



**Karanja v Director of Public Prosecution & another (Constitutional Petition E103 of 2024) [2025] KEHC 8973 (KLR) (19 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8973 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CONSTITUTIONAL PETITION E103 OF 2024**

**AB MWAMUYE, J**

**JUNE 19, 2025**

**BETWEEN**

**BENARD NJUGUNA KARANJA ..... PETITIONER**

**AND**

**DIRECTOR OF PUBLIC PROSECUTION ..... 1<sup>ST</sup> RESPONDENT**

**DIRECTOR OF CRIMINAL INVESTIGATIONS ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

**Introduction**

1. This is a judgment on a constitutional petition where the Petitioner alleges that his constitutional rights have been violated by the Respondents' actions in investigating and intending to prosecute him on charges of forgery. The Petitioner invokes the jurisdiction of this Court under Article 165 of *the Constitution*, seeking relief for alleged violations of fundamental rights and freedoms.
2. The Petitioner's prayers in the petition seek, inter alia:
  - a. A declaration that the actions of the Respondents to arrest and intention to charge the Petitioner with the offence of forgery is unconstitutional and in contravention of Articles 27(1), 28 and 50(1), (2) j, k, I of *the Constitution* of Kenya.
  - b. A declaration that the actions of the Respondents to arrest and intention to charge the Petitioner with the offence of forgery is unconstitutional and in contravention of Article 29(a) of *the Constitution* of Kenya.
  - c. A declaration that the actions of the Respondents to arrest and intention to charge the Petitioner with the offence of forgery is unconstitutional and in contravention of Articles 157(4) and 245(4) of *the Constitution* of Kenya.



- d. An order of certiorari to be issued against the Respondents quashing/setting aside the decision of the Respondents to arrest and charge and/or prosecute the Petitioner.
  - e. An order of prohibition to be issued against the Respondents from charging the Petitioner herein in relation to the facts surrounding the change of Directorship of Eitices Limited (The Interested Party Company).
  - f. Costs of the Petition and any other order(s) as this Honorable Court shall deem just to grant.
3. From the material presented, the genesis of this matter was a complaint lodged with law enforcement alleging that the Petitioner had been involved in the forgery over Directorship of a company. Upon receiving the complaint, officers of the DCI opened investigations. The Petitioner was summoned and he recorded a statement in the course of those inquiries. Subsequently, the Investigation Officers, in liaison with the DPP's office, concluded that there was reasonable cause to prefer criminal charges against the Petitioner for stealing contrary to Section 268 as read with Section 275 of the Penal Code, making documents without authority contrary to section 357 of the Penal Code and uttering a false document contrary to section 353 of the Penal Code.
  4. It is not disputed that by the time of filing this petition, the DPP had signalled an intention to arraign the petitioner before a trial court to answer to the forgery charge, although actual prosecution had not commenced due to interim conservatory orders obtained herein.

#### **Petitioner's submission**

5. The Petitioner's case is that the criminal process set in motion against him is baseless and has been initiated in bad faith. He maintains that the allegations are false and/or stem from a malicious vendetta by the complainant.
6. In the Petitioner's view, the police investigation and the DPP's decision to charge him were undertaken without proper factual foundation and amount to an abuse of power. He asserts that being subjected to arrest and prosecution under these circumstances would violate his constitutional rights particularly the right to fair administrative action (Article 47), the right to a fair trial (Article 50), and the right to human dignity (Article 28). The Petitioner fears that the mere fact of being prosecuted will cause him irreparable reputational damage and stigma, and that the process is unfair because the evidence against him is scant or fabricated. He also alludes to a potential abuse of court process if the subject matter of the forgery is part of an ongoing civil dispute.

#### **Respondents' Submission**

7. The Respondents oppose the petition and deny any violation of the Petitioner's rights. They contend that their actions have at all times been in accordance with their constitutional and statutory mandates. The DCI and DPP maintain that a complaint was lawfully received and investigated, and that sufficient evidence was gathered establishing prima facie that a forgery offense may have been committed by the Petitioner. The decision to prosecute, the DPP asserts, was made independently and based on the evidence and the public interest in prosecuting crime, not on any extraneous factors.
8. The Respondents emphasize that under Article 157 of the Constitution, the DPP is not subject to direction or control of any person in making prosecutorial decisions, save that he must act within the confines of the law and public interest. They argue that the Petitioner has not demonstrated any abuse of power, illegality, or malice on the part of the investigators or prosecutors that would warrant this



Court's intervention. Simply put, the State's position is that being investigated and charged for an alleged crime, per se, does not amount to a violation of constitutional rights so long as due process is observed.

