



Kigia v Attorney General & 3 others (Miscellaneous Application E022 of 2023) [2024] KEHC 1395 (KLR) (15 February 2024) (Judgment)

Neutral citation: [2024] KEHC 1395 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
MISCELLANEOUS APPLICATION E022 OF 2023
EM MURIITHI, J
FEBRUARY 15, 2024**

BETWEEN

MICHAEL KUNG’U KIGIA APPLICANT

AND

THE ATTORNEY GENERAL OF KENYA 1ST RESPONDENT

DIRECTOR OF PUBLIC PROSECUTION 2ND RESPONDENT

THE JUDICIARY (MEDIATION ACCREDITATION COMMITTEE) 3RD RESPONDENT

INSPECTOR GENERAL OF POLICE 4TH RESPONDENT

JUDGMENT

1. By a Notice of Motion under certificate of urgency dated 3rd April 2023 brought under Order 51 Rule 3, Order 45 of the Civil Procedure Rules, Sections 3, 3a and 63 (e) of the *Civil Procedure Act*, chapters 4 and 10 and Article 159 (1) (d) of *the Constitution*, the applicant seeks that:

1. Spent

2. This Honorable court do issue an order to set aside ruling issued on 10th December 2021 by the Mediation Accreditation Committee as the applicant herein was never served by court process server of High Court of Kenya/or any other process and what proceeded before the committee is Null and Void as there is existing chief magistrate court case No. 232/2019 against Meru Law Society who are against mediation in Meru, obtained a court order issued by Chief Magistrate Meru (against) Applicant on issue that was referred to Chief Justice Martha Koome (hence CJ/120) of 16/8/2021 AS M.A.C has been siding with Meru Lawyers since they wrote malicious letter dated 25/7/2019 falsely accusing applicant on flimcy grounds hence lacks jurisdiction due to COVIT 19 as world health organization has never declared that Kenya is



free country obtained any authority from Ministry of Health to confirm aged Kenyans as above 70 years can assemble if any order let be produced.

3. The Honorable court do issue an order against Mediation Accredited Committee to prove the committee has power to set aside the Chief justice letter issued on 16/8/2021 that appointed the applicant herein in paragraph three (3) that has no authority in Judiciary to do so as applicant herein did forward the letter to the committee But Hon. Mosses Wanja the director has upper hand with Mount Kenya Lawyers against the applicant as the only mediator privately in Meru under payment Receipt of Kenya Kshs. 71,920 issued on 2018 to James Mangere Advocate, President M.T.I International East Africa – Distinguished fellow of the International Academy of Mediator that registered applicant as one of 1st group of Advances Mediators and pioneer group of Chartered Mediators in Kenya as the M.A.C lacks jurisdiction to cancel mediators as they work independently/Private except the mediator who are assigned court files/or lower court files to mediate and properly carry fraud work that M.A.C lacks jurisdiction as ALL Mediator Trained were ordered to practice in Kenya/or proceed in any country of the world where mediation remuneration in Africa is confirmed by James Mangerere trainer is Kshs. 300Million per seven days/or 1.83 Million as per hour was paid by Kenya Government when he mediated in County of Turkana where there were crises between International Oil Company, Kenya Government and Turkana people.
 4. The Honorable court do issue an order against mediation accreditation committee to issue to issue practicing certificates of applicant paid to Kenya Commercial Bank A/C of Court of appeal 1144416752. Since 2018 to 1/2/2023 and forwarded to M.A.C Nairobi. As has never forwarded up to date payment. (2023) in ORDER to punish the applicant.
 5. The Honorable Court do issue an order against the D.C.I.O Meru why he used Cr. Case No. 239/2023 to remand application, served him with criminal case No. E010/2023 and disobeyed court order issued on 10/3/2023 to the applicant to Hospital hence Cr. Case No. 368/2023 cannot be entertained in any court of law as is null and void (civil matter).
 6. The Honorable Court do issue an order against defendants as applicant herein was unlawfully detained in G.K prison for four days illegally and court do order payment of Kshs. 1.83Million per Hour as from 2nd March 2023 to 13/3/2023 since due process of law was NOT followed and be condemned on the officer who conspired by LAW Society chairman Mr. Mutuma to Malign applicants name as obtained ruling issued on 10/12/2021 back dated by M.A.C on fraud as Roll out of court annexed mediation in Meru the A.D.R (Alternative) dispute resolution could have addressed the issue as Justice George V. Undunga chairman M.A.C and Court Annexed Mediation secretariat could have addressed the issue to applicant an issue that was the only mediators representative in Meru. When I proceeded in front line with all Judges, Magistrates, Mediators from Nairobi Judicial Officers and public through streets of Meru, when No. Advocate attended and Justice V. Undunga Judge commenced dispute resolution should not be killed.
2. The grounds upon which the application is premised are set out in the body of the application and supporting affidavit of Michael Kungu Kigia, the applicant herein, sworn on even date. He avers, “2. That on 2018 the Judiciary advertised the training of mediators through International Mediation Bodies and issued tenders to three (3) and especially to James Mangerere advocate M.T.I International East Africa Distinguished fellow of International Academy of Mediator who was my trainer. 3. That at the end of the training obtained a recommendation to practice as a mediator and certificate as had completed fifty (50) hour program while chief Justice David Maraga had suggested 20-30 Hr program for Kenya (Annexed MMK1). 4. That the trainer directed all qualified mediator to proceed and carry



