



**Mutura v Director of Criminal Investigations & 3 others (Petition E167 of 2022)  
[2025] KEHC 7929 (KLR) (Constitutional and Human Rights) (10 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 7929 (KLR)

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

**PETITION E167 OF 2022**

**AB MWAMUYE, J**

**APRIL 10, 2025**

**BETWEEN**

**BENSON MUTURA ..... PETITIONER**

**AND**

**THE DIRECTOR OF CRIMINAL INVESTIGATIONS ..... 1<sup>ST</sup> RESPONDENT**

**INSPECTOR GENERAL OF POLICE ..... 2<sup>ND</sup> RESPONDENT**

**THE DIRECTOR OF PUBLIC PROSECTIONS ..... 3<sup>RD</sup> RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**JUDGMENT**

**A. Introduction**

1. The Petitioner herein filed a petition dated 20<sup>th</sup> April, 2022 seeking the following remedies: -
  - i. A declaration that the arrest and detention of the Petitioner is not only baseless but is also arbitrary and illegal and in blatant violation of his Constitutional rights.
  - ii. A permanent injunction restraining the Respondents by themselves, their officers, servants and assigns or anyone acting on their behalf or instructions from arresting, charging or prosecuting the petitioners herein on account of the issues raised in this petition.
  - iii. General damages.
  - iv. Costs of the petition.
2. The petition was supported by the grounds on the face of the said petition and the supporting affidavit of the Petitioner. The Petition was opposed by the Respondents; the 1<sup>st</sup> -3<sup>rd</sup> Respondent did file their



Grounds of opposition dated the 4<sup>th</sup> May 2022 and further filed a Replying Affidavit sworn by one No. 237080 Chief Inspector Felix Karisa Banzi dated 27<sup>th</sup> May 2022.

## **B. The Petition**

3. The Petitioner averred that on the 7<sup>th</sup> April, 2022 he announced that he had joined the United Democratic Alliance (UDA) party and would fully want to be affiliated with the said party. The said decision did not sit well with quite a number of people and/or certain entities as the Petitioner has since the material date been issued with constant threats of arrest and has been constantly harassed by the Respondents.
4. The Petitioner stated that on the 20<sup>th</sup> April, 2022, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents proceeded to arrest him at his offices, without informing him of the reason for his arrest.
5. The Petitioner did contend that the conduct of the Respondents was a gross violation of his Constitutional right to be informed of the reason for arrest and freedom of association as guaranteed under Articles 49 and 36 of *The Constitution* of Kenya, 2010.
6. The Petitioner did further contend that he is apprehensive that unless this Honourable Court intervenes, the Respondents will eventually be successful in utilizing the Criminal Justice System to illegally detain, embarrass, disrepute and even harm him. He also stated that he is entitled to equal protection and benefit of the law by dint of Article 27 of *The Constitution* and it therefore behoves this Honourable Court to ensure his enjoyment of the said right.
7. Consequently, the Petitioner prayed for this Honourable Court to issue the declaratory orders sought and further deem it fit to protect him against the threat of continued violation of his fundamental rights and freedom.

## **C. The Responses**

8. The 1<sup>st</sup> – 3<sup>rd</sup> Respondents opposed the Petition through their Grounds of opposition and a Replying Affidavit of Chief Inspector Felix Karisa Banzi who stated that he was an officer attached to the Serious Crime Unit based at the Directorate of Criminal Investigations and that he is one of the Investigating Officers in the said matter.
9. Vide a letter dated 6<sup>th</sup> April, 2022 the DCI received an anonymous complaint requesting for investigations into abuse of office, fraud and misuse of public funds by the Petitioner herein who was the Speaker of the Nairobi City County Assembly.
10. Investigations were commenced based on the complaint lodged on 6<sup>th</sup> April, 2022 and established that the Petitioner had used his position in office to confer himself imposts to attend official engagements abroad which he either failed to attend or went for fewer days than those applied for and failed to surrender the imposts as required in *Public Finance Management Act*.
11. The 1<sup>st</sup> to 3<sup>rd</sup> respondents deponed that it was established that between the period of 1<sup>st</sup> February and 28<sup>th</sup> February, 2022 the Petitioner defrauded the County Assembly by receiving imposts to proceed for overseas trips amounting to Kes. 5,348,984/- which he failed to surrender.
12. It was further deponed that the Petitioner was presented before the Chief Magistrate Court Milimani on the 22<sup>nd</sup> April, 2022 to answer to the charge of Stealing by Servant Contrary to Section 281 of The *Penal Code*.