9. Any grievances the Petitioner has regarding the evidence or the merits of the case, the Respondents argue, should be ventilated before the trial court in the usual course of criminal justice, rather than by way of a constitutional petition. The Respondents also that courts should be loath to interfere in ongoing or prospective criminal proceedings unless it is clearly demonstrated that those proceedings are instituted mala fides or amount to an abuse of the court's process.
10. It is noteworthy that at the inception of this petition, the Court granted interim conservatory orders staying the petitioner's arrest and arraignment pending the hearing and determination of the petition. Those orders have remained in force, effectively suspending the prosecution.

### **Issues for Determination**

11. Having reviewed the pleadings, affidavits, and submissions of the parties, the Court frames the following key issues for determination:
  - a. Whether the petitioner was maliciously arrested and subsequently charged by the 2nd Respondent
  - b. Whether the actions of the Respondent's violated the Petitioner's fundamental rights

### **Analysis and Determination**

#### **Whether the petitioner was maliciously arrested and subsequently charged by the 2nd Respondent**

12. The claim of malicious arrest and prosecution requires specific legal thresholds to be met, as clearly established in *Kagane & Others v Attorney General & Another* [1969] EA 643. The criteria include initiation of prosecution by the Respondent, termination of prosecution in the Petitioner's favor, prosecution without reasonable and probable cause, and proof of malice in instituting the proceedings. It is imperative for a Petitioner alleging malice to demonstrate explicitly the absence of genuine cause and the presence of ulterior motives or wrongful intent.
13. In *Mbowa v East Mingo District Administration* [1972] EA 352, the court articulated that malice implies intentional wrongful motives, distinguishing it from mere error or negligence. This principle was reaffirmed in *Murunga v Attorney General* [1979] KLR 138, emphasizing the necessity for affirmative proof of intentional malice, beyond general allegations or suggestions of improper conduct. These judicial precedents consistently underscore the heavy evidential burden placed on petitioners claiming malicious prosecution.
14. The Kenyan High Court, in *Chrispine Otieno Caleb v Attorney General* [2014] eKLR, further clarified that unsubstantiated assertions of malice are insufficient to sustain a malicious prosecution claim. Clear evidence must establish that prosecutorial actions were specifically motivated by improper purposes rather than legitimate criminal justice objectives. This reinforces judicial restraint from interfering in criminal processes without compelling evidence of bad faith or ulterior motives.
15. Applying these legal standards to the present case, the Petitioner failed to provide persuasive or concrete evidence of malicious intent on the part of the 2nd Respondent. The investigation and procedural steps taken including summoning, interrogation, and bail procedures were within statutory mandates and do not inherently indicate improper motives or malice. Consequently, this Court finds that the



Petitioner's allegations of malicious arrest and prosecution are unsupported by the required evidential threshold, thereby failing in law and fact.

### **Whether the actions of the Respondent's violated the Petitioner's fundamental rights**

16. The petitioner alleges violations of Articles 27, 28, 47, and 50 of *the Constitution*. On examination, the Court is not persuaded that any of these rights have been infringed. The petitioner was accorded due process during the investigation; he was informed of the allegations and gave his statement to the police - there is no claim that he was denied an opportunity to be heard or that he was mistreated in custody. The decision to charge him was made pursuant to law, and Article 157(6) authorizes the DPP to institute proceedings where an offense is disclosed. There is no credible material to suggest that the DPP or DCI acted under improper influence, or that they breached any procedural rights of the petitioner in the course of the investigation.
17. It is settled law, as reiterated in *Anarita Karimi Njeru v Republic* [1979] KLR 154, that one alleging violations of constitutional rights must demonstrate with precision the specific right violated and the manner in which the right was infringed.
18. In addressing claims under Articles 27, 28, and 29, it is essential to establish whether the Petitioner was subjected to arbitrary arrest, unfair discrimination, or degrading treatment. Guided by the principles laid down in *Republic v Commissioner of Police & Director of Public Prosecution Ex Parte Michael Monari & Another* [2012] eKLR, the police have a constitutional obligation to investigate reported crimes. The mere act of arrest or investigation, performed in accordance with statutory obligations and procedures, does not automatically constitute a violation of rights unless done arbitrarily or in bad faith.
19. The Petitioner's claim that his dignity under Article 28 will be violated by being prosecuted is understandable from a human perspective, but it is not a legal basis to stop a lawful prosecution. Any person charged with a crime faces a degree of embarrassment. However, *the Constitution* does not guarantee that one will never be put on trial it guarantees that if one is tried, it will be per a fair process. The attribute of dignity in Article 28 means that every person should be treated with respect and accorded the full measure of human rights. In the context of criminal proceedings, that translates to humane treatment, presumption of innocence, and a fair opportunity to defend oneself. There is no suggestion that the petitioner has been or will be treated in an undignified or degrading manner by the mere fact of being charged. Should the petitioner be subjected to any treatment in custody or during the trial that offends his dignity, the law provides remedies at that stage.
20. At present, the claim under Article 28 appears to be based solely on the petitioner's perception that being accused of a crime is demeaning. That cannot, on its own, constitute a constitutional violation otherwise, every suspect or accused person would have grounds to allege loss of dignity by virtue of being prosecuted, which is not tenable. As long as the prosecutorial process is carried out in accordance with the law and with respect for the rights of the accused, it does not amount to a violation to dignity. In this case, no such contraventions have been shown.
21. The Petitioner's pleadings made a cursory reference to Article 27. He did not, however, provide any evidence or argument that he was targeted for prosecution on a prohibited discriminatory ground (such as race, sex, ethnic origin), or that others similarly situated have been treated differently. All indications are that the investigation was prompted by a specific complaint and was evidence-driven, not influenced by any personal attributes of the petitioner. Thus, the Article 27 claim is unsubstantiated. The discretion to charge or not charge an individual lies with the DPP, and provided that discretion is exercised on permissible criteria and not on whim or bias, it does not offend the right



