

Case *Note*

CASE NOTES & COMMENTARY
ODPC & HIGH COURT, KENYA

ONE RULING, DIGESTED ON ITS OWN – THE FACTS, THE HOLDING, AND THE PRACTICE POINT

☞ [2026] KEHC 3911

A phone-records petition against a bank collapses as a collateral attack on a succession case

Chege v Sholei

PETITION DISMISSED CASE NOTED DATA PROTECTION · ADMINISTRATIVE LAW

BY THE EDITORIAL BOARD, MUCHANGI PATRICK & CO. ADVOCATES

A petitioner alleged her private phone messages had been accessed without authorisation and used as evidence in a separate Succession Cause, in breach of Article 31. The Court held the real dispute was the admissibility of that evidence in the Succession Cause — a question for the Succession Court, by appeal or review, not a fresh constitutional petition running in parallel. Allowing the petition to proceed would have undermined the finality of the Succession proceedings by attacking them collaterally.

PRACTICE POINT

Not every privacy grievance is a constitutional question. Where a properly seized court has already ruled, or is seized, of the underlying evidentiary dispute, the doctrine of constitutional avoidance requires that route to be exhausted first — a fresh petition is not a second bite at the same evidentiary objection.

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HOW THIS TOUCHES A LIVE ODPC MATTER

Whether you are defending a complaint, appealing a determination, or bringing a privacy claim of your own, the forum you choose and the procedural record you build early usually decide the outcome.

Muchangi Patrick & Co. Advocates represents complainants and respondents before the Office of the Data Protection Commissioner and on appeal, judicial review and constitutional petition before the High Court.

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