



Omondi & another v Office of the Director of Public Prosecutions & 5 others; Southdowns Developers Limited & 3 others (Interested Parties) (Constitutional Petition E298 of 2022) [2024] KEHC 376 (KLR) (Constitutional and Human Rights) (26 January 2024) (Judgment)

Neutral citation: [2024] KEHC 376 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
CONSTITUTIONAL PETITION E298 OF 2022**

**M THANDE, J
JANUARY 26, 2024**

BETWEEN

ROSE KAVULANI OMONDI 1ST PETITIONER

CAMILUS GERALD MBAGO 2ND PETITIONER

AND

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS 1ST RESPONDENT

**INSPECTOR GENERAL, THE NATIONAL POLICE SERVICE 2ND
RESPONDENT**

CHIEF MAGISTRATE’S COURT, CITY COURT NAIROBI ... 3RD RESPONDENT

THE HON ATTORNEY GENERAL 4TH RESPONDENT

HAITHER HAJI ABDI 5TH RESPONDENT

ABDIRAHIM HAITHER HAJI 6TH RESPONDENT

AND

SOUTHDOWN DEVELOPERS LIMITED INTERESTED PARTY

JANET ATIENO OMONDI INTERESTED PARTY

JAMES KARIUKI NGANGA INTERESTED PARTY

NATIONAL BANK OF KENYA INTERESTED PARTY



JUDGMENT

1. The 1st and 2nd petitioner are respectively the widow and son of Paul Omondi Mbago, (deceased), a director of the 1st Interested Party. The 2nd Interested Party is also a widow of the deceased. The petitioner filed the Petition dated 19.6.22 seeking the following prayers:
 1. A declaration be and is hereby issued that the criminal investigation of the Petitioner undertaken by the 2nd respondent's officers of the Directorate Criminal Investigation and the 1st respondent's Institution of criminal proceedings against the 1st Petitioner In CMC City Court Nairobi CR C E 187 of 2022 Republic versus Rose Kavulani Omondi violates the 1st petitioner's rights, is an abuse of the process of the court, is irrational, unreasonable, malicious actuated by spite and ulterior motives, vexatious, oppressive, and violates the notions of fundamental justice and fair play enshrined under Articles 2 (2), 3 (1), 10, 25 (c) , 27 (1), 28, 29(f), 47, 50, 73 (2), 75 and 157 (11) of the Constitution of Kenya 2010 and therefore unlawful,, null and void ab initio.
 2. A declaration be and is hereby issued that the criminal investigations of the 2nd Petitioner undertaken by the 2nd respondent's officers of the Directorate of Criminal Investigation and the 1st respondent's institution of criminal proceedings against the 1st Petitioner in CMC City Court Nairobi CR C E 116 of 2022 Republic versus Janet Atieno Omondi and Camilus Gerald Mbago violates the 2nd petitioner's rights, is an abuse of the process of the court, is irrational, unreasonable, malicious, actuated by spite and ulterior motives, vexatious, oppressive, and violates the notions of fundamental justice and fair play enshrined under Articles 2 (2), 3(1), 10, 25 (c) , 27 (1), 28, 29 (f), 47, 50, 73 (2), 75 and 157 (11) of the Constitution of Kenya 2010 and therefore unlawful, null and void ab initio.
 3. An Order of certiorari to remove and bring to this Honourable Court and to quash the decision of the 1st respondent to charge the 1st and 2nd petitioner contained in the 1st respondent's charge sheet dated 16th February, 2022 against the 1st Petitioner in CMC City Court Nairobi CR C 187 Republic versus Rose Kavulani Omondi and in charge sheet dated 1st February, 2022 and any subsequent charges on the same facts against the 2nd Petitioner in CMC City Court Nairobi CR C E 116 of 2022 Republic versus Janet Atieno Omondi and Camilus Gerald Mbago be and is hereby issued.
 4. An Order of certiorari to remove and bring to this Honourable Court and to quash the entire 1st respondent's charge sheet dated 16th February, 2022 and the proceedings commenced by the charge sheet against the 1st Petitioner in the respondent's Court in CMC City Court Nairobi CR C E 187 of 2022 Republic versus Rose Kavulani Omondi be and is hereby issued.
 5. An Order of certiorari to remove and bring to this Honourable Court and to quash the entire 1st respondent's charge sheet dated 1st February, 2022 and



the proceedings commenced by the charge sheet against the 2nd Petitioner in the 3rd respondent's Court in CMC City Court Nairobi CR C E 116 of 2022 Republic versus Janet Atieno Omondi and Camilus Gerald Mbago be and is hereby issued.

