



**Onduto v County Secretary, Nairobi City County & 3 others
(Constitutional Petition E196 of 2022) [2025] KEHC 1525 (KLR)
(Constitutional and Human Rights) (14 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1525 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
CONSTITUTIONAL PETITION E196 OF 2022**

EC MWITA, J

FEBRUARY 14, 2025

BETWEEN

COLPHAX OBIERO ONDUTO PETITIONER

AND

COUNTY SECRETARY, NAIROBI CITY COUNTY 1ST RESPONDENT

INSPECTOR GENERAL OF POLICE 2ND RESPONDENT

KENYA REVENUE AUTHORITY 3RD RESPONDENT

HON ATTORNEY GENERAL 4TH RESPONDENT

JUDGMENT

1. The petitioner is the registered owner of motor vehicle registration KCX 560V Toyota Fielder. He filed this petition against the respondents, claiming violation Articles 3, 19, 21, 22, 24, 25 (a) & (c), 27, 28, 32, 34, 47, 50(1) & (2), 159, 249 and 252 of *the Constitution* and sought declarations to that effect and compensation.
2. The petitioner's case is that on 13th April 2022, he drove to the Nairobi Central Business District (CBD) and parked his vehicle near City Hall. As parking attendants were not around, he rushed to answer the call of nature. On coming back, he found the vehicle being towed. He unsuccessfully explained why he had not paid parking fees, but the 1st respondent's officers would hear none of it. The vehicle was towed and detained at a parking yard. The officers left and asked him to return at noon.
3. When the petitioner went back at noon, he found different officers. He was issued an invoice for Kshs. 5,000 which included penalty for late payment which he paid through the online paying system. When



- he went to collect the vehicle, he was told to wait for the officers who had clamped and towed the vehicle to come and release the vehicle.
4. The petitioner stated that when the officers came, they changed the story and alleged that he had parked the vehicle at a parking reserved for Members of the County Assembly. The officers demanded a bribe of Kshs. 90,000 to release the vehicle. He declined and went home.
 5. The petitioner went back the following day but was again told to wait for the officers who towed the vehicle. The officers did report on that day, but one of them called and asked him to send the Kshs. 90,000 through M-pesa, but he declined.
 6. The petitioner asserted that after visiting the yard several times without success, he engaged his lawyers to deal with the matter. He then called the officer who asked him to meet them at Times Tower. At Times Tower, he found the two officers. They told him that the vehicle was attracting daily storage charges of Kshs. 2,500 which they insisted he had to pay from the date the vehicle was impounded to the date of its release.
 7. On 25th April 2022 at around noon, a Mr. Mwangi from the 3rd respondent (KRA), called and asked him to go to Times Tower so that they could negotiate. At Times Tower, he was detained by police officers in a room and asked to pay Kshs. 90,000 or be charged in court for parking at VIP Parking lot. He was only released after he requested to be released to go and look for the money.
 8. The petitioner pleaded that he is under threat of being arrested and charged with crimes not known to law and offences he never committed. He further pleaded that he suffered inconvenience when the vehicle was detained because it was his only source of livelihood.
 9. The petitioner argued that there was no justification for the respondents' actions. He maintained that although he paid Kshs. 5,000 as late packing fee, his vehicle was not released. He argued that there is no law or by law reserving any parking for Members of the County Assembly and, therefore, he had the right to use any free parking space available.
 10. The petitioner asserted that forcing him to pay a bribe was an illegality which should attract severe punishment from this court to deter other officers who may want to engage in the vice. His detention at Times Tower, he argued, was illegal and meant to intimidate and force him into submission, a violation of his rights which this court has jurisdiction to intervene and redress. He relied on *Peter Ndegwa Kiai t/a Pema Wines & Spirits v Attorney General & 2 others* [2021] KECA 328 (KLR) where the court awarded Kshs 5,000,000.

