



Mumbi (Suing on his behalf and that of Patrick Ndung’u Kibe) v Inspector General of Police & 2 others (Miscellaneous Criminal Application E050 of 2025) [2025] KEHC 12648 (KLR) (10 September 2025) (Ruling)

Neutral citation: [2025] KEHC 12648 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
MISCELLANEOUS CRIMINAL APPLICATION E050 OF 2025
FN MUCHEMI, J
SEPTEMBER 10, 2025
IN THE MATTER OF ARTICLE 25 OF THE CONSTITUTION
OF KENYA
AND
IN THE MATTER OF SECTION 389 OF THE CRIMINAL
PROCEDURE CODE
AND
IN THE MATTER OF AN APPLICATION FOR DIRECTIONS IN
THE NATURE OF HABEAS CORPUS
AND
IN THE MATTER OF THE CRIMINAL PROCEDURE
(DIRECTIONS IN THE NATURE OF HABEAS CORPUS)
RULES

BETWEEN

PENINAH WANGUI MUMBI (SUING ON HIS BEHALF AND THAT OF PATRICK NDUNG’U KIBE) APPLICANT

AND

INSPECTOR GENERAL OF POLICE 1ST RESPONDENT

DIRECTORATE OF CRIMINAL INVESTIGATIONS 2ND RESPONDENT

SCCIO JUJA SUB COUNTY 3RD RESPONDENT



RULING

1. The application for determination dated 7th July 2025 seeks for orders of summons to issue directed against the SCCIO Juja Sub County in whose custody Patrick Ndung'u Kibe is currently arbitrarily held to produce the body of the said Patrick Ndung'u Kibe before the court together with the original warrant or order for detention on a date to be given and the said Patrick Ndung'u Kibe be released and set at liberty.
2. The applicant states that she is the wife of Patrick Ndung'u Kibe who was arrested on 2nd July 2025 at Juja Police Station by officers from the Directorate of Criminal Investigations as he was following up on a complaint he had lodged there on 1st July under OB No. 44/01/07/2025. The applicant avers that to date, the 3rd respondent has failed to arraign him before a competent court of law and there is no court order issued for his continued detention.
3. On 4th July 2025, Patrick Ndung'u was transported to Thika Law Courts where his advocate was present but he was never presented before the magistrate. Furthermore, upon his advocates following up with the court registry, the court staff informed him that no matter was registered against Patrick Ndung'u at the court. the applicant further states that he spent the whole day at Thika Law Courts and was returned to Juja Police Station where he is being held to date.
4. The applicant argues that Article 49 of the Constitution grants any suspect the right to be produced before a competent court of law not later than 24 hours after being arrested or if the twenty four hours end outside ordinary court hours, or on a day that is not an ordinary court day, the end of the next court day. It therefore follows that his rights to be presented to court continues to be violated as he has not been presented before a court of law and unless the court intervenes the Constitution shall continue being violated by the respondents.
5. The applicant states that Patrick Ndung'u Kibe has an absolute right to habeas corpus and to a fair trial and therefore he should be subjected to the due process of the law other than arbitrarily detaining him and leaving his loved ones worrying of his whereabouts.
6. The respondents proceeded with the application by way of viva voce evidence.
7. DW1, SP Dorcas Cherui situated in SCCI Juja DCI Office testified that she has worked in the Juja Station for seven months. She stated that her duties involved investigating serious criminal cases and she is in charge of the DCI Office in Juja. The witness testified that on 1st July 2025, one IP Joan Gachanja and PC Robert Kenyando went to her office in the company of the subject Patrick Ndung'u Kibe and stated that the subject had booked a report being OB No. 44 alleging that some persons known to him had obtained 520 bags of green grams each bag costing of Kshs. 7,500/- per bag by false pretences.
The total value of the goods was Kshs. 3,900,000/-. The subject informed them that the suspect was of Somali origin who had purchased the goods through Maktech Company to some mobile numbers which were given.
8. The witness further testified that on 2nd July 2025, the two officers went back to her office and stated that as they were recording the subject's statement he gave them his suppliers name and phone number and upon calling him, he stated that he was far away but would go to the station. He further stated that he was the owner of the goods and the subject had sold them without his consent. DW1 stated that she called the said number and confirmed the information he had given the two officers and later in



