



**Wanjigi v Firearms Licensing Board & 2 others (Petition E427 of 2024)  
[2025] KEHC 2813 (KLR) (Constitutional and Human Rights) (20 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 2813 (KLR)

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

**PETITION E427 OF 2024**

**AB MWAMUYE, J**

**FEBRUARY 20, 2025**

**IN THE MATTER OF ARTICLES 1, 2, 3, 10, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 36,  
38, 39, 40, 47, 48, 49, 57, 165(3), 258 OF THE CONSTITUTION OF KENYA, 2010  
AND RULE 4 OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS  
AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013**

**BETWEEN**

**JIMI WANJIGI ..... PETITIONER**

**AND**

**FIREARMS LICENSING BOARD ..... 1<sup>ST</sup> RESPONDENT**

**DIRECTOR OF PUBLIC PROSECUTION ..... 2<sup>ND</sup> RESPONDENT**

**DIRECTOR OF CRIMINAL INVESTIGATIONS ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. The Petitioner, filed this Petition challenging the revocation of his Firearm Certificate No. 9522, issued by the 1<sup>st</sup> Respondent, the Firearms Licensing Board. The Petitioner avers that the revocation was done without due process, in violation of his fundamental rights under Article 10, 35, 47 and 232(1) of *the Constitution* of Kenya, 2010.
2. The Respondents oppose the Petition, arguing that the revocation was lawful, necessary for public safety, and not unconstitutional. They further argue that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents (DPP and DCI) were wrongly enjoined since they had no role in firearm licensing.
3. The Petitioner duly applied for the licencing of the firearms he had lawfully acquired and was issued with a firearm certificate on 12<sup>th</sup> June 2014 which was subsequently lawfully renewed every year.



4. The Petitioner avers that for the duration that he has been a licensed firearm holder, he has never been involved in any act that would warrant the withdrawal or revocation of his firearms licence.
5. That in 2017, the 1<sup>st</sup> Respondent unilaterally attempted to revoke the said Firearm certificate, which action the Petitioner challenged in court through JR NO.46 OF 2018 and Petition No.520 of 2017.
6. On 19<sup>th</sup> August 2024 a verbal communication was made to the Petitioner revoking the firearm certificate despite the ongoing court proceedings and court orders barring the Respondent from revoking the certificate.
7. On the basis of the facts stated above, the Petitioner filed this Petition dated 19<sup>th</sup> August 2024 seeking the following reliefs: -
  - a. A declaration be and is hereby issued that the Respondents' action of purporting to limit the rights of the Petitioner to liberty, freedom of movement and human dignity are unconstitutional, null and void;
  - b. A declaration be and is hereby issued that the 1<sup>st</sup> Respondents' action of purporting to revoke the Petitioner's Firearms License No. 9522 without due regard to the law are accordingly null, void and of no effect in law;
  - c. A declaration be and is hereby issued restraining the Respondents from instituting, preferring, continuing and or registering any criminal charge or continuing any intended criminal prosecution of the Petitioner.
  - d. An order of certiorari to move into this court for purposes of being quashed, a decision of the 1<sup>st</sup> Respondent to revoke the Applicant's Firearm Certificate 9522 verbally communicated to the Applicant on 19<sup>th</sup> August 2024;
  - e. An order prohibiting the registration and or institution or continuing with any criminal prosecution against the Applicant in respect to Firearm Certificate No. 9522 and all the Firearms duly licensed therein;
  - f. Cost of this Petition
  - g. Any further Relief or orders that this Honourable court may deem just and fit to grant.
8. The Petitioner's Notice of Motion dated 19<sup>th</sup> August, 2024 sought the grant of the following substantive prayers, to wit:
  - "a. That pending the hearing and determination of this Application and Petition, a conservatory order be and is hereby issued restraining the Respondents from instituting, preferring, continuing and or registering any criminal charges or continuing any intended criminal prosecution of the Applicant in respect to Firearms registered under the Applicant's Firearm's Certificate No.9522. If any criminal charges have been registered and preferred against the Applicant, the same be stayed pending the hearing and determination of this instant application.
  - b. That pending the hearing and determination of this application there be an order staying the decision the Respondents to revoke the Applicant's Firearms Certificate No.9522 verbally communicated on 19<sup>th</sup> august 2024."



