



REPUBLIC OF KENYA



KENYA LAW
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**Keya v Director of Criminal Investigations & 3 others (Criminal Petition
E001 of 2024) [2025] KEHC 8420 (KLR) (16 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8420 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL PETITION E001 OF 2024**

**AC BETT, J
JUNE 16, 2025**

BETWEEN

BILL BRIGHT KEYA PETITIONER

AND

THE DIRECTOR OF CRIMINAL INVESTIGATIONS 1ST RESPONDENT

THE DIRECTOR OF PUBLIC PROSECUTIONS 2ND RESPONDENT

THE HON ATTORNEY GENERAL 3RD RESPONDENT

NELLY NAMAI 4TH RESPONDENT

JUDGMENT

1. According to the petition dated 4th December 2024, the Petitioner sought the following prayers:-
 - a) Declaration that the intended arrests are premature and hence arbitrary contrary to article 29 of *the constitution*.
 - b) An order of prohibition do issue against the 1st and 2nd Respondent from arresting and charging the Petitioner.
 - c) Any order that shall meet the interest of justice be made.”
2. The Petition is grounded on a supporting affidavit sworn by the Petitioner who depones that he was arrested on 7.8.2024 for failing to pay a debt which he owed the 4th respondent. He avers that he and the 4th Respondent were in a romantic relationship which terminated mutually and during that time, he approached the 4th Respondent with a business idea and was advanced Kshs. 280,000/= while in Kakamega. Unfortunately, the said business did not flourish and the Petitioner fell into debt with several people including the 4th Respondent.



3. The Petitioner depones that he was arrested and detained in Kakamega Police station and the Respondents were seeking detain him further but the court did not grant them orders. He stated that the 1st Respondent and 2nd Respondent have been threatening him with imminent arrest and his liberty is threatened and he has fears of being harassed and unable to do his duties effectively. He further avers that the intended arrest and arraignment in court is actuated by malice and it was premature and it is arbitrary an abuse of power. Moreover, he stated that the matter is purely civil in nature.
4. The Petition is opposed by the 1st Respondent vide Grounds of Opposition dated 4.2.2025. The 1st Respondent posits that the petition is bad in law, misconceived and is an abuse of the court process; that the Petitioner has failed to disclose material facts in the petition, and has not approached the court with clean hands. Further, that the Petitioner has not demonstrated any form of Constitutional violation and has not demonstrated to the court with reasonable precision, spelling out the relevant breaches in *the Constitution* with full particulars and how those breaches were committed.
5. It is the contention of the 1st Respondent that the allegation that the matter in question is civil in nature does not suffice because Section 193A of the Criminal Procedure stipulates that a civil suit is not a bar to criminal proceedings. It is their contention also that the granting of anticipatory bail and any conservatory orders in this matter will amount to interference of investigations and prohibition sought would amount to interference of the power of police and DPP as provided in *the Constitution* of Kenya.
6. The petition was canvassed by way of written submissions.

Petitioner's Submissions

7. The Petitioner submits that the matter between him and the 4th Respondent is civil in nature and as in his sworn affidavit, he admitted to receiving Kshs. 280,000/= from the 4th Respondent and informed her that the funds were to be used to try out a business venture. Further he submitted that the 4th Respondent abused the institution of the 2nd Respondent by lodging a criminal complaint in Kakuma as she was residing there.
8. Reliance is placed on the case of Hannah Wambui Githire v DPP and Ndarua v r [2002] 1 EA 205, it is submitted that the institution of criminal proceedings against the Petitioner contravenes Articles 27(1) and (2), 47, 50(1) (2) and Articles 157(11) of *the Constitution*.
9. The Petitioner submitted that he is entitled to the prayers sought in his petition and urges the court to grant the same.

