



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 435 OF 2019

IN THE MATTER OF CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES 2, 19, 22, 23, 29, 47 AND 49 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES 10 (1) (2), 24, 47, 49, 50, 129 (2) & 165 OF THE CONSTITUTION OF KENYA

BETWEEN

WAWERU MUNYI JACKSON.....PETITIONER

VERSUS

DIRECTOR OF CRIMINAL INVESTIGATION.....1ST RESPONDENT

INSPECTOR GENERAL OF POLICE.....2ND RESPONDENT

OCS, CENTRAL POLICE STATION, NAIROBI.....3RD RESPONDENT

DIRECTOR OF PUBLIC PROSECUTIONS.....4TH RESPONDENT

ATTORNEY GENERAL.....5TH RESPONDENT

AND

GRACE WAMBOI MUKUHA.....INTERESTED PARTY

JUDGMENT

THE PETITION

1. The Petitioner through a Petition dated 31st October 2019 seeks the following reliefs: -

- a) *The Honourable Court be pleased to issue an injunction restraining the 1st, 2nd, 3rd, and 4th Respondents from charging and / or continuing any criminal process against the Petitioner.*
- b) *The Honourable Court be pleased to declare that the arrest and confinement of the Petitioner violated the provisions of the Constitution of Kenya.*
- c) *The Honourable Court do issue an order of compensation against the respondents for violation of the Petitioner’s constitutional rights.*
- d) *The Honourable Court do issue an order for punitive damages.*

e) *Any other relief that the court deems fit.*

f) *Cost of this suit.*

THE PETITIONER'S CASE

2. On or about July 2019 the Petitioner an Advocate of the High Court of Kenya was instructed by Grace Wamboi Mukuha (the Interested Party) to act for her in the purchase of several parcels of land within Laikipia County, Rumuruti area including land parcel no. Laikipia / Salama Pesi block 1/53.

3. On 20th September 2019, the interested party requested for a meeting scheduled for 4th October 2019 with the Petitioner for an update on all transactions. On the said date, as the meeting was ongoing the Petitioner was arrested and driven to Central Police where he was held from 1.30 pm up to 7 pm at the CID offices without being booked in the O.B at the station. He was further denied bail on the said date, released late the following day after depositing cash bail of Kshs. 100,000/- and was not immediately or soon thereafter charged in court since the police continued to extend his bond four times to wit, 7th, 15th, 18th and 25th October 2019 when the bond was extended to 1st November 2019.

4. The Petitioner's case is supported by the Petitioner's affidavits sworn on even date, supplementary affidavit sworn on 22nd January 2021, Affidavit of Peris Karimi Mburia sworn on 22nd January 2021 and Affidavit of Joseph Mutisya Nzenge sworn on 22nd January 2021.

1ST, 2ND, 3RD & 4TH RESPONDENTS' RESPONSE

5. The 1st - 4th Respondents filed a replying affidavit sworn by No. 92907 Inspector Samuel Akatch, the Investigating officer in a case of obtaining money by false pretence, forgery and uttering a false document against the petitioner reported by the interested party vide Central Police Station OB 108 of 30/09/2019.

6. The Respondents' case is that after conducting investigations, the signatures of Wanja Laibon and Mwaura Gikonyo were found to have been forged; the land Marmanet / North Rumuruti Block /2/1872 allegedly owned by Mwaura Gikonyo, belonged to Annah Nyambura; and Mr. Mwaura Gikonyo confirmed that he only dealt with the petitioner and only knew of the interested party after she filed a complaint at the Central Police.

7. The Petitioner was arrested on 11th October 2019 at around 1700 hours and informed of the charges against him. The Petitioner was released on cash bail of Kshs. 100,000/- on 5th October 2019 and made to appear in Court on 7th October 2019. Further, after several extensions of the bond due to hindrances placed by the Petitioner, the file was finally registered on 6th November 2019 vide Central Police Criminal Case 111/516/2019 and Milimani Criminal Case 1890/19 but the Petitioner placed a stay order. The Respondents urge that the petition be dismissed with costs and the criminal trial against the petitioner be allowed to proceed to its logical conclusion.

