



**Pimp My Ride (Buruburu) & another v Directorate of Criminal Investigations & 3 others
(Constitutional Petition E032 of 2023) [2024] KEHC 10180 (KLR) (13 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10180 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CONSTITUTIONAL PETITION E032 OF 2023
DO CHEPKWONY, J
AUGUST 13, 2024**

BETWEEN

PIMP MY RIDE (BURUBURU) 1ST PETITIONER

PATRICK MACHARIA NDERITU 2ND PETITIONER

AND

DIRECTORATE OF CRIMINAL INVESTIGATIONS 1ST RESPONDENT

INSPECTOR GENERAL OF POLICE 2ND RESPONDENT

THE DIRECTOR OF PUBLIC PROSECUTIONS 3RD RESPONDENT

THE HONOURABLE ATTORNEY GENERAL 4TH RESPONDENT

RULING

1. This is a ruling in respect of a Notice of Motion application dated 26th June, 2023 which seeks the following orders:-
 - a. Spent.
 - b. Spent.
 - c. Spent.
 - d. Spent.
 - e. That pending the hearing and determination of the Petition, this Honourable court be pleased to issue orders restraining the Respondents by themselves, their officers, servants, agents, and or anyone acting on their behalf from harassing, arresting, detaining, restricting or in any other way confining or in any other way interfering with the liberty of the 2nd Petitioner application herein in respect of or in connection with the complaint or allegation made arising from or in



relation to Motor Vehicles KCF 754X, KCP 555G, KCJ 765Q, KDK 797, KDH 550K and KDD 101G respectively.

- f. That pending the hearing and determination of the Petition, this Honourable Court be pleased to issue orders restraining the Director of Public Prosecution by himself, his officers, servants, agents or anyone acting on his behalf from instituting charging or prosecuting the Petitioners herein in respect of in connection with any complaint or allegation(s) made arising from or in relations to this matter.
 - g. That pending the hearing and determination of this Petition, this Honourable court be pleased to issue orders restraining the Respondents whether by themselves, their officers, their servants, agents or anyone acting on their behalf from interfering in any manner whatsoever with the operations of the 1st Applicant.
 - h. That this Honourable court be pleased to issue orders it may deem just, fit and expedient to award in in the interest of justice.
 - i. That the costs of this application be provided for.
2. The application is based on the grounds as set out on its face and the Supporting Affidavit of Patrick Nderitu sworn on 26th June, 2023 wherein he has stated that the 1st Applicant is a garage which deals with motor vehicle repairs. It is stated that on 24th September, 2022, the employees of the Applicants were conducting business as usual when at around 3.00 pm police officers from DCI headquarters stormed into their premises claiming that they were looking for the subject motor vehicles which had been used as loan securities and were allegedly in the garage for repairs.
 3. It is averred that the Applicants' employer co-operated with the police officers who proceeded to conduct a search at the garage but did not find any of the said motor vehicles. However, they arrested nine of the employees who were at the premises at the time and then took them to Kilimani Police Station where they detained them. That the said employees were then charged before the Chief Magistrate's court on various charges as set out at Paragraph(1) of the affidavit, but the said charges were later withdrawn and the employees released as the allegations had not been backed by any material evidence.
 4. According to the Applicants, despite the charges being dropped, the Respondents did not stop harassing them as they would on numerous occasions go to the garage with allegation after allegation which has frustrated their operations, ruined their image, made them lose their employees and eventually caused him to run out of business.
 5. It is the Applicants contention that the court ought to intervene and grant the orders sought so that the Respondents are restrained from interfering with their operations and or their employees which is likely to cause harm to the business.
 6. In response, the 2nd and 4th Respondents filed Grounds of Opposition dated 8th August, 2023. They hold that the mere allegation that the Petitioner's rights and fundamental freedoms have been infringed is not sufficient to warrant the remedies sought as they must demonstrate imminent danger. They argue that the applicants have not demonstrated how they have infringed on their rights to warrant the court's intervention.
 7. The 2nd and 4th Respondents also hold that the application as well as the Petition offend their constitutional powers and statutory functions as provided for under Articles 244 and 245 of the Constitution and Sections 24, 27 and 35 of the National Police Service Act.