6. An order of prohibition be and is hereby issued prohibiting the 1st and 2nd respondents and any of their officers from proceeding with the investigation or prosecution of the 1st Petitioner in CMC City Court Nairobi CR C E 187 of 2022 Republic versus Rose Kavulani Omondi.
 7. An order of prohibition be and is hereby issued prohibiting the 1st and 2nd respondents and any of their officers from proceeding with the investigation or prosecution of the 2nd Petitioner in CMC City Court Nairobi CR C E 116 of 2022 Republic versus Janet Atieno Omondi and Camilus Gerald Mbago.
 8. An order of prohibition be and is hereby issued against the 1st and 2nd respondents and any of their officers prohibiting them from recommending the prosecution or commencing prosecution of the petitioner in future in respect of the same facts and evidence of which CMC City Court Nairobi CR C E 187 of 2022 Republic versus Rose Kavulani Omondi and CMC City Court Nairobi CR C E 116 of 2022 Republic versus Janet Atieno Omondi and Camilus Gerald Mbago.
 9. An order that the 5th and 6th respondents are abusing court processes and are frivolous and vexatious litigants.
 10. An Order of compensation be and is hereby issued to the 1st and 2nd petitioner against the 1st, 2nd, 5th & 6th respondents for the 1st and 2nd respondents unconstitutional conduct and flagrant violation of the provisions of Article 2 (2), 3 (1), 10, 25 (c), 27 (1), 28, 29 (f), 47, 50, 73 (2), 75, 157 (11) of the Constitution of Kenya 2010 and for allowing the 5th and 6th respondents to abuse them in furtherance of goals far removed from the administration of criminal law.
 11. An Order of Costs be issued.
2. At the centre of this case is a property known as L. R. No. 13154 (Original Number Part of 6861/4) Langata, registered in the name of the 1st Interested Party. The petitioner's case is that the property was purchased by the 1st Interested Party from at a public auction from Kenya National Capital Corporation Limited, the predecessor of the 4th Interested Party. Between 1991 and 2022, the property has been the subject of cases in the Environment and Land Court, (ELC), the High Court and the Court of Appeal in which the 1st Interested Party has been a successful litigant against the 5th and 6th respondents, in over 15 judicial pronouncements. Having lost in the civil cases, the 5th and 6th respondents have now resorted to criminal proceedings. They are complainants in the 2 cited criminal cases as well as CMC City Court Nairobi CR C E 1552 of 2022 Republic v Paul Omondi Mbago and James Francis Kariuki (Case No. 1552). The offences in the 3 cases are similar, save that the 2022 cases were commenced 1 year after the demise of the deceased in a bid to replace a deceased accused and maintain the cases for ulterior motives. Despite numerous decisions and court orders, that confirmed that the 1st Interested Party is a bona fide purchaser for value, the 5th and 6th respondents insist that the property belongs to them.



