



**Boyd v Cabinet Secretary Ministry of Interior & Coordination of National Government
& 3 others (Petition E5 of 2020) [2022] KEHC 12746 (KLR) (27 April 2022) (Judgment)**

Neutral citation: [2022] KEHC 12746 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
PETITION E5 OF 2020
SM GITHINJI, J
APRIL 27, 2022
IN THE MATTER OF CHAPTER 4 OF THE CONSTITUTION OF KENYA
AND
IN THE MATTER OF ARTICLES 19, 20, 21,22, 23, 27 AND 29 OF THE CONSTITUTION
AND
IN THE MATTER OF PETITION BY CORBIN BOYD CHALLENGING INFRINGEMENT OF
HIS CONSTITUTIONAL RIGHTS BY INFRINDEMENT OF FUNDAMENTAL FREEDOMS**

BETWEEN

CORBIN BOYD PETITIONER

AND

**CABINET SECRETARY MINISTRY OF INTERIOR & COORDINATION OF
NATIONAL GOVERNMENT 1ST RESPONDENT**

**DIRECTOR OF IMMIGRATION SERVICES COAST REGION 2ND
RESPONDENT**

INSPECTOR GENERAL OF POLICE 3RD RESPONDENT

THE ATTORNEY GENERAL 4TH RESPONDENT

JUDGMENT

1. By way of an amended petition dated July 22, 2021, the petitioner sought the following orders:
 1. A declaration that the frequent summoning of the petitioner by the 2nd respondent on issues already within his system and/or data all meant to extort money from him is an infringement of his fundamental rights.



2. An order of prohibition be issued prohibiting the respondents from subjecting the petitioner to any form of harassment including physical, psychological and/or financial.
3. A declaration that the petitioner is entitled to general damages arising from the injustices he has been taken through.
4. An order of permanent injunction restraining the respondents from frequent summoning of the petitioner on information already within their reach and custody.
5. A declaration that the petitioner is holding valid documents and is constitutionally entitled to remain in the country while holding such valid documents.
6. Costs of the petition.
7. Any other relief this court may deem fit to grant for the best interest of justice.

The Petitioner's Case.

2. In his amended petition, he averred that every person has a right to institute court proceedings claiming that a right or fundamental freedom in the bill of rights has been denied, violated or infringed or is threatened under article 22(1) of the Constitution of Kenya. He also averred that he is lawfully in the country as a tourist with all his travel and residential documents legally updated. He contends that all the application process and payments in the immigration are done online where the 2nd respondent has access including the particulars of the petitioner.
3. He further alleges that the 2nd respondent has frequently subjected him to unnecessary harassment and intimidation with frequent summons to appear before the 2nd respondent demanding what he has already renewed and which is within access of the 2nd respondent. The petitioner also alleges that on various occasions he has been subjected to financial harassment by the 2nd and 3rd respondents and in fact, at one point, his stay in the country was threatened with a two weeks ultimatum. He contends that he has also been harassed by the police from various departments.

Respondents' Case

4. The 4th respondent filed a replying affidavit sworn by Venance Mwasambo Mwakio on the August 16, 2021. He stated the petitioner who is an American citizen visited Kenya as a tourist and was issued with a one-month tourist visa on February 13, 2020 which was to expire on March 2, 2020. He asserted that due to covid -19 it was practically impossible for foreigners to leave the country and the Director General for immigration issued a directive that all foreigners whose visas had expired should remain in the country until the situation is stabilized.
5. He also asserted that their office received several complaints from the coast guard and police from Malindi that the petitioner appeared on national television having an altercation with the police. That on September 20, 2020 he called the petitioner to his office in order to clarify what activities he was involved with in the country. That despite being served with official summons to appear before their offices, he declined and failed to honour the said summons.

Submissions

7. The petitioner filed submissions on the November 30, 2021. He submitted that every person has right to institute court proceedings claiming that a right or fundamental freedom in the bill of rights has been denied, violated or infringed or is threatened under article 22 (1) of the Constitution of Kenya. He relied on article 20 (2), 27 (4) and, 29 (d) of the Constitution. He also relied on the authorities of Miguna



Miguna v Dr Fred Okengo Matiang'i, Cabinet Secretary, Ministry of Interior and Coordination of National Government Constitutional & 6 others, Petition No 51 of 2018 and *Li Wen Jie & 2 others v Cabinet Secretary, Interior and Coordination of the national Government & 3 others*, Petition No 354 of 2016.

