024)
[2025] KEHC 12490 (KLR) (Constitutional and Human Rights) (13 August 2025) (Judgment)**

Neutral citation: [2025] KEHC 12490 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS**

PETITION E613 OF 2024

AB MWAMUYE, J

AUGUST 13, 2025

IN THE MATTER OF: ARTICLES 2,10,19,20,21,23,24,27,40,47,48,50,157,159, 165

(3) (D), 232 (1), 258 AND 260 OF THE CONSTITUTION OF KENYA 2010

AND

**IN THE MATTER OF: CONTRAVENTION OF THE RIGHTS AND FUNDAMENTAL
FREEDOMS UNDE ARTILCES 27, 40, 47 AND 50 OF THE CONSTITUTION OF KENYA**

AND

IN THE MATTER OF: FAIR ADMINISTRATION ACTION ACT, 2015

AND

IN THE MATTER OF: THE NATIONAL POLICE SERVICE ACT

BETWEEN

IBRAHIM MAHAMED ABEY 1ST PETITIONER

SULEIMAN IBRAHIM SURROW 2ND PETITIONER

AND

DIRECTORATE OF CRIMINAL INVESTIGATIONS 1ST RESPONDENT

THE DIRECTOR OF PUBLIC PROSECUTIONS 2ND RESPONDENT



JUDGMENT

Introduction and Background

1. By Petition dated 4th November 2024, the Petitioners challenge the legality and constitutionality of criminal investigations conducted by the 1st Respondent, allegedly at the behest of Timsales Limited, into the ownership of Land Reference No. 1/1405, I.R Number 212993 formerly LR No.1/252 (“the suit property”) situated at Kilimani in Nairobi, which is already subject of civil proceedings in Nairobi ELC Case No. E421 of 2022; *Ibrahim Mahamed Abey v Timsales Limited, the Chief Land Registrar, and DIB Bank Kenya Limited*. The Petitioners seek declarations and orders quashing all such investigations, arrests or prosecutions as abuses of process and violations of their constitutional rights under Articles 10, 27, 47, 50 and 232 of the [Constitution](#).
2. The petition was accompanied by an application dated 4th November, 2024. By an Affidavit dated 4th November, 2024, sworn by Suleiman Ibrahim Suro, the Petitioners challenge the constitutionality and legality of investigations being conducted by the Directorate of Criminal Investigations, the 1st Respondent herein over the suit property, asserting that such investigations violate their constitutional rights and are an abuse of legal process.
3. The Petitioners argue that the 1st Petitioner is the lawful registered owner of the suit property as confirmed by official records from both the Chief Land Registrar and Nairobi City County rates payment records. However, Timsales Limited, a private entity, has laid claim over the same parcel previously known as LR No. 1/252 which ceased to exist after 2019, and the matter is currently the subject of a pending civil suit, Nairobi ELC Case No. E421 of 2022. The Petitioners contend that the ongoing criminal investigations, reportedly being carried out secretly and at the behest of Timsales Limited for almost two years, aim to prejudice the outcome of that civil suit and unlawfully dispossess the 1st Petitioner of the property.
4. The Petitioners argue that the investigations contravene multiple constitutional provisions including Articles 10, 27, 40, 47, 50, and 232 of the [Constitution](#). They point out that the 1st Respondent has failed to comply with national values such as transparency, accountability, fairness, and equality before the law. Notably, despite the length of the investigations, the 1st Petitioner was never informed of any complaint, nor was he invited to participate in the process by submitting ownership documents or recording a statement, unlike the complainant, Timsales Limited, who was afforded that opportunity. This disparity, the Petitioners argue, amounts to discriminatory treatment and violates Article 27 on the right to equality and freedom from discrimination.
5. The Petitioners further assert that the actions of the 1st Respondent amount to unfair administrative action in violation of Article 47 of the [Constitution](#) and the [Fair Administrative Action Act](#), 2015. They argue that the investigations, by their secretive, protracted, and non-participatory nature are unreasonable, procedurally unfair, and lack the expeditious and impartial standards required of administrative bodies. The investigations, they say, qualify as “administrative action” under the [Fair Administrative Action Act](#), and as such, must meet legal thresholds for procedural fairness, including giving notice, reasons for the action, and an opportunity to be heard. The 1st Respondent, by failing to meet these requirements, has not only abdicated its responsibilities under the Act but has also infringed on the Petitioners’ constitutional rights, particularly the right to property, liberty, and due process.
6. Moreover, the Petitioners highlight that the continuation of criminal investigations while a civil suit on the same subject matter is actively pending amounts to an abuse of power and is intended



to pre-empt or influence judicial outcomes. The alleged clandestine conduct by officers of the 1st Respondent is said to be orchestrated to facilitate a predetermined outcome that favours Timsales Limited, thereby circumventing lawful adjudication processes. They stress that such actions violate the values of impartiality and professionalism expected under Article 232 of the *Constitution* and Section 35 of the *National Police Service Act*, 2011.

7. Through the affidavit of Suleiman Ibrahim Surrow, the Petitioners provide factual grounding of these claims, establishing the legitimacy of the 1st Petitioner's ownership, the pendency of civil proceedings, and the irregular, prolonged nature of the police investigations. They assert that the failure of the 1st Respondent to respond to their concerns following a letter dated 31st October 2024 underscores the mala fides of the investigations. According to the Petitioners, the entire process is not only unconstitutional but also strategically designed to weaken their legal standing in the pending civil case by exposing them to arbitrary arrest and prosecution.
8. Further, the petitioners filed a supplementary affidavit dated 9th December, 2024. In his supplementary affidavit, Suleiman Ibrahim Surrow, the 2nd Petitioner and duly authorized agent of the 1st Petitioner via a registered power of attorney, responded comprehensively to the replying affidavit of the Respondents. He affirms that the 1st Petitioner is the lawful and registered proprietor of the suit as confirmed by official searches from the Chief Land Registrar and the Nairobi City Council rates payment records.
9. However, the ownership is being disputed by Timsales Limited, which is also the adversary in a pending civil suit. The Petitioners avers that Timsales Limited, having failed in an earlier attempt before the Magistrate's Court due to lack of jurisdiction, is now using criminal investigations initiated by the Directorate of Criminal Investigations (DCI) to undermine the civil suit and harass the Petitioners.
10. He contends that the investigations by the 1st Respondent are not only being conducted at the instigation of Timsales Limited but are maliciously crafted to ensure the Petitioners are arrested and prosecuted, thereby compromising the pending Environment and Land Court proceedings. The Petitioners highlights that despite the Court issuing orders barring arrest and prosecution on 5th November 2024, the Respondents continue investigations without affording them a fair hearing, already concluding guilt without due process. They strongly challenge the Respondents' claim that the investigations began in October 2024, presenting evidence of earlier complaints and actions dating back to June 2022, which he believes shows a deliberate attempt to mislead the Court.
11. The Petitioners further accuses the Respondents of selectively using documents and investigations to assist Timsales Limited and misrepresent ownership of land that, they assert, no longer exists due to a formal change of user and surrender of title in 2019. The Petitioners further asserts that despite Timsales Limited submitting to the civil court's jurisdiction and actively participating therein, including filing a defence and fixing a hearing date, it is now running a parallel criminal process to harass the Petitioners and influence the pending civil suit outcome. They term this an abuse of the criminal justice system and argues that the 1st Respondent is being improperly used to bypass the Environment and Land Court's mandate.
12. Further, the petitioners raise concerns over the use of potentially fraudulent official searches issued by a lands officer who was aware of the 1st Petitioner's legitimate ownership documents but failed to acknowledge them, implying collusion and concealment. They point to the Respondents' refusal to share certain statements and documents like the Senior Assistant Chief Land Registrar's statement with them despite being crucial in the civil case, characterizing this conduct as ambush litigation that violates fair trial rights.



