



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

PETITION NO. 2 OF 2017

IN THE MATTER OF: ARTICLES 20, 21, 22, 23, 24, 25, 26, 28, 29, 39, 47, 48, 49 50 AND 51 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF: THE ALLEGED CONTRAVENTION OF RIGHTS AND FUNDAMENTAL FREEDOMS UNDER ARTICLE 20, 25, 28, 29, 39, 47 AND 50 OF THE CONSTITUTION OF KENYA, 2010

BETWEEN

DANIEL BARU NYAMOHANGA 1st PETITIONER

REBECCA BOKE MWITA 2nd PETITIONER

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

THE HON. ATTORNEY GENERAL

THE INSPECTOR GENERAL OF POLICE

OFFICER COMMANDING STATION-KEHANCHA RESPONDENTS

RULING

1. The Petition herein seeks orders of *habeas corpus* in relation to one **Daniel Baru Nyamohanga** (hereinafter referred to as '**Daniel**') who, admittedly, was arrested by the Administration Police officers at Kehancha town within Migori County and taken into custody at the Kehancha Police Station.
2. The contention in this Petition is whether Daniel was later released from police custody. The Petitioners on one hand firmly aver that Daniel is still held by the police and on the other hand the Respondents contend that Daniel was lawfully released from police custody.
3. That led to the hearing of the Petition by way of oral evidence where the second Respondent herein, **Rebecca Boke Mwita**, who is the wife of Daniel, testified in support of the Petition together with the father of Daniel, **Nyamohanga Chacha**. Several police officers testified in opposition to the Petition.
4. The way the evidence unfolded related to how the police carry out their duties especially within a police station moreso in relation to the custody and release of suspects. Several official entries in various documents were referred to and produced. Reference was also made to various police operational procedures by the Respondents in opposition to the Petition.
5. I have carefully considered this Petition. There is no doubt that the Petition raises serious issues on human rights violation and on the liberty of a citizen. Further, whereas the Petitioners are anxiously waiting to know the whereabouts of Daniel, the Respondents hold that Daniel was lawfully released from custody.
6. Since the Petition hinges on whether Daniel was allegedly released from the police custody and by placing the evidence of the Petitioners and the evidence of the Respondents side by side, I am of the firm view that the events subject herein require a further in-depth investigation. I do believe that such an investigation will go a long way in the determination of the Petition.

7. From the foregone and in view of **Article 244** of the **Constitution** and the provisions of the **Independent Policing Oversight Authority Act**, No. 35 of 2011, the following orders hereby issue: -

- a) **The Independent Policing Oversight Authority shall urgently carry out investigations on the circumstances leading to the arrest of one Daniel Baru Nyamohanga and whether he was released from Kehancha Police Station as alleged or otherwise.**
- b) **In view of the nature and urgency of this matter, the Petitioners shall liase with the Deputy Registrar of this Court and effect service of this ruling, the resultant order, the pleadings and the proceedings upon the Independent Policing Oversight Authority within 15 days of this ruling.**
- c) **The Independent Policing Oversight Authority shall deal with the matter accordingly and file its Report with this Court within a reasonable period but in any event not later than the 30th day of September 2017.**
- d) **The Deputy Registrar of this Court shall fix this matter for directions and further orders immediately upon receipt of the Report from the Independent Policing Oversight Authority or on 03/10/2017 as the case may be.**

Orders accordingly.

DELIVERED, DATED and SIGNED at MIGORI this 31st day of July 2017.

A. C. MRIMA

JUDGE