INTERESTED PARTY'S RESPONSE

8. The Interested Party filed a replying affidavit sworn by herself on 3rd February 2020 and further affidavit sworn on 23rd July 2021. The Interested Party deposes that she is the complainant in Criminal Case No. 1890 of 2019 Nairobi, pending in the Chief Magistrate's Court which has culminated to the Petition herein.

9. The Interested Party admits instructing the Petitioner, an Advocate of the High Court to act on her behalf in purchasing several parcels of land and that the only parcel of land in contention is L.R. no. Laikipia/ Salama Pesi Block /53 (omc) owned by Wanja Laibon. It is her case that after transmitting to the petitioner a total of Kshs. 10,220,000/- for the purchase of the said property, she was denied access to the said property and upon inquiry, the owner informed her that she had never received any payment, nor signed any sell agreement. She further refuted the signature on the sale agreement allegedly prepared by the petitioner and indicated that her advocates OMA Advocates had prepared a sale agreement and were waiting upon the Petitioner to start the process of signing.

10. Consequently, the Interested Party reported the matter to Central Police Station and made a report of forgery of her signature and that of Wanja Laibon and theft of her money. The police investigated the matter and found that the petitioner had stolen from her Kshs. 10,220,000/- and charged the Petitioner with the offences allegedly committed. The Interested Party urged the Court to dismiss the Petition and allow the criminal case to proceed to its logical conclusion.

ANALYSIS AND DETERMINATION

11. Upon consideration of the pleadings herein, parties rival submissions, I find that there arises only one issue for determination:-

A. WHETHER THE PETITIONER HAS MADE OUT A CASE AS REGARDS VIOLATION OF HIS FUNDAMENTAL RIGHTS UNDER THE CONSTITUTION TO WARRANT GRANTING THE RELIEFS SOUGHT IN THE PETITION.

12. The Petitioner in this Petition is seeking, an injunction restraining the 1st, 2nd, 3rd, and 4th Respondents from charging and / or continuing any criminal process against him; a declaration that his arrest and confinement violated the provisions of the Constitution of Kenya; an order of compensation against the Respondents for violation of his constitutional rights; an order for punitive damages; any other reliefs; and costs.

13. The Respondents are opposed to the granting of the prayers sought by the Petitioner on the grounds that the same are unconstitutional as

the Petitioner in this Petition seek to prevent the Respondents from exercising their Constitutional mandates as provided in law. It is further contended the prayers if granted it would amount to a greater injustice in the criminal justice system and public interest.

14. In dealing with Constitutional Petitions, I am alive of the fact that it is established principle that where a party alleges a breach or violation of a fundamental rights and freedoms, he or she must state and identify that rights with precision and demonstrate how the same have been or will be infringed in-respect of him/her. This principle is well articulated in the case of **Anarita Karimi Njeru vs. The Republic (1976 – 1980) KLR 1272**. The principle states that:-

(i) Constitutional violations must be pleaded with a reasonable degree of precision.

(ii) The Articles of the Constitution which entitles rights to the Petitioner must be precisely enumerated and how one is entitled to the same.

(iii) The violations must be particularized in precise manner.

(iv) The manner in which the alleged violations were committed and to what extent.

15 Further it is clearly provided under **Article 24 of the Constitution** that a right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors.

16 It is further of great importance to bear in mind that the foregoing notwithstanding, the independence of the judiciary is a key tenet in the administration of justice. The Court is required to be independent and impartial, In discharge of its functions, **Article 160 of the Constitution** provides; in the exercise of judicial authority, the Judiciary, as constituted by **Article 161**, shall not be subject to the control or direction of any person or authority. In view whereof it is evidently clear that the Petitioner should enjoy the right to equal protection in any Court of law and a fair administrative process, in which matters are required to be decided on merit.