9. This Court preliminarily considered the Certificate of Urgency, chamber summons, the Notice of Motion and the Supporting Affidavit all dated 19<sup>th</sup> August, 2024 and found that the Application raised constitutional, legal and factual issues that met the threshold to warrant the immediate issuance of ex-parte interim orders. Consequently, this Court issued interim conservatory orders dated 20<sup>th</sup> August, 2024 to wit;
- a. The Application dated 19/08/2024 be and hereby certified urgent and shall be heard on a priority basis.;
  - b. Pending the hearing and determination of the Application dated 19/08/2024, a conservatory order be and is hereby issued restraining the Respondents, jointly and/or severally, from limiting, suspending, or revoking Firearms Certificate No.9522 held by the Applicant or confiscating, retaining, or interfering with any firearms or accessories registered or owned by the Petitioner/Applicant pursuant to Firearms Certificate No.9522.
  - c. Pending the hearing and determination of the Application dated 19/08/2024, a conservatory order be and is hereby issued restraining the Respondents jointly and/or severally, from instituting, preferring or continuing any charges or criminal prosecution of the Petitioner/Applicant with respect to any firearms or accessories registered or owned by the Petitioner/Applicant pursuant to firearms Certificate No.9522; and if any charges or criminal prosecutions arising from or related to Firearms Certificate No.9522 that have been instituted, preferred, or are continuing the same be and hereby stayed pending the hearing and determination of the Application dated 19/08/2024.
10. On the 26/09/2024, this Honourable Court issued orders by consent of parties which confirmed and extended the Orders dated 20/08/2024 until hearing and determination of the Petition.
11. In opposition to the application, the 2<sup>nd</sup> Respondent filed Grounds of Opposition raising the following grounds:
- a. That the institution of the instant Application and Petition amounts to an abuse of the court process as there is a related Constitutional Petition pending before this court which is yet to be heard and determined.
  - b. That the instant Application and Petition is misplaced, misconceived and bad in law as it does not disclose how the 2<sup>nd</sup> Respondent herein has threatened or violated and infringed the Applicant's fundamental rights and freedoms under articles 24, 27, 28, 29, 47, 49 and 50 of *the Constitution* as averred.
  - c. That the Application and Petition fails to set out with reasonable degree of precision that of which the Petitioner complains, provisions said to have been infringed or violated (even where the provisions have been mentioned, it's not clearly demonstrated how they have been violated) and the manner in which they are alleged to have been infringed or violated by the 2<sup>nd</sup> Respondent as was enunciated in the celebrated case of Anarita Karimi -Versus-Republic (No.1) (1979 1 KLR 154 and Mumo Matemu -Versus-Trusted Society of Human Rights Alliance, Civil Appeal No.290 of 2012(2013) hence should be dismissed.
  - d. That the Applicant/Petitioner herein appears to have failed to appreciate the 2<sup>nd</sup> Respondent's mandate as provided under article 157 of *the Constitution* of Kenya, 2010 and as amplified under the Office of the Director of Public



Prosecutions (ODPP) Act, 2013, its mandate does not include issuance of firearm licences or prevention and detection of crime or apprehension of offenders or maintain law and order or investigation of crime as provided under section 24 as read with section 35 of the National Police Service Act No.11A of 2011 since the Applicant/Petitioner is complaining about revocation of his firearms licences and the attempt by the police to have him arrested over issues relating to his possession of some firearms, matters that are not within the purview of the 2<sup>nd</sup> Respondent.