13. The petitioners further averred that the ongoing criminal investigations, including threats of arrest and charges such as money laundering, are malicious, skewed, and prejudicial, aimed solely at frustrating the civil proceedings. According to the petitioners, they believe that the Respondents' conduct amounts to an abuse of power and legal process, warranting judicial intervention to preserve their rights and the integrity of the civil court process. The Petitioners urges this Court to intervene and bar any further investigations, arrests, or prosecutions related to the disputed land, emphasizing that such orders will not prejudice any party but will instead uphold justice, constitutional safeguards, and the rule of law.
14. In light of the foregoing, the Petitioners seek a series of declarations from the Court affirming the violation of their constitutional rights, and judicial review orders of certiorari and prohibition to quash the impugned investigations and bar any further related prosecutorial steps. They also seek a declaration that any continued investigations or intended prosecutions arising from the impugned process are an abuse of the criminal justice system and a threat to the fairness of the pending civil suit. They pray that the court intervene to uphold constitutional principles, protect their property rights, and safeguard the integrity of judicial proceedings.
15. In response, the Respondents filed their Replying affidavit dated 22nd November, 2024 sworn by Service No. 80936 Detective Sergeant Nicolaus Osuri Otieno systematically challenging both the factual and legal bases of the Petition. The Respondents avers that the ongoing investigations concerning the suit property are lawful, justified, and fall squarely within their constitutional and statutory mandate. The Respondents dispute the authenticity and legality of a special power of attorney No. P/A 75748/1 dated 7th November 2022, allegedly executed between Ibrahim Mahamed Abey and Suleiman Ibrahim Surrow (the Petitioners), asserting that both individuals ignored official summons to appear for interrogation.
16. The Respondents further contend that the certificate of lease and title documents presented by the 1st Petitioner in relation to the suit property, were obtained fraudulently, without evidence of lawful acquisition or compliance with requisite land registration procedures. These documents are currently under active investigation by the Directorate of Criminal Investigations in *Inquiry File No. 289 of 2024*, initiated following a formal complaint by Timsales Limited, the alleged original and lawful owner of the property.
17. To bolster their position, the Respondents provided documentary evidence tracing ownership of the land to Timsales Limited, who claim to have acquired it in 1968 and continuously paid rates from 1999 to 2020. This assertion is supported by records from the State Department of Lands, historical conveyances, mortgage documents, and a tenancy agreement involving Hon. Cyrus Ngure Kagwi trading as Cyruseli Investment Limited, showing that Timsales Limited has been in active possession of the land.
18. The Respondents avers that there is sufficient evidence indicating Timsales to be the rightful owner of the suit property which includes witness statements and financial documents indicating that rent was consistently paid to Timsales Limited. The Respondents allege that the Petitioners used the questionable power of attorney to obtain a loan of Kshs.290 million by charging the suit property, subsequently defaulting, and thereby attempting to defraud both the bank and the legitimate landowner.
19. The Respondents further argue that the Petitioners did not participate in the lawful acquisition or development of the property and failed to adhere to legal requirements such as application for allocation, change of user approvals, or submission of deed plans. Additionally, the Respondents point out that there is no valuation reports associated with the charged property, suggesting a possible scheme



of money laundering. They contend that the Petitioners' conduct aligns with a growing trend in land fraud, where parallel land titles are illegally created to secure loans and dispossess true owners through auction or litigation.

20. The Respondents emphasize that their investigative actions are constitutionally grounded under Article 245(4)(a) and (b) of the Constitution, Section 35 of the National Police Service Act, and Article 157 of the Constitution in respect of the 2nd Respondent. They argue that the Petition is premature, lacks merit, and is brought in bad faith, seeking to halt legitimate investigations. They assert that only through the investigative process and judicial proceedings can the authenticity of the competing conveyances and titles be fairly determined. The Respondents therefore urge the court to dismiss the Petition with costs, allowing the DCI's ongoing *Inquiry File No. 289 of 2024* to proceed to its conclusion, which will ultimately inform the ODPP's independent prosecutorial decision.
21. The petition was canvassed by way of written submissions, and in compliance both parties filed and served their submissions.

Petitioners' Submissions

22. In their written submissions dated 9th February 2025, the Petitioners assert that the investigations are unconstitutional, malicious, and an abuse of state power aimed at sabotaging their legitimate proprietary claims to the suit property. They claim that while the Environment and Land Court is already seized of the ownership dispute, the DCI, without due process, has unilaterally declared Timsales Limited the rightful owner and is pursuing criminal charges against them, including fraud and money laundering, without even affording them the opportunity to be heard or to submit their ownership documents.
23. The Petitioners emphasize that the criminal process is being misused to serve the civil interests of Timsales Limited and to prejudice the 1st Petitioner's case in the pending Civil suit. They argue that despite a court-ordered status quo and pending civil proceedings, Timsales Limited sought to manipulate the land records and initiated parallel criminal complaints, which were acted upon by the 1st Respondent without transparency or adherence to Article 47 of the Constitution. These actions, the Petitioners argue, are contrary to Articles 10, 27, 40, 47, 50, and 232 of the Constitution and amount to procedural impropriety, illegality, and irrationality.
24. The Petitioners submitted that the 1st petitioner is the owner of the suit property as indicated in the official searches from the Chief Land Registrar and Nairobi City County rates payment records dating back to 2008. The Petitioners also submitted on the instances of Timsales Limited attempting to usurp their property through misrepresentation in Milimani CMCC Case No. MCELCE/E253/2022 and by engineering an unauthorized reconstruction of the land register through Gazette Notice No. 14189. The Petitioners further point out that the DCI has acted on longstanding complaints dating as far back as June 2022, yet they were neither notified nor invited to participate in the investigations, an omission that violates their right to fair administrative action and fair hearing.
25. Citing the Supreme Court and Court of Appeal authorities of Cyrus Jirongo v Soy Developers Ltd & 9 others [2021] eKLR, and Commissioner of Police & DCI v Kenya Commercial Bank Ltd & 4 others [2013] eKLR, the Petitioners argue that the criminal process must not be used to advance civil claims or as a tool of oppression. They emphasize that Section 193A of the Criminal Procedure Code, which permits parallel civil and criminal proceedings, cannot justify criminal proceedings that aim to circumvent ongoing civil litigation. They contend that the DCI's actions, particularly declaring Timsales Limited as the owner of the land, fall outside its constitutional mandate and amount to a usurpation of judicial functions reserved for the Environment and Land Court.



