



**Murage v Republic (Constitutional Petition 2 of 2019)
[2023] KEHC 533 (KLR) (30 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 533 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CONSTITUTIONAL PETITION 2 OF 2019
GL NZIOKA, J
JANUARY 30, 2023**

BETWEEN

PAUL NJUKI MURAGE PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. The Petitioner has filed an undated Petition herein pursuant to the cited provisions of Article 20(1)(2), 25 (A) of the *Constitution of Kenya, 2010* (herein “ the *Constitution*”). He avers that he was arrested and charged with the offence of robbery with violence contrary to section 296 (2) of the *Penal Code* before the Chief Magistrate’s Court, vide Chief Magistrate’s Criminal Case No 477 of 2017.
2. However, after the arrest on April 1, 2017, he was held in the Police custody up to April 10, 2017, in contravention of his rights under Article 25 (A) of the *Constitution*. That, despite raising the torture claim with the Chief Magistrate’s Court that he was assaulted by Police officers while in their custody and sustained serious injuries on his ribs and hand, and lost a tooth, the Chief Magistrate’s Court did not take any action, save for the issuance of a court order for his treatment.
3. He therefore prays that, the Petition be allowed and he be granted the “much sought relief” and ‘any other such relief or order that the Honourable Court may deem just” in the circumstances.
4. The applicant also filed a chamber summons application alongside the Petition supported by an affidavit dated; March 22, 2019. The application is not premised on any provisions of the law but simply states that, he was charged with the offence of robbery with violence vide Chief Magistrate’s Criminal Case No 477 of 2017.
5. It is also noteworthy that, the Petitioner also filed another application in this matter under a certificate of urgency seeking for bond reduction and supported by his own affidavit. However, he abandoned the same and it was terminated accordingly.



6. To revert back to this matter, I note that, the same is opposed through an affidavit sworn by Alyvine Matara Asande; a Police officer stationed at Naivasha Police Station as OC Crime, in the 2017. He averred that, the Petitioner was arrested on April 1, 2017, at 12:30 am following reports of bar breaking, stealing and robberies within Kayole area in Naivasha.
7. That, Police officers laid an ambush and arrested the Petitioner in the company of two other people. Upon arrest, they conducted a search on them and motor vehicle registration No KBV 657F, in their custody and recovered, two pangas, one sword, one knife, two metal bars, one pair of pliers, two metal cutters (big scissors cutters) and one *rungu*.
8. That, the members of the public wanted to administer mob justice and damage the motor vehicle but although the Police officers shielded the Petitioner and the others, the members of the public “hit” the three arrested suspects. That, upon arrival of an Administration Police motor vehicle, the agitated crowd went away, suspects arrested and rescued to Naivasha Police Station.
9. The deponent denied having assaulted or tortured the Petitioner while in custody at Naivasha Police Station. He averred that he merely went to the inquiry desk, noted the report of the incident in the OB, and never talked to the Petitioner. He further denied allegations of a plot to take the Petitioner to Lake Naivasha and kill him.
10. The alleged presence of a Subaru vehicle at the station was denied and that the Petitioner was seriously assaulted as alleged, and argued that, had the Petitioner been assaulted, the Court and the Prisons authorities would have noticed and taken action against the culprits.
11. The Petition was canvassed by way of written submissions. On August 30, 2022 and September 30, 2022, the Petitioner filed two sets of submissions and argued that under Articles 23 (1) and 165(3)(b) of the Constitution, the court has jurisdiction to hear and determine application for redress of denial, violation or infringement of, or threat to a right or fundamental freedom in the Bill of Rights. He relied on the cases of The Owners of Motor Vessel Lilian “S” vs Caltex Oil (Kenya) Ltd KLR 1 and Samuel Kamau Macharia & Another vs Kenya Commercial Bank Ltd & 2 Others Application No 2 of 2011.
12. He further reiterated that under Article 25 (a) of the Constitution, the freedom from torture and cruel, inhuman or degrading treatment or punishment is a fundamental right that cannot not be limited. That his rights were violated by a Police officer who beat him with an iron bar to the point that he sustained injuries on his ribs, hands, and lost a tooth.
13. Further, for ten (10) days before he was arraigned in court, he was assaulted and ill-treated and abused in the name of obtaining evidence. Moreover, his money amounting to Ksh 14,400.00 was taken and has never been returned.
14. He further repeated that, when he was arraigned before the court, he raised the issue with the trial court and Mr Owour Advocate, noted the injuries and made a prayer for the OCS to be summoned. That, when the OCS was summoned, he informed the court that the injures were sustained during his arrest and the court ordered he be taken to hospital but no further action was taken necessitating the filing of the Petition.
15. I have considered the Petition, the materials placed before the court in support thereof, in particular the affidavit and submissions filed by the Petitioner. I note that, first and foremost, the applicant has not sought for any specific prayers or any legal or equitable remedies for enforcement of his alleged violated fundamental rights.
16. Secondly, there are no facts in support of the Petition in the body of the Petition or affidavit in support thereof but in the submissions. Even, then, the same do allude to having been assaulted but no medical



documents have been provided in proof thereof. The law is clear, he who alleges must prove the allegations.

17. Further the medical documents availed are of the year 2021 for example; patient lab request form, x-ray/ultra sound request form all dated January 27, 2021 and prescription dated June 30, 2021.

Yet subject events herein allegedly took place between 1st to April 10, 2017. Finally, the averments as to the alleged assault have been rebutted by the lengthy affidavit of OC Crime, Mr Matara.

18. In conclusion I find the petition has no merit and I dismiss it accordingly.

DATED, DELIVERED AND SIGNED ON THIS 30TH DAY OF JANUARY, 2023.

GRACE L NZIOKA

JUDGE

In the presence of;

Applicant present on call virtually

Mr. Ndiema for the Respondent

Ms Ogutu Court Assistant