- e. That the instant Application and Petition is well orchestrated move by the Petitioner to invite the court to disturb, interfere and disrupts the 1<sup>st</sup> and 3<sup>rd</sup> Respondents and possibly the 2<sup>nd</sup> Respondent herein from performing their constitutional and statutory mandate, the 1<sup>st</sup> Respondent obligated to regulate ownership of firearms hence issues licences on the same, the 3<sup>rd</sup> Respondent is mandated to prevent and detect crime, apprehend offenders, maintain law and order or investigate cases which are prosecuted by the 2<sup>nd</sup> Respondent hence the court should decline this unlawful invitation by the Applicant/Petitioner.
12. The 3<sup>rd</sup> Respondent filed a Replying affidavit dated 28<sup>th</sup> August 2024 sworn by Michael K. Sang, the Commissioner of Police. In the said affidavit, he avers that the Petitioner was issued Firearm Certificate No. 9522 on 12<sup>th</sup> June 2012 by the 1<sup>st</sup> Respondent but has failed to renew his firearm certificate since 2018 as required under Section 14 of the Firearms Licencing Act.
  13. He acknowledges the existence of JR NO.46 of 2018 and Petition No.520 of 2017 and the subsequent court orders but avers that the Petitioner has not renewed his licence and remains in possession of the said firearm and ammunitions illegally.
  14. He avers that the Petitioner through a letter referenced FLB/NBI/WANJIGI.JW/11 was informed of the revocation of firearm certificate No. 9522 and required to surrender all the firearms under the referenced certificate number within 14 days but failed to comply and upon the lapse of the 14 days on 14<sup>th</sup> August 2024, another letter was sent to the Petitioner by the 1<sup>st</sup> Respondent requesting to take legal action against the Petitioner for failing to heed to the notice dated 30<sup>th</sup> July 2024.
  15. The 2<sup>nd</sup> Respondent contended that it has no role in issuing firearms licences and is only responsible for prosecution while the 3<sup>rd</sup> Respondent argued that its role is to investigate crimes, and the Petitioner failed to demonstrate any wrongdoing on its part.
  16. The 1<sup>st</sup> Respondent submitted that it acted within its mandate in regulating firearms ownership and revoking licences in accordance with the law and that the revocation was done in the interest of public safety and national security while also asserting that the Petitioner failed to demonstrate that the decision was made in bad faith or outside the law.
  17. I have considered the Petition, the responses and the written submissions and it emerges that the issues for determination are as follows:
    - a. Whether the Petition meets the specificity threshold required in constitutional petitions.
    - b. Whether the Respondents' actions violated the Petitioners constitutional rights.
    - c. Whether the reliefs sought should be granted.



### **Whether the Petition meets the specificity threshold required in constitutional petitions.**

18. In regards to this issue, the courts have established a clear threshold for specificity in constitutional petitions. This principle was first articulated in *Anarita Karimi Njeru v Republic (No. 1) (1979) KLR 154*, and later reinforced in *Mumo Matemu v Trusted Society of Human Rights Alliance (2013) eKLR*.
19. In the case of *Anarita Karimi Case (1979)*, the Court held that a person seeking redress for constitutional violations must clearly and precisely state: The specific constitutional provisions alleged to have been violated, the manner in which those provisions have been violated and the facts or evidence supporting the claim of violation. Similar position has been held in *Mumo Matemu Case (2013)*, where the Court of Appeal emphasized that a petition must be pleaded with specificity to enable the court to understand and determine the alleged constitutional violations. The Court rejected vague and general claims, stating that a petitioner must clearly demonstrate how specific rights were violated.
20. The 2<sup>nd</sup> Respondent (DPP) and 3<sup>rd</sup> Respondent (DCI) argue that the Petition lacks specificity and should be dismissed because: the Petitioner has not clearly demonstrated how the Respondents violated his rights, that the Petition does not set out the alleged violations with precision, failing the *Anarita Karimi* test, the Petitioner wrongly enjoined the DPP and DCI, since they are not responsible for issuing or revoking firearm licenses and the Petitioner has not provided sufficient evidence to support claims of constitutional violations.
21. To determine whether the Petition meets the *Anarita Karimi* and *Mumo Matemu* test, the courts must examine the pleadings and submissions filed by the Petitioner. The Petition cites specific constitutional provisions allegedly violated the petitioner explicitly identifies the constitutional rights allegedly violated, including: Article 40 – Right to property (unjustified deprivation of a firearm license), Article 47 – Right to fair administrative action (lack of notice, reasons, or hearing before revocation), Article 50 – Right to a fair hearing (denial of an opportunity to challenge the revocation), and Article 24 – Unlawful limitation of rights (revocation of the license without justification).
22. The petition explains how each right was violated. The Petitioner details how the Firearms Licensing Board revoked his firearm license without notice or due process, leading to an alleged violation of Articles 40 and 47. The lack of a hearing before revocation is cited as a violation of Article 50 and how the failure of the Respondents to justify the revocation makes it an unlawful restriction of rights under Article 24.
23. Therefore, the Petition satisfies the constitutional threshold for specificity under the *Anarita Karimi* and *Mumo Matemu* cases. The Petitioner explicitly cites the constitutional provisions that were violated (Articles 40, 47, 50, and 24). The Petition explains how each right was violated (lack of notice, reasons, and hearing), the Petition provides supporting evidence, including past court rulings on the same issue. The reliefs sought are clearly stated, and the legal basis for the claim is well-documented.

