



Mango v Director of Public Prosecutions & 3 others (Criminal Petition E009 of 2024) [2025] KEHC 3689 (KLR) (20 March 2025) (Judgment)

Neutral citation: [2025] KEHC 3689 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL PETITION E009 OF 2024
SC CHIRCHIR, J
MARCH 20, 2025**

**IN THE MATTER OF ARTICLE 22(1)
IN THE MATTER OF ALLEGED CONTRAVENTION OF RIGHTS
OF FUNDAMENTAL FREEDOMS UNDER ARTICLE 2(5),
27,28, 29 (A),49 (1)(A) (I) (C) & (H) 50 (2A) 157 (11) AND 239 (A)**

BETWEEN

DEREK GYIDEI MANGO PETITIONER

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS 1ST RESPONDENT

THE INSPECTOR GENERAL OF POLICE 2ND RESPONDENT

THE DIRECTOR OF CRIMINAL INVESTIGATIONS 3RD RESPONDENT

THE ATTORNEY GENERAL 4TH RESPONDENT

JUDGMENT

1. This petition dated 6th March, 2024 seeks orders as follows: -
 - a. A declaration be and is hereby made and/or issued declaring that the arrest and confinement of the petitioner at Bamburi Police Station without any charges being preferred against him as unlawful and unconstitutional.
 - b. A declaration be and is hereby made and/or issued declaring that the arresting and moving the petitioner beyond the jurisdiction of this honourable court is unlawful and unconstitutional.
 - c. An order compelling the 2nd and 3rd respondents to unconditionally release the petitioner.
 - d. An order prohibiting the 1st respondent from preferring any charges against the petitioner



- e. An order directing that in the event the 1st respondent prefers any charges against the petitioner, the same should be before a court of law within the jurisdiction of this honourable court.
 - f. An order for compensation for unwarranted arrest and unlawful confinement against the respondents.
 - g. Costs of this petition.
2. The 1st respondent filed undated grounds of opposition praying for the dismissal of the petition.
 3. The petitioner also filed a Notice of Motion application dated 6th March, 2024 seeking relief pending the hearing and determination of the petition. Conservatory Orders were granted pending the determination of this petition.

The Petitioner's Case

4. It is the petitioner's case that in the course of performing his duties as and Advocate, he was retained by one Beatrice Nafula Wangila, James Amani, Rose Nafula and Imelda Wafula Nafula to prepare a lease agreement over Land parcel No.No. Kitale/ Saboti/223. The lessor was supposed to be one Jackson Kibet Choge. For reasons unknown to him however, the transaction aborted
5. The petitioner further states that on 5th March 2024, the police officers from Bamburi Police Station stormed his office arrested him, and whisked him to Bamburi Police Station in Mombasa. The arrest was based on an alleged complaint logged by the intended lessor, Jackson Kibet Choge. He states that he was arrested for the failings of his client.
6. The petitioner contends that the arbitrary arrest and being taken to a station outside the local jurisdiction violated his rights to human dignity and the right to liberty and freedom of the person.

1st Respondent's case

7. In the grounds of opposition dated 6th March 2024 the 1st respondent (The respondent) states that the petition is premature as the petitioner has not produced any evidence to show that a decision to charge by the respondent has been made.; that the court cannot issue orders that that would curtail it from carrying out its mandate under Article 157 of *the constitution*; that there are no exceptional circumstances that necessitates the exercises of the courts jurisdiction in favour of the petitioner.
8. The respondent further argues that the respondent has constitutional powers to direct the 2nd and 3rd respondents to investigate any allegation or information related to any criminal conduct. It is finally stated that if the court was to grant the orders being sought, it would be usurping the mandate of the constitutional offices.
9. The other respondents did not file any response.
10. The petition was disposed of by way of written submissions.

Petitioner's Submissions

11. The petitioner submits that the denial of the petitioner's rights to human dignity and liberty by his arbitrary arrests; being incarcerated for a period of 4 days, being taken for hundreds of kilometres away from the local jurisdiction of the court, failing to inform the petitioner the reasons for his arrest and incarceration and withholding the petitioner's cash bail of Kshs. 100,000/= unjustly with no intention of preferring any charge against him amounted to acts in violation of the petitioner's constitutional



rights as enshrined in Article 28 and 29 of *the Constitution* of Kenya. He submits that no further action has since been taken to indicate that there was intention to charge him.

12. The petitioner refers to the case of *MWK & Anor vs AG & 4 Others* (2017) KEHC 1496 (KLR) and urges this court to decide the petition in his favour, award general damages accordingly, and order for the release of the the cash bail deposited.
13. The respondent did not file any submissions.