13. The Petitioner had therefore not proved that the 1<sup>st</sup> to 3<sup>rd</sup> respondents violated any of his rights and had not met the threshold for granting the prayers sought. They prayed that this petition be dismissed with costs and the criminal trial process be allowed to proceed to its logical conclusion.

## **D. Submissions**

### **i. Petitioner's Submissions**

14. The Petitioner submitted that it was not contested that the 1<sup>st</sup> Respondent has a duty to investigate any complaints of criminal conduct. What he contests was the manner in which he was arrested pursuant to the said investigations which was discriminatory and instigated by malice and witch-hunt.
15. Article 49(1) (b) of *The Constitution* guarantees all arrested persons the right to be promptly informed of the reason for their arrest. However, on the 20<sup>th</sup> April, 2022 he was merely ambushed in his office while carrying out his official duties and taken to the 1<sup>st</sup> Respondent's Headquarters along Kiambu Road for interrogation on an offence he was not privy to.
16. He further submitted that the said arrest was affront to the provisions in Article 27(1) of *The Constitution* which guarantees that every person is equal before the law and has the right to equal protection and benefit of the law.
17. Reliance was placed on the case of Keroche Industries Limited Vs. Kenya Revenue Authority & 5 others, Judicial Service Commission V. Mbalu Mutava & another [2014] eKLR to emphasis that it was wrong to effect arrest without informing the person being arrested the reason thereof.
18. In addition, Article 9 of The International Covenant on Civil and Political Rights, which Kenya had accented to and formed part of the laws of Kenya as established under Article 2 of *The Constitution* of Kenya, also provided that Everyone had a right to liberty and security of persons and nobody would be subject of arbitrary arrest/detention and nobody would be deprived of his/her liberty except on such procedure as established in law. As a result of his arbitrary arrest the Petitioner had suffered harm, loss of reputation and damage and was therefore entitled to be compensated.

### **ii. The Respondents Submissions**

19. The 1<sup>st</sup> -3<sup>rd</sup> Respondents submitted that they had acted within the law and constitution of Kenya 2010 upon receipt of an official complaint, conducted investigations, arrested and charged the Petitioner with the offence of stealing by a servant.
20. They relied on Article 24 (1) of *the Constitution* which provides that a right or fundamental freedom in the Bill of Rights shall not be limited except by law and quoted the case of Leonard Otieno Vs. Airtel Kenya Ltd [2018] eKLR in support. It was submitted that the Petitioner is entitled to and shall enjoy the right to equal protection in any court of law and a fair administrative process.
21. The 1<sup>st</sup> -3<sup>rd</sup> Respondents also submitted that they are independent institutions established under *the Constitution* and therefore the Court can only interfere with or interrogate their actions where there is contravention or likely contravention of *the Constitution*. They relied on the case of Paul Ng'ang'a Nyaga Vs. Attorney General & 3 others [2013] eKLR to support this position.
22. Further, reliance was placed on Hon. James Ondicho Gesami Vs. The Attorney General & Others, Petition No. 376 of 2011, Article 157 of *The Constitution* and Section 6 of the *Office of the Director of Public Prosecutions Act* to emphasis that the 3<sup>rd</sup> Respondent is mandated to institute and undertake criminal proceedings against any person before any court of law and that the 3<sup>rd</sup> Respondent shall



not require the consent of any person or authority for commencement of criminal proceedings and in the exercise of its powers or functions, shall not be under the direction or control of any person or authority.