3. The petitioner assert that following the 5th and 6th respondents' claim over the property and after investigations by the 2nd respondent, the 1st respondent instituted the criminal proceedings referred to herein on 21.3.22. In CMC City Court Nairobi CR CE187 of 2022 Republic v Rose Kavulani Omondi (Case No. E187), the 1st Petitioner is charged with upto 15 counts including conspiracy to defraud, the 5th and 6th respondents of the property and making false documents relating to the 1st Interested Party. She is also charged with contempt of court in respect of proceedings in HCCC No. 6054 of 1991 by participating in the irregular auction of the property yet she was aware that an injunction had been issued restraining the sale of the property. In CMC City Court Nairobi CR C E116 of 2022 Republic v Janet Atieno Omondi, Camillus Gerald Mbago and Southdowns Developers Limited (Case No. E116), the 2nd Petitioner, the 1st and 2nd Interested Parties are charged with similar offences. The petitioner allege that prior to instituting Case No. 116 and Case No. 187, the 1st respondent had charged the deceased and the 3rd Interested Party with the same or similar offences in Case No. 1552.
4. The petitioner allege that the 3 criminal cases emanate from a complaint by the 5th respondent that in the aforesaid public auction, the property was undervalued and that the deceased who was the Registrar General used his influence to purchase the same through the 1st Interested Party. Being dissatisfied with the sale, the 5th and 6th respondents engaged the 1st Interested Party in a series of baseless, vexatious and frivolous law litigation as follows:
 - i. NRB HCCC No 6054 of 1991 Haithar Haji Abdi & Another v Southdowns Developers Limited consolidated with HCCC No. 1181 of 1992 Southdowns Developers Limited v Kenya National Capital Corporation Limited where they challenged the validity of the auction. In a judgment of 15.10.13 the court held that the auction was properly conducted and that the 1st respondent was a bon fide purchaser for value. The court ordered specific performance of the auction sale contract and the 1st Interested Party was registered as the owner of the property.
 - ii. NRB ELC Suit No. 1389 of 2004 Southdowns Developers Limited v Haithar Haji Abdi & Another was filed when the 5th and 6th respondent refused to hand over vacant possession of the property to the 1st Interested Party. In a judgment delivered on 29.4.13, the court issued an order of eviction and awarded the Interested Party general damages of Kshs. 6,300,000/=.
 - iii. NRB Constitutional Petition No. 218 of 2012, Haithar Haji Abdi & Another v Southdowns Developers Limited was filed during the pendency of ELC No. 1389 of 2004, seeking to stop the eviction of the 5th and 6th respondents from the property. In a ruling of 30.5.2012, the court struck out the petition for being an abuse of the court process. An application for review in ELC No. 1389 of 2004 was on 31.7.12 dismissed.
 - iv. NRB Civil Application No. 103 of 2103 for stay of execution of the judgment in ELC Case No. 1389 was dismissed by the Court of Appeal on 26.7.13. After the 5th and 6th respondents failed to comply with the eviction orders, the Interested Party made an application for auctioneers to assist, which was granted on 9.10.13. An application for the review of the orders dated 9.10.13 and 3.6.14 was dismissed. On 6.10.17, the Court of appeal dismissed their appeal against the judgment of 29.4.13. Their applications in ELC Case No. 1389 of 2004 dated 25.9.2020 and 15.10.2020 seeking stay of proceedings pending determination of HCCC 6054 of 1991 was dismissed on 4.3.21 on grounds that the matter had been conclusively dealt with previously and that having moved to the Court of Appeal, the 5th and 6th respondents had exhausted the appeal mechanism. They also filed an application in HCCC No. 6054 of 2004



seeking stay of the judgment entered therein and in other cases, which was dismissed on 5.3.21 for being similar to previous applications for review.

- v. Application dated 29.11.13 in ELC 1389 of 2004 seeking review of orders of 9.10.13, decree of 3.6.13. The grounds were that the 1st Interested Party was not a registered company when the suit was commenced and that the certificate of incorporation produced was a forgery. The application was dismissed with costs.
 - vi. Nairobi CoA Civil Appeal No. 130 of 2016 Haithar Haji Abdi & Another v Southdowns Developers Limited against the judgment of 29.4.13 in ELC 1389 of 2004 was dismissed on 6.10.17.
 - vii. The 5th and 6th respondents filed an application dated 30.3.21 in ELC 1389 of 2004 seeking a declaration that the Interested Party was not a legal person and therefore not a proper party before court as a decree holder and that the decree had been obtained by fraud. In a ruling dated 16.2.22, the court dismissed the application for lack of merit and found that it was functus officio and marked the matter as closed.
 - viii. Applications dated 25.9.2020 and 15.10.2020 in ELC 1389 of 2004 seeking stay of suit, judgment, hearing notice and notice to show cause in HCC No. 6054 of 1991. In a ruling on 4.3.21, the court found that after final judgment was rendered in April 2013, no further issues were pending, and proceeded to dismiss the applications.
 - ix. Review application dated 20.11.2020 in HCCC No. 6054 of 1991 seeking stay of judgment and decree in that case and in ELC 1389 of 2004, HCCC No. 2310 of 1999 HC Misc 546 of 2004 and HCCC No. 447 of 2004 on grounds that the directors of the 1st Interested Party had denied knowledge of the suit and that the judgment and decree was obtained through fraud practiced upon the court. Application was dismissed in a ruling of 16.2.22.
5. It is the petitioner's case that in spite of the deceased making the 1st respondent aware of the civil suits between him and the 5th and 6th respondents and outcomes, through letters from his advocates, the 1st respondent proceeded to charge him and the 1st Interested Party in Case No. 1552. Upon his demise, the 1st and 2nd respondents decided to charge his family members. The petitioner allege that they have never been summoned to any police station to record a statement. They learned of the charges facing them when they were summoned to court.
 6. The petitioner contend that their fundamental rights and freedoms under Articles 47 and of *the Constitution* were violated. Further that the criminal investigations and the criminal charges by the 1st and 2nd respondents at the instigation of the 5th and 6th respondents is an abuse of their investigating and prosecutorial powers and an abuse of the legal and court process, is oppressive and vexatious to the petitioner.
 7. The 1st and 2nd respondents opposed the Petition vide a replying affidavit sworn on 9.11.22 by Service No. 65761 Senior Sergeant Japheth Ng'etich. It was deposed that the investigation and subsequent prosecution of the petitioner was conducted lawfully and within constitutional safeguards, following a complaint by the 5th and 6th respondents.
 8. The 6th respondent swore a replying affidavit on 14.7.22 supported by the 5th respondent opposing the Petition. He averred that the petitioner have concealed material facts in the present Petition to wit that the 5th and 6th respondents filed constitutional petition no. E341 of 2020 against the 1st Interested Party and the 2nd Interested Party (as legal representative of the deceased), seeking to declare as null and void the said judgments or rulings relied upon by the petitioner in support of the present



