



**REPUBLIC OF KENYA**  
**IN THE HIGH OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**

Miscellaneous Application 1098 of 2005

**ALFRED THIRINGI .....APPLICANT**

**AND**

**THE ATTORNEY GENERAL .....1<sup>ST</sup> RESPONDENT**

**THE COMMISSIONER OF POLICE .....2<sup>ND</sup> RESPONDENT**

**THE DIRECTOR OF CRIMINAL INVESTIGATION  
DEPARTMENT .....3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

**Applicant's Case**

1. This matter was filed on 19<sup>th</sup> July 2005. It is unfortunate that it has taken this long to prosecute and it is for this reason that I ordered that the applicant attend court on 30<sup>th</sup> July 2012 where I directed that he gives evidence in order to finalise the matter once and for all.
2. In the amended Originating Summons dated the 21st July, 2005, the applicant seeks orders that;
  - a) *A declaration do issue that the Arrest and subsequent detention of the applicant on 17<sup>th</sup> July 2005 by officers from Industrial Area Police Station without a warrant of arrest or any other order issued by a court in Kenya was unlawful and in violation of his fundamental rights of personal liberty contained in sections 70 and 72(1) of the Constitution of the Republic of Kenya.*
  - b) *A declaration do issue that it is unjust, oppressive, unfair, unconscionable, against the public interest and contrary to the fundamental personal liberty, protection from cruel and degrading treatment and freedom of movement as contained in sections 70, 72, 74 and 81 of the Constitution of the Republic of Kenya to detain the applicant at industrial Area Police Station over a civil debt.*
3. The applicant's case is that while at home on 17<sup>th</sup> July 2004 at about 10.30 pm, police men came to his house in the company of one Peter Mukurai and demanded that he pays a debt of Kshs.150,000.00. He was arrested and taken to Industrial Area Police Station. He remained in custody until 19<sup>th</sup> July when he was released. He was not charged with any offence. He claims damages for illegal and wrongful detention.

4. The applicant relies on the supporting affidavit of his wife Lydia Mwithimbu sworn on 19<sup>th</sup> July 2005 and his own affidavit dated sworn on 5th April 2006.

### **Respondent's Case**

5. The State opposes the application through the affidavit of Benson Muriithi Nyaga sworn on 30<sup>th</sup> March 2006. At the time material to this suit he was police officer at Criminal Investigations Department, Moyale Division. He depones that he acted on a complaint by Peter Mukura. He conducted the investigation and concluded that the offence of obtaining money by false pretence contrary to **section 313** of the **Penal Code** had been disclosed and it is for this reason that the applicant was arrested on 17<sup>th</sup> July 2004 at 10.30 pm. He further depones that on 18<sup>th</sup> July 2004, the applicant was released when his wife produced the agreement between the applicant and the complainant showing the debt.

### **Determination**

6. The only issues for consideration are whether the arrest and subsequent detention was reasonable in the circumstances and whether the complainant was unlawfully detained for two days.

7. I have considered the evidence and on the balance of probabilities, I find that there was no reasonable basis to arrest the applicant in the manner he was as the dealings between the applicant and respondent were business dealings. My finding is coloured by the fact that the applicant was arrested on a Sunday night company of the complainant. Indeed, Mr Nyaga did not deny this fact in his deposition.

8. Since there was no reasonable basis for his arrest, it means that the detention was unlawful and therefore in breach of his constitutional rights. I find that he was detained from 17<sup>th</sup> July 2004 at 10.30 pm up to 19<sup>th</sup> July 2004 when he was released. I find that this action was a violation of his right to personal liberty protected by **section 72** of the former Constitution. I make this finding because the application was filed on 19<sup>th</sup> July 2004 and supported by the affidavit of the applicant's wife alleging he was still in custody. I have no reason to disbelieve this evidence.

9. The applicant has prayed for Kshs. 100,000.00 special damages but there is no evidence upon which I can award compensation in the absence of proof. Since the applicant rights were violated I shall issue declarations to that effect and award the sum of Kshs. 80,000 as general damages which I consider reasonable in the circumstances to vindicate his rights.

### **Conclusion**

10. In the circumstances, I grant the following orders;

**a) I declare that the rights of the applicant under section 72 of the former Constitution were infringed and violated by his arrest and detention in police custody from 17<sup>th</sup> July 2004 and to 19<sup>th</sup> July 2004 without reasonable cause.**

**b) I award him Kshs. 80,000/= only as general damages.**

**c) I award costs of the suit to the applicant.**

**DATED and DELIVERED at NAIROBI this 30<sup>th</sup> day of July 2012**

**D.S. MAJANJA**  
**JUDGE**

Mr Makori with him Ms Kamau instructed by Enonda, Makoloo, Makori and Company Advocates for the applicant.

Mr Njogu, State Counsel, instructed by the State Law Office for the respondents.