- the day the owner of the goods went to the office confirming that they had talked on the phone. DW1 further confirmed that the goods belonged to Mr. Gitonga and Christopher.
9. The witness testified that they called the subject who went to the office later in the night and confirmed that Gitonga and Christopher were the owners of the said goods. Thus the subject was booked and charged with the offence of stealing contrary to Section 268 of the Penal Code. The matter was then referred to the ODPP for approval of the charge on 4/7/2025 but the ODPP declined to approve the charge and directed for the police to conduct more investigations. The witness stated that the prosecutor called her and directed that the subject be released on cash bail.
 10. DW1 further testified that the subject's advocate Mr Michuki went to her office requesting to pay cash bail for the release of his client and she handed over the matter to Joan. Joan later reported to her that the advocate was to go and prepare for cash bail but he never returned. DW1 further testified on 7/7/2025, courts were not open as there were demonstrations for Saba Saba and they were assigned security duties for the day. On 8/7/2025, it was impossible to take the subject to court on time as the roads were impassable due to riots. The charge was registered in court on 9/7/2025 and plea was scheduled to take place on 11/7/2025 and thus they kept the subject in custody. The witness stated that considering the high value of the goods, she was unable to release the subject on free bond.
 11. On cross examination the witness stated that she did not order the detention of the subject. The witness further stated that they launched investigations on 1/7/2025 immediately after receiving the report and the subject recorded his statement on 1/7/2025. DW1 further testified that she ought to have taken the subject to court on 3/7/2025 but the file was forwarded to the ODPP on 4/7/2025. The subject was taken to court on 4/7/2025 but he was not presented for plea because the ODPP did not approve the charge and thus he was returned to their custody.
 12. The witness stated that although the law does not allow them to detain someone for more than 24 hours, some circumstances can ensue that require them to hold one for more than 24 hours. The witness further stated that they detained the subject's motor vehicle registration number KDQ 122D.
 13. DW1 testified that they had asked the DPP to file an application for continued detention but they sent them back to the station to cover some points. The DPP approved the charge on 9/7/2025 and it was registered. The witness stated that the subject was presented for plea on 11/7/2025 although he was arrested on 2/7/2025.
 14. Parties put in written submissions.

The Applicant's Submissions.

15. The applicant submits that Article 49(1) of the *Constitution* is an implied non derogable right pursuant to Article 25 of the *Constitution*. Further Article 25 expressly protects a person's right to obtain an order of habeas corpus whereas Article 29(1)(a) prohibits arbitrary deprivation of liberty or without just cause. Therefore prolonged detention without judicial oversight undermines both the inderogable right to habeas corpus as set out under Article 25 and 29. To support her contentions, the applicant refers to the case of Michael Rotich vs Republic [2016] eKLR.
16. The applicant argues that Mr. Kibe was held incommunicado for nine days without any court appearance grossly exceeding the 24 hour limit in explicit violation of Article 49(1)(f) and Article 29(1) of the *Constitution*. The applicant further submits that Mr. Kibe was not charged until after nine days after this court issued an order of habeas corpus. To support her contentions, the applicant relies on the case of Okiya Omtatah Okioti vs Director of Public Prosecutions; Inspector General of National Police Service & Another (Interested Parties) International Commission of Jurists (Kenya Selection) (Amicus



- Curiae) [2022] eKLR and submits that Mr. Kibe's arrest and detention from 2nd to 11th July 2025 contravened multiple constitutional provisions as he was held beyond the 24 hour limit, without being informed of his offence, without counsel and in defiance of Article 29's ban on arbitrary detention.
17. The applicant submits that all the evidence derived from the illegal detention of Mr. Kibe must be excluded and if such evidence is essential to the prosecution's case, the proceedings cannot stand pursuant to Article 50(4) of the Constitution. The applicant further refers to the case of *Philomena Mbete Mwilu vs Director of Public Prosecutions & 3 Others; Stanley Muluvi Kiima (Interested Party) International Commission of Jurists Kenya Chapter (Amicus Curiae) (2019) eKLR* and submits that while ordinarily the issue of whether to exclude evidence would be a matter for the trial court where, as in the present circumstances, a court is faced with the issue of determining whether there has been a violation of a person's rights it is under an obligation to consider the issue. Further, the trial court is a magistrate court that cannot deal with issues regarding violation of human rights. The applicant argues that in the present case, the egregious right violations and prolonged incommunicado detention without legal processing are so serious that admitting any resulting evidence would violate Article 50(4) of the Constitution and fundamental justice.
18. The applicant submits that as per the admissions by the 1st respondent, all the evidence in the matter was collected subsequent to Mr. Kibe's detention on 2nd July 2025. Thus the said evidence having been obtained during the unconstitutional detention of Mr. Kibe, the same must be excluded for public policy reasons.

The Law

19. Article 51(2) of the Constitution relates to the rights of persons detained held in custody or imprisoned. It states:-
- A person who is detained or held in custody is entitled to petition for an order of habeas corpus.
20. Section 389 of the Criminal Procedure Code provides directions on the orders that the High Court may issue regarding pleas for habeas corpus which states:-
- The High Court may whenever it thinks fit direct-
- a. that any person within the limits of Kenya be brought up before the court to be dealt with according to law.
 - b. that any person illegally or improperly detained in public or private custody within those limits be set at liberty.
 - c. that any prisoner detained a prison situated within those limits be brought before the court to be there examined as a witness in any matter pending or to be inquired into in that court.
 - d. that any prisoner so detained be brought before a court martial or commissioner acting under the authority of a commission from the President for trial to be examined touching any matter pending before the court martial or commissioners respectively.
 - e. that any prisoner within those limits be removed from one custody to another for the purpose of trial.
 - f. that the body of the defendant within whose limits be brought in on return of cepi corpus to a writ of attachment.



