



**Jiupeng v Kenya Revenue Authority & another (Constitutional Petition E157 of 2022)
[2025] KEHC 819 (KLR) (Constitutional and Human Rights) (4 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 819 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
CONSTITUTIONAL PETITION E157 OF 2022**

LN MUGAMBI, J

FEBRUARY 4, 2025

BETWEEN

CAI JIUPENG PETITIONER

AND

THE KENYA REVENUE AUTHORITY 1ST RESPONDENT

THE DIRECTOR OF IMMIGRATION SERVICES 2ND RESPONDENT

JUDGMENT

1. Cai Jiupeng, a Chinese national who claims to have lived in Kenya since 2019 filed the instant Petition dated 11th April, 2022 supported by his affidavit in which he depones that the Respondents have unlawfully restrained him from leaving the Country over alleged tax arrears of Kshs. 83,561,358 owed by two companies, namely: Huiye Kenya Trading Co. Limited and Yingluo International Trading Co. Ltd.
2. He swore that while conducting investigations into matters tax against the two companies, the 1st Respondent summoned him to provide information on the said companies notwithstanding that he was neither a director nor a shareholder or a controlling member of any of the two companies.
3. He protests that the Respondents issued a Departure Prohibition Order against him contravention of Section 45 of the *Tax Procedures Act* as he only learnt about it when he was stopped at the airport when he wanted to leave the country to visit his family in China.
4. That his freedom of movement as enshrined under Article 39 of *the Constitution* was curtailed causing him substantial business loss. Further the Respondent’s action has also denied him an opportunity to visit and fend for his young family and elderly parents who are in China. He contends that the



Respondents' actions are an affront to his rights under Articles 27, 28, 39, 47 and 48 of the Constitution of Kenya and Sections 18 and 45 of the Tax Procedures Act.

5. He prays for the following reliefs:
 - a. A declaration that the Respondents' actions of restraining the departure of the Petitioner from Kenya over alleged tax arrears of Kshs.83,561,358 owed by Huiye Kenya Co. Limited and Yingluo International Trading Co. Limited amounts to a violation of the Petitioner's rights under Article 39 of the Constitution;
 - b. A conservatory order do issue restraining the Respondents from restricting the departure or entry of the Petitioner into Kenya over alleged tax arrears of Kshs.85,561,358 owed by Huiye Kenya Co. Limited and Yingluo International Trading Co. Ltd;
 - c. Costs of the Petition;
 - d. Any other or further reliefs that this Honourable Court considers appropriate and just to grant.

1st Respondent's Response

6. Moses Ado deponed the 1st Respondent's replying affidavit on the 25th of May, 2022.
7. He acknowledged that the Petitioner was a Chinese national and holder of passport number EC1475706. He swore that the Petitioner is the tax representative of Huiye Trading Company Limited, within the meaning of Section 15 of the Tax Procedures Act.
8. That the 1st Respondent carried out tax investigations on the said company following the information obtained from the Company's bank over suspicious activities in its bank account.
9. That the investigation revealed that together with Guo Wendong, the Petitioner was nominated as the Company's signatory to the said bank account into which a deposit of Kshs.67,373,900 and Kshs.98,144,650 had been made respectively.
10. That the 1st Respondent established that although there were sales made by the company, they had filed nil returns for corporation tax purposes and had failed to register for VAT obligation despite dealing with vatable sales that reached the threshold for VAT registration as required under Section 5 of the Value Added Tax Act, 2013.
11. The 1st Respondent swore that the investigations led to a reasonable ground to believe that the Petitioner being the tax representative of the Company was a flight risk and could leave Kenya without addressing the company's tax status as required by Section 15 of the Tax Procedures Act, 2015. This what led to the issuance of a Departure Prohibition Order against the Petitioner and any other signatory of the company's bank accounts in order to prevent revenue leakage.
12. The Respondent depones that it exercised the power to issue the prohibition order against the Petitioner as the tax representative of the Company in view of the power of attorney executed on 1st of April, 2019 and registered on the 5th April, 2019 in which the company vested wide ranging powers and responsibilities upon the Petitioner including taking charge of managing all the affairs of the company.
13. That the Petitioner failed to perform its obligations as a tax representative of the company hence the 1st Respondent was justified in issuing the Deportation Prohibition Order against the Petitioner since the taxes of the company where he is the tax representatives have not been remitted despite several requests



to him. The Respondent denied that it had violated any of the Petitioner's constitutional rights and urged this Court to strike out the Petition with costs.