8. The respondent filed submissions on the January 14, 2022. In their submissions, they identified two issues for determination; whether the petition has met the threshold for a constitutional petition and whether the orders sought by the petitioner are valid. It is their submission that no constitutional violation has been established with precision and the manner in which the said violations were occasioned and the harm suffered by the petitioner has also not been demonstrated.
9. They submitted that the petition falls short of the required threshold of a constitutional petition as discussed in the case of *Anarita Karimi Njeru v Republic No 1* (1979) KLR 154. The respondents also submitted that the allegations by the petitioner are too vague, ambiguous and unsubstantiated to constitute an arguable case. They also relied on the case of *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* (2913) eKLR where the court held that the petition before court was not pleaded with precision as required in constitutional petitions, as they did not provide adequate particulars of the claims relating to the alleged violations of the *Constitution*.
10. They as well relied on section 14 of the *National Police Service Act* and section 53 (1) (m) of the *Kenya Citizenship and Immigration Act* No 12 of 2011 which makes provision for an offence for a person who is not a Kenyan citizen to engage in any employment, occupation, trade, business or profession, whether or not for profit or reward without being authorized to do so by a work permit.
11. On whether the orders sought by the petitioner are valid, they submitted that the claim for general damages is without basis and on this they relied on the case of *National Land Commission v Estate of Sisiwa Arap Malakwen & another* (2017) eKLR and *Reuben Njuguna Gachukia & another v Inspector General of the National Police Service & 4 others* (2019) eKLR.

Analysis and Determination

12. I have gone through the petition, the responses, the submissions by the parties and the authorities cited. I am duly guided that this court, 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*, 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. In that regard, the invitation in a proper manner to do so, is most welcome as that is one of the core mandates of this honourable court.
13. The constitutional provisions upon which the petition before me is premised are articles 19,20, 21, 22, 23, 27 and 29. The petitioner has in his petition narrated how his rights have been violated under the above quoted provisions of *Constitution*. Having analyzed the issues at hand, I note that the dispute at hand involves an issue that is before the immigration department.
14. It is not disputed that for a constitutional petition to be sustained there is the basic threshold that must be met. This being a constitutional petition, it is important to set out the parameters that determine whether it raises issues for determination as a constitutional petition or whether the issues ought to be dealt with in an ordinary suit. It is vital to note that even in ordinary civil disputes, it is not difficult to find some underlying constitutional principle involved. However, the mere fact that some underlying principle may be gleaned from the pleadings does not necessarily elevate the matter to the level where it may qualify for determination as a constitutional petition.



15. I wish to acknowledge the holding in the case of *Bernard Murage v Fine Serve Africa Ltd & others* (2015) eKLR where the court stated: -

“Not each and every violation of the law must be raised before the High Court as a constitutional issue. Where there exists an alternative remedy through statutory law, then it is desirable that such a statutory remedy should be pursued first”.

16. I have noted the provisions of article 3 and 22 of the *Constitution* which provides for an obligation to respect, uphold and defend the *constitution* as well as a right to institute court proceedings claiming that a right or fundamental freedom in the bill of rights has been denied, violated, infringed or threatened. However, the provisions need be rightly invoked where deserved and not at all, abused. The case of *Karuri & others v Dawa Pharmaceuticals Company Limited and others* [2007] 2 EA 235; emphasized on the point in the following terms;

“Nothing can take the courts inherent power to prevent the abuse of its process by striking out pleadings or striking out a frivolous and vexatious application. Baptising such matters constitutional cannot make them so if they are in fact plainly an abuse of the court process... A constitutional court must guard its jurisdiction among other things to ensure that it sticks to its constitutional mandate and that it is not abused or trivialised. There is no absolute right for it to hear everything and it must at the outset reject anything that undermines or trivialises or abuses its jurisdiction or plainly lacks a cause of action... The notion that wherever there is a failure by an organ of the government or a public authority or public office to comply with the law necessarily entails the contravention of some human right or fundamental freedom guaranteed to individuals is fallacious. The right to apply to the High Court under the *Constitution* for redress when any human right or fundamental freedom is or is likely to be contravened is an important safeguard of those rights and freedoms but its value will be diminished if it is allowed to be misused as a general substitute for the normal proceedings for invoking judicial control of administrative action. In an originating application to the High Court, the mere allegation that a human right or fundamental freedom of the applicant has been or is likely to be contravened is not of itself sufficient to entitle the applicant to invoke the jurisdiction of the court if it is apparent that the allegation is frivolous or vexatious or an abuse of the process of the court as being made solely for the purpose of avoiding the necessity of applying the normal way for the appropriate judicial remedy for unlawful administrative action which involves no contravention of any human right or fundamental freedoms.”

17. From the foregoing, it's vivid that in the present matter does not reveal violation or infringement of any constitutional provisions under bill of rights to justify the petitioner to invoke the constitutional jurisdiction of this honourable court. His issues are under investigations and if he has nothing to hide or worry about should just obey the summons and present his case. The petition lacks merit and is hereby dismissed with no order as to costs.

JUDGEMENT READ, SIGNED AND DELIVERED VIRTUALLY AT MALINDI THIS 27TH DAY OF APRIL, 2022.

S.M. GITHINJI

JUDGE

In the presence of; -



Mr Boyd Corbin Boyd – Petitioner in Person
Mr Mkala Advocate for the Respondent. Absent