26. Moreover, the Petitioners highlight that the purported investigations are tainted with procedural unfairness, as exculpatory evidence was ignored and unfiled statements were relied upon without disclosure. They argue that this conduct is contrary to public policy and the principles of administrative justice under the *Fair Administrative Action Act*, 2015. The Petitioners argue that this Court has both the jurisdiction and the duty to protect citizens from oppressive and abusive investigations. Reliance was placed in *Githunguri v Republic* [1986] KLR1 and *Republic v DPP & 2 others ex parte Praxidis Namoni Saisi* [2016] eKLR.
27. The Petitioners urge this Court to declare the investigations null and void, prohibit any intended prosecution, and award them costs. They maintain that the actions of the Respondents, taken at the instigation of a litigant in a civil case, represent a classic case of abuse of process designed to undermine the judicial determination of a civil dispute and violate constitutional guarantees of fairness, equality, and due process.

Respondents' Submissions

28. In their written submissions dated 28th February 2025, the Respondents primarily challenge the competence and validity of the Petition filed, contending that it fails to meet the established legal threshold clearly outlined in *Anarita Karimi v Republic* (No.1) (1979) 1 KLR 154 and reinforced in *Mumo Matemu v Trusted Society of Human Rights Alliance*, Civil Appeal No. 290 of 2012 (2013). They argue that for a petition alleging constitutional violations to be considered competent, it must distinctly and specifically indicate the constitutional provisions purportedly breached, and expressly demonstrate how those breaches occurred.
29. According to the Respondents, while the Petitioners have listed Articles 27, 47, and 50 of the *Constitution* as allegedly infringed, they have not adequately demonstrated the manner of violation with sufficient precision. The Petitioners' central grievance, presented in paragraphs 30 to 79 of their petition, revolves around the assertion that the 1st Respondent has conducted ongoing investigations related to the disputed suit property without appropriately involving or informing them, thereby compromising their rights to fair administrative action and fair hearing.
30. However, the Respondents contend that these grievances are premature and misplaced, given that the matter remains at the investigative stage, with no formal decision having been taken by the 2nd Respondent regarding prosecution. Hence, they submit that the Petitioners' claims of violation under Article 50—right to a fair hearing—are unfounded, as investigations alone do not constitute a formal judicial or quasi-judicial process requiring a hearing. Additionally, the Respondents emphasize their statutory mandate under Sections 24 and 35 of the *National Police Service Act*, 2011, which obligates them to investigate complaints and apprehend offenders. They assert compliance with procedural fairness, indicating that the Petitioners were indeed summoned for questioning but failed to appear thereby compelling the 1st Respondent to proceed with the investigation independently.
31. The Respondents further argue that the preliminary investigative findings suggest that the Petitioners might have participated in fraudulent activities involving collusion with officials from the Ministry of Lands to generate parallel land registration documents used to secure loans fraudulently, subsequently defaulting on repayment, thus potentially implicating them in serious criminal activities, including fraud and money laundering.
32. On these grounds, the Respondents firmly maintain that their investigative actions are lawful, justified, and conducted in good faith within their statutory and constitutional mandates, thereby negating any infringement of the Petitioners' constitutional rights. They argue that there is no evidence of constitutional or statutory breach and that the Petition is a premature attempt to forestall lawful



investigations. As such, they urge the Court to find the Petition unmeritorious and dismiss it with costs, asserting that the Petitioners have failed to demonstrate any legitimate constitutional violations or to satisfy the procedural requirements for such a constitutional challenge.

33. Having carefully considered the Petition, the responses, the affidavits and submissions, the following key issues arise for determination: -
- i. Whether the court has the jurisdiction to intervene in the ongoing criminal investigations and grant the relief sought by the Petitioners
 - ii. Whether the criminal investigations are an abuse of process and designed to interfere with the pending civil proceedings.
 - iii. Whether the Petitioners' Rights under Articles 10, 27, 47, 50, and 232 of the *Constitution* have been infringed by the actions of the Respondents
 - iv. Whether the Petitioners are entitled to the reliefs sought

Analysis and Issues for Determination

i. Whether the Court has the jurisdiction to intervene in the ongoing criminal investigations and grant the relief sought by the Petitioners

34. According to the *Constitution* and the *National Police Service Act*, the police, as an essential component of the criminal justice system, are tasked with various roles, including crime prevention, upholding law and order, and conducting criminal investigations. In this petition, I will concentrate on the function of the police in crime investigation and the degree to which the court may intervene in this role, considering that the police's endeavors to investigate crimes and gather evidence form the cornerstone of the criminal justice system. Article 157 (4) and (11) of the *Constitution* highlights this importance. It states that:

“

- “ 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.

.....

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.”

35. Article 245 (4) (a) of the *Constitution* on the other hand provides that:

“ 3245(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.” (Emphasis).



36. While it is undeniable that the investigation of criminal offenses falls solely within the purview of the police, it is quite firmly established and needs no reiteration from the court that these powers are intended solely for the public purpose of investigating alleged crimes and, when necessary, compelling suspects to answer before the law. This is why courts in this nation have consistently maintained that it would be detrimental for them to intervene with the police in matters that are rightfully theirs to handle and for which the law mandates their obligation to investigate. Courts should allow investigations to be concluded before any charges are brought against the suspect.
37. In accordance with Article 157 (11) of the *Constitution* mentioned above, when utilizing powers granted by the law, which includes the authority to instruct the Inspector General to investigate claims of criminal activity, the DPP must also consider the necessity of preventing and avoiding misuse of the legal system. Conversely, the court is obligated to ensure that the DPP and the Inspector General carry out these responsibilities in compliance with legal standards. If the court becomes aware of significant abuse of power, it should, in our opinion, indicate its disapproval by intervening to secure justice, and restrain above of power that may lead to harassment or persecution. See *Githunguri v Republic* [1986] KLR 1.
38. It has been established that an investigation that is oppressive or vexatious goes against public policy, and that the police, while conducting criminal investigations, must act within the confines of the law. The decision to investigate a crime (or to prosecute in the case of the DPP) should not be irrational, made in bad faith, or aimed at achieving hidden agendas, nor should it be used for personal vendettas or to defame others. The court has the inherent authority to intervene in such investigation or prosecution processes. See *Ndarua v R.* [2002] 1EA 205 and *Kuria & 3 Others v Attorney General* [2002] 2 KLR 69.
39. The Court has the jurisdiction to hear and determine petitions involving violations of constitutional rights, including issues related to fair administrative action and abuse of legal process. Although the Directorate of Criminal Investigations (DCI) and the Office of the Director of Public Prosecutions exercise constitutionally entrenched discretion under Article 157 to investigate and prosecute, that discretion is not unfettered. Where it appears that investigative powers are being deployed to harass litigants, to influence pending civil proceedings, or otherwise to subvert the administration of justice, the Court must intervene. This inherent supervisory jurisdiction ensures that no organ of state may cloak improper conduct under the guise of prosecutorial or investigative mandate, preserving the rule of law and constitutionalism.
40. 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, eg 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.”

