



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 94 OF 2020

**IN THE MATTER OF ARTICLES 22, 23 & 165 (3) (a) (b) OF THE CONSTITUTION OF KENYA, 2010
IN THE MATTER OF THREATNED AND/OR ALLEGED CONTRAVENTION OF FUNDAMENTAL
RIGHTS AND FREEDOMS UNDER ARTICLES 10, (1) (2), 19(2) (3), 20(1) (2) (3) (4),
21(1) (4), 27(1) (2), 23(1) (3), 29, 48 & 47 OF THE CONSTITUTION OF KENYA**

BETWEEN

PAUL ONGILI BABU OWINO.....PETITIONER/ APPLICANT

-VERSUS-

THE REPUBLIC.....1ST RESPONDENT

THE DIRECTOR OF PUBLIC PROSECUTIONS.....2ND RESPONDENT

INSPECTOR GENERAL OF POLICE.....3RD RESPONDENT

BENARD OMONDI OGIJO.....INTERESTED PARTY

JUDGMENT

PETITIONER'S CASE

1. The Petitioner through an Petition filed on 10th March 2020 prays for:-

a) A declaration that the arrest and impending prosecution of the petitioner is unlawful and unconstitutional.

b) That a permanent injunction to issue restraining the 1st and 2nd Respondents by themselves, their officers, servants, agents, and anyone acting on their behalf from arresting, detaining, restricting or otherwise confining or in any other way interfering with the liberty of the Petitioner herein in respect of or in connection with the complaint or allegation(s) made arising from an in relation to this matter.

c) An order prohibiting the Director of Public Prosecution by himself, his officers, servants; agents or anyone acting on his behalf from instituting, charging, or prosecuting the Petitioner herein in respect of or in connection with the complaint or allegation(s) made arising from or in relation to this matter.

d) That costs of this petition be provide for.

2. The 1st and 2nd Respondents filed grounds of opposition dated 2nd June 2020 in opposition of the Petitioner's petition.

3. The 1st, 2nd and 3rd Respondents further filed a Replying Affidavit by No.236275 CI Alex Kharambe Simiyu deponing that he was handling the interested party's complaint in this petition, who withdrew the two complaints unequivocally and without any coercion whatsoever on the 12th day of August 2015.

4. Mr. Makori, learned State Counsel appearing for 1st and 2nd Respondents and Mr. Marwa, learned State Counsel appearing for 3rd Respondent before this Court have confirmed that the Interested Party had withdrawn his complaints against the Petitioner and the matter is now settled.

5. It is further confirmed that the 2nd Respondent has no intention of prosecuting the Petitioner based on the grounds that the complaints have since been withdrawn and matter settled as between the complainant and the Petitioner.

6. Mr. Okatch Learned Advocate for the Petitioner agrees that is the position and has no objection to the petition being compromised but seeks prayers (b) and (c) of the petition be granted and that each party bears its own costs.

7. I have considered counsel submissions and affidavit by No. 236275 CI Alex Khaemba Simiyu, and it is clear that the complaints against the Petitioner herein were withdrawn and matter duly settled between the Petitioner and the Interested Party. It is clear that the DPP has no intention of arresting and charging the Petitioner in respect of the already settled matters. The Petition before this Court is accordingly compromised by the parties having reached settlement.

8. The upshot is that the petition is settled as between the Petitioner and Interested Party and DPP has no intention of prosecuting the Petitioner. I accordingly enter Judgment in favour of the Petitioner as follows:

a) A Permanent Injunction be and is hereby issued restraining the 1st and 2nd Respondents by themselves, their officers; servants, agents or anyone acting on their behalf from arresting, detaining; restricting or otherwise confining or in any other way interfering, with the liberty of the Petitioner herein in respect of or in connection with the complaint or allegation (s) made arising from or in relation to this matter.

b) An order prohibiting the Director of Public Prosecutions by himself, his officers, servants, agents or anyone acting on his behalf from instituting, charging or prosecuting the petitioner herein in respect of or in connection with the complaint or allegation(s) made arising from or in relation to this matter.

c) The parties have agreed that each party bears its own costs. I accordingly order that each party bears its own costs.

Dated, Signed and Delivered at Nairobi on this 25th day of June, 2020.

.....

J. A. MAKAU

JUDGE