2nd Respondent's Response

14. The 2nd Respondent's replying affidavit was deponed by Christine Kinyua on the 7th of February, 2022. The Respondent contended that the Petitioner had not demonstrated any violation and/or threatened violation of his fundamental rights and freedoms by the 2nd Respondent.
15. The 2nd Respondent explained that it received a letter from the 1st Respondent dated 9th June, 2021 asking it to restrain the Petitioner from leaving the country as a result of tax arrears and the Respondent acted on the said instructions by activating the Petitioner's name to in the immigration PISCES system.
16. The Respondent deponed further that it was acting under the powers granted to it under Section 45 (5) & (9) of the Tax Procedure Act that anyone with a departure prohibition order should not be granted immigration clearance and that no criminal or civil proceedings should be instituted against the 2nd Respondent for what was lawfully done. The Respondent urged this Court to find that the Petition is in bad faith and with no legal basis and dismiss the same with costs.

Submissions

Petitioner's Submissions

17. The Petitioner filed two sets of submissions, one dated 31st March, 2023 and rejoinder submissions dated 12th June, 2023. He submitted on the following issues for determination:
 - a. Whether the Petitioner's rights under the Constitution have been infringed;
 - b. Whether the Respondents should be restrained from restricting the Petitioner's departure or entry into Kenya over alleged tax arrears of Kshs.83,561,358 owed by Huiye Kenya Trading Company Limited and Yingluo International Trading Company Limited.
18. He submitted that Article 20(1) and (2) of the Constitution provides that the bill of rights applies to all and binds all state organs and all persons and that every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom. He relied on the case of Li Wen Jie & 2 Others Vs. Cabinet Secretary, Interior And Coordination Of The National Government & 3 Others (2017) EKLK and submitted that his freedom of movement under Article 29 (a) of the Constitution, right to non-discrimination under Article 27(4) of the Constitution and the right to fair administrative action under Article 47(1) of the Constitution. That he was neither a tax agent or a tax representative of the companies in question in accordance to Section 15(1)(b) of the Tax Procedure Act because he was neither the chief executive officer, the managing director, company secretary, treasurer, trustee, a resident director nor an officer in charge or purporting to act in such a position. That the departure prohibition order is a shakedown by the 1st Respondent instead of pursuing the controlling members or the representatives of the Companies in question.
19. On the second issue, the Petitioner submitted that the Respondents have not provided sufficient proof for the restriction as well as the connection between the Petitioner and the companies with the alleged tax arrears. He denied the allegation that he was a controlling member of the companies and quoted Section 18(4) of the Tax Procedure Act and submitted that he held neither of the positions outlined in Section 15 (1) (b) of the Act. He submitted further that the power of attorney was invalid because there was undue influence when he was executing the same and further that the donor did not sign the power



of attorney. That he was coerced and influenced to sign the said document without understanding the impact thereof. He stated that he was never served with the departure prohibition order and submitted that the Courts have as in the case of Seyed Hassan Dashti Khavidaki Vs. Kenya Revenue Authority & Another (2018) Eklr And Bare Vs. Kenya Revenue Authority & Another (2021) KEHC 458 KLR demonstrated that departure prohibition orders infringe on constitutional rights of an individual.

20. The Petitioner submitting that his petition has set out the specific provisions of *the Constitution* that have been infringed by the Respondent and even specified how the actions and omissions of the Respondents have given rise to the present petition therefore satisfying the threshold and requirements set out in ANarita Karimi Njeru Vs. Republic (1979) EKLK.
21. He concluded by submitted that the persons responsible for the alleged tax arrears owed by Huiye Trading Company Limited are well known to the Respondents and the efforts to recover the arrears should be focused on them. He urged this Court to allow the Petition as prayed.