### **Whether the Respondents' actions violated the Petitioners constitutional rights.**

#### **Article 47**

24. Article 47(1) of *the Constitution* guarantees every person the right to administrative action that is expeditious, efficient, lawful, reasonable, and procedurally fair. Section 4 of the *Fair Administrative Action Act*, 2015, further requires that a person affected by an administrative decision must be given notice, reasons, and an opportunity to be heard. The Petitioner submits that the respondents' decision was procedurally unfair within the meaning of article 47(1).



25. In the Court of Appeal decision in *Judicial Service Commission v Mbalu Mutava* (2015) eKLR, the Court emphasized that fair administrative action requires procedural fairness, including notice and an opportunity to be heard. Also, in *Kenya Human Rights Commission v NGO Coordination Board*, the court held that failure to provide reasons for an administrative decision violates Article 47.
26. Similarly, in *Republic v. Firearms Licensing Board & Another; Ex Parte Jimi Wanjigi* (2019) eKLR, the court found that the Board's actions were arbitrary and violated the Petitioner's right to fair administrative action. The revocation was quashed, and the court underscored the importance of procedural fairness.
27. The Petitioner submits that the 1<sup>st</sup> respondent revoked his firearms licence without prior notice. Additionally, the Petitioner submits that through his counsel, wrote to the 1<sup>st</sup> respondent on several occasions and followed these letters with phone calls and in person visits to the 1<sup>st</sup> respondent but all these were ignored, and neither was the petitioner given an opportunity to be heard and without notice, the 1<sup>st</sup> respondent proceeded to cancel the petitioner's licences verbally on 19<sup>th</sup> August 2024.
28. The Petitioner avers that the respondent had an obligation to promptly communicate the reasons and justification for their decision but failed to do so. Instead, he only found out from the police about the cancellation when he went to report an invasion at his home.
29. The revocation of the Petitioner's firearm license without notice, a hearing, or reasons was unconstitutional and violated Article 47.