17 As regards the investigative power of the Police, the National Police Service draws its authority to investigate from **Article 245 of the Constitution** and **Section 35 of the National Police Service Act 2013**.

18 **Section 35 of the National Police Service Act** provides on the function of the Directorate and provides that the Directorate shall:-

a) Collect and provide criminal intelligence

b) Undertake investigations on serious crimes including homicide, narcotic crimes, human trafficking, money laundering, terrorism, economic crimes, piracy, organized crime, and cybercrime among others;

c) Maintain law and order;

d) Detect and prevent crime

e) Apprehend offenders

h) Executive the directions given to the Inspector-General by the Director of Public Prosecutions pursuant to Article 157(4) of the Constitution.

19 It is clearly provided that in the exercise of its power of investigation, the Police are functionally independent and can only take directions to investigate from the DPP and no other authority. In the case of the DPP's directive, the Constitution requires the directives to be in writing for the Police to give effect. In this case, the Petitioner has not presented any written directive to the Police by any other authority to justify his claim that the investigations have been commenced for a collateral purpose. In the absence of that evidence, the Court can only presume that the Police are purely acting in the discharge of their lawful authority.

20 It is triste that the law allows the Police and any other investigative agency to investigate any complaint brought to Police and if there is probable and reasonable cause to proceed to take appropriate action as provided by law.

21 To buttress the aforesaid reliance is placed in the case of **Dr. Alfred N. Mutua Vs. The Ethics and Anti-Corruption Commission & others, Misc. Application NO. 31 of 2016**, in which the Court stated as follows:-

“Is threat of arrest or arrest with reasons given a violation or threatened violation of fundament rights and freedom? We think not. What the law seeks to prevent is arbitrary arrest without probable cause. An objective justification must be shown to validate arrest of any individual. The Kenya Constitution recognizes that if a criminal offence is committed, investigation arrest and prosecution might ensure...”

22 Turning to the instant Petition, it is clearly demonstrated that the Police received a complaint from the Interested Party and following the same the Police were duly bound to investigate the Complaint raised against the Petitioner herein as the law required them to do so.

23 To buttress the above mentioned proposition reliance is placed in the case of **Republic vs. The Commissioner of Police & the Director of**

Public Prosecution Ex parte Michael Monari & another Misc. Application No. 68 of 2011, Nairobi, in which it was stated that in determining whether the Respondents had abused their statutory and constitutional powers, the learned Judge stated that:-

“...the Police have a duty to investigate on any complaint once a complaint is made. Indeed the police would be failing in their constitutional mandate to detect and prevent crime. The Police only need to establish reasonable suspicion before preferring charges. The rest is left to the trial court. The predominant reason for the institution of the criminal case cannot therefore be said not to have been the vindication of the criminal justice. As long as the prosecution and those charged with the responsibility of making the decisions to charge act in a reasonable manner, the High Court would be reluctant to intervene. It is not the duty of the court to go into the merits and demerits of any intended charges to be preferred against any party. It would be improper for this court to try and/or attempt to determine the intended criminal case which is not before it. There is no evidence to show that the respondents exceeded jurisdiction, breached rules of natural justice or considered extraneous matters or were actuated by malice in undertaking the investigations against the applicants. The purpose of criminal proceedings is to hear and determine finally whether the accused has engaged in conduct which amounts to an offence and on that account is deserving punishment.” (Emphasis added)

24 I find that unless the Petitioner establishes that the police did not receive any complaint and are acting ultra vires to their powers, there is no justification for any Court to unnecessarily inhibit them from the investigations. Any investigations that is carried out in accordance with the relevant legislation, in my view, is constitutional and any Respondents action, ensuing therefore are lawful, and valid unless it can be demonstrated that the Respondents' have in execution of their duties, breached those very provisions or have acted in excess of their powers or in violation of the Constitution or acted ultra vires to the act. There has always to be justification for Respondents to be inhibited from exercising their constitutional and statutory mandate. The Court cannot act without such justification.