1st Respondent's Submissions

10. The 1st Respondent submits that the issue presented is a direct invitation to this court to restate the circumstances under which the High Court in exercise of its vast jurisdiction conferred by *the Constitution* can halt, stop, prohibit or quash a police investigation. They rely on the case of Republic v Serviced&2 others, Resilient Investments Limited & 3 others (interested party): limited (Exparte) Judicial Review Application E037 of 2021 [2022] KEHC (KLR). Further, it is submitted that court is vested with jurisdiction to test the veracity of evidence in the trial. Reliance on Anne Nduta Ruo v DPP & 2 others [2022] eKLR.
11. It was submitted the alleged breach of *the Constitution* has not been stated with the required degree of precision and the petition has failed the test of specificity as in the case of Anarita Karimu Njeru v Republic (1976-1980) KLR 154. Further, it is submitted that being subjected to a lawful process of investigations does not amount a violation of a Constitutional right, relying on the case of Mutuku Mwanza v Inspector General of the National Police Service &3 others [2021] eKLR.



12. It is submitted that civil suits cannot bar the institution of criminal proceedings according to Section 193A of *Criminal Procedure Code* where parallel civil and criminal proceedings are allowed in law.

Analysis and Determination

13. I have considered the grounds in support of the petition, the grounds in opposition thereto and the rival submissions by the parties.
14. The issues for determination as is deducible from the pleadings are:-
- (a) Whether the Respondents are using the criminal process to harass, intimidate and threaten the Petitioner over a civil debt.
 - (b) Whether the acts of the Respondents are in violation of the Petitioner's constitutional rights.
 - (c) Whether the petition has merits.
15. By virtue of Article 165 (3) (b) of *the Constitution*, the High Court has unlimited original jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened.
16. This court therefore has the power to halt, stop, prohibit or quash a police investigation under certain circumstances.
17. The 2nd Respondent, is empowered under Section 35 of the *National Police Service Act* to:-
- “(a) collect and provide criminal intelligence;
 - (b) undertake investigations on serious crimes including homicide, narcotic crimes, human trafficking, money laundering, terrorism, economic crimes, piracy, organized crime, and cyber crime among others;
 - (c) maintain law and order;
 - (d) detect and prevent crime;
 - (e) apprehend offenders;
 - (f) maintain criminal records;
 - (g) conduct forensic analysis;
 - (h) execute the directions given to the Inspector-General by the Director of Public Prosecutions pursuant to Article 157(4) of *the Constitution*;
 - (i) coordinate country Interpol Affairs;
 - (j) investigate any matter that may be referred to it by the Independent Police Oversight Authority; and
 - (k) perform any other function conferred on it by any other written law.”
18. On the other hand, the 1st Respondent is mandated under Article 157 of *the Constitution* to inter alia, institute and undertake criminal proceedings, take over existing cases, and direct investigations. It therefore follows that once the police have conducted their investigations, they will forward a duplicate of the police file to the office of the Director of Public prosecutions who upon perusal of the file, will



give advice and further directions on the matter including the decision to have the suspect charged with a criminal offence.

19. As submitted by the 1st Respondent, the police are vested with powers to investigate complaints lodged with the 2nd Respondent provided the complainant has met the test, which is the “reasonable suspicion” test. The police, must have a reasonable basis to believe that the suspect is connected to the crime that is being investigated based on available witness statements, documentary or physical evidence.

20. Additionally, it is provided under S. 52 (1) of the National Police Act, that:-

“A police officer may, in writing, require any person whom the police officer has reason to believe has information which may assist in the investigation of an alleged offence to attend before him at a police station or police office in the county in which that person resides or for the time being is.”

21. The statutory powers vested upon the police are aimed at enabling the police to effectively discharge its constitutional mandate as encoded in Article 245 of *the Constitution*.

22. It is well settled that where a constitutional and statutory body is exercising its mandate, it should not be subjected to external interference without proper reason. In *Tom Dola & 2 others v. Chairman, National Land Commission & 5 others* [2020] eKLR, the Court of Appeal held as follows:-

“In *Pevans East Africa Ltd & Another v. Chairman, Betting Control & Licensing Board & 7 Others* [2018] eKLR, this Court emphasised, and we reiterate, that where *the Constitution* has vested specified functions in a state institution or organ, the courts will not readily interfere with the discharge of that mandate unless it is demonstrated that the institution or organ in question has acted ultra vires or in breach of *the Constitution* or the law. The Court expressed itself thus:

“Where *the Constitution* had reposed specific functions in an institution or organs of State, the courts must give those institutions or organs sufficient leeway to discharge their mandates and only accept an invitation to intervene when those bodies are demonstrably shown to have acted in contravention of *the Constitution*, the law or that their decisions are so perverse, so manifestly irrational that they cannot be allowed to stand under the principles and values of our Constitution. Courts must decline to intervene at will in the constitutional spheres of other organs, particularly when they are invited to substitute their judgment over that of the organs in which constitutional power reposes, because those organs have expertise in their area of mandate, which the courts do not normally have.”