#### **Article 40**

30. Article 40 of *the Constitution* of Kenya, 2010, guarantees the right to property as follows:
  - a. Article 40(1): Every person has the right, either individually or in association with others, to acquire and own property in Kenya.
  - b. Article 40(2): Parliament shall not enact a law that arbitrarily deprives a person of property or limits the enjoyment of property rights.
  - c. Article 40(3): The state shall not deprive a person of property unless:
    1. The deprivation is for a public purpose or public interest.
    2. The deprivation is carried out in accordance with due process and compensation is provided, if necessary.
31. The Petitioner legally acquired the firearm license and weapons, and no allegations of misuse were raised against him. He has complied with all legal requirements for firearm ownership since receiving the license in 2014. The 1<sup>st</sup> Respondent arbitrarily revoked the Petitioner's firearm license, without any legal justification, notice or hearing constitutes an unlawful deprivation of property. The revocation was arbitrary, unreasonable, and lacked justification, thus violating Article 40.
32. In *Kenya Human Rights Commission v NGO Coordination Board* (2016), the High Court ruled that arbitrary revocation of a license without due process is unconstitutional. Additionally, in *Shollei v Judicial Service Commission* (2022) KESC 5 (KLR) the Supreme Court held that limitations on rights must be justified.
33. The 1<sup>st</sup> Respondent argued that Firearm ownership is not an absolute right but a privilege subject to regulatory control therefore, the revocation was done in the interest of public safety and national



security. They also added that the state has the power to regulate and even revoke firearm licenses without compensation if it serves a lawful purpose.

34. The firearm license was lawfully acquired by the Petitioner in 2014. The 1<sup>st</sup> Respondent revoked the license without due process, which amounts to an arbitrary deprivation of property. Article 40(3) only allows deprivation of property for public interest when due process is followed. There was no public interest justification provided for the revocation.
35. The Petitioner was not given notice before revocation, violating Article 47 of the *Fair Administrative Action Act*, neither was he allowed to defend his right to keep his firearm license, violating Article 50 on right to a fair hearing. The 1<sup>st</sup> Respondent did not provide written reasons for the decision making the action disproportionate, violating the *Fair Administrative Action Act*, 2015.
36. The revocation constituted an arbitrary deprivation of property, violating Article 40.

#### **Article 24**

37. *The Constitution* recognizes both the right to public safety and the protection of individual rights under Article 24 of *the Constitution*. The state has a duty to regulate firearm ownership for public safety, but any limitation of rights must meet constitutional requirements. Article 24 of *the Constitution* provides that fundamental rights can only be limited if the limitation is reasonable and justifiable in an open and democratic society.
38. In *Republic v Ministry of Education (2021)*, the High Court held that a decision is unreasonable if it lacks a rational connection to a legitimate government interest.
39. The Respondents failed to provide a justification for the revocation. There was no compelling national security reason provided to support the action. The restriction was unjustified and unconstitutional under Article 24. The revocation was done without giving the Petitioner an opportunity to defend himself, making it disproportionate. The Respondents provided no written reasons, meaning the decision was arbitrary and lacked transparency.

#### **Principle of legitimate expectation**

40. The doctrine of legitimate expectation applies where: a public authority makes a clear and unambiguous representation. The representation induces reliance that the affected party suffers detriment when the expectation is not honored.
41. The Petitioner had a reasonable expectation that his firearm license would not be revoked arbitrarily and the Respondents' failure to communicate any reasons for revocation undermines procedural fairness.
42. The 1<sup>st</sup> Respondent had consistently renewed the Petitioner's license since 2014, leading to a reasonable expectation that the process would be fair. He had a legitimate expectation that his license would be renewed, given his previous compliance with all conditions attached to the firearm license.
43. The petitioner had at all times upheld all conditions indicated in the certificate for years since. As such, the petitioner had legitimate expectation that having adhered to all conditions of his firearm certificate and not once been in breach, his firearm licence would be renewed or at least reasons would be provided for any decision not to renew.
44. The revocation was sudden, without warning, and ignored previous court decisions reinstating the license. The Petitioner had no history of misuse, meaning there was no reasonable basis for him to expect revocation.



45. In *Kenya Human Rights Commission v NGO Coordination Board*, the court held that public bodies must honor legitimate expectations unless they have lawful justification.
46. The principle of proportionality requires that administrative actions should not be more restrictive than necessary. The decision to revoke the license appears excessive, given that there is no evidence that the Petitioner misused his firearms.