Determination

14. The only issue for determination in this petition is whether the petitioner’s right to dignity and freedom and security of the person were violated by the respondents.
15. I have perused the petitioner’s submission and noted that he has brought up new issues in his submissions which were not pleaded to in the petition. For instance the plea that he was detained for 4 days, and that his cash bail of ksh. 100,000 was withheld are new issues coming out at the point of submissions. It follows that the respondents were denied the benefit of addressing these issues. Submissions, as often stated, are not pleadings. If the aforesaid issues arose after the filing of the petition the petitioner had the liberty to seek leave to amend the petition, but he did not . I therefore decline to make a determination on the said issues.
16. Article 28 of *the constitution* provides that : “ Every person has inherent dignity and the right to have that dignity respected and protected.” *The constitution* does not define the word “ human dignity. “. An attempt to define this right is however found in case law. In *M W K & another vs Attorney General & 3 others* [2017] eKLR, the court had this to say: The right to dignity is at the heart of *the Constitution*. It is the basis of many other rights. The basis is that of recognizing that every person has worth and value and must be treated with dignity.”
17. Thus dignity is about the inherent worth and value of a human being; it is the worth and the value that belong to a person by virtue of being a human being. It is the reason why courts have often held the right to dignity as the basis of all other rights and freedoms. It follows that any action which devalues the worth of a person is the violation of the right to dignity.
18. I have carefully read through the petition. The petitioner states that his arrest and detention violated his dignity. However being arrested followed by placement in lawful custody perse is not a violation of human dignity. These are lawful processes.
19. I find the petition wanting on particulars ; the facts provided are rather scanty. In the case of *Mumo Matemu vs Trusted society of human rights Alliance & 5 others*(2013) e KLR it was held that a party should plead the specific Article of *the constitution* and the right or freedom decreed and plead the actions of the respondent that constitute the alleged violations. The court further stated that the practice of pleading and / or setting out a litany of Articles of *the constitution* and the rights or freedom decreed without juxtaposing them with the corresponding acts that constitute a violation and throwing them on the court for it to decipher must be discouraged. (Emphasis added)
20. Article 29 of *the Constitution* of Kenya, provides that:-“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.”
21. The petitioner has stated that on 5th March,2024, police officers from Bamburi Police Station stormed the petitioner’s office, arrested and whisked him to Bamburi Police Station- Mombasa. He was



informed that he was being arrested based on a complaint lodged against him by one Jackson Kibet Choge.

22. It is trite law that a deprivation of liberty must in all cases be carried out in accordance with the law (the principle of legality). Further, deprivations of liberty must not be arbitrary.
23. In the case of Esther Wanjiru Mbugua *v Inspector General National Police Service & 3 others (Constitutional Petition E22 of 2021)* [2022] KEHC 10740 (KLR the court stated: “ as to the the principle of legality, the right to liberty is violated if an individual is arrested or detained on grounds which are not clearly established by the legislation. Arbitrariness’ is not to be equated with ‘against the law’, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law. This means that remand in custody pursuant to lawful arrest must not only be lawful but reasonable in the circumstances.”
24. The petitioner stated that he was arrested for the failings of his client but has failed to provide any further particulars so as for this court to determine whether the arrest and confinement warranted him being arrested or the police were simply abusing their powers of arrest. If he knew that he was arrested on the “failings of his client” , the next question one is bound to ask is what about those failings? What did he understand those failings to be?. And based on that understanding , how did it constitute unlawful deprivation of liberty?
25. The petition and submissions are wanting in particulars as aforesaid .The petitioner has provided very scanty information in relation to his arrest. In other words , there are not enough facts upon which the court can make a determination on whether the petitioner’s right to dignity and deprivation of freedom were violated or denied.
26. The petitioner bore the burden of availing the details of his arrest and confinement. It must always be remembered that the legal burden of prove is always on the plaintiff/ petitioner. That was what was demanded of him under Section 107 of the *Evidence Act*. The section states as follows:
 - (1) whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exists
 - (2) when the burden is bound to prove the existence of any fact it is said that the burden of proof lies on that person”
22. On the reasons of his arrest he stated that he was arrested based on a complain by one Joel Choge. Thus contrary to his subsequent assertion , he was informed of the reason of his arrest.
23. The case against the respondent has no factual basis. There was no evidence adduced showing that a decision to charge had been made. There is also no evidence that the arrest was at the instructions of the 1st respondent .
24. To conclude , the petitioner has failed to establish that his right to dignity was violated and that his arrest and detention was arbitrary, unreasonable and was undertaken contrary to law .
25. The petition is unmerited. It is hereby dismissed with no orders as to costs

DATED , SIGNED AND DELIVERED VIRTUALLY AT ISIOLO THIS 20TH DAY OF MARCH 2025.

S. CHIRCHIR

JUDGE

In the presence of:



Godwin Luyundi- Court Assistant

Mr. Mango- petitioner

Ms. Kagai for the 1st Respondent.