1st Respondent's Submissions

22. The 1st Respondent's submissions are dated 10th May, 2023. They submitted on the following issues for determination:
 - a. Whether the Petition meets the threshold of Constitutional Petition
 - b. Whether the 1st Respondent has a basis for the issuance of the DPO;
 - c. Whether the Petitioner has proved the alleged violation on his constitutional rights.
23. The Respondent submitted that the Petitioner has not particularised how the provisions of *the Constitution* have been violated especially against the fact that he has never filed tax returns on behalf of the company as required of him under Section 16 of the Tax Procedure Act in his capacity as a tax representative. That the position of the law is that the burden of proof rests on who alleges and Article 22 of *the Constitution* provides for a precise claim and details with regards to the rights alleged to have been violated. The Respondent submitted further that the Petition has failed the test as was determined in the case of Anarita Karimi Njeru (supra) as well as the decision in Mumo Matemu Vs Trusted Society Of Human Rights Alliance & 5 Others (2013) EKLK.
24. On its second issue, the Respondent submitted that the departure prohibition order (DPO) was issued to the Petitioner in his capacity as a tax representative of the company which status was laid bare by the Power of Attorney executed on the 1st of April, 2019. The Respondent dissuaded this Court from engaging into the internal affairs of the company by interrogating the absence of resolutions to back the power of attorney which is not the dispute before this Court. That the Petitioner did not raise any complaints to discredit the power of attorney when it was used to open the bank accounts and is therefore estopped from contesting the said attorney and he is therefore a tax representative of the company according to Section 16 of the Tax Procedure Act which lists the obligations and responsibilities of a tax representative. That the Respondent's responsibility in collection of taxes for the Country and the departure prohibition order is issued where there is a risk of a tax payer leaving Kenya's jurisdiction without payment/accounting for the taxes and that foreigners with no strong ties to Kenya such as assets that can be auctioned or no family to come back to are considered flight risks. That the prohibition order is required to remain in force unless and until the person named therein pays in full the tax payable or makes an arrangement satisfactory to the Commissioner for the payment of the tax that is or will become payable by that person or by a company in which that person is a controlling member or a tax representative in satisfaction of Section 45(7) of the Tax Procedure Act.



25. The Respondent relied on the cases of Duncan Ziyani Murashiki Vs. Kra & Others Petition No. 176 Of 2018 And R Vs. Kra Exparte Allied Services & Logistics Ltd & 2 Others (JR NO. 190 OF 2019) and submitted that freedom of movement comes with a responsibility and the Petitioner had a responsibility of paying tax before leaving the country.
26. On its third issue, the 1st Respondent submitted that the Petitioner had failed to particularise how his constitutional rights were violated and that the 1st Respondent's actions were within the parameters of the law and all the tenets of *the Constitution* of Kenya. That the Petitioner's rights under Article 47 were not violated because before the DPO was issued there were investigations on the tax affairs of the company where the Petitioner was a tax representative and Section 45 of the Tax Procedure Act clearly states that the DPO is issued where the Commissioner reasonably believes that the tax payer may leave the country before the payment of the tax due. That despite summons being issued, the Petitioner declined to appear in respect of any of the summons issued.
27. The Respondent also submitted that the freedom of movement is not absolute and it was within its rights to issue the DPO to restrict movement rights of the Petitioner in his capacity as a tax representative of Huiye Trading Company Limited.
28. The Respondent urged this Court to find that the petition lacks merit and dismiss it with costs.

2nd Respondent's Submissions

29. The 2nd Respondent's submissions are dated 7th June, 2022. They submitted on the following issues for determination:
 - a. Whether the 2nd Respondent has violated the Petitioner's constitutional rights;
 - b. Whether the Petition is merited
30. On the first issue, the Respondent submitted that the Petition raises no cause of action against it and that the said Respondent had justifiable reasons for issuing the DPO against the Petitioner and they are statutorily mandated to prevent the person named in the order from departing Kenya. That the said petition does not meet the constitutional threshold established in the case of Anarita Karimi Njeru (supra). The Respondent continued to submit that both Respondents are protected by Section 45 of the Tax Procedure Act against civil and criminal proceedings following the lawful performance of the mandate under the said Section.
31. On whether the Petition is merited, the Respondent submitted that the 1st Respondent is given the authority to inquire into the business affairs of any person under the tax laws and therefore had reasonable grounds to inquire into the Petitioner's business affairs after finding out that he was a tax representative of the subject company based on the power of attorney issued in his favour. The Respondent relied on the case of Christopher Maina Kimaru Vs. Josephine Wairimu Ngari & Another (2016) EKLK and submitted that the Petitioner had no valid reasons to try and invalidate the power of attorney for lack of a legal basis. That the allegations that the Petitioner was coerced into signing the power of attorney cannot be used as a defence when a third party sought to rely on the attorney. That the Respondents acted within their lawful mandates and the Petitioner has not sufficiently established how they had violated his constitutional rights. The Respondent urged this Court to dismiss the petition for lacking legal and factual grounds to warrant the intervention of this Court.