to equality. There being no proof of selective enforcement or discrimination in this case, the Article 27 claim fails.

22. Regarding Article 47, the petitioner must demonstrate that the respondents acted unreasonably, irrationally, or without legal justification. In *Judicial Service Commission v Mbalu Mutava & Another* [2015] eKLR, the Court emphasized that fair administrative action requires decisions to be lawful, reasonable, and procedurally fair. Here, the respondents have shown a lawful process: the petitioner was summoned, informed of allegations, and given an opportunity to respond. Here, the petitioner's claim essentially amounts to insisting on his innocence and the weakness of the case against him – matters that should be raised as a defense in the trial, not as a ground for constitutional invalidation of the prosecution. Without evidence of procedural impropriety or irrationality, a breach of Article 47 cannot be sustained.
23. Article 50 of *the Constitution* guarantees the right to a fair trial, encompassing due process protections. However, as clarified in *Republic v Attorney General & 4 Others Ex Parte Kenneth Kariuki Githii* [2014] eKLR, the right to fair hearing principally applies within the context of an actual trial, not during preliminary investigations or decisions to prosecute. The petitioner's assertion of innocence or the alleged weakness of evidence cannot preempt a trial.
24. The Petitioner's Article 50 claim is premature. The fair hearing right primarily ensures that once before a court, an accused will receive a fair and impartial trial. The Petitioner has not yet been tried; indeed, the trial process has been in abeyance due to the conservatory orders. There is at present no indication that a trial court would conduct his case unfairly or that any of the safeguards like presumption of innocence or the burden/standard of proof would be disregarded. If the Petitioner's concern is that the prosecution lacks merit, the fair trial framework has internal mechanisms to address that. Thus, the Petitioner's Article 50 claims are premature and unsubstantiated at this pre-trial stage.
25. In sum, this Court finds that the Petitioner has failed to demonstrate any violation of his constitutional rights by the Respondents' conduct, nor any mala fides or abuse of legal process in the institution of the criminal proceedings. The investigation was lawfully undertaken, and the DPP's decision to charge was based on evidence and within the bounds of its constitutional mandate. The Petitioner's arguments largely go to the merits of the criminal case, but those are matters for the trial court. There is no proof before this Court of any procedural impropriety, illegality, or infringement of fundamental rights in the manner the investigative or prosecutorial mandate was exercised. Consequently, there is no legal basis for this Court to interfere with the criminal process.
26. Disposition
  - i. The Petition is hereby dismissed in its entirety.
  - ii. The interim orders earlier granted staying the arrest or prosecution of the Petitioner are accordingly discharged.
  - iii. Each party shall bear its own costs of the petition.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19<sup>TH</sup> DAY OF JUNE, 2025.**

.....

**BAHATI MWAMUYE**

**JUDGE**

In the presence of: -

Counsel for the Petitioner - Absent



Counsel for the 1<sup>st</sup> Respondents – Mr. Achochi

Counsel for the 2<sup>nd</sup> Respondents – Mr. Achochi

Counsel for the Interested Party - Absent

Court Assistant – Ms. Neema