23. It cannot be gainsaid that where there are reasonable grounds to believe that a crime has been committed, the 2nd Respondent has the power to mount an inquiry and investigate the same. In the case of *Republic v. Commissioner of Police & Another Ex Parte Michael Monari & Another* [2012] eKLR, the Court stated that:-

“Under Article 157(4) of *the Constitution*, the Director shall have power to direct police to investigate any information or allegation of a criminal conduct and it is mandatory for the police to comply with any directions or instructions given by the Director of Public Prosecution. Under article 157(10) the Director of Public Prosecution shall not require the



consent of any person or authority for commencement of criminal proceedings and shall not be under the direction or control of any person. It is also clear in my mind that the police have a duty to investigate on any complaint once a complaint is made. In deed the police would be failing in their constitutional mandate to detect and prevent crime. The Police only need to establish reasonable suspicion before preferring charges. The rest is left to the trial court. The predominant reason for the institution of the criminal case cannot therefore be said not to have been the vindication of the criminal justice. As long as the prosecution and those charged with the responsibility of making the decisions to charge act in a reasonable manner, the High Court would be reluctant to intervene.”

24. It is trite that in discharging its mandate as aforesaid, the Respondents must act within the confines of *the Constitution*. Of importance in the discharge of the mandate is whether the action is fair and lawful.
25. The Respondents did not file an affidavit in reply to the Petition despite the fact that the Complainant was named as the 4th Respondent. In the circumstances, the Petitioner’s averments that the subject matter of the complaint was money lent and advanced to him by the 4th Respondent for purposes of conducting a business which failed, was not contested. Nor was his averment that after their romantic liason went sour, the 4th Respondent resorted to the police to embarrass, harass and intimidate him over the debt which he had already started paying. According to the Petitioner, the debt was purely civil debt and criminal liability did not arise.
26. In *Development Bank of Kenya Limited v. Director of Public Prosecutions & Another; Giriama Ranching Company Ltd (Interested Party)* [2020] eKLR, the court held as follows:-

“It must be stated that the law on this issue has never changed since *Kuria & 3 others v Attorney General* [2002] 2 KLR 69 when Mulwa, J held that:-

“It cannot be gainsaid that the court has power and indeed the duty to prohibit the continuation of the criminal prosecution if extraneous matters divorced from the goals of justice guide their instigation. It is a duty of the court to ensure that its processes does not degenerate into tools for personal score-settling or vilification on issues not pertaining to that which the system was even formed to perform...

Kuloba J in *Floriculture International HC Misc. Civil App No. 114 of 1997* warned, which warning I would concur with, that the machinery of criminal justice is not to be allowed to become a pawn in personal civil feuds and individual vendetta.”

27. On analysis of the petition and the grounds of opposition, I have come to the conclusion that this was a case of love gone sour and as the saying goes, “Hell hath no fury like a woman scorned”. To recover money advanced to the Petitioner at the heights of a romantic relationship, once the relationship went south, so to say, the offended erstwhile lover turned to the police and when efforts to have the Petitioner detained longer after his arrest at Kakamega failed, she lodged her complaint in Kakuma knowing very well the distance to Kakuma from Kakamega is not short.
28. In *Republic v. Service & 2 others; Resilient Investments Limited & 3 others (Interested Party)* [2022] KEHC 43 (KLR), the court in deciding on whether the court has powers to test the veracity of evidence on a matter pending investigations stated that:-

“There is no dispute that the process of establishing whether or not to prosecute usually starts when the police present a docket to the prosecutor. The police are yet to forward



the investigation file to the DPP who will evaluate the evidence and independently decide whether or not to prosecute. Importantly, it has never been the rule in this country that suspected criminal offences must automatically be the subject of prosecution. There must be sufficient evidence to mount a prosecution. The initial consideration in the exercise of this discretion is whether the evidence is sufficient to justify the institution or continuation of a prosecution. It is for the DPP to determine that the evidence presented is sufficient to justify a prosecution. A prosecution should not be instituted or continued unless there is admissible, substantial and reliable evidence that a criminal offence known to the law has been committed by the accused. It is not for this court to weigh the veracity of the evidence. This court can only intervene where there is proven breach of *the Constitution* or the law. I am afraid, a review of the material presented before me does not suggest that the police exceeded their mandate. On the contrary, the impugned actions are grounded on the enabling provisions of *the Constitution* and *the Constitution*.”