23. Further, it was not enough for the Petitioner to state that his right had been violated. He was required to demonstrate and prove the same, which he had not. Reliance was placed on Anarita Karimi Njeru – Vrs- The Republic (1976 -1980) KLR 1272 and Matiba-Vrs- Attorney General (1990) KLR 666. The 1<sup>st</sup> to 3<sup>rd</sup> Respondent therefore prayed that this Petition be dismissed with costs.

### **E. Analysis and Determination**

24. I have extensively considered all the pleadings filed, to wit; the petition and its supporting affidavit, the 1<sup>st</sup> to 3<sup>rd</sup> Respondents replying affidavits filed in opposition thereto and finally the submissions filed by all the parties. The issues which arise for determination are;
- a. Whether the arrest and subsequent detention of the petitioner was illegal, unjustifiable, unreasonable and without probable cause thus violating his rights as enshrined and protected under *the Constitution*.
  - b. Whether the orders of permanent injunction should issue to restrain the Respondents and their agents from arresting and detaining the petitioner on account of the issues raised in this Petition.
  - c. Whether the Petitioner is entitled to be compensated, by way of General damages.
  - d. Who should bear costs of this suit.

#### **i. Whether the arrest and subsequent detention of the petitioner was illegal, unjustifiable, unreasonable and without probable cause thus violating his rights as enshrined and protected under *the Constitution*.**

25. It is not in dispute that the Petitioner was arrested on 20.04.2022, and presented before court on 22.04.2022, where he was charged with the Offence of Stealing by Servant contrary to section 281 of the *Penal Code*.
26. The petitioner averred that his arrest and subsequent detention was a gross violation of his Constitutional right to be informed of the reason for arrest and freedom of association as guaranteed under Articles 49 and 36 of *The Constitution* of Kenya, 2010. The respondents on the other hand averred that there was a valid complaint lodged vide a letter dated 6<sup>th</sup> April, 2022 on allegations of abuse of office, fraud and misuse of public funds by the then speaker of the Nairobi City County Assembly, the Petitioner. They undertook investigations and later presented the petitioner before the Chief Magistrate Court Milimani on the 22<sup>nd</sup> April, 2022.
27. The National police service is charged with inter alia the duty to carry out investigations into suspected criminal activities and to apprehend those culpable. The Director of public prosecutions, exercises the state's power of prosecution of criminal cases. However, in carrying out their respective obligations/mandate, both are subject the adherence to the provisions of *The constitution* of Kenya, 2010 and the relevant law which guide the same. In *Investments & Mortgages Bank Limited (I&M) Vs Commissioner of police and The director of criminal investigations Department & DPP & 2 others*, Nairobi HCC Petition No 104 of 2012 (2013) Eklr, Justice Majanja remarked as follows:

“I agree with the respondents that it is within their mandate to investigate crimes where there is reasonable basis of commission of an offence and that in performance of their duties, they



are independent institutions. The office of the Director of public prosecutions established under Article 157 is an independent office which is empowered to conduct its duties free from any influence or control by any authority. Its actions must be within the law and in accordance with what *the Constitution* dictates. One such dictate is that in the exercise of their powers, it is to “have regard to the public interest, the interests of administration of justice and the need to prevent and avoid abuse of the legal process.” Article 244 enjoins the National police service to amongst other things “comply with constitutional standards of human rights and fundamental freedoms.”

28. Further in Kenya commercial Bank Ltd and 2 others Vs Commissioner of police and Another, Nairobi Petition No 218 of 2011 (unreported), Majanja J also observed that;

“The office of the Director of public prosecutions and Inspector General of the National police service are independent offices and this court would not ordinarily interfere in the running of their offices and exercise of their discretion within limits provided for by the law. But these offices are subject to *the constitution* and the bill of rights contained therein and, in every case, the high court as the custodian of the bill of rights is entitled to intervene where the facts disclose a violation of the rights and fundamental freedom guaranteed under *the constitution*.”