8. It is the 2nd and 4th Respondents' argument that the Application and Petition are meant to frustrate the investigations, subsequent arrest and prosecution facing the 2nd Applicant. They state that any impending arrest or actual arrest of the 2nd Applicant/Petitioner cannot strip him of his constitutional mandate under Articles 22,49 and 50 of the Constitution. They also argue that the court cannot interfere with their constitutional rights unless it is demonstrated that their actions have been done beyond the constitutional and statutory mandate. They therefore argue that the court is estopped from issuing any order against the 2nd Respondent with regard to the investigation of any offence or enforcement of the law.
9. The 2nd and 3rd Respondents contend that no evidence has been adduced to show that the Petitioners have suffered prejudice, damages or a violation of their rights and freedom as a result of the ongoing investigations. Therefore, the Respondents have urged that the application and Petition be found to be frivolous, abuse of court process and should thus be dismissed with costs to the Respondents.
10. On 22nd April, 2024, the court directed the parties to canvass the application by way of written submissions and the Applicant filed their submissions dated 17th May, 2024 while the 2nd and 4th Respondents filed theirs dated 29th May, 2024, both which the court has considered.

Analysis and determination.

11. I have read through the grounds advanced by the Applicants and the Respondents in their respective affidavits in support and against the application and find the main issue for determination being whether the application has merit to warrant the orders sought.
12. It is trite law that courts should be cautious not interfere with the duties of the Respondents as they are all independent offices established under the Constitution as explained by statutory provisions.
13. The 1st Respondent is established under Section 28 of the National Police Service Act, No 11 of 2011 which provides that:-

“There is established the Directorate of Criminal Investigations which shall be under the direction, command, and control of the Inspector-General.
14. The 2nd Respondent is established under Article 245 (1) of the Constitution and its powers to investigate crimes are stated in Article 245 (4) of the Constitution, as follows:-
 4. The Cabinet Secretary responsible for police services may lawfully give a direction to the Inspector-General with respect to any matter of policy for the National Police Service, but no person may give a direction to the Inspector-General with respect to
 - a. The investigation of any particular offence or offences;
 - b. The enforcement of the law against any particular person or persons; or
 - c. The employment, assignment, promotion, suspension, or dismissal of any member of the National Police Service.”
15. The 3rd Respondent on the other hand is established under Article 157 of the Constitution where its functions are provided for under Article 157 (6) thereof as follows:-
 6. The Director of Public Prosecutions shall exercise State powers of prosecution and may—
 - a. Institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed;



- b. Take over and continue any criminal proceedings commenced in any court (other than a court martial) that have been instituted or undertaken by another person or authority, with the permission of the person or authority; and
- c. Subject to clause (7) and (8), discontinue at any stage before judgment is delivered any criminal proceedings instituted by the Director of Public Prosecutions or taken over by the Director of Public Prosecutions under paragraph (b).
16. This court is persuaded by the High Court's decision in Judicial Review Application 8 of 2017, *Republic v Director of Public Prosecutions & 2 others, Ex parte Edwin Harold Dayan Dande & 3 others*, where it was held as follows:-
- “A reading of article 157 of the *Constitution* leaves no doubt that the DPP is required to not only act independently, but to remain fiercely so. It is also important to mention that article 245(4)(a) of the *Constitution* provides that: 'no person may give a direction to the Inspector General with respect to the investigation of any offence or offences.' Just like the constitutionally guaranteed independence of the DPP, this provision is aimed at ensuring that investigations are undertaken independently.”
17. From the following finding, it therefore follows that the court can only interfere with duties of the 1st, 2nd and 3rd Respondents under Articles 244 and 245 of the *Constitution* and under the provisions of the *National Police Service Act* if the constitutional and statutory provisions are not adhered to or if the actions are shown to be illegal and unlawful.
18. From the application, it was deponed that after the arrest of the Applicant's employees, the preferred charges which the 3rd Respondent was investigating were Stealing contrary to Section 281(1) as read with Section 27€ of the Penal Code, obtaining Credit by false pretences contrary to Section 316(c) of the Penal Code and making a Document without authority contrary to Section 357(a) of the Penal Code. Although the Applicants state that their employees were released, there is no evidence that this should have marked the close of investigations for the same charges as they have not indicated under what circumstances the charged were dropped.
19. There is further no evidence that the actions by the Respondents are contrary to the powers conferred upon the Respondents by the *Constitution* or statute to warrant the claim that they were and or are acting outside their mandate to investigate or continue investigating the matter so as to establish whether there is need to arrest and have the Applicant and or his employees charged with the offences upon being summoned, which would then amount to an infringement upon their constitutional rights and freedoms.
20. To that extent, the Notice of Motion application dated 20th June, 2023 lacks merit and the same is hereby dismissed with costs to the Respondents.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT KIAMBU THIS 13TH DAY OF AUGUST, 2024.

D. O. CHEPKWONY

JUDGE

In the presence of:

M/S Angiela holding brief for Mr. Okatch counsel for Petitioner



No appearance by counsel for the Respondents

Court Assistant - Martin