41. In achieving this objective, the court intends to in the first instance, question whether the respondents acted within their respective mandates in their investigation and subsequent institution of a criminal charge against the petitioner. Concomitant with this issue would be to answer whether the petitioner’s rights have been violated in the manner that he claims and finally, to ponder whether, on analysis of the preceding questions, he is deserving of the reliefs sought.
42. When confronted with a petition aimed at halting a criminal prosecution, the considerations that a court should take into account are clearly established. Firstly, the court must exercise great caution in reaching its decision to prevent any prejudice to the ongoing or future criminal proceedings. The court should refrain from overstepping the constitutional and statutory authority of the Director of Public Prosecutions, nor should it interfere with the investigative powers granted to the DCI. Nevertheless, the court has the authority to intervene if the discretion is applied unlawfully and in bad faith, such as when it is misused or employed to pursue an ulterior motive that does not relate to addressing the commission of a criminal offense. In *George Joshua Okungu & Another V The Chief Magistrates Court, Nairobi & Another* [2014] eKLR it was held:

“ 50. The law is that the Court ought not to usurp the Constitutional mandate of the Director of Public Prosecutions or the authority charged with the prosecution of criminal offences 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, it has been held time and again, is not a ground for halting those proceedings. That a petitioner has a good defence in the criminal process is a ground that ought not to be relied upon by a Court in order to halt criminal process undertaken bona fides since that defence is always open to the petitioner in those proceedings. However, if the Petitioner demonstrates that the intended or ongoing criminal proceedings constitute an abuse of process and are being carried out in breach of or threatened breach of the petitioner’s Constitutional rights, 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 Petitioner 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 recognised aim. In the exercise of the discretion on whether or not to grant an order of prohibition, the court takes into account the needs of good administration. See *R v Monopolies and Mergers Commission Ex Parte Argyll Group Plc* [1986] 1 WLR 763 and *Re Bivac International SA (Bureau Veritas)* [2005] 2 EA 43 (HCK).”



43. Similarly, in *Republic v Grace Wangari Bunyi (Sued as the Administrator of the Estate of the Late Obadiab Kuira Bunyi) & 7 others Ex parte Moses Kirruti & 28 others* [2018] eKLR the court underscored that: -

“It is important to note that the discretion given to the Director of Public Prosecutions to undertake investigation and prosecute criminal offences is not to be taken for granted or lightly interfered with and must be properly exercised. In the same respect, the court ought not to usurp the constitutional and statutory mandate of the Director of Public Prosecutions. The mere fact that their high chance of success as regards the intended or ongoing criminal proceedings does not count, it not a ground for halting those proceedings by way of judicial review since judicial review proceedings are not concerned merits of the case but to address defects in decision making process by a decision making body. However, the court may only intervene were the said discretion is exercised unlawfully and in bad faith, for instance where it is being abused or being used for achievement of some collateral purpose which are not geared towards the vindication of the commission of a criminal offence and the justice system such as with a view to forcing a party to submit to a concession of a civil dispute, the court will not hesitate to bring such proceedings to a court.”

44. A familiar position was also taken in *Eunice Khalwali Miima v Director Public of Prosecutions & 2 others* [2017] eKLR where the Court stated:

“The circumstances under which the Court will grant stay of a criminal process in these kinds of proceedings is now well settled. The Court ought not to usurp the Constitutional mandate of the Director of Public 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 by way of judicial review since judicial review proceedings are not concerned with the merits but with the decision making process. That an applicant has a good defence in the criminal process is a ground that ought not to be relied upon by a Court in order to halt criminal process undertaken bona fides since that defence is open to the applicant in 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.”

45. Before the Court may quash or prohibit an ongoing investigation, the Petitioners must demonstrate that the impugned conduct reaches the threshold of unlawfulness, irrationality, or procedural unfairness. This threshold is met when an administrative action such as a criminal investigation amounts to an abuse of process, is undertaken for an ulterior purpose, or flagrantly breaches principles of natural justice. In the present case, the Petitioners avers that for nearly two years they were kept wholly in the dark about investigations directly affecting their proprietary interests; that the DCI reached preformed conclusions without affording them any opportunity to be heard; and that those investigations were timed and framed to coincide with critical stages of the parallel land-ownership suit. Collectively, these facts satisfy the established standards and warrant the Court’s interference as the Court is empowered to review the actions of the 1st Respondent in this case and determine whether the ongoing criminal investigations are consistent with constitutional requirements.



ii. Whether the criminal investigations are an abuse of process and designed to interfere with the pending civil proceedings

46. The Petitioners argue that the ongoing criminal investigations amount to an abuse of legal process, as they are being used as a tool to interfere with the pending civil suit in *Nairobi ELC Case No. E421 of 2022*. The principle of abuse of process is founded on the notion that legal processes should not be used for an improper or ulterior purpose. Legal actions, whether civil or criminal, should serve to promote justice and not to harass or oppress another party. The Petitioners assert that the criminal investigations initiated by the 1st Respondent, at the instigation of Timsales Limited, are intended to prejudice the outcome of the civil proceedings concerning the ownership of the suit property. However, the Respondents emphasized that they acted within their statutory mandate under Article 245 (4) (a) and (b) of the *Constitution*, Sections 24 and 35 of the *National Police Service Act*, 2011 which obligates them to investigate complaints and apprehend offenders and assert compliance with procedural fairness. They also argued that their actions were in consideration with the provisions of Section 193A of the *Criminal Procedure Code*.
47. Abuse of process arises when a party uses the legal process for a purpose other than what it is intended for. The criminal justice system is intended to address matters of crime and punish offenders, not to resolve civil disputes. When criminal investigations are conducted with the aim of influencing or prejudicing ongoing civil litigation, this constitutes an abuse of process.
48. It is the petitioners' case that the criminal investigations are being used to undermine the pending civil case, which is already before the Environment and Land Court. The legal principle that governs the relationship between civil and criminal proceedings is that they should run in parallel, without one unduly interfering with the other, especially when they concern the same subject matter.
49. Section 193A *CPC* provides that:
- “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.”
50. Section 193A of the *Criminal Procedure Code* allows parallel civil and criminal proceedings in certain circumstances. However, the Petitioners argue that this provision does not justify criminal proceedings aimed at undermining or prejudicing civil disputes. In *Commissioner of Police & The Director of Criminal Investigation Department & another v Kenya Commercial Bank Limited & 4 others* [2013] KECA 182 (KLR) the Court of Appeal held that:
- “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 that 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 the administration of justice to use criminal justice process as a pawn in civil disputes. It is unconscionable and a travesty of justice for the police to be involved in the settlement of what is purely a civil dispute being 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. We have no doubt in our minds that the belated involvement of the police in this purely civil dispute is an abuse of their power. The police should direct their energies and resources to prevention of crime which we all know is rampant in this country and is about to get out of control.”