29. Having determined that the 1<sup>st</sup> respondent had power to investigate and arrest the petitioner, the court has to determine the question whether in the circumstances of this case, the arrest of the petitioner was unlawful. The Petitioner averred that he was not notified of the reason for his arrest in contravention of Article 49 of *the constitution*. The respondents’ however, in their response stated that the Petitioner was informed of the reason for his arrest when recording the charge and cautionary statement before Chief Inspector Philip Bii at DCI Headquarters. A copy of the charge and cautionary statement recorded by the Petitioner were annexed and I note that it bears the Petitioner’s signature and the same was not contested. I therefore find that the Petitioner is not being truthful in asserting that he was not made aware of the reason for his arrest.

30. Further, in determining whether the arrest of the petitioner was lawful, the court must find that the arrest was for a cognizable offence and that the respondents had reasonable grounds to believe the petitioner had committed such offence. It is therefore also necessary to seek out what “probable and reasonable cause” ought to entail. In the case of Hicks Vs Faulkner, (1978), 8 Q.B.D 167 at para 171 Hawkins.J defined probable and reasonable cause as follows;

“Reasonable and probable cause is an honest belief in the guilt of the accused based upon a full conviction founded upon reasonable grounds of the existence of a state of circumstances which assuming them to be true, would reasonably lead an ordinary prudent and cautious man placed in the position of the accuser to the conclusion that the person charged was probably guilty of the crime imputed”

31. Ruud. J in Kagame vs Attorney General & Another, (1969) E.A 643 aligned himself with the Hicks definition by reiterating that:

“..... Reasonable and probable cause is an honest belief in the guilt of the accused based upon all a full conviction founded upon reasonable grounds of the existence of a state of circumstances, which assuming them to be true, would lead an ordinary prudent and



cautious man placed in the position of the accuser to the conclusion that the person charged was probable guilty of the crime imputed.”

32. In the present case, it has been proved that there was an official complaint lodged vide a letter dated 6<sup>th</sup> April, 2022 requesting for investigations into abuse of office, fraud and misuse of public funds by the Petitioner. This lay out a reasonable and probable basis/suspicion that the petitioner had committed an offence. The same was investigated by the 1<sup>st</sup> Respondent and consequently led to the arrest and arraignment in Court of the Petitioner.
33. The 1<sup>st</sup> to 3<sup>rd</sup> respondent therefore cannot be said to have acted in an ultra vires manner and did no wrong as the investigating officer had powers under section 29 of the criminal procedure Code, Cap 75 to arrest the petitioner, where there was reasonable suspicion of commission of an offence. The arrest and subsequent detention of the petitioner therefore cannot be said to have been effected in an illegal, unjustifiable, unreasonable manner and/or without probable cause nor were his rights as enshrined and protected under the Constitution violated.

**ii. Whether the orders of permanent injunction should issue to restrain the Respondents and their agents from arresting and detaining the petitioner on account of the issues raised in this Petition.**

34. As initially stated, the office of the Director of public prosecutions and Inspector General of the National police service are independent offices and this court would not ordinarily interfere in the running of their offices and exercise of their discretion within limits provided for by the law.
35. The only caveat is that they must have regard to the public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process. I am not persuaded from the materials before me that the Respondents have fallen into that exception. Therefore, I decline to issue any permanent injunction restraining the Respondents from conducting their duties and responsibilities regarding the matter at hand.

**iii. Whether the Petitioner is entitled to be compensated, by way of General damages.**

36. Having found that the petitioner’s rights have not been violated by the respondents as claimed, his prayer to be compensated by way of general damages cannot succeed.

**Disposition**

37. The upshot considering the totality of all the facts herein, I do find that the Petitioner has failed to prove on balance of probability that the Respondents acted in an ultra vires manner and/or infringed on his rights. This petition therefore fails and is hereby dismissed with no orders as to costs.

**DATED, SIGNED, AND DELIVERED VIRTUALLY THIS 10<sup>TH</sup> DAY OF APRIL, 2025.**

.....

**BAHATI MWAMUYE**

**JUDGE**

