



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CONSTITUTIONAL PETITION NO. 2 OF 2019

STANLEY KIMATHI RAINI.....PETITIONER

VERSUS

BASE COMMANDER,

RUNYENJES POLICE STATION.....1ST RESPONDENT

NATIONAL TRAFFIC COMMANDANT.....2ND RESPONDENT

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

DIRECTOR GENERAL N.T.S.A.....4TH RESPONDENT

DIRECTOR OF PUBLIC PROSECUTIONS.....5TH RESPONDENT

THE HON. ATTORNEY GENERAL.....6TH RESPONDENT

RULING

A. Introduction

1. This ruling pertains to the application dated 3rd April 2019 in which the petitioner seeks amongst others prayers for stay of further proceedings in Runyenjes Magistrates' Court Traffic Case No. 102 of 2019 until he petition is determined and an order that the Traffic Base Commander Runyenjes police station do surrender to this court the petitioner's driving licence.

2. It is the petitioner's case that he was unlawfully arrested and charged with the offence of driving without a licence contrary to Section 30(4) as read with 30(7) of the Traffic Act.

3. In rejoinder, one Safari Katana, Chief Inspector of Police swore a replying affidavit on behalf of the 1st, 2nd, 3rd, 4th and 5th respondents in which he deposed that the petitioner was stopped along the Embu – Meru road and upon inquiry and inspection his driving licence was found to lack his photograph. Despite showing that the licence was to expire on the 18th July 2019 after being renewed on 19th September 2018, this information was found to be contraction of the National Transport Safety Authority (NTSA).

4. Mr. Katana further deposed that the NTSA records showed that the driving license had expired on 18th June 2018 after which he was arrested on suspicion of having an invalid driving license.

5. The 5th respondent in rejoinder deposed that the process of recommending and instituting charges against the petitioner emanated from a lawful process in accordance with Article 157 of the Constitution of Kenya and further that the petitioner had failed to demonstrate how the formulation of charges against him was a contravention of his constitutional rights.

6. The parties disposed of this application through written submissions.

B. Petitioner's Submissions

7. The petitioner submitted that the violence meted out to him during his arrest was contrary to the provisions of Article 29(c) of the Constitution and that he was not informed of the reasons for his arrest contrary to the provisions of Article 49(1)(a) of the Constitution.

8. It was further submitted by the petitioner that the charges brought against him were baseless, malicious and uncalled for more so because he had a valid driving license with the requisite receipt attached and as such the 4th respondent had exercised its powers arbitrarily and without due diligence. He relied on the case of **Farmers Choice Limited Vs Gideon Ndinika Gitau C.A. No. 508 of 2009** in which the court held that the arrest and prosecution of the plaintiff had been maliciously activated and not founded on any probable cause.

9. He further submitted that a stay of the proceedings in the traffic court in Runyenjes was tainted with illegality and a blatant violation of the petitioner's constitutional right. He relied on the case of **Law Society of Kenya & 2 others Vs Attorney General & 2 Others [2018] eKLR** where the court reinforced the high court's duty to address denial, violation or infringement to the fundamental freedoms in the bill of rights.

C. 1st, 2nd, 3rd and 6th Submissions

10. It was submitted that the application by the petitioner was frivolous, vexatious and an abuse of the court process that ought to be dismissed with costs and that there was need for the petitioner to proceed before the Traffic Court in Runyenjes to have his case determined on merit.

11. It was further submitted that the petitioner had failed to avail any evidence of the violence meted out on him.

D. 5th Respondent's Submissions

12. It was submitted that the contention by the petitioner that he had presented a valid driving license was to be determined before the trial court and that the order for stay of proceedings was unmerited. The 5th respondent relied on the case of **Goddy Mwakio & Another Vs Republic [2011] eKLR** where the Court of Appeal held that an order staying criminal proceedings would be granted only in the most exceptional circumstances. It was further submitted that allegations of harassment should be addressed by the relevant administrative body if the same are genuine.

13. The respondent further submitted that the petitioner had failed to satisfy the court that the discretion given to the respondents to investigate and prosecute had been abused as had been held in the case of **Kuria & 3 Others Vs Attorney General [2002] 2 KLR 69** and that of **Kipoki Oreu Tasur Vs Inspector General of Police & 5 Others [2014] eKLR** where the court had held that in order to strengthen the rule of law and good order there should be restraint from the superior courts in interference with the criminal justice system except in clear cases it is demonstrated there was violation of fundamental rights of an individual.