25 On the other end **Article 157 of the Constitution** vests state power of prosecution upon the Director of Public Prosecution. The Power is reinstated in *pari materia* under **Section 5 of the Office of Director of Public Prosecutions Act**, where it is provided in no uncertain terms that in the exercise of this power, the DPP is not under the direction or control of any person, body or authority as provided for under **Article 157(10) of the Constitution**.

26 In support of the above proposition reliance is placed in the case of **Hon. James Ondicho Gesami Vs. the Attorney General & others Petition No. 376 of 2011, Nairobi** where the Court stated as follows:-

“...The DPP is at liberty to prefer charges against any party in respect of whom he finds sufficient evidence to prefer charges... In my view, requiring that the Petitioner subjects himself to the normal criminal prosecution process mandated by law where he has all the safeguards guaranteed by the Constitution does not in any way amount to an attack on his human dignity in violation of his constitutional rights.”

27 The primary test in making of prosecutorial decisions part of the DPP is whether or not the material placed before the DPP meet the evidential and public interest threshold. Reliance is placed in the case of **Mohamed Ali Swaleh vs. The Director of Public Production & Another – High Court Mombasa Petition No. 2 of 2017** where the Court held;

“the decision whether or not to institute criminal proceedings is made based on the evidence collected. Once the investigations establish reasonable suspicion that a person committed a crime he ought to be charged in a court of law.”

28 It therefore follows that the DPP's prosecutorial decision is not subject to the power and control of any one while discharging his mandate and that the Courts would only interfere where it is shown the DPP acted *ultravires*, unreasonably, without procedural fairness, *malafides* and in total disregard of proportionality in decision making. In this case no reasons have been advanced by the Petitioner to that effect and to justify this Court's interference and proceeding to grant orders sought.

29 The Police in discharging other duty need to establish reasonable suspicion before preferring charges and the rest is left to the Trial Court. It is therefore, in my view, not the duty of the Court to decide who to be charged and with what offence. I find if the Court's were to do so, it would be clear intermeddling in matters that are purely within the provisions of the DPP, and in essence, would be rendering the DPP, a Constitutional body, a lame duck. I have no doubt in such a situation that would amount to emasculation of Independent Constitutional Officer and would be dangerous for this County, that is based and believes in the Rule of law and Separation of Powers.

30 I therefore find that the Court, should be slow in accepting invitations by litigants to interfere with the independent exercise of constitutional and statutory authority by state organs except in those cases where such organs and offices are acting ultra vires, outside the confines of reasonableness, procedural fairness, *mala fides* and in total disregard of the Doctrine of proportionality in decision making.

31 In the instant Petition and upon perusal of the pleadings as drawn and filed as well as parties submissions, I find that there is absolutely no reason for the Court to bar investigations and prohibit prosecution since none of the relevant grounds as stated herein above exists to justify such a decision.

32 Reliance in support of the above is placed in the case of **Pauline Raget Adhiambo Agot vs. DPP and 5 others (2010) Petition No. 446 of 2015** where the Court stated:-

“... It is not for this court to sieve through the evidence and determine whether or not the Petitioner ought to be prosecuted. It would not only be speculative for the court to state that it is wrong to prosecute the Petitioner when the decision is yet to be made but also a usurpation of a role which has been exclusively reserved both by statute as well as by the Constitution for another office in the 1st Respondent.” The Learned Judge continued as follows:

“It must first be stated that the clear intention of the Constitution was to ensure that the office of the Director of Public Prosecutions was free of any interference or meddling. No person or body including the court ought to instruct or direct the 1st Respondent on how to conduct its business as to investigating crime and prosecuting offenders. Indeed, it is the 1st Respondent who is enjoined under Article 157(4) of the Constitution to direct the National Police Service to investigate any criminal activities. On the other hand members of the public are also morally obligated to report incidents of crime to the Respondents.” (Emphasis added)

33 The Constitution and the Statutes allows complaints to directly or indirectly lodge complainants with police. The lodge of such complaints or reporting incidents of criminal activity does not equate giving directions to the Respondents or any of them. If it was, so to be held then a grievant would never receive justice. The Public would never report crime and the Respondents would also be under no obligation to act on the complaint.