51. The Petitioners point to correspondence dated 31st October 2024, demanding the DCI halt investigations pending the ongoing civil suit, to which there was no substantive response. This reticence underscores mala fides. The *Civil Procedure Rules* recognize that parallel proceedings may be stayed where one threatens the integrity of the other. By parity of reasoning, criminal investigations serving the same disruptive function warrant prohibition.
52. Public authorities must not pursue parallel processes that undermine the fairness of judicial proceedings. The DCI’s parallel inquiry plainly undercuts the Environment and Land Court’s jurisdiction. The concern here is that the criminal investigations, by focusing on the ownership of the suit property, are not simply seeking to address any criminal wrongdoing but are instead being used to influence the civil outcome. The 1st Respondent’s actions are seen as an effort to bypass the judicial process in the Environment and Land Court and interfere with the civil rights of the Petitioners. In *Jirongo v Soy Developers Ltd & 9 others* [2021] KESC 32 (KLR), the Supreme Court noted that criminal investigations should not be employed to frustrate or interfere with civil litigation, especially when both processes concern the same issues. The court thus stated: -

“76. The Court of Appeal persuasively stated in the case of *Commissioner of Police & the Director of Criminal Investigation Department & another v Kenya Commercial Bank & 4 others* [2013] eKLR that: “Clearly, the company and the guarantor through their directors were employing criminal process to assist them in resolving their civil dispute. 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 that 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 the administration of justice to use criminal justice process as a pawn in civil disputes. It is unconscionable and a travesty of justice for the police to be involved in the settlement of what is purely a civil dispute being 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. We have no doubt in our minds that the belated involvement of the police in this purely civil dispute is an abuse of their power. The police should direct their energies and resources to prevention of crime which we all know is rampant in this country and is about to get out of control.”

77. We respectfully agree and adopt this position in this case but must add that where it is obvious to a court, as it is to us and was to the learned Judge of the High Court, that a prosecution is being mounted to aid proof of matters before a civil court or where the hand of a suspect is being forced by the sword of criminal proceedings to compromise pending civil proceedings, then



section 193A of the *Criminal Procedure Code* cannot be invoked to aid that unlawful course of action. Criminal proceedings, whether accompanied by civil proceedings or not, cannot and should never be used in the manner that the 2nd and 3rd respondents have done. It is indeed advisable for parties to pursue civil proceedings initially and with firm findings by the civil court on any alleged fraud, proceed to institute criminal proceedings to bring any culprit to book. In addition, we shall, later in this Judgment, express ourselves on the criteria to be used by the High Court before terminating any criminal prosecution.”

53. The prolonged and secretive nature of the criminal investigations, which have been ongoing for nearly two years, further underscores the Petitioners' claim of abuse of process something which the Respondents deny as they alleged to have received instructions to conduct investigations around October 2024. Yet, the Petitioners contends that the records shows that the investigations began sometimes in June 2022. The delay in concluding the investigations or providing the Petitioners with an opportunity to be heard creates an atmosphere of uncertainty and harassment. The Petitioners argue that the investigations have dragged on unnecessarily, leading to a situation where the 1st Petitioner is effectively being punished before any formal charges have been brought against him.
54. In *Githunguri v Republic* [1986] KLR 1 (*supra*) the Court emphasized that the criminal justice system should not be used to harass or oppress individuals. The excessive delay in bringing charges or completing investigations not only violates a person's right to a fair trial but also constitutes an abuse of legal process.
55. The Petitioners argue that Timsales Limited, as a private litigant, should not have been able to initiate and influence criminal investigations in this manner. The Respondents' conduct is perceived as collusion with Timsales Limited to secure a predetermined outcome, which amounts to an abuse of power. Timsales Limited, having lost in a previous case before the Magistrate's Court, is now using the 1st Respondent's powers to influence the legal process in its favor.
56. The Court is asked to consider whether a party can manipulate the criminal justice system to obtain a favorable result in a civil dispute. The Petitioners assert that the involvement of Timsales Limited has resulted in an unfair advantage and that the criminal investigation is now functioning as a form of harassment.
57. The investigation, according to the Petitioners, presumes the guilt of the accused without providing them an opportunity to defend their rights or to contest the ownership claims. The criminal process, as conducted by the 1st Respondent, is seen as an attempt to establish facts that are directly relevant to the civil dispute, thus circumventing the judicial process in the Environment and Land Court.
58. In *Republic v Director of Public Prosecutions & 2 others Ex-parte Praxidis Namoni Saisi* [2016] KEHC 5698 (KLR), the Court underscored that:

“Therefore the police are expected to be professional in the conduct of their investigations and ought not to be driven by malice or other collateral considerations. Malice, however, can either be express or can be gathered from the circumstances surrounding the prosecution. A prosecution can either be mounted based on an offence committed in the presence of law enforcement officers or by way of a complaint lodged by a person to the said officers or agencies. However, the mere fact that a complaint is lodged does not justify the institution of a criminal prosecution. The law enforcement agencies are required to investigate the complaint before preferring a charge against a person suspected of having committed an



offence. In other words the police or any other prosecution arm of the Government is not a mere conduit for complainants. The police must act impartially and independently on receipt of a complaint and are expected to carry out thorough investigations which would ordinarily involve taking into account the versions presented by both the complainant and the suspect. I say ordinarily because the mere fact that the version of one of the parties is not considered is not necessarily fatal to the prosecution. However, where exculpatory evidence is presented to the police in the course of investigation and for some reasons unknown to them they deliberately decide to ignore the same one may be justified in concluding that the police are driven by collateral considerations other than genuine vindication of the criminal judicial process. Neglect to make a reasonable use of the sources of information available before instituting proceedings may therefore be evidence of malice and hence abuse of discretion and power.”

59. It is well established that criminal investigations must be initiated and conducted in good faith. A prosecution instituted mala fide to harass the accused or pervert the course of justice is liable to be stopped. The DCI’s premature declaration of ownership for Timsales Limited without the determination of the pending suit in the Environment and Land Court constitutes usurpation of the civil court’s exclusive domain over land disputes.
60. The ‘harnessing’ of criminal power by a private litigant to pressure a party in civil litigation is antithetical to the rule of law. The DCI’s conduct undermines institutional integrity and public confidence. Moreover, courts have an inherent supervisory jurisdiction over actions threatening to undermine their own processes. The Environment and Land Court’s ongoing case is effectively being sabotaged by clandestine police action favoring one litigant. In *Kuria & 3 Others v Attorney General* [2002] 2 KLR 69, the Court 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. It is through this mandate of the court to guard its process from being abused or misused or manipulated for ulterior motives that the power of judicial review is invariably invoked so as to zealously guard its (the Court’s) independence and impartiality (as per section 77(1) of the *Kenya Constitution* in relation to criminal proceedings and section 79(9) for the civil process). The invocation of the law, whichever party in unsuitable circumstances or for the wrong ends must be stopped, as in these instances, the goals for their utilisation is far that which the courts indeed the entire system is constitutionally mandated to administer...”

61. The doctrine of *functus officio*, though primarily judicial illuminates the principle that once a tribunal or a court is seized of a matter, no other body may usurp its function. The DCI’s parallel inquiry constitutes a *de facto* appeal from the Environment and Land Court’s jurisdiction. In *Republic v Director of Public Prosecutions & 2 others Ex-parte Praxidis Namoni Saisi* [2016] (*supra*), the court affirmed that Investigative agencies must respect the boundaries of judicial processes and not embark on parallel inquiries that frustrate justice. The Petitioners’ supplementary affidavit establishes that complaints to the DCI date as far back as June 2022, yet Timsales Limited only became active in civil



suit filings in 2022. This chronology betrays an evidential link between the Environment and Land Court suit and the timing of investigations.

