



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**

**PETITION NO 272 OF 2014**

**NICHOLAS MURIUKI KANGANGI .....PETITIONER**

**VERSUS**

**DIRECTOR OF PUBLIC PROSECUTION .....**  
**.....RESPONDENT**

**RULING**

1. The petitioner moved the court on 16<sup>th</sup> June 2014 by way of an application brought under certificate of urgency seeking orders to restrain the respondent from proceeding with his prosecution in **Nairobi Milimani Criminal Case No. 764 of 2014**. He alleged that his prosecution in the matter was unconstitutional and violated his rights guaranteed under the Constitution.
2. He averred in his affidavit in support of the petition that he was arrested by CID officers on 20<sup>th</sup> May 2014 and held at Kilimani Police Station for three days. The basis of his arrest was that he had caused the Speaker of Embu County to be abducted and confined. He was thereafter charged before the Milimani Chief Magistrate's Court on 22<sup>nd</sup> May 2014 with the offence of abduction with intent to confine contrary to section 259 of the Penal Code. He prayed that the criminal proceedings at Milimani Law Courts be stayed and or quashed as they infringed on his constitutional rights.
3. When the matter came up before me on the 16<sup>th</sup> of June 2014, I directed that it be served forthwith for inter parties hearing on 18<sup>th</sup> June 2014.
4. At the inter parties hearing of the application, Mr. Mule, Learned Counsel for the Director of Prosecution, conceded that the prosecution should be stayed. Consequently, the court issued an order staying the criminal case against the petitioner, gave directions with regard to filing of responses and submissions, and fixed the petition for hearing on 22<sup>nd</sup> September 2014.
5. On 22<sup>nd</sup> September 2014, Counsel for the DPP, Ms. Kithiki, informed the court that the DPP had called for the police file and had made a recommendation for the withdrawal of the criminal case against the petitioner. She produced a letter dated 5<sup>th</sup> September 2014 in which the DPP has recommended the withdrawal of the case under section 87(a) of the Penal Code.
6. Counsel for the petitioner submitted that the respondent has not opposed the petition and had agreed that the prayers that the petitioner was seeking should be issued. He asked the court to

quash the criminal proceedings as the petitioner did not wish to have them withdrawn under section 87(a).

7. In reply, Counsel for the DPP submitted that the charges would be withdrawn, but that should the petitioner wish to proceed with the petition, then the Attorney General should be enjoined as a party to represent the Inspector General within whose ambit investigations fall.
8. I have considered the petition and the respective submissions of the parties. I note that the DPP conceded from the outset that the prosecution of the petitioner should be stayed, has carried out investigations, and has now directed the withdrawal of the case on the basis that there is insufficient evidence to sustain the charge against the petitioner.
9. The petitioner submits that he does not wish to have the charges withdrawn under section 87(a) but wishes to have them quashed. However, should the charges be withdrawn, then there would be nothing for the court to quash.
10. After the DPP withdraws the case against the petitioner, and should the petitioner still be interested in pursuing any part of his claim that is not resolved by the withdrawal of the case, he is still at liberty to do so. Further, the parties are at liberty to resolve the matter amicably following the withdrawal and file an appropriate consent in this matter.
11. Counsel informed the court that the criminal matter comes up before the trial court on 26<sup>th</sup> September 2014. This matter shall therefore be mentioned on 16<sup>th</sup> October 2014 to confirm the position and allow the petitioner time to determine whether he wishes to proceed with any part of his petition that he feels has not been addressed by the withdrawal of the criminal charges.

**Dated, Delivered and Signed at Nairobi this 25<sup>th</sup> day of September 2014**

**MUMBI NGUGI**

**JUDGE**

**Mr. Karige instructed by the firm of Waiganjo Wachira & Co. Advocates for the Petitioner**

**Mr Mule instructed by the office of Director of Public Prosecution for the respondent**