21. Thus for the writ to issue, the applicant must show that the subject is being held in custody, detained or imprisoned and in whose custody.
22. In *Grace Straut Ibingira & Others vs Uganda* (1966) EA 447 (CA) at 454 the court held:-

The writ of habeas corpus is a writ of right grante ex debito justacine, but it is not a writ of course and it may be refused if the circumstances are such that the writ should not issue. The purpose of the writ is to require the production before the court of a person who claims that he is unlawfully detained so as to ensure his release from custody (unlawful) should the court hold that he is unlawfully restrained. The writ is directed to one or more persons who are alleged to be responsible for the unlawful detention and it is a means whereby the most humble citizen may test the action of the executive government no matter how high the position of the person who ordered the detention.
23. Similarly in *Masoud Salim Hemed & Another vs DPP & 3 Others* (2014) eKLR the court held:-

The general burden in a habeas corpus application must, pursuant to Section 107 of the *Evidence Act* remain with the petitioner. The petitioner must establish by competent and convincing evidence that the missing person on whose behalf the petition was filed is under the custody of the respondents.
24. Further in *Law Society of Kenya & 3 Others vs Attorney General & 2 Others; Independent Policing Oversight Authority (Interested Party)* (Constitutional Petition E467 of 2021) [2023] KEHC 26888 (KLR) (Constitutional and Human Rights) (15 December 2023) (Judgment) the court held:-

Habeas corpus hence deals with the production of a person who is proved to be in custody of the police or any state agency or is held under the instructions of the state or its agencies. It does not deal with matters of compensation or reparation for the violation of any fundamental rights resulting from the illegal incarceration.
25. As explained in the foregoing decisions, the writ of Habeas Corpus requires the respondents to either produce the subject person before the court, dead or alive for the court to satisfy itself that the detention is lawful, failure to which the detention shall be found to be unlawful.
26. It is not in dispute that the subject took himself to Juja Police Station on 1st July 2025 where he reported a case of fraud by a certain suspect whom he said was of Somali origin. The report was to the effect that persons known to him had obtained 520 bags of green grams by false pretences. The report was booked as OB No.44 of 01/07/2025. He gave a telephone number of the suspect. Upon inquiries, the investigating officers said they came to find out that the subject was the one who had sold the goods of the complainants whom he referred to as the suspects.
27. The SCCIO Juja SP Dorcas Cherui ordered the detention of the subject pending further investigations. On 7/07/2025, the subject was still in police custody when his advocate visited the police station and one Mr. Michuki requested that his client be released on bond pending completion of investigations.
28. The officer in charge SP Cherui said she could not have released the subject on cash bail because the value of the goods was very high. On 8/07/2025, the advocate obtained orders of habeas corpus to have his client produced in court. He was produced in court on 10/07/2025. The hearing of this application continued and was concluded on 24/07/2025.



29. On the side of the criminal investigations, the said SP Chruir said that the ODPP office did not approve of the charge until The other reason given for the delay by the office of the SCCIO in arraigning the suspect before the court was that there were demonstrations of the youth country wide on 7th July 2025 which caused disturbances in several areas including Juja. The police were deployed to maintain order and were not able to arraign the suspect in court for a few days until 11th July 2025. The 3rd respondent said she requested the ODPP office to file an application for extension of time of detention in custody but this was not done. The defence of the SCCIO is that the delay to arraign the suspect in court was caused by circumstances beyond her control.
30. Article 49(1) of the Constitution provide that an arrested person has a right to be released on bail at least 24 hours after arrest. This is a right that ought to be accorded to an arrested person by the arresting authority. The police did not explain why the subject was not released before the end of the 24 hour period and be directed to return to the police station on a certain date for further directions concerning arraignment in court. The defence given by the detaining authority is not satisfactory in my view. Before the disturbances of 7th July 2025, the subject ought to have been released on 3rd July 2025 unless a court of law had authorised further detention.
31. Considering the authorities cited herein, the purpose of Habeas Corpus, is to produce the subject before the court for orders to be made concerning the legality or otherwise of the detention. The 24 – hour period ended on 3rd July 2025 whereas the subject ought to have been released. Any detention thereafter was unlawful. The defences presented by the 3rd respondent were not plausible.
32. However, the 3rd respondent complied with the orders of the court made on 8th July 2025 to produce the subject in court. The court has pronounced itself to the effect that detention of the subject from 3rd July 2025 at 3.00 p.m. was unlawful and unconstitutional contrary to Article 49(1) of the Constitution.
33. The subject is at liberty to institute civil proceedings for compensation.
34. The application for Habeas Corpus is now spent.
35. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 10TH DAY OF SEPTEMBER 2025.

F. MUCHEMI

JUDGE