Analysis And Determination

32. The issues that arise for determination in this petition are:



- a. Whether the petition meets the threshold of a constitutional petition;
- b. Whether the Respondents infringed the Petitioner's rights under *the Constitution*; and
- c. Who caters for the costs of the Petition.

Whether the petition meets the threshold of a constitutional petition;

33. The threshold required of a constitutional petition is that it must identify the constitutional rights that are infringed or violated and demonstrate with precision the manner of violation. That was the holding in the locus classicus case of Anarita Karimi Njeru Vs. Republic [1979] EKLR where the court stated thus:

“... if a person is seeking redress from the High Court on a matter which involves a reference to *the Constitution*, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed...”

34. The Court of Appeal in the case of Communications Commission Of Kenya & 5 Others Vs. Royal Media Services Limited & 5 Others [2014] EKLR also stated that:-

“Although article 22(1) of *the Constitution* gives every person the right to initiate proceedings claiming that a fundamental right or freedom has been denied, violated or infringed or threatened, a party invoking this article has to show the rights said to be infringed, as well as the basis of his or her grievance. This principle emerges clearly from the High Court decision in Anarita Karimi Njeru v Republic, (1979) KLR 154: the necessity of a link between the aggrieved party, the provisions of *the Constitution* alleged to have been contravened, and the manifestation of contravention or infringement. Such principle plays a positive role, as a foundation of conviction and good faith, in engaging the constitutional process of dispute settlement...”

35. This was also the holding in the case of Mumo Matemu Vs. Trusted Society Of Human Rights Alliance & 5 Others [2013] EKLR.

36. The Respondents have submitted that the Petitioner has not specified the rights that have been infringed. However, in paragraph 11, 12 and 15 of the Petition, there are particulars of how his freedom of movement was curtailed by the Respondents' Departure Prohibition Order. In this Court's assessment, the petition meets the threshold set out in the case of Anarita Karimi Njeru (supra).

Whether the Respondents infringed the Petitioner's rights under *the Constitution*

37. Freedom and security of the person and the freedom of movement is provided for in Articles 29 (a) and 39 of *the Constitution* respectively. *The Constitution* states thus:

29. Every person has the right to freedom and security of the person, which includes the right not to be: -

(a) deprived of freedom arbitrarily or without just cause.