Petition. They further failed to disclose that the reason why the said Petition No. E341 of 2020 seeks to nullify all the said judgments and rulings because the said judgments, rulings, decrees and orders originated from or were outcomes of the court proceedings that violated *the Constitution* of Kenya and are therefore null and void. The said violation came to the attention of the 5th and the 6th respondents in 2019 through and sworn Affidavit by Meshack Owino Njega Odero (Odero), Advocate that proves beyond any reasonable doubt that contrary to the official records held by the State, Odero, did not subscribe to, and was not a subscriber of, the Memorandum of Association of the 1st Interested Party. It is thus the 5th and 6th respondents' case that the petitioner cannot rely on the said violations of *the Constitution* or the judgments, decrees or orders that originated from them to sustain the present Petition against the respondents, and derive any benefit from the violations.

9. The 4th respondent chose not to file any pleadings and to remain neutral in this matter.
10. The 2nd Interested Party swore an affidavit on 27.7.22 in which she supported the Petition and reiterated the averments by the petitioner.
11. I have considered the Petition, depositions and the written submissions as highlighted before me by the parties' respective counsel. I am keenly aware that my role is not to test the legality or otherwise of the charges against the petitioner and Interested Parties, or to determine their guilt or innocence. The single constitutional issue for this Court to consider is whether the 1st and 2nd respondents' actions of conducting the investigation and charging the petitioner based on complaints by the 5th and 6th respondents, are within the law and whether they in any way infringe upon the petitioner' rights and fundamental freedoms or is an abuse of process.
12. Parties cited various authorities that emphasize the mandate of the Police Service to investigate complaints and that of the Office of the Director of Public Prosecutions to prosecute offences. The decisions also speak to the extent to which the High Court exercising its inherent jurisdiction may intervene in the respective mandates of these agencies.
13. Article 245(1) of *the Constitution*, establishes the office of the Inspector General of Police. Clause (4) confers upon the Inspector General of Police, autonomy in the discharge of its mandate with regard to, the investigation of any particular offence or offences, the enforcement of the law against any particular person or persons, and the employment, assignment, promotion, suspension or dismissal of any member of the National Police Service. It is only the DPP who under Article 157(4) of *the Constitution*, may direct the Inspector General of Police to investigate any information or allegation of criminal conduct and he is required to comply.
14. Article 157(1) of *the Constitution* establishes the Office of the Director of Public Prosecution. Clause (6) and Section 5(1)(a)(b) of the Director of Public Prosecution Act provide for the powers of the 1st respondent to institute and undertake criminal proceedings, take over and continue any criminal proceedings commenced in any court and discontinue any criminal proceedings at any stage before judgment is delivered. Clause (10) and Section (6) of the said Act protect the independence of the 1st respondent by providing that he 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. In the discharge of his mandate however, Clause (11) places an obligation upon the 1st respondent to have regard to the public interest, the interest of administration of justice and the need to prevent and avoid abuse of the legal process.



15. In emphasizing the mandate of the 1st respondent, the court in Republic v The Director Of Public Prosecution & 7 Others [2013] eKLR, Odunga, J. considered the independence of the Director of Public Prosecution in the discharge of his mandate and stated:

The law is that 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 interfering with those proceedings by way of judicial review since judicial review proceedings are not concerned with the merits but with the decision making process.

The Learned Judge went on to state:

It follows that the office of the Director of Public Prosecutions is an independent constitutional office which is not subjected to the control, directions and influence by any other person and only subject to control by the Court based on the aforesaid principles of illegality, irrationality and procedural impropriety.