1st respondent's case

11. The 1st respondent opposed the petition through grounds of opposition and written submissions. The 1st respondent contended that the petition is based on falsehoods; the petitioner is guilty of material non-disclosure and the petition is an abuse of the court process.
12. The 1st respondent relied on the decisions in *Samson Gwer & 5 others v Kenya Medical Research Institute & 3 others* [2020] eKLR; *Mohammed Mahamud Ali v Independent Electoral and Boundaries Commission* [2019] eKLR and *Humphrey Mutegi & 9 others v Chief of the Kenya Defence Forces & another* [2017] eKLR to argue that there is no evidence to support the petition.
13. According to the 1st respondent, the petitioner made generalized allegations of violations of his rights, which cannot sustain his claim before this court. The 1st respondent relied on *Halima Haji Sarah v Multiple Hauliers (E.A) Limited & another* [2022] eKLR for the argument that the petitioner failed to disclose material facts, namely; that he had a fake VIP parking sticker. The petitioner should not be



allowed to benefit from his wrong doing. The 1st respondent urged the court to dismiss the petition with costs.

2nd and 4th respondents' case

14. The 2nd and 4th respondents also opposed the petition through grounds of opposition and written submissions. They contended that the petition lacks clarity and precision by failing to set out the alleged violations. Further, that the claim is mainly against the 1st and 3rd respondents who were acting in their private capacities and not on behalf of the national government.
15. The 2nd and 4th respondents asserted that the petitioner did not adduce evidence to support the alleged detention, threats or intimidation. The petitioner did not also discharge the burden of proof as required by sections 106 and 107 of the *Evidence Act*. They relied on the decisions in *Rheir Shipping Co. SA v Edmunds* [1955] 1 WLR 948 (at 955) and *Hellen Wangari Wangechi v Carumera Muthini Gathua* [2005] eKLR.
16. The 2nd and 4th respondents again relied on the decision in *Cowper v Cowper* [1734] 2 P WNS 720 that the petitioner is not entitled to the reliefs sought. They further relied on *Republic v Rosemary Wairimu Munene (ex parte applicant) v Ihururu Dairy Farmers Co-operative Society Ltd* [2014] eKLR and urged the court to dismiss the petition with costs.

3rd respondent's case

17. The 3rd respondent opposed the petition through a replying affidavit sworn Jonah Mwangi (Mr. Mwangi) and written submissions. The 3rd respondent stated that by Deed of Transfer of Functions executed between the National Government, through the Ministry of Devolution, Arid and Semi-Arid Lands and the Nairobi City County Government (the 1st respondent) on 25th February 2020, the 3rd respondent was appointed (Gazette Notice No. 1967 dated 6th March 2022), as the principal agent for revenue collection on behalf of the 1st respondent for a period of twenty-four (24) months from 16th March 2020. The appointment was extended for a further period of six (6) months through Gazette Notice No. 2662 dated 11th March 2022.
18. The 3rd respondent stated that a Service Level Agreement was subsequently executed and section 5.3 thereof set out the 3rd respondent's functions which included; revenue assessments; revenue accounting, reconciliation & reporting; compliance monitoring; enforcement of compliance and debt enforcement.
19. The 3rd respondent contended that on 13th April 2022, while the 1st and 2nd respondent's officers were conducting routine enforcement operations along Tsavo Street within Nairobi CBD, they notice that the petitioner had not paid parking fee for his vehicle. The vehicle had a VIP Parking Sticker but on verifying its authenticity, it was discovered that the registration number of the vehicle was not on the authorized list of VIP vehicles.
20. The 1st respondent's enforcement officers were instructed to secure the vehicle by clamping it to enforce payment of parking fees. In the course of clamping the vehicle, the petitioner arrived but could not explain the source of the VIP sticker. The vehicle was towed to the general stores yard for safe custody in accordance with section 53(1) of the Nairobi City County Transport Act, 2020 awaiting further investigations and payment of appropriate parking charges.
21. The petitioner went to KRA and lied to an intern attached to parking section that his vehicle had been impounded for non-payment of daily parking fee. The intern proceeded to facilitate him to make the payment of Kshs. 5,000 and issued a release note.