**Whether the reliefs sought by the Petitioner should be granted.**

47. Kenyan courts apply the following principles when determining whether to grant reliefs in constitutional petitions:
  - a. Proof of Constitutional Violation - The Petitioner must prove that a constitutional right has been violated. Article 22 of *the Constitution* allows a party to seek relief for the enforcement of constitutional rights.
  - b. Proportionality of the Remedy - The remedy must be proportionate to the violation suffered. The Court must ensure the relief does not unduly hinder government functions (e.g., firearm regulation).
  - c. Effectiveness of the Remedy - The relief must effectively address the harm suffered and prevent future violations.
48. On the Petitioner's relief 1, the revocation of the firearm license was done without notice or a fair hearing, violating Articles 47 and the Respondents failed to justify the revocation, violating Article 24. The Petitioner had a legitimate expectation that his license would be renewed unless legally revoked.
49. In *Judicial Service Commission v Mbalu Mutava (2015) eKLR*, the Court of Appeal held that Article 47 guarantees procedural fairness, including notice and a hearing before an administrative decision is made. Therefore, revocation of the Petitioner's firearm license without notice violated this principle.
50. On relief 2, A decision made without due process is invalid under the *Fair Administrative Action Act*. The revocation was procedurally unfair since the Petitioner was not given prior notice, reasons, or a hearing. The Courts have previously quashed administrative decisions where due process was not followed (e.g., *Kenya Human Rights Commission v NGO Coordination Board (2016)*).
51. In regards to the order of certiorari to quash the revocation, the High Court has the power to quash the revocation since it was made in violation of fair administrative procedures. In this case, there is no evidence that the Petitioner misused his firearm, making the revocation excessive. In the case of *Republic v Firearms Licensing Board & Another Ex Parte Boniface Mwangi (2020) eKLR*, the High Court quashed a similar revocation of a firearm license for lack of due process.
52. On prohibitory order restraining criminal charges, the order may be partially granted. The Petitioner argues that the revocation was politically motivated and aimed at framing him for illegal firearm possession. While the DPP (2<sup>nd</sup> Respondent) argues that he retains the discretion to decide whether or not to charge the Petitioner and that the courts should not interfere with prosecutorial discretion unless there is abuse of power. As in the case of *Nairobi Law Monthly v Kenya Electricity Generating Company & 2 others (2013) eKLR* where it noted that Courts should not interfere with the DPP's discretion unless bad faith is proven.



## **Conclusion**

53. This court finds that the revocation of the Petitioner's firearm license was unconstitutional, procedurally unfair, and lacked justification. The rights of the Petitioner under Articles 40, 47, and 50 of *the Constitution* were violated. Justice is best served when the state upholds the rule of law and ensures that administrative decisions meet constitutional standards.
54. Final Orders: For the foregoing reasons, I hereby make the following orders:
- a. A declaration be and is hereby issued that the 1<sup>st</sup> Respondent's action of purporting to revoke the Petitioner's Firearms License No. 9522 without due regard to the law accordingly null, void, and of no effect in law;
  - b. An order of Certiorari be and is hereby issued to move into this Court for the purposes of being quashed, which this Court hereby quashes, the decision of the 1<sup>st</sup> Respondent to revoke the Petitioner's Firearm Certificate No. 9522 as verbally communicated to the Application on 19<sup>th</sup> August, 2024;
  - c. A declaration be and is hereby issued restraining the Respondents from instituting, preferring, continuing and/or registering any criminal charge or continuing any intended or ongoing criminal prosecution with respect to the subject matter of this Petition;
  - d. An order be and is hereby issued prohibiting the registration and/or institution or continuing with any criminal prosecution against the Petitioner in respect to Firearm Certificate No. 9522 and all Firearms duly licensed therein; and
  - e. The Costs of this Petition are awarded to the Petitioner.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 20<sup>TH</sup> DAY OF FEBRUARY 2025.**

**BAHATI MWAMUYE**

**JUDGE**

In the Presence of:-

Counsel for the Petitioner – Dr. Owiso Owiso and Mr. Otieno Willis

Counsel for the Respondents – No Appearance

Court Assistant – Mr. Guyo