34 The Court in discharge of its duty is not required to usurp the constitutional mandate of the DPP to investigate and undertake prosecution in exercise of discretion conferred to his office. In support of this proposition guidance is placed in the case of **Republic vs. Attorney General & 4 others Ex parte Kenneth Kariki Githii (2014) eKLR Miscellaneous Application NO. 151 of 2013 (LOA No. 14)**, in which it was stated that:-

“the Court ought not to usurp the Constitutional mandate of the DPP to investigate and undertake prosecution in the exercise of the discretion conferred upon that office.”

The learned Judge further stated as follows:-

“Judicial review applications do not deal with the merits of the case but only with the process. In other words judicial review only determined whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision the decision maker took into account relevant matters or did take into account irrelevant matters.” (Emphasis added)

35 Further to the above in the case of **Hon. James Ondicho Gesami vs. The Attorney General & Others, Petition No. 376 of 2011, Nairobi** where the Court stated as follows:-

“...The DPP is at liberty to prefer charges against any party in respect of whom he finds sufficient evidence to prefer charges..... In my view, requiring that the petitioner subjects himself to the normal criminal prosecution process mandated by law where he has all the safeguards guaranteed by the Constitution does not in any way amount to an attack on his human dignity in violation of his constitutional rights.”

36 Similarly in the case of **Thuita Mwangi & 2 others vs. Ethics and Anti-Corruption Commission & 3 others (2004)**, the Court held as follows:-

“The discretionary power vested in the DPP is not an open cheque and such discretion must be exercised within the four corners of the Constitution. It must be exercised reasonably, within the law and to promote the policies and objects of the law which are set out in Section 4 of the Office of the Director of Public Prosecutions Act. These objects are as follows; the diversity of the people of Kenya, impartiality and gender equity, the rules of natural justice, promotion of public confidence in the integrity of the Office, the need to discharge the functions of the Office on behalf of the people of Kenya, the need to serve the cause of justice, prevent abuse of the legal process and public interest, protection of the sovereignty of the people, secure the observance of democratic values and principles and promotion of constitutionalism.” (Emphasis added)

37 The 1st – 4th Respondents have clearly deponed that they were acting within their mandate. The position as noted in the said Replying Affidavit, it is stated that the Petitioner was arrested after investigations were done. The forged signatures were subjected to forensic examination and confirmed to have been forged. The petitioner has not demonstrated that the 1st – 3rd Respondents acted unreasonably, without jurisdiction, breached rules of natural justice or acted with malice in undertaking their investigations against him. I note that the Petitioner has averred that the Respondents are trying to manipulate one Mwaura Gikonyo, one of the alleged vendors into disowning the sale agreement, yet no evidence has been adduced to that effect. In my view, the court should not interfere with the mandate of the police as envisaged in the Constitution and statute law, as no evidence has been adduced to show they acted contrary to the law. Having established that the Director of Public Prosecution and the Police acted within their mandate, I find that this Court should allow the matter to proceed at the Trial Court. In any event the Petitioner, will get the opportunity to tell his side of the story and if dissatisfied with the decision, he can appeal to a higher Court.