22. Mr. Mwangi later received a call from the officer in charge of the General Stores Yard informing him that the petitioner had gone to collect his vehicle with a payment receipt of Kshs. 5,000. On request from the 2nd respondent's officers, Mr. Mwangi instructed the officer in charge of the yard not to release the vehicle. The petitioner was directed to report to the 2nd respondent's officers to record a statement regarding the acquisition of the VIP parking sticker.
23. The petitioner, after consulting with the supervisor, agreed to pay for one-year seasonal ticket. The 3rd respondent generated a one-year seasonal invoice which was sent to the petitioner for payment. However, the petitioner left the security desk and lied to the police officers that he had been asked to go to the 3rd respondent's offices and left before paying for the ticket. The supervisor of the yard was instructed not to release the vehicle without permission.
24. The 3rd respondent denied that there was a demand for a bribe of Kshs. 90,000. According to the 3rd respondent, the petitioner was to pay Kshs. 82,500 which included one-year's seasonal ticket, impounding charges, storage charges and breakdown charges but not a bribe. The vehicle was lawfully impounded and detained over a counterfeit VIP parking sticker
25. The 3rd respondent relied on Republic v Town Clerk of Webuye County Council & Another [2014] eKLR to argue that it is not the proper respondent in this matter since its mandate as revenue collector for the 1st respondent had had been returned to the 1st respondent
26. The 3rd respondent also argued that the petitioner should have reported the alleged offence of demanding a bribe to the Ethics and Anti-Corruption Commission for investigation and action. It relied on sections 6(1) (a) and 20(1) of the Bribes Act, section 9 (4) of the *Fair Administrative Action Act* and section 8 of the *Commission on Administrative Justice Act*.
27. The 3rd respondent again relied on, among others, the decisions in Speaker of National Assembly v Njenga Karume [1992] KLR 21; Geoffrey Muthinja Kabiru & 2 others v Samuel Munga Henry & 1756 Others [2015] eKLR; The Registered Trustees, Kenya Railways Staff Retirement Benefits Scheme v Chairman, Rent Restriction Tribunal & 99 Others [2018] eKLR; and Night Rose Cosmetics (1972) Ltd v Nairobi County Government & 2 others [2018] eKLR.
28. The 3rd respondent maintained that the petition does not raise a constitutional issue because the petitioner only cited provisions of *the Constitution* without demonstrating how those provisions were violated. Reliance was placed on Anarita Karimi Njeru v R [1979] eKLR and Mumo Matemu v Trusted Society of Human Rights Alliance [2013] eKLR.
29. It was the 3rd respondent's position, that the issue of bribery is not a constitutional matter as there are constitutional institutions with the mandate to investigate and take action on such matters. The petitioner did not show how the 3rd respondent violated those provisions. The 3rd respondent relied on, among others, the decisions in KKB v SCM & 5 others [2022] KEHC 289 (KLR); Communication of Kenya & 5 others v Royal Media Services Ltd & 5 others [2015] eKLR; Kenya Builders & Concrete Company Limited v National Government Constituency Development Fund Committee- Embakasi South & another [2017] eKLR and S v Boesak (CCT25/00) [2000] ZACC 25;2001 (1) BCLR 36.
30. The 3rd respondent maintained that the vehicle was lawfully towed as permitted by section 53(1) of the Nairobi City County Transport Act pending investigations on how the petitioner acquired a fake VIP parking sticker.