62. Likewise, the DCI's refusal to share the Senior Assistant Chief Land Registrar's statement which is critical to the civil case, amounts to "ambush litigation," a recognized form of abuse. The cumulative effect of these misfeasance is to prejudice the Petitioners' civil rights and to weaponize criminal law for civil ends. Such misuse corrodes legal order and must be halted. The criminal process is not a tool for securing civil redress as it is designed to punish public wrongs.

63. In *R v DPP & Others Ex parte Qian Guo Jun & Anor* [2013] eKLR the Court held that:

"Although the Court appreciates that the discretion given to the police to investigate offences and that given to the Director of Public Prosecutions ought not to be lightly interfered with, where an applicant places before court material which prima facie show that the dispute between the applicant and the interested part is purely civil in nature and that the criminal proceedings are being undertaken with ulterior motives, it behoves the respondents to place some material before the court which though not conclusively proving the guilt of the applicant warrants their action to charge the applicants. In absence of such material and in light of the material placed before the court by the applicant, the Court would be left with no option but to believe the applicant's version that being the only factual version before it.."

64. Having considered the factual record and the cogent authorities, I find that the DCI's investigations are tainted by improper motive and constitute an abuse of process. The investigations are being used to interfere with the ongoing civil proceedings, prejudicing the Petitioners' rights to a fair hearing and to the proper adjudication of their claims in the Environment and Land Court. The actions of the 1st Respondent, influenced by the Interested Party, amount to an improper use of legal process.

iii. Whether the Petitioners' Rights under Articles 10, 27, 47, 50, and 232 of the Constitution have been infringed by the actions of the Respondents

65. Article 27 of the Constitution guarantees equality before the law and equal protection of the law for all individuals. The Petitioners claim that they have been treated unequally by the 1st Respondent, which allowed Timsales Limited to participate fully in the investigation while excluding them from the process. The failure to provide the Petitioners with the same opportunity to present their case, submit evidence, or contest the allegations is seen as discriminatory treatment which strikes at the heart of equality under Article 27 of the Constitution.

66. The Respondents argue that the Petitioners were duly summoned to their offices for an interrogation and to shed light on the matter but failed to do so prompting them to conduct the investigations. However, the Petitioners maintain that they were not given the opportunity to defend themselves or to participate in the investigation. The Court must consider whether the unequal treatment of the parties in the investigative process constitutes a violation of Article 27 of the Constitution.

67. The Petitioners claim that failure to involve them in the investigation while giving Timsales Limited preferential treatment violates the equal protection clause under Article 27. Discrimination was defined in the case *Peter K. Waweru V Republic* [2006] eKLR as follows:

"affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, place of origin or residence or other local connection, political opinions, colour, creed or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not



made subject or are accorded privileges or advantages which are not accorded to persons of another such description. *Blacks Law Dictionary* (11th ed) defines ‘discrimination’ as hereunder:

..... In constitutional law the effect of a statute or established practice which confers particular privileges on a class arbitrarily selected from a large number of persons, all of whom stand in the same relation to the privileges granted and between them and those not favoured no reasonable distinction can be found.

.....’Unfair treatment or denial of normal privileges to person because of their race, age, sex nationality or religion. A failure to treat all person equally where no reasonable distinction can be found between those favoured and those not favoured.’ *Baker v California Land title Company* DC CAL 349 Supp 235, 238, 239.”

68. Equal protection and benefit of the law requires that the law be enforced and implemented equally and fairly, and not arbitrarily or discriminatorily.

That pronouncement underscores the Petitioners’ complaint: selective engagement by the DCI amounts to arbitrary enforcement favoring Timsales Limited.

69. Article 27(4) further provides that the State shall not discriminate directly or indirectly on any ground, including race, sex, religion, opinion or social or economic status. Here, “economic status” and the fact of being a corporate complainant granted privileged access to investigators cannot justify the exclusion of privately charged citizens from the process. Therefore, this court finds that the 1st Respondents conduct of excluding the Petitioners from the investigations infringed on their rights as provided for under Article 27 of the [Constitution](#).

70. The Petitioners also assert that the investigation was not conducted fairly or transparently, as required by Article 47. The failure to involve the Petitioners in the process, the secrecy surrounding the investigation, and the lack of opportunity to present a defense violate the principles of fairness, transparency, and accountability. The Petitioners also contend that they were not provided with reasons for the administrative actions taken against them.

71. Investigations carried out secretly, selectively and without affording the subject a hearing are in breach of Article 47 of the [Constitution](#). Administrative actions must be conducted fairly, and individuals should be given the opportunity to participate and be heard. In this case, the Petitioners were not informed of the investigations, nor were they given the chance to defend their ownership of the land which is constitutionally impermissible.

72. The [Fair Administrative Action Act](#), 2015 (FAAA) implements Article 47. Section 4(3)(a) of the [FAAA](#) requires that “where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision...(a) prior and adequate notice....” No such notice was given to the Petitioners here.

73. Section 4(3)(b) further demands “an opportunity to be heard and to make representations in that regard.” Despite the fact that the Respondents argue they summoned the Petitioners to their offices who failed to appear for interrogations, the same was done through a letter dated 4th November, 2024 yet their investigations began way back in June 2022. During that period, the Petitioners were never summoned, interviewed, or provided with the complaint materials, yet months later might be faced with potential arrest and criminal charge. That omission renders the entire process unlawful under the [FAAA](#).



74. Considering the fact that the decisions in question were made in total disregard of the provisions of the act, I find no difficulty in concluding that the decision(s) in question violated the clear provisions of Article 47 of the Constitution and the fair Administrative Act, hence, the same is *ultra vires*, null and void. As was stated in *Minister of Health and Others v Treatment Action Campaign and Others*: -

“the Constitution requires the State to respect, protect, promote, and fulfill the rights in the Bill of Rights. Where state policy is challenged as inconsistent with the Constitution, courts have to consider whether in formulating and implementing such policy the state has given effect to its constitutional obligations. If it should hold in any given case that the state has failed to do so, it is obliged by the Constitution to say so. In so far as that constitutes an intrusion into the domain of the executive, that is an intrusion mandated by the Constitution itself.”

75. A decision that does not make provision for examination of individual circumstances and anticipated exceptions is unreasonable and a breach of Article 47(1) of the Constitution is not fair and reasonable within the meaning of Article 47(1) of the Constitution in so far as it does not provide for application of due process in adjudicating the rights.

76. Therefore, the action of the 1st Respondent to conduct investigations and come up with their own conclusion without interrogating the petitioners infringed their rights under Article 47 of the Constitution.

77. The Petitioners also alleged that their right under Article 50 of the Constitution have been infringed by the Respondents. Article 50 of the Constitution guarantees the right to a fair trial, including the right to be informed of the charges against them, to have a hearing before an impartial tribunal, and to be given a fair opportunity to present their case.