16. And in James Ondicho Gesami v Attorney General & 2 Others [2012] eKLR, Ngugi, J. (as he then was) had this to say of the DPP's mandate:

The DPP is at liberty to prefer charges against any party in respect of whom he finds sufficient evidence to prefer charges.

The learned Judge went on to state:

In my view, requiring that the petitioner subjects himself to the normal criminal prosecution process mandated by law where he has all the safeguards guaranteed by *the Constitution* does not in any way amount to an attack on his human dignity in violation of his constitutional rights.

17. It is also well settled that constitutional and statutory bodies such as the 1st and 2nd respondents, must be given the space to discharge their mandate and to exercise their discretion in doing so. In the case of Tom Dola & 2 others v Chairman, National Land Commission & 5 others [2020] eKLR the Court of Appeal spoke to this issue and stated:

In Pevans East Africa Ltd & Another v. Chairman, Betting Control & Licensing Board & 7 Others [2018] eKLR, this Court emphasised, and we reiterate, that where *the Constitution* has vested specified functions in a state institution or organ, the courts will not readily interfere with the discharge of that mandate unless it is demonstrated that the institution or organ in question has acted ultra vires or in breach of *the Constitution* or the law.

18. What is evident from the cited provisions of the law and case law, is that the constitutional and statutory mandate of the 1st and 2nd respondents should not be interfered with, unless there is justifiable reason to do so. Constitutional and statutory bodies must be allowed to discharge their mandate unhindered. Their undertakings must however be within the four corners of *the Constitution* and the law. The Court will only intervene where the actions of the respondents are oppressive and vexatious and amount to an abuse of the court process. In Stanley Munga Githunguri v Republic [1986] eKLR the Court restated that the High Court has inherent power to stop a prosecution that amounts to an abuse of the court process, is oppressive and vexatious.



19. In the case of Commissioner Of Police & The Director Of Criminal Investigation Department & another v Kenya Commercial Bank Limited & 4 others [2013] eKLR, the Court of Appeal addressed its mind to abuse of mandate by the Inspector General of Police and the DPP and stated:

By the same token and in terms of Article 157 (11) of *the Constitution*, quoted above, in exercising powers donated by the law, including the power to direct the Inspector General to investigate an allegation of criminal conduct, the DPP is enjoined, among other considerations, to have regard to the need to prevent and avoid abuse of the legal process. The court on the other hand is required to oversee that the DPP and the Inspector General undertake these functions in accordance and compliance with the law. If it comes to the attention of the court that there has been a serious abuse of power, it should, in our view, express its disapproval by stopping it, in order to secure the ends of justice, and restrain abuse of power that may lead to harassment or persecution. See *Githunguri V. Republic* [1985] LLR 3090.

It has further been held that an oppressive or vexatious investigation is contrary to public policy and that the police in conducting criminal investigations are bound by the law and the decision to investigate a crime (or prosecute in the case of the DPP) must not be unreasonable or made in bad faith, or intended to achieve ulterior motive or used as a tool for personal score-settling or vilification. The court has inherent power to interfere with such investigation or prosecution process. See *Ndarua V. R.* [2002] 1EA 205. See also *Kuria & 3 Others V. Attorney General* [2002] 2KLR 69.

20. In the matter before me, the petitioner have demonstrated that there have been the numerous cases involving the deceased, the 1st Interested Party on the one hand and the 5th and 6th respondents on the other, all relating to the property and the legal status of the 1st Interested Party. In over 15 judicial pronouncements, the 1st Interested Party has been a successful litigant against the 5th and 6th respondents, who have been slapped with costs. Although as far back as 15.10.03 the court held that the auction in respect of the property was properly conducted and that the 1st Interested Party was a bona fide purchaser for value, the 5th and 6th respondents have been relentless in engaging the deceased and the 1st Interested Party in endless litigation in the High Court, ELC and Court of Appeal. No doubt after reaching the end of the rope, they have now opened another war front, namely the criminal process to vex the petitioner.
21. In light of the foregoing, by proceeding to investigate and prosecute the petitioner, notwithstanding the numerous court decisions of the courts of which they are aware, the 1st and 2nd respondents, acted without due regard to public interest, against the interest of the administration of justice and has not taken account of the need to prevent and avoid abuse of court process. It is not in the public interest or in the interest of the administration of justice to use criminal justice process to reopen a matter that has been determined in an apparent mission to settle scores. In the premises, this Court would be justified to intervene.
22. The decisions rendered in the civil cases have determined with finality, that the 1st Interested Party is a legal entity and its certificate of incorporation is not a forgery and further that it lawfully acquired the property. Looking at charge sheets however, one can see that the offences with which the petitioner have been charged relate to the property and the legal status of the 1st Interested Party and include inter alia conspiracy to defraud the 5th and 6th respondents of the property and forgery relating to the company documents of the 1st Interested Party. This is clearly an impermissible collateral attack on all the decisions by the superior courts in the cited cases.