Determination

31. I have considered the petition, responses and arguments by parties. I have also considered the decisions relied on. The issue for determination is whether the petitioner's rights and fundamental freedoms were violated. If the answer to this issue is in the affirmative, whether he should be compensated, and what is the quantum.
32. On 13th April 2022, the petitioner parked his vehicle within the Nairobi CBD and because parking attendants were not around, he rushed to relieve himself. On coming back, he found the vehicle being towed. His plea that the vehicle should not be towed was unsuccessful. The vehicle was towed away and detained at a parking yard.
33. The petitioner's effort to have it released on that day failed and he went home. The following day he found different officers who issued him with an invoice of Kshs. 5,000 for parking fee and penalty which he paid but the vehicle was not released.
34. According to the petitioner, the story later changed and the officers alleged that he had parked the vehicle at a parking reserved for Members of the County Assembly. The officers demanded a bribe of Kshs. 90,000 to release the vehicle which he declined. He followed up the matter but was asked to go to Times Tower where he was detained by police officers and asked to pay the Kshs. 90,000 or be charged in court for parking at VIP Parking lot. He was released after he requested to be allowed to go and look for the money.
35. The petitioner stated that he was now under threats of being arrested and charged with crimes not known to law and offences he never committed. Due to the treatment he was subjected to, his rights were violated. He also suffered inconvenience when his vehicle, the source of his livelihood, was detained.
36. The respondents denied violating the petitioner's rights and fundamental freedoms. They stated that the petitioner had parked at a VIP designated parking and when the ticket was checked, the vehicle was not on the list of VIP vehicles. It was towed to a yard and the petitioner was asked to report to police to explain on how he got the VIP parking sticker.
37. Regarding the claim of demand of a bribe of Kshs. 90,000, the respondents denied the alleged demand for a bribe. They stated that the petitioner had agreed to pay for a seasonal ticket at Kshs. 82,500 inclusive of the penalty and an invoice for that amount was generated. There was no demand for a bribe of Kshs. 90,000.
38. The petitioner filed this petition claiming violation of his rights and fundamental freedoms. Under Article 19 of *the Constitution*, the Bill of Rights is an integral part of Kenya's democratic state and is the framework for social, economic and cultural policies. The Article underscores the fact that the purpose of recognising and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and realisation of the potential of all human beings.
39. In that respect, Article 22(1) grants every person the right to institute proceedings claiming that a right or fundamental freedoms in the Bill of Rights has been denied, violated or infringed, or is threatened. When so moved, Article 23(1) read with Article 165(3) confers on the Court jurisdiction to determine an application for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom.



40. The petitioner exercised this right and moved this Court alleging violation and threat to violate his rights and fundamental freedoms. According to the petitioner, his vehicle having been towed and detained, he was asked to pay a bribe to have it released. He was also detained by police officers and is being threatened with arrest and prosecution for no-existent offences and for crimes he did not commit. The respondents denied the petitioner's allegations and maintained that the petitioner did not only fail to pay parking fees, he had a fake VIP parking sticker whose source was to be investigated.
41. A claim for violation of rights and fundamental freedoms is a matter of fact that a petitioner has to prove to the satisfaction of the Court. The petitioner admitted that he had not paid parking fee and that was why the vehicle was towed away.
42. The respondents' position was that the petitioner did not only fail to pay parking fees, he had a VIP parking sticker yet his vehicle was not on the list of VIP vehicles allowed to have such stickers. The respondents again denied that the petitioner was detained or that a bribe was demanded from him.
43. The facts of this petition are disputed. Whereas the petitioner has his narrative, the respondents have their own. Whereas the petitioner again argued that he was given an invoice for Kshs. 5000 for parking fee inclusive of penalty, the respondents argued that the invoice was generated by an intern after being misled by the petitioner.
44. The petitioner again argued that he was detained by police officers at Times Tower as the officers pressed him to pay a bribe of Kshs. 90,000, but the respondents contended that the petitioner was to explain how he obtained the VIP parking sticker. Further, that petitioner had agreed to pay for a seasonal ticket at Kshs. 82,500 and an invoice was generated for that amount.
45. It has long been held that there must be precision in constitutional litigation to enable parties respond to the issues at hand so that the court can make the correct determination on those issues. That is, a petitioner must plead with as much precision as possible on the articles of *the constitution* said to have been violated and the manner of the alleged violation.
46. In *Phillips & others v National Director of Public Prosecutions* [2005] ZACC 15; 2006(1) SA 505(CC), the Constitutional Court of South Africa stated;

The constitutional challenge should be explicit, with due notice to all affected. This requirement ensures that all interested parties have an opportunity to make representations; that the relevant evidence, if necessary, be led, and that the requirement of separation of powers be respected.
47. The Supreme Court reiterated this position in *Communication Commission of Kenya & 5 others v Royal Media Services Limited & 5 others* [2014] eKLR stating (para 349) that "...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....plays a positive role, as a foundation of conviction and good faith, in engaging the constitutional process of dispute settlement..."
48. The above decisions emphasis the point that a party claiming violation of rights and fundamental freedoms should plead with precision, the constitutional rights violated and the manner of violation so that there is a link between the alleged violation, the rights infringed and the constitutional provisions violated so that the respondent is put on notice over the petitioner's claim in order to respond appropriately.
49. In this petition, the petitioner stated that his vehicle was towed away and detained for alleged failure to pay parking fee. Detention of the vehicle inconvenienced him since it was his source of livelihood. The



