



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Petition 7 of 2013

TERESIA WANJIRU KARIUKI PETITIONER

AND

DIRECTOR OF PUBLIC PROSECUTIONS 1ST RESPONDENT

THE ATTORNEY GENERAL 2ND RESPONDENT

JUDGMENT

1. The petitioner in this matter has moved the court by an amended petition dated 11th March 2013 seeking the following orders:

- (1) *A declaration that the fundamental freedoms of the petitioner have been denied, infringed and or threatened.*
- (2) *A declaration that criminal cases No. 6434 of 2012 Makadara Law Courts and 43 of 2013 Milimani Law Courts are invalid, null and void as they offend the values and principles of constitutionalism.*
- (3) *A declaration that the petitioner is entitled to compensation for gross violation of her fundamental rights and freedom.*

2. She is currently facing two criminal charges. The first one is ***Makadara Criminal Case No. 6434 of 2012*** which is a charge of obtaining money by false pretences contrary to **Section 313 of the Penal Code (Chapter 63 of the Laws of Kenya)**. The particulars of the charge are that *“On the 6th day of August 2012 at Kamukunji Dishes Hotel along Kamukunji road in Nairobi within Nairobi County, jointly with another not before court, with intent to defraud, obtained Kshs.96,000/= from Joseph Mwangi Guchu by falsely pretending you were in a position to supply him with one leister pump and assorted agro-chemicals, a fact you knew to be false.”*

3. After the charge was lodged, according to the replying affidavit of Ken Gideon Musumba, the Investigating Officer attached to Kamukunji Police Station, the petitioner drafted an agreement to compound the charge. Before the parties could agree, she allegedly assaulted Joseph Mwangi Guchu, the complainant in the first case. This resulted in a second charge being preferred against her in ***Criminal Case Milimani Criminal Case No. 43 of 2012***. She is charged with the offence of assault causing actual bodily harm contrary to **section 251 of the Penal Code**. The charge states that, *“On the 7th day of December 2013, along Moktar Dadar Street in Nairobi within Nairobi County, you unlawfully assaulted Joseph Mwangi Guchu there by occasioning him actual bodily harm.”*

4. The petitioner's case is that the institution or prosecution of these cases is agitated by her former husband who is using the police to settle scores thereby denying her fundamental rights and freedoms. Learned counsel for the petitioner, Mr Gichuhi has submitted that the facts upon which the case is founded are fabricated and that the statements recorded contain falsehoods and cannot be the basis for prosecuting her.
5. Mr Njogu, learned counsel for the Director of Prosecutions, submitted that the police carried out its constitutional mandate to investigate the complaint lodged against the petitioner and there is reasonable evidence to support the prosecution of the petitioner in each case. This position was supported by Ms Ndungu, learned counsel for the Attorney General, who noted that there was no violation of fundamental rights disclosed in the petition.
6. I have reviewed the material before the Court and I am satisfied that there is reasonable evidence to prosecute the petitioner for the offences alleged. It has not been demonstrated that the police acted contrary to the law or that the prosecution is instituted for an ulterior motive or in bad faith or is an abuse of the process. Simply stated, no basis has been laid for the court to halt the criminal proceedings.
7. Whether the evidence against the petitioner is well founded or not will be a matter for the trial court to access. The evidence preferred by the prosecution to prove its case will be tested at the trial having regard to the standard and burden of proof imposed on the prosecution. I find that there nothing in the depositions before me to demonstrate that the petitioner will not have a fair trial.
8. The petitioner has deponed to the fact that she is the subject of harassment by the police, her former husband and other persons. When I asked counsel for the petitioner whether the petitioner had reported the harassment to the police, he confirmed that the complaints had been reported after this matter was lodged in court. This seems to negative the allegation in the petition that nothing has been done about the harassment she is undergoing. In my view, her complaints, if any, will be dealt with by the authorities in the ordinary cause.
9. On the whole, the petitioner has not established that her fundamental rights and freedoms have been violated. The amended petition be and is hereby dismissed with no order as to costs.

DATED and **DELIVERED** at **NAIROBI** this 13th day of May 2013.

D.S. MAJANJA
JUDGE

Mr Gichuhi instructed by Gichuhi Ndung'u and Company Advocates for the petitioner.

Mr Njogu, Litigation Counsel, instructed by the Directorate of Public Prosecutions.

Ms Ndung'u, Litigation Counsel, instructed by the State Law Office for the 2nd respondent.