29. The Petitioner has deposed that he was arrested by the 1st and 2nd Respondent on 7th August 2024, detained at Kakamega Police Station for two days, then presented in court under Kakamega Miscellaneous Criminal Application No. E138 of 2024 where the Respondents’ prayer to detain him further was denied. Having been previously arrested over the same issue, the summoning of the Petitioner to a distant police station has led to fear on his part which he avers has resulted in inability to concentrate on his business so that he can settle the debt.
30. Considering the undisputed averments by the Petitioner, I find that the complaint at Kakuma Police station failed the reasonable suspicion test, and was arbitrary and aimed at embarrassing the Petitioner or harassing or intimidating him.
31. It is important to note that whereas the police have investigative powers, the same powers ought not to be used to settle personal scores and more so, to resolve civil disputes. In saying so, I am alive to the provisions of Section 193A of the *Criminal Procedure Code* that allows for criminal as well as civil proceedings arising from the same issues. However, the Petitioner has a right not to be subjected to an arbitrary arrest or unwarranted criminal process. The Court in the case of Hannah Wambui Githire & 3 others v. DPP [2018] eKLR cited the case of Commissioner of Police and Director of Criminal Investigations Department v. Kenya Commercial Bank and others [2013] eKLR where the Court of Appeal held:-

“While the law (Section 193A of the *Criminal Procedure Code*) allows the concurrent litigation of civil and criminal proceedings arising from the same issues, and while it is the prerogative of the police to investigate crime, we reiterate that that power must be exercised responsibly, in accordance with the laws of the land and in good faith. What is it that the company was not able to do to prove its claim against the bank in the previous and present civil cases that must be done through the institution of criminal proceedings? It is not in the public interest or in the interest of the administration of justice to use criminal justice process as a pawn in civil disputes. It is unconscionable and a travesty of justice for the police to be involved in the settlement of what is purely a civil dispute being litigated in court. This is a case more suitable for determination in the civil court where it has been since 1992, than in a criminal court. Indeed, the civil process has its own mechanisms of obtaining the information now being sought through the challenged criminal investigations. We have no doubt in our minds that the belated involvement of the police in this purely civil dispute is an abuse of their power. The police should direct their energies and resources to prevention of crime which we all know is rampant in this country and is about to get out of control.”



32. In the case of Leah Anyango Okul & 2 others v. Director of Criminal Investigations & Another, Shirley Maina (Interested Party) [2022] KEHC 15947 (KLR), the court dealt with a matter where the Petitioner had already acknowledged a debt arising from their inability to perform their contractual duty and held that:-

“...This notwithstanding, I am of the view that this is a case that is better dealt with in a civil court as opposed to invoking the criminal justice system. Indeed, the civil process has its own mechanisms of dealing with breach of contract where moneys are obtained from one party and there is no performance by the other party. The mechanisms also include enforcement of decrees in favour of the winning party.”

33. I have painstakingly considered the pleadings and submissions placed before me and I am convinced that the 4th Respondent’s claim is civil in nature. I therefore allow the petition dated 4th December 2024 and issue the following orders:-

- (a) An order of prohibition be and is hereby issued against the 1st and 2nd Respondent restraining them from arresting and charging the Petitioner.
- (b) The cash bail of Kshs. 30,000/= that was deposited in court be released to the 4th Respondent as part payment of the money owed to her by the Petitioner.

34. It is so ordered.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 16TH DAY OF JUNE 2025.

A. C. BETT

JUDGE

In the presence of:

Mr. Esese for Petitioner

Ms. Chala for the 1st Respondent

Court Assistant: Polycap