38 The Petitioner prays for a declaration that the arrest and his confinement violated the provisions of the Constitution. The Petitioner submitted that his constitutional rights and freedoms were infringed and contravened in the manner he was arrested; and that he was not given time to tell his side of the story, that he was never informed of the reasons for arrest; he was never booked in the OB, when he was placed in the police cells up until late night; and was only released the following day despite there being readily available bail and sureties.

39 The 1st to 4th Respondents in their replying affidavit sought reliance on the case of **Anarita Karimi Njeru vs the republic (1976-1980) KLR 1272** on the threshold for what is required in a constitutional petition. They also submitted that by dint of **Article 24 (1) of the Constitution**, a right can be limited where it is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all the relevant factors. The Respondents contended that the Petitioner can therefore enjoy the right to equal protection in any Court of law and a fair administrative process.

40 The Interested Party contend that the Petitioner has not demonstrated that his rights were violated and, that in any event, it is her rights that were violated by the actions of the Petitioner. Accordingly, the Interested Party urged that the Petition should be dismissed, and the Petitioner allowed to stand trial.

41 **Article 22 of the Constitution** provides for the enforcement of Bill of Rights. **Article 23 (3) of the Constitution** provides for the reliefs that the court can grant. **Article 24** provides for when a right or a fundamental freedom in the Bill of Rights can be limited and only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors.

42 **Article 29** provides for the right to freedom and security of the person. Article 47 provides for administration of justice. **Article 49** provides for the rights of an arrested person. **Sub-article (1) (f), (g), and (h)** provide for the right of the accused to be brought before a court as soon as reasonably possible but not later than , twenty –four hours after being arrested ; or if twenty –four hours ends outside ordinary court hours , or on a day that is not an ordinary Court day, the end of the next Court day; (f) provides for the right of the accused person at the first Court appearance, to be charged or informed of the reason for the detention continuing, or to be released; and (h) to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released. **Article 50** provides for the right to have any dispute resolved by the application of law decided in a fair and public hearing before a court or, independent and impartial tribunal or body.

43 I note as clearly pleaded in the Petitioner’s pleadings, it is asserted that he was arrested unlawfully on 4th October 2019 without any explanation and driven to Central Police Station where he was held against his will from 1.30 pm up to 7 pm at the CID offices without being booked in the O.B at the station. He further asserts that he was denied bail despite it being readily available and released late the following day after depositing a cash bail of Kshs. 100,000/-. Further, he was not immediately or soon thereafter charged in court since the police continued to extend his bond four times to wit, 7th, 15th, 18th and 25th October 2019 when they extended it to 1st November 2019.

44 The 1st – 4th Respondents in their Replying affidavit sworn by the Investigating officer, stated that he arrested the petitioner on 11th October 2019 at around 1700 hours while in the interested party’s office and informed him of the charges against him. He was released on a cash bail of Kshs. 100,000/- on 5th October 2019 and made to appear before Court on 7th October 2019. He further asserts that the extensions of the bail were due to hindrances placed by the petitioner and that the file was finally registered on 6th November 2019, but the petitioner placed a stay order on the same.

45 It is urged that on the issue of meeting the Constitutional threshold, it is trite that when it comes to matter concerning the violation of human rights, the clear principles as in the case of **Anarita Karimi Njeru vs Republic (1979) eKLR** should be satisfied, in which it was stated that :-

“...if a person is seeking redress from the High Court on a matter which involves a reference to the Constitution, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be ingraind.” (Emphasis added)

46 In the instant Petition, it is clear that though the Petitioner has cited several provisions of the Constitution on the heading of the Petition, he has not demonstrated how the said provisions have been contravened and by which party. Something to note in the facts in the position is that there are discrepancies in the dates and times of arrest. While the petitioner states that he was arrested on 4th October 2019 at around 1.30 pm and released late the following day, the Investigating Officer states that he arrested the petitioner on 11th October 2019 at around 1700 hours and he was released on cash bail of Kshs. 100,000/- on 5th October 2019. Both the Petitioner and the investigating officer are also not clear as to the time he was released.