23. After considering all that has transpired, the litigation between the parties herein and the decisions rendered by the various superior courts, I do find and hold that the prosecution of the petitioner and interested parties in the listed cases is not only oppressive and vexatious but is indeed a hallmark of abuse of the process of the court.
24. Black's Law Dictionary, Tenth Edition defines a vexatious litigant as a litigant who repeatedly files frivolous law suits. This definition clearly fits the 5th and 6th respondents. Their conduct as outlined in the history of litigation between them and the deceased and the 1st Interested Party is demonstrative of litigants who have relentlessly filed frivolous law suits against the deceased and the persons now claiming under him and the 1st Interested Party. They have moved from the High Court to the ELC to the Court of Appeal and back to the High Court and the ELC with numerous applications. They continue to flog a horse that is long dead and need to accept that it must now be laid to rest.
25. The 5th and 6th respondents have told the Court that they have filed Petition No. E341 of 2020 seeking to nullify all the previous judgments referred to herein, which they claim originated from or were outcomes of the court proceedings that violated the Constitution and therefore null and void. That petition should be allowed to proceed to its logical conclusion. For now however, I find and hold that continued criminal proceedings against the petitioner in light of the existing court decisions concerning the property and the 1st Interested Party, between the parties therein and those claiming through them is oppressive, vexatious and an abuse of the court process. Accordingly, any further action on that front must be halted.
26. In the end and for the reasons stated, I find that the Petition herein dated 19.6.22 make the following orders:
- i. A declaration be and is hereby issued that the criminal investigations of the petitioner by the 2nd respondent and the institution by the 1st respondent CMC City Court Nairobi CR C E116 of 2022 Republic v Janet Atieno Omondi, Camillus Gerald Mbago and Southdowns Developers Limited and CMC City Court Nairobi CR CE187 of 2022 Republic v Rose Kavulani Omondi violates the petitioner' rights and are irrational, unreasonable, malicious vexatious, oppressive and an abuse of the process of the court and violate the notions of fundamental justice and fair play enshrined under Articles 2 (2), 3 (1), 10, 25 (c) , 27 (1), 28, 29(f), 47, 50, 73 (2), 75 and 157 (11) of the Constitution of Kenya 2010 and therefore unlawful,, null and void ab initio.
 - ii. An order of certiorari be and is hereby issued quashing the proceedings in CMC City Court Nairobi CR C E116 of 2022 Republic v Janet Atieno Omondi, Camillus Gerald Mbago and Southdowns Developers Limited and CMC City Court Nairobi CR CE187 of 2022 Republic v Rose Kavulani Omondi.
 - iii. An order of prohibition be and is hereby issued prohibiting the 1st and 2nd respondent and any of their officers from proceeding with the investigation or prosecution of the petitioner in CMC City Court Nairobi CR C E116 of 2022 Republic v Janet Atieno Omondi, Camillus Gerald Mbago and Southdowns Developers Limited and CMC City Court Nairobi CR CE187 of 2022 Republic v Rose Kavulani Omondi.
 - iv. An order of prohibition be and is hereby issued prohibiting the 1st and 2nd respondent and any of their officers from recommending or commencing the prosecution of the petitioner in future in respect of the same facts and evidence over which CMC City Court Nairobi CR C E116 of 2022 Republic v Janet Atieno Omondi, Camillus Gerald Mbago and Southdowns



Developers Limited and CMC City Court Nairobi CR CE187 of 2022 Republic v Rose Kavulani Omondi, were instituted.

- v. The 5th and 6th respondents are hereby barred from instituting any proceedings in any court, against the petitioner and Interested Parties, relating to L. R. No. 13154 (Original Number Part of 6861/4) Langata, without leave of the Court.
- vi. The petitioner shall have costs which shall be borne by the 5th and 6th respondents.

DATED AND DELIVERED VIS MS TEAMS THIS 26TH DAY OF JANUARY 2024

M. THANDE

JUDGE

