



**REPUBLIC OF KENYA**

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

**CONSTITUTIONAL PETITION NO. 2 OF 2017**

**IN THE MATTER OF PROTECTION OF RIGHTS IN THE BILL OF RIGHTS CHAPTER FOUR (4) ARTICLE 49 (1) (F) (G) AND (H) OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF CONTRAVENTION OF FUNDAMENTAL RIGHTS AND PROTECTION UNDER CHAPTER ONE ARTICLE 2 (2, 3, 4, 5, 6) CHAPTER 2 ARTICLE 10 BILL OF RIGHTS ARTICLE 19, 20, 21, 22, 23, 27, 28, 29 (a) (b) (c) (d) (e) (f) ARTICLE 30 (1) (2) ARTICLE 47 (1) (2) ARTICLE 49 (i) (f) (g) (i) (4) ARTICLE 50 (1) OF THE CONSTITUTION OF KENYA**

**IN THE MATTER OF UNPROSECUTED POLICE BOND CASE FILE NO. 461/2011 MERU DATED 27<sup>TH</sup> MARCH 2011 ON FRAMED STOLEN MOTOR VEHICLE TOYOTA REGISTRATION NO. KAQ 105A BETWEEN 1<sup>ST</sup> FEBRUARY, 2011 AND 10<sup>TH</sup> MARCH, 2011 AT NKOUNE VILLAGE IN POLICE OB NO. 54/23/3/2011**

**BETWEEN**

**MICHAEL KUNGU KIGIA.....PETITIONER**

**VERSUS**

**LYDIA GATWIRI.....1<sup>ST</sup> RESPONDENT**

**O. C. S. MERU POLICE STATION.....2<sup>ND</sup> RESPONDENT**

**P. C. PETER KISOI.....3<sup>RD</sup> RESPONDENT**

**ROSA NKATHA.....4<sup>TH</sup> RESPONDENT**

**JAPHET MURIIRA.....5<sup>TH</sup> RESPONDENT**

**ATTORNEY GENERAL.....6<sup>TH</sup> RESPONDENT**

**DIRECTOR OF PUBLIC PROSECUTION....7<sup>TH</sup> RESPONDENT**

**JUDGMENT:**

1. The judgment relates to a Petition filed by the Petitioner herein, **Michael Kungu Kigia**, on 27/01/2017. The Petitioner sought for several reliefs on allegations that he was arrested on 25/03/2011 on theft of a motor vehicle and placed in custody at Meru Police Station until 27/03/2011 when he was released on police bond. He was eventually charged in **Meru Chief Magistrates Criminal Case No. 598 of 2011** (hereinafter referred to as '**the criminal case**') which criminal case is still pending.

2. The Petitioner recounted his tribulations during the investigations of the criminal case. He seriously took issue with one Peter Kisoi, the investigating officer. He then made the following prayers: -

*(a) That declarations that fundamental rights and freedoms of the petitioners as enshrined in the constitution has been*

*breached.*

*(b) An order do issue inhibition order on the Criminal Case No. 598/2011 be enforced until this petition is heard and determined.*

*(c) An order to petitioner be paid (Kshs. 2,000,000/=) Two million shillings for damages and defamation by defendants.*

*(d) Costs of the petition.*

*(e) Such further / or orders to court deem fit and expedient.*

3. The Petition was heard by way of oral evidence. The Petitioner was the only one who testified since none of the Respondents appeared in the matter despite service. The Petitioner recounted the contents of the Petition in seeking for the prayers aforesaid.

4. Since the criminal case is still pending, it will be premature and/or pre-emptive for this Court to interrogate how the investigating officer handled the case. The Petitioner ought to make a basis for any of his claims arising from the way the criminal case was investigated during the hearing and thereafter he may petition this Court accordingly. I say so noting that the Petitioner did not seek to stop his prosecution in the manner the investigations were conducted. He only prayed for an interlocutory stay of the criminal case until the determination of this Petition which prayer he seems to have abandoned. That hence leaves the allegation that the Petitioner was incarcerated contrary to the **Constitution**.

5. **Article 49** of the **Constitution** is on the rights of an arrested person. Of relevance to this matter is **(1)(f)** and **(2)** which are tailored as follows: -

*49(1)(f) to be brought before a court as soon as reasonably possible a sentence, but not later that*

*(i) twenty – four hours after being arrested; or*

*(ii) if the 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;*

*(2) A person shall not be remanded in custody for an offence if the offence is punishable by a fine only or by imprisonment for not more than six months.*

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.

7. The Petition was hence founded on a wrong interpretation of the **Constitution** and do not have any legal leg to stand on. The position would however have been different had the Petitioner been held in contravention of the **Constitution** and/or the law. Consequently, the Petition be and is hereby dismissed with no orders as to costs.

Orders accordingly.

**SIGNED BY:**

**A. C. MRIMA**

**JUDGE**

**DATED, COUNTERSIGNED and DELIVERED at MERU this 30<sup>th</sup> day of July, 2018.**

**S. M. GIKONYO**

**JUDGE**