47 The Constitution on the rights of the accused person, provides for the person, **“to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reason not to be released”**. The Constitution is not specific on the time the accused is supposed to be released. What is clear from the pleadings is that the petitioner was not denied bail but was released on 5th October 2019 and this demonstrates that the 1st to the 4th Respondents did not breach that provision of the law. I therefore do not find that the Petitioner’s right was violated with regards to bail.

48 The Petitioner further contend that he was not immediately or soon thereafter charged in Court since the police continued to extend his bond four times to wit, 7th, 15th, and 18th and 25th October and finally extended to 1st November 2019. It is his case that he was arrested at around 1.30 pm and held up until 7pm without being booked in the OB. The investigating officer on the other hand stated that the petitioner was made to appear in court on 7th October 2019 and that he was arrested at 1700 hours. The Constitution under **Article 49 (1) (f)** provided for the accused person **“ to be brought before a court as soon as reasonably possible, but not later than- twenty-four after being arrested ; or if twenty-four hours ends outside ordinary court hours , or on a day that is not an ordinary court day , the end of the next court day.”** When the petitioner was arrested it was a Friday and outside the court working hours. Further, the following day was a weekend and obviously outside the court ordinary hours. He was then made to appear in Court on 7th October 2019 which was Monday and within the Court working hours. In my view, his right was not violated.

49 To buttress the above proposition reliance is placed in the case of **Michael Kungu Kigia v Lydia Gatwiri & 6 others [2018] eKLR** J. Mrima while dismissing the Petitioner’s assertion therein stated;

“6. The Petitioner avers that he was arrested on 25/03/2011 and released on 27/03/2011 on police bond. The 25/03/2011 was on a Friday and 27/03/2011 was on a Sunday. The confinement was hence within the confines of Article 49(1)(f)(ii) of the Constitution since the Petitioner could not be arraigned in court before 28/03/2011.”

50 The other issue raised in the Petitioner's Petition is that he was not informed the reason for his arrest and detention. The Investigating officer states that he was informed the reason for his arrest. The Constitution under **Article 49(1) (a)** provides among other rights the right to be informed promptly, in language that the person understands, of the reason for the arrest. **Sub-article (1) (g)** provides "**at the first court appearance, to be charged or informed of the reason for the detention continuing, or to be released.**" While the Petitioner and the investigating officer have given their own different accounts of whether the Petitioner was informed of the charges at the time of arrest I find it hard to believe that the Petitioner was not informed the reason for his arrest. It is nevertheless provided for the accused person to be charged or informed of the reason for the detention, continuing or to be released at the first Court appearance. In this case I presume that being that he appeared in court on 7th October 2019, the Petitioner must have also been made aware of the charges he was facing. I do not agree with the petitioner that his right was violated on this regard.

51 The Petitioner has alluded to **Article 50 of the Constitution** on the right to fair hearing. He has also alleged that there was no attempt by the respondents to show that any signature on the purported alleged false / forged document bore his signature. The Petitioner is being preemptive and is inviting this court to go into the merits of the case which is a precinct of the trial Court. The Petitioner has not demonstrated that he will be denied that right to fair hearing, which he can only demonstrate once this matter has kicked off. On the issue of the forged signature this is an issue that can only be disproved by way of evidence in the trial court. In my view therefore, that prayer at this point is premature.

52 On issue for an Order for compensation, punitive damages, and cost of the suit, having found that it has been demonstrated that the respondents acted within their mandate, that the Petitioner's rights were not violated and that the matter should be left to proceed for trial, I find that the Petitioner is not entitled to compensation, punitive damages, or any other reliefs and costs of the suit.

53 The upshot is that the Petition is without merit. The same is dismissed with costs to the Respondents and Interested Party.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 16TH DAY OF DECEMBER, 2021.

.....

J. A. MAKAU

JUDGE OF THE HIGH COURT OF KENYA