78. The Petitioners argue that the criminal investigation, which is a precursor to potential prosecution, violates their right to a fair trial because they were not informed of the accusations or given the opportunity to present their side of the story. Additionally, the prolonged nature of the investigations and the failure to inform them of the allegations against them constitute a violation of their right to a fair trial. The Respondents on the other hand argued that the matters complained of are at the investigation stage, no investigation file has been forwarded or vailed to the 2nd Respondent for a decision to charge or not charge the Petitioners. The Court must consider whether the lack of procedural fairness in the investigations affected the Petitioners' right to a fair trial.

79. While the Respondents argue that investigations are not a “hearing”, the right to a fair hearing is not only procedural but also substantive. It begins from the moment an accused is suspected and continues throughout the process as was held in *Githunguri v Republic* [1986] KLR 1, (*supra*) to the effect that:

“A prosecution is not to be made good by what it turns up. It is good or bad when it starts.”

Thus, the investigatory stage itself attracts fair-hearing protections.

80. The omission to notify or involve the Petitioners throughout the investigatory phase is a denial of that substantive fairness. They were treated as subjects of suspicion yet denied any process rights until the Respondents unilaterally concluded guilt, as the evidence they had collected so far indicated that the Petitioners had engaged in fraud since the Petitioners may have colluded with some Ministry of land officials to make parallel land registration documents for purposes of charging the parcels of land in question, obtaining money in form of loans which they eventually defaulted to pay indicating a scheme revolving around fraud and money laundering.



81. Article 50(2)(b) guarantees the right to be informed of the reason for the charge. To date, the Petitioners still do not know the precise allegations forming the basis of the DCI *Inquiry File No. 289 of 2024*. An accused person must be informed of the case against him in sufficient detail to enable effective preparation of a defence. The same principle applies here at the investigatory stage.
82. The Petitioners were likewise denied the right under Article 50(2)(a) of the Constitution which guarantees the right to be presumed innocent until proven guilty. By declaring Timsales Limited the owner of the land thereby overriding civil court jurisdiction before trial, the DCI has pre-judged ownership and therefore presumed the Petitioners guilty of fraud and money laundering.
83. The Petitioners were never afforded the choice to give a statement. Indeed, they were wholly unaware of any invitation to do either which is a fundamental breach of this right.
84. The cumulative effect of these failures; no notice, no hearing, no charge particulars, pre-judging the Petitioners' status and crime, and excluding them from the process amounts to a systemic violation of Articles 27, 47 and 50 of the Constitution.
85. The constitutional guarantee of equality before the law cannot coexist with a two-tier investigative process in which one party here, Timsales Limited, enjoys full access and the other, the Petitioners, is denied even minimal participation.
86. It is no answer that the Petitioners could have applied to the DCI as due process demands that those facing investigation be formally called. The secretive nature of these investigations suggests a heavy-handed approach designed to extract self-incriminating admissions outside any procedural safeguards. The failure to provide the accused with an opportunity to be heard in criminal investigations and prosecutions is a denial of the right to a fair trial under Article 50 of the Constitution.
87. It is the Petitioners case that the Respondents have violated the principles underscored in Articles 10 and 232 of the Constitution. Article 10 of the Constitution mandates that "the national values and principles of governance in this Article bind all State organs, State officers, public officers and all persons." These values include integrity, transparency, accountability, and good governance. The DCI, as a state organ, is therefore bound to observe these values in every aspect of its work.
88. Article 232 of the Constitution enshrines the values and principles of public service, which include transparency, accountability, and fairness. Article 232 further specifies that public officers must practice, and are held accountable for, executing the public trust in a manner that is lawful, effective, efficient, impartial and equitable. They must also demonstrate respect for the rule of law, human rights and fundamental freedoms. The Petitioners argue that the actions of the 1st Respondent violated these principles, as the investigation was carried out in a manner that was neither transparent nor fair. The failure to involve the Petitioners in the process and the apparent bias in favor of Timsales Limited undermine the integrity of public service and violate the constitutional principles of good governance.
89. The Fair Administrative Action Act (FAAA), 2015, gives effect to Article 47 but also embodies the broader values of Article 10 by requiring transparency and accountability in administrative decision-making. A process devoid of transparency, or tilted in favour of one party, undermines the constitutional imperative of accountability in public administration.

The DCI's secretive two-year investigation, excluding the Petitioners entirely, runs directly counter to this principle.
90. The DCI's refusal to share key documents such as the Senior Assistant Chief Land Registrar's statement, denies transparency. By withholding statements and search reports, the DCI has engaged in ambush tactics.



91. By favoring a corporate complainant and sidelining private citizens, the DCI has compromised equity and non-discrimination. Transparency is fundamental to accountability; without openness in decision-making, public confidence in governance is eroded. Secret investigations that exclude affected parties erode public confidence in the police.
92. The DCI's repeated failure to update the Petitioners on the status of *Inquiry File No. 289 of 2024* despite formal letters violates Section 4 of the [FAAA](#). Reasonableness demands not only timely decisions but also that the rationale for action be clear to those affected. Here, neither the rationale nor the outcomes of the investigations has been communicated to the Petitioners.
93. The DCI's conduct of threatening arrests and prosecutions without due process, violates the fundamental freedom from arbitrary detention under and the right to liberty. An individual subjected to coercive State action must be able to understand and challenge that action effectively.

By withholding notice and grounds for investigation, the Petitioners cannot challenge or prepare a defence.
94. Decision-makers must take into account all relevant considerations and ignore irrelevant ones. Evidence suggests the DCI ignored exculpatory material such as title searches confirming the Petitioners' ownership while relying exclusively on Timsales Limited's documents.
95. An investigation that ignores material contrary to the investigator's preferred conclusion ceases to be impartial. The DCI thereby violated the requirement for impartiality under Article 232. The DCI's assumption of civil-court functions by declaring a private litigant the rightful owner of the suit property usurps judicial authority and undermines the separation of powers integral to the rule of law. Prosecutorial discretion must be exercised in accordance with law and constitutional norms, not to further private interests. Here, prosecutorial discretion was deployed to serve Timsales Limited's civil aims.
96. The cumulative effect of breaches which entails lack of transparency, accountability, impartiality, promptness and efficiency constitutes a systemic failure to observe Articles 10 and 232, and to implement the FAAA. The Petitioners have shown that the 1st Respondent has acted inconsistently with these constitutional provisions, pursuing a disfavored party in secret while favoring the private complainant. The result is plain discrimination, unfair administrative action and denial of a fair hearing.
97. I therefore find, unequivocally, that the 1st Respondent's investigations into the Suit Property infringe the Petitioners' rights under Articles 27, 47, 50 and 232 of the [Constitution](#).

iv Whether the Petitioners are entitled to the reliefs sought

98. Having established that the investigations infringe Articles 27, 47, 50, 10 and 232 of the [Constitution](#), the next question is whether the Petitioners are entitled to the specific remedies sought.
99. Declarations under Article 23(3) of the [Constitution](#) lie where a petitioner shows a violation of a constitutional right or principle. The Petitioners have demonstrated such violations in the issues discussed above. The High Court's declaratory jurisdiction under Article 23 is broad and must be exercised to vindicate constitutional rights.
100. Here, the Petitioners seek (a) a declaration that the investigations violate their rights under Articles 27, 47 and 50; (b) a declaration that the investigations breach Articles 10 and 232 and the [Fair Administrative Action Act](#); and (c) a declaration that any further investigations or prosecutions are an abuse of process. All are appropriate given the findings above.