E. The Determination

14. It is evident from the material before the court that the key issue for determination is whether the applicant is entitled to the orders for stay of Runyenjes Traffic Case No. 102 of 2019 given the facts of this application.

15. The gist of the petitioner's case is that the applicant was unlawfully arrested and charged for the offence of driving without a motor license contrary to Section 30(4) as read with 30(7) of the Traffic Act despite his allegations that he had a valid driving license. The Attorney General for the 1st, 2nd, 3rd, 4th and 6th respondents responded that his officers validly arrested the petitioner after inspecting his driving license and realizing that firstly it did not bear the petitioner's photo as is standard and secondly upon checking the NTSA application verifying that the aforementioned driving license was expired. On their part, the 5th respondent put forth their case that the process of recommending and instituting charges against the petitioner emanated from a lawful process in accordance with their mandate as enshrined in Article 157 of the Constitution of Kenya.

16. In **Republic Vs Commissioner of Police & Another ex parte Michael Monari & Another [2012] eKLR**, it was held: -

The police have a duty to investigate on any complaint once a complaint is made. Indeed, the police would be failing in the 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.... 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.

17. In the instant case, it is my view that the lack of photograph of the petitioner in his driving license combined with the fact that the NTSA application returned a finding of "licence expired" upon checking, raised reasonable suspicion in the police officers' minds to warrant his arrest.

18. It is noteworthy that whereas an applicant may well be correct that there are several factors which go to show his innocence, these are not the proper proceedings in which the correctness of the evidence or the truthfulness of the witnesses may be gauged. The task is solely reserved for the criminal trial court which is constitutionally bound to determine whether an offence was committed in accordance with the law. This was the holding of the court in the case of **Republic Vs Director of Public Prosecutions & Another Ex parte Geoffrey Mayaka Bogonko & Another [2017] eKLR**.

19. Accordingly, the mere fact that the applicants view the evidence to be presented against them as patently false, concocted and/or misleading does not warrant this court in interfering with the criminal process since that is an allegation which goes to the sufficiency and veracity of the evidence and the innocence of the applicants, matters which are not within the province of this court.

20. In **Thuita Mwangi & Another Vs The Ethics and Anti-Corruption Commission & 3 Others Petition No. 153 & 369 of 2013**, it was held:

... I am afraid that the High Court at this point is not the right forum to tender justifications concerning the subject transaction let alone test the nature and veracity of these allegations. In ...the court held that "It is the trial Court which is best equipped to deal with the quality and sufficiency of the evidence gathered to support the charge. It would be a subversion of the law regulating criminal trials if the judicial review court was to usurp the function of a trial Court". Similarly,....Lenaola J., captured this balance as follows "(22). The point being made above is that the DPP though not subject to control in exercise of his powers to prosecute criminal offences, must exercise that power on reasonable grounds. Reasonable grounds, it must be noted, cannot amount to the DPP being asked to prove the charge against an accused person at the commencement of the trial but merely show a prima facie case before mounting a prosecution. The proof of the charge is made at trial.

21. The question of whether the 5th respondent carried out its mandate as provided for under Article 157 of the Constitution will be determined in this petition in regard to the alleged violations or the applicant's constitutional rights. The applicant has not convinced this court that the charges against him in Runyenjes Traffic Case No. 102 of 2019 are illegal or motivated by malice.

22. The trial court is constitutionally bound to give the applicant a fair trial and if there is no evidence to support the charges, he ought to be acquitted.

23. I rely on the case of **Kipoki Oreu Tasur (supra)** where it was held: -

The criminal justice system is a critical pillar of our society. It is underpinned by the Constitution, and its proper functioning is at the core of the rule of law and good order in society, that it be allowed to function as it should, with no interference from any quarter, or restraint from the superior courts, except in the clearest of circumstances in which violation of the fundamental rights of individuals facing trial is demonstrated.

24. Bearing in mind that this petition is a different legal process from the traffic/criminal trial, and considering all the foregoing, I am not convinced that the applicant is entitled to the orders sought in this application.

25. Consequently, I find no merit in this application and dismiss it accordingly.

26. Each party to meet its own costs.

27. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 13TH DAY OF AUGUST, 2019.

F. MUCHEMI

JUDGE

In the presence of: -

Ms. Manyal for 5th Respondent

Mr. Muthomi for Petitioner/Applicant