- towing of the vehicle and its detention could not amount to a violation of the petitioner's his rights and fundamental freedoms since there is a law that governs parking and related fees within the 1st respondent's jurisdiction. Any action taken in violation of such laws can only give rise to a civil claim.
50. Secondly, the petitioner stated that he was detained at Times Tower and asked to pay a bribe a claim the respondents denied. The respondents maintained that the petitioner had a "fake" VIP parking ticket an issue he had to explain to the police. The respondents further denied that the petitioner was asked to pay a bribe.
51. If indeed the respondents' officers demanded a bribe from the petitioner, he should he reported the matter to the appropriate authorities for investigation and action. The petitioner did not state anywhere in his pleadings that he had reported the issue of soliciting of a bribe so that the issue could be investigated by the relevant agency to establish the veracity of that claim and take appropriate action. This could not again be raised in a constitutional petition since soliciting a bribe does not fall in the category of violation of rights and fundamental freedoms. If investigated and found to be true, soliciting a bribe is a crime on its own subject to prosecution under a known law. It cannot be the basis of a constitutional petition claiming violation or threat to violate a right and fundamental freedom.
52. The respondents' position was that the petitioner was found with a VIP parking ticket or fake VIP ticket which he was required to explain and that was why he was wanted by the police. The petitioner did not at first admit that he had a VIP parking ticket. This came later when he stated that the officers changed the story and introduced the issue of VIP parking ticket. He did not either deny that he had the ticket in question.
53. As the Court stated in *Grays Jepkemoi Kiplagat v Zakayo Chepkonga Cheruiyot* [2021], for a constitutional petition to be sustainable it must, at a minimum, satisfy a basic threshold. It must with some reasonable degree of precision identify the constitutional provisions that are alleged to have been violated or threatened with violation. There has to be some particulars of alleged infringements to enable the respondents respond or answer the allegations.
54. In *Godfrey Paul Okutoyi & others v Habil Olaka & Another* [018] eKLR, this court stated:
- (65) It is time it became clear to both litigants and counsel that rights conferred by statute are not fundamental rights under the Bill of Rights and, therefore, a breach of such rights being a breach of an ordinary statute are redressed through a court of law in the manner allowed by that particular statute or in an ordinary suit as provided by procedure. It is not every failure to act in accordance with a statutory provision or where action is taken in breach of a statutory provision that should give rise to a Constitutional petition. A party should only file a constitutional petition for redress of a breach of *the Constitution* or denial, violation or infringement of, or threat to a right or fundamental freedom. Any other claim should be filed in the appropriate forum in the manner allowed by the applicable law and procedure.
55. Again, in *Bernard Murage v Fine Serve Africa Ltd & others* [2015] eKLR the Court reiterated that "Not each and every violation of the Law must be raised before the High Court as a constitutional issue. Where there exist an alternative remedy through statutory law, then it is desirable that such a statutory remedy should be pursued."
56. And the Court of Appeal observed in *Gabriel Mutava & 2 others v Managing Director, Kenya Ports Authority* [2016] eKLR as follows:
- Constitutional litigation is a serious matter that should not be sacrificed on the altar of all manner of frivolous litigation christened constitutional when they are not and



would otherwise be adequately handled in other legally constituted forums. Constitutional litigation is not a panacea for all manner of litigation; we reiterate that the first port of call should always be suitable statutory underpinned forums for the resolution of such disputes.

57. Taking a cue from the above decisions, it is the view of this court, that as the facts in this petition are disputed each side having its own position regarding what happened, they do not disclose a clear case of violation of rights and fundamental freedoms. The issues that arise from the parties' positions do not persuade this court that there was, prima facie, violation of the rights and fundamental freedoms guaranteed by *the Constitution*. Rather, these are issues that fall for determination in different forums other than this court.

Conclusion

58. Having considered the pleadings and arguments by parties, the conclusion I come to, is that the facts in this petition do not constitute a constitutional petition and do not also reveal violation of rights and fundamental freedoms.

Disposal

59. The petition is declined and dismissed. Costs being discretionary, each party will bear their own costs.

DATED AND DELIVERED AT NAIROBI THIS 14TH DAY OF FEBRUARY 2025

E C MWITA

JUDGE