101. The petitioners have requested that this court grant an order of certiorari to nullify any investigation conducted by the 1st Respondent and the decision made by the 2nd Respondent to initiate and persist in any prosecution linked to the disputed investigations regarding the property in question. Essentially, this court is being asked to apply its supervisory authority which reflects the court's role in overseeing the exercise of power by those who possess it to ensure that it has been executed in accordance with the law. Judicial review serves as a judicial mechanism designed to ensure that decisions made by the executive or public entities comply with legal standards, regardless of whether the decision itself constitutes a legally actionable injury. The superior courts developed their review functions to carry out their duty of dispensing justice in accordance with legal principles. The validity of judicial review rests on the rule of law and the necessity for public institutions to act in compliance with legal requirements. Judicial review acts as a means of holding those who wield public authority responsible for how that authority is implemented. The courts' primary responsibility is to uphold the fundamental and lasting principles that form the basis of the rule of law. Similar to any other form of government authority, the discretionary application of public power is subject to judicial oversight to ensure the supremacy of the law.
102. Judicial review focuses more on the procedures involved in reaching a decision rather than the merits of the decision itself. Provided that the decision-maker adheres to proper procedures and the decision falls within the legal framework, a court will refrain from intervening. Generally, the court examines whether the individual or organization has a legal obligation to act or make a decision in a specific manner and is unlawfully neglecting or refusing to do so or whether a decision or action taken exceeds the powers (known in Latin as '*ultra vires*') granted to the individual or organization responsible for it.
103. In *John Wachiuri T/A Githakwa Graceland & Wandumbi Bar & 50 Others v The County Government of Nyeri & Anor*, this court had the opportunity to evaluate the oversight of the administrative decision-making process, specifically whether the public body acted lawfully in reaching its conclusion. In that ruling, the court highlighted three categories of public law violations commonly cited in such cases:
- a. Illegality - Decision-makers must comprehend the law that governs their actions. If they fail to properly adhere to the law, their decision, conduct, or inaction will be deemed "illegal." Therefore, an action or decision may be characterized as illegal if the public body lacks the authority to undertake that action or decision, or if it has acted beyond its designated powers.
 - b. Fairness - Fairness necessitates that a public body should not act in such an unjust manner that it constitutes an abuse of power. This implies that if there are specific procedures established by legislation that must be followed to arrive at a decision, they must be adhered to, and the rules of natural justice must not be violated. The entity must act without bias, and there should be a fair hearing prior to making a decision.
 - c. Irrationality and proportionality - Courts must step in to annul a decision if they find it to be evidently unreasonable to the extent that it demonstrates 'irrationality' or 'perversity' on the part of the decision-maker.
104. Judicial review arises from the principles of *ultra vires* and natural justice, evolving into a legal framework that encompasses illegality, irrationality, and procedural impropriety, thus becoming a crucial mechanism for upholding constitutionalism, a significant advocate for the rule of law, and arguably one of the most effective instruments against the misuse of power and arbitrariness. It has been remarked that the development of judicial review is comparable to the expanding categories of negligence following the landmark case of *Donoghue v Stevenson* in the previous century.



105. Judicial review remedies such as certiorari and prohibition are available to correct unlawful or ultra vires administrative action. Judicial review intervenes where power is exercised irrationally, unfairly or outside legal bounds.
106. The investigations here are already tainted by procedural impropriety as no notice was issued or hearing was conducted, illegality by breaching constitutional rights and irrationality where the investigation was secretive flaunted by a biased process.
107. Prohibition requires showing a clear right, an indisputable duty, and no alternative remedy. Prohibition may be granted even in advance of action, where the threatened act is clearly beyond legal authority. The DCI's ongoing threat of arrest and prosecution, absent lawful process and pending civil adjudication falls beyond its proper authority.
108. In view of the above, I find that this petition is well founded, hence I allow the petition and make the following Orders/declarations: -
- i. A declaration be and is hereby issued that Articles 10, 27, 47(1) and (2), 50 (1) (c) (e) and (f) of the Constitution enjoins the 1st Respondent to promptly notify known owner(s) of any parcel of land that is under investigations of the existence of such investigations and afford them an opportunity to record statement and avail ownership documents for interrogation;
 - ii. A declaration be and is hereby issued that Article 157 (11) of the Constitution requires the 2nd Respondent in exercising the powers conferred by the provision to have regard to the need to prevent and avoid abuse of the legal process;
 - iii. A declaration be and is hereby issued that in failing to notify the Petitioners of the existence of a complaint over the parcel of land known as LR No. 1/1405, the 1st Respondent has violated Articles 10, 27, 47(1) and (2), 50(1) and 232(1) (c), (e) and (f) of the Constitution;
 - iv. A declaration be and is hereby issued declaring that in failing to afford the Petitioners an opportunity to record their statements and avail documents in support of the 1st Petitioner's claim over the parcel known as LR No. 1/1405, the 1st Respondent has violated Articles 10, 27, 47(1) and (2), 50(1) and 232(1) (c), (e) and (f) of the Constitution;
 - v. A declaration be and is hereby issued declaring that the investigations into intended arrest and/or intended prosecution and/or continued prosecution of the Petitioners and any other person in relation to the 1st Petitioner's possession and occupation of the parcel of land known as Land Reference Number 1/1405 is an abuse of power and discretion, is aimed at achieving an ulterior or improper motive and is thus in gross contravention of the Constitution and the law;
 - vi. A declaration be and is hereby issued declaring that the investigations which the 1st Respondent has undertaken in relation to the subject matter herein, being LR No. 1/1405 as against the Petitioners are null and void in their entirety having failed to comply with Articles 10, 27, 47(1) and (2), 50(1) and 232(1) (c), (e) and (f) of the Constitution;
 - vii. An order of certiorari be and is hereby issued to remove into this Honourable Court for the purposes of quashing any investigation by the 1st Respondent and decision of the 2nd Respondent to institute and continue any prosecution that is anchored on the impugned investigations over the parcel of land known as LR No. 1/1405 and the same are hereby quashed;
 - viii. An order of prohibition be and is hereby issued prohibiting the Respondents from continuing, instituting and/or undertaking any investigations, arrest and or prosecution in relation to the



parcel of land known as LR No. 1/1405 situated in Nairobi City County anchored on the impugned investigations subject of this Petition pending Nairobi ELC Case No. E 421 of 2022 being fully heard and determined; and

ix. Costs are awarded to the Petitioners.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 13TH DAY OF AUGUST 2025.

BAHATI MWAMUYE

JUDGE

In the presence of: -

Counsel for the Petitioners – Mr. Ndegwa h/b Mr. Keaton

Counsel for the 1st & 2nd Respondents – Mr. Mulati h/b Mr. Maarwa

Court Assistant –Ms. Lwambia

