



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAKURU**

**PETITION NO. E007 OF 2021**

**STEPHEN NG'ANG'A MBIRA.....PETITIONER**

**VERSUS**

**INSPECTOR GENERAL OF POLICE.....2<sup>ND</sup> RESPONDENT**

**THE DIRECTOR OF PUBLIC PROSECUTIONS.....3<sup>RD</sup> RESPONDENT**

**THE ATTORNEY GENERAL .....4<sup>TH</sup> RESPONDENT**

**RULING**

1. The Petitioner/ applicant filed a **Notice of Motion** dated **10<sup>th</sup> June 2021** under **Article 10, 22(1), 27, 28,29,47,49, 50 and 51** of the Constitution of Kenya and prayed for the following orders;

***a) THAT pending the hearing and determination of the Petition herein, this Honourable Court do issue an Order staying the proceedings of the criminal matter, Nakuru CM'S Criminal Case Number 3921 of 2019 (Republic Vs Stephen Nganga Mbira).***

***b) THAT the Honourable Court be pleased to issue such other orders that it deems fit in the circumstances of this matter.***

***c) Costs of this Application.***

2. The application is premised on supporting affidavit sworn by **Stephen Nganga Mbira** and the following grounds;

3. That the Petitioner was arrested on a warrant of arrest procured irregularly and unlawfully detained in the police cells overnight before being arraigned in court on the **20 January, 2020**. The Petitioner was arraigned in court and charged with various Criminal offences in Nakuru CM's Criminal Case number 3921 of 2019 (Republic Vs Stephen N. Mbira) in relation to a land dispute that was essentially civil in nature.

4. The petitioner averred that the criminal charges were irregularly being used to prop up a civil land case filed in connection with the land dispute and with the intention of bearing pressure on him in a bid to force him to abandon his proprietary rights over the parcels of land in issue. That the criminal proceedings are oppressive, an abuse of the court process and are a violation of his fundamental rights and the right to a fair administrative process.

5. The petitioner averred further that he had filed the petition seeking reliefs for the violation of his constitutional rights arising from the unlawful and irregular arrest, arraignment and the imminent prosecution. That amongst the reliefs sought in the Petition is stay of proceedings in the criminal case.

6. The petitioner went on to state that unless an order staying the hearing of the criminal case is granted, the same will proceed as scheduled in which case the petition will be rendered nugatory. That the Petitioner will suffer extreme prejudice if the violation of his constitutional rights is allowed to continue. He added that it is in the interest of justice that criminal proceedings in **Nakuru CM's Criminal Case number 3921 of 2019 (Republic Vs Stephen N. Mbira)** be stayed pending the hearing and final determination of the Petition herein.

7. The respondents herein did not file any response to the application.

8. The court directed that the matter be disposed by way of written submissions but only the petitioner has complied.

**Petitioner's/Applicant's submissions**

9. The petitioner/applicant submitted that the petition was premised on his wrongful and arbitrary arrest and his arraignment in court to answer several criminal charges relating to land. The petitioner/applicant urged the court to stay pending the hearing the criminal proceeding in CM's Criminal Case No. 3921 of 2019 (The Republic v Stephen Nganga Mbira). That the continuation of the said proceedings against him before his petition is heard and determined will seriously prejudice him. That further, should the court not grant the prayer sought the main petition will be rendered nugatory. He placed reliance on the case of **Kuria & 3 others vs Attorney General (2002) KLR 69** and urged the court to allow his application.

### **Analysis and Determination**

10. I have considered the application which is the subject of this ruling and the submissions made on behalf of the petitioner/applicant. The only issue for determination is **whether this Court should grant stay of proceedings in the criminal matter, Nakuru CM's Criminal Case Number 3921 of 2019 pending hearing and determination of the petition herein.**

11. This court has powers to stay proceedings under its inherent jurisdiction reserved in section 3A of the **Civil Procedure Act** which provides as follows:

***“Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”***

12. The court in **Kenya Wildlife Service vs. James Mutembei [2019] eKLR** cited with approval the case of **Re Global Tours & Travel Ltd HCWC No. 43 of 2000** where **Ringera, J** (as he then was) held that:

***“As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of justice...the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matter, it should bear in mind such factors as the need for expeditious disposal of case.....and whether the application has been brought expeditiously.”***

13. In the case of **Kenya Wildlife Service (supra)** the court held that:

***“Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore, the test for stay of proceeding is high and stringent.”***

14. The same court further quoted **Halsbury's Law of England, 4th Edition. Vol. 37 page 330 and 332**, that:

***“The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court's general practice is that a stay of proceedings should not be imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue.”***

***“This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases.”***

***“It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for a stay on this ground must show not merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case.”***

15. In the instant case, the applicant herein has filed a petition where he claims that his fundamental rights under various articles of the Constitution had been infringed by the respondents. That on 19<sup>th</sup> January 2020 he was wrongfully arrested, unlawfully detained in police cells and on 20<sup>th</sup> January, 2020 he was arraigned in court where the court proceeded to take his plea despite the fact that no charge sheet or witness statement were supplied. The petitioner argues further that the police maliciously charged him with criminal offences without carrying out thorough and/or impartial investigations. The petitioner apprehends that he will be subjected to unfair and high prejudicial judicial process that if the said criminal process is allowed to continue.

16. In view of the forgoing, it is my perspective that the features of the petitioner's/applicant's case moved the burden of rebuttal to the respondents to offer probative evidence concerning the essential facts raised in the petition and application for stay of proceedings orders. The respondent did not file any response despite the fact that they were served as evidence from the affidavits of service on record. The petitioner's/applicant's evidence remains unrebutted.

17. In the absence of any rebuttal by the respondents it goes without saying that the applicants complain is reasonable and merits consideration. At any rate all is not lost as it appears that there is an ongoing land case namely **NAKURU ELC NO. 1 OF 2020** between the parties and there is no doubt that they can ventilate their issues therein.

18. This Court is vested with the power to interpret the Constitution and to safeguard, protect and promote its provisions as provided for under **Article 165 (3) of the Constitution**. Further it has the duty and obligation to intervene in actions of other arms of Government and State Organs where it is alleged or demonstrated that the Constitution has either been violated or threatened with violation.

19. **In the premises, the application is hereby allowed, that is pending the hearing of the petition herein, let there be stay of criminal proceedings at Nakuru CMCR, NO.3921 of 2019.**

20. Costs shall await the outcome of the petition.

**DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAKURU THIS 27TH DAY OF JANUARY 2022.**

**H K CHEMITEI.**

**JUDGE**