mediation in Kenya as private mediator as Judiciary was unable to employ us all 540 mediator had kshs. 71,920/= to be a member of 1st group of advanced mediator and the pioneer group of chartered mediator in the country (Kenya) annexed marked MMK2. 5. That applicant has been submitting yearly payment of Kshs. 10,000/= to court of appeal account for purposes of practice of certificate since 2018 to 31/12/2023 hence none compliance by M.A.C Secretariat Nairobi of Judiciary Annexed Marked MMK3. 6. That on 16/8/2021 the Chief Justice Martha Koome recommended applicant and forwarded the letter reference CJ/120 that did not please the M.A.C according to the recommendation marked MMK4. 7. That the M.A.C some members have been acting against applicant herein as confirmed by some advocates here in Meru in order to stop mediation in this region as seen now. 8. That I am an accredited mediator with wide experience of six years and the Only in Meru while have requested all my cases be forwarded to court annexed mediator Meru due to bad blood with magistrates as some have been rejecting to forward the same. 9. That is write law if this Honorable court can peruse the CMC 232/2019 and note the kind of lawyers affidavits filed as now have been purporting to be mediators that is wrong. 10. That the Honorable court do set aside the ruling issued on 10/12/2021 as no services was done to applicant hence condemned unheard and to make matter worse to struct my mediation as never assigned any court file in Kenya courts even here in Meru showing irregular and illegal issues of M.A.C with Meru Lawyers who on 2/3/2023 said has used money to have my license cancelled and locked me in cell in court while report reached me by 2/3/2023 at 5p.m and same lawyers meet the same clients in my office confirming the arrest. Annexed MMK 4. 11. That on Roll out of mediation annexed mediation on 28/6/2022 the chairman of M.A.C Justice V. Onduga could have confirmed the matter or the mediation secretariat from Nairobi to me. This shows the ruling was irregular and illegally done to sacrifice my business for monetary gain. 12. That the Honorable Court Ought to peruse the proceedings of withdrawn Cr. Case No. E011/2023 and Cr. Case No. 368/2023 and note court orders were not complied with and the magistrate who issued a bond of Kshs. 600,000 compared with a bond of Kshs. 50,000 was malicious in order to kill applicant in remand at G.K prison Meru and please the Mount Kenyan Lawyers (annexed MMK5). 13. That this Honorable court do order the director of C.I.D Meru to return all documents as shown in the Annexed Inventory marked MKK 6. 14. That the Honorable Court do order the defendants be condemned to pay damages involved. 15. That this Honorable Court do issue an order against the D.C.I Meru to explain why they filed Cr. Case No. 368/2023 and used Cr. Case No. 239/2023(Duncan Mworira Mwonjera) to remand applicant in G.K prison Meru as was serious matter in law/or withdraw Cr. Case No. 368/2023 with cost of damages involved. 16. That the court annexed mediation took place on 28/6/2022 while cancelling of my mediation record was done on 10/12/2021 why did it take almost 1 year without communication with applicant if the ruling is legal. 17. That this Honorable court is requested to allow the orders as prayed in the motion as the applicant shall go untold sufferings due to irregular and illegal issues mentioned above that shall damage the gospel of mediation in Mount Kenya Courts if complaints are allowed to use D.C.I.O as the former president used D.C.I.O Kinoti to harass judges in Nairobi.”