39. Freedom of movement and residence

1. Every person has the right to freedom of movement

2. Every person has the right to leave Kenya.



3. Every citizen has the right to enter, remain in and reside anywhere in Kenya.

38. The Petitioner's case is that he is a Chinese national doing business in Kenya but has family residing in China. The Respondents issued a Departure Prohibition Order (DPO) preventing him from leaving the Country due to unsettled tax arrears of Kshs. 83,561,358 allegedly owed by Huiye Kenya Trading Co. Ltd and Yingluo International Trading Co. Ltd. He denied that he was a director, or controlling partner in any of the Companies and that he was only a mere employee who is not in control of the Companies or their revenue. Annexed to his supporting affidavit were the CR 12 forms of the Companies which do not list him as either Director or Shareholder of the said companies.
39. The 1st Respondent explained that the Petitioner held the power of attorney of the first company, Huiye Kenya Trading Co. Ltd (the Company). In the general power of attorney marked as MA6 attached to the 1st Respondent's Replying Affidavit, the director of the Company, XU Huogen, appointed the Petitioner and Guo Wendong to hold the power of attorney of the Company and among other things; open offices and manage the same noting to observe all the governing laws of Kenya, to pay all taxes, rates, rents, expenses and charges and other outgoings whatsoever from time to time payable in respect of the Company. This power of attorney is what the 1st Respondent submits empowered them to order the DPO against the Petitioner until the tax arrears are paid. The Petitioner attempted to discredit the said power of attorney as having not been executed by the Donor, however a look at the said document indicates that the Director, XU Huogen signed the document and he was also the Donor. This argument therefore fails to hold any water as the power of attorney was executed by all parties and registered with the on the 2nd of April, 2019 making it a valid document.
40. It is on the strength of this power of attorney that the 1st Respondent describes the Petitioner as a Tax Representative of the Company in accordance to Section Section 15 (1) (i) of the [Tax Procedures Act](#) which provides that:
- “ a person can only be a tax representative of a non - resident person if they are in control of the non - resident's person's affairs in Kenya including being a manager of the business of that non-resident person.”
41. A look into the Company's resolution to open a bank account annexed to the 1st Respondent's affidavit marked “MA-1” confirms that the Petitioner alongside XU Huogen And Guo Wendong were to be the signatories of the Company's bank account which account was opened in Stanbic Bank with the Petitioner and Guo Wendong filling and signing the said forms (“MA-1” of the 1st Respondent's Replying Affidavit). The Bank statements (“MA-2”) also prove that the Petitioner deposited and withdrew money into the said account on behalf of the Company. The power of attorney and the Petitioner's resultant actions are sufficient proof that he acted for and behalf of the company.
42. Departure prohibition orders are issued in accordance to Section 45(2)& (3) of the [Tax Procedures Act](#) provides that:-
- “The Commissioner may issue a departure prohibition order, in writing, to the Director in relation to a person to who this section applies stating-
- a. The name and address of the person; and
 - b. The amount of tax that is or will become payable by the person or by a company in which the person is a controlling member or tax representative.”

“45



(3) The Commissioner shall, as soon as practicable after issuing a departure prohibition order under subsection (1), serve a copy of the order on the person named in the order.”

43. The Petitioner conceded that he was summoned by the 1st Respondent. He was aware of the investigations into the Company before the said prohibition order was issued. The Court in the case of Bare Vs. Kenya Revenue Authority & Another (constitutional Petition 45 Of 2020) [2021] Kehc 458 (klr) (constitutional And Human Rights) (25 February 2021) (judgment) laid down the requirements for issuance of a departure prohibition order as well as the ingredients thereof.
44. The 1st Respondent’s letter to the Company is dated 23rd November, 2021 and referenced KRA/IED/CISN/INQ/466/2019 and it outlined the tax arrears owed by the Company and invited the Directors to lodge a notice of objection within 30 days.
45. The Petitioner has not provided any proof that he responded to the said letters or the summons nor evidence on how he intends to address the issue of the tax arrears. There was thus a reasonable basis for the Respondent to issue a Departure Prohibition Order as a means of enabling the State enforce the recovery the taxes that were due from the Petitioner as the tax representative of the said companies. In Duncan Ziyani Murashiki Vs. Commissioner General, Kenya Revenue Authority & 3 Others [2021] EKLK the Court held that:

“70. As already stated, Section 45 of the TPA serves the lawful purpose of ensuring that the State fulfills its constitutional mandate of ensuring fair distribution of the tax burden. The departure prohibition order is a tool for enforcing tax obligations on those who may wish to evade taxes. The Petitioner has not shown that there are other reasonable alternatives which the State can use to collect taxes from those who may want to leave the country without meeting their tax obligations. The provision is therefore compliant with the requirements of Article 24 of *the Constitution* on limitation of certain rights. The rights that are limited by the deployment of a departure prohibition order are rights which can be limited as long as the provisions of Article 24 of *the Constitution* have been complied with.”

46. The Respondents acted within their mandate in putting in motion preventive measures aimed at curbing possible losses of State’s revenue through tax evasion considering that the Petitioner is a tax representative of a Company that had substantial amount of tax arrears. Article 24 of *the Constitution* allows for the limitations of rights and fundamental freedoms to the extent that the limitation is reasonable and justifiable and as authorised by law.
47. This Petition lacks merit and is thus dismissed with costs to the Respondents.

DATED, SIGNED AND DELIVERED AT MILIMANI THIS 4TH DAY OF FEBRUARY, 2025.

L N MUGAMBI

JUDGE