3. The 2nd Respondent opposed the application vide a replying affidavit sworn by Masila E. Masila, its principal prosecution counsel, on 30/10/2023. He urges that the applicant was detained at Meru police station on 3/3/2023 for 7 days vide Principal Magistrate’s court at Tigania Misc. criminal application No. E011/2023 to allow for investigations to be concluded. Upon expiry of the 7 days granted, the applicant was presented before Chief Magistrate’s court at Meru on 10/3/2023 and formally charged in Criminal case No. E368/2023. At no time did the applicant complain to the trial court during plea taking with regard to the non-compliance of court orders which were issued in Misc. criminal application No. E011/2023. The applicant’s arrest and subsequent pre-charge detention orders by the court were legal, regular, proper and correct by dint of Article 49 (1) (g) of *the Constitution*. Bail/bond terms were issued at the discretion of the court and the same was exercised judiciously.



The applicant's documents that were seized by the Investigating Officer are exhibits that will be used in the prosecution's case, and the 2nd respondent did not violate the applicant's fundamental rights and freedoms guaranteed under *the Constitution*. The applicant's application as pleaded ought to be dismissed, as it does not disclose any breach of fundamental rights and freedoms and as such there cannot be any basis for an inquiry.

4. The 3rd respondent opposed the application vide a replying affidavit sworn on 13/9/2023 by Moses W. Wanjala, the Mediation Registrar in charge of its day to day activities. He avers that the specific mandate of the 3rd respondent is to determine the criteria for certification of mediators, proposed rules for certification of mediators, maintain a register of qualified mediators, enforce a mediator code of ethics and set up appropriate mediation training programs. In the execution of its mandate, the 3rd respondent receives and reviews applications from members of the public wishing to be placed on the register of qualified mediators. Successful applicants who have been issued with MAC accreditation numbers and their details placed on a register maintained by the 3rd respondent are eligible to practice as such under the court annexed mediation program. The applicant lodged his application with the 3rd respondent for accreditation as a qualified mediator on 15/12/2019, and upon review of his application, he was awarded a provisional accreditation status and required to undergo a mandatory mentorship program and submit a report for suitability for full accreditation. As per the 3rd respondent's records, the applicant never concluded the mentorship program and he did not submit any report for consideration for full accreditation status. Instead, the 3rd respondent received a complaint from Mt. Kenya Law Society vide a letter dated 25/7/2019, where the applicant was accused of advertising and posing himself as a trainer of mediators, trainer of arbitrators as well as an ADR judge. The applicant was duly notified of the complaint and afforded an opportunity to reply and defend himself. The 3rd respondent processed the complaint in line with the procedure laid out in the Mediator Code of Ethics and rendered its decision on 10/12/2021, finding that the applicant was neither fit nor suitable to be retained on its register of accredited mediators. Consequently, the applicant lost his provisional accreditation status and his name was expunged from the register of accredited mediators. The ruling of the 3rd respondent of 10/12/2021 was regular as due process and rules of natural justice were adhered to, and having been struck off the register of accredited mediators, the applicant and the 3rd respondent lost any formal or legal engagement inter se and had no obligations and/or rights that could be enforced by either of them against the other. The 3rd respondent does not have any statutory mandate to regulate the practice of mediation in the country, and it is unaware of the alleged arrest, detention and prosecution of the applicant in March 2023. Since the applicant did not appeal against the 3rd respondent's ruling of 10/12/2021 either as provided for in the Mediator Code of Ethics or otherwise, his application ought to be dismissed with costs.
5. The applicant in his written submissions on 23/6/2023 and 17/11/2023 urges that he is a certified professional mediator and not a quack, and prays for the application to be allowed with costs.

Determination

6. The primary issue for determination is whether the detention of the applicant and his subsequent prosecution was illegal and unlawful. The Motion also challenges and seeks the setting aside of the ruling of the 1st Respondent.
7. The 2nd Respondent's case is that the detention of the applicant for 7 days pending completion of investigations was lawful subsequent to which he was formally charged in Meru CMCC No.E368/2023.



8. On its part, the 3rd respondent maintains that the decision to strike out the applicant's name from the register of accredited mediators was informed by an inquiry into a complaint lodged by Mt. Kenya Law Society, that the applicant was masquerading as an accredited mediator, yet he had not completed the mandatory mentorship program and submitted any report for consideration for full accreditation status.
9. Article 49 (1) provides that, "An arrested person has the right — (g) at the first court appearance, to be charged or informed of the reason for the detention continuing, or to be released; and (h) to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released."
10. Here, the applicant was arraigned before Tigania Law courts on 3/3/2023, and pursuant to an application by the prosecution to detain him to enable investigations therein to be completed, the court ordered that, "The Respondent be detained at Meru Police Station for a period of 7 days to allow investigations by the applicant to be carried out and concluded....The matter to be mentioned on 10/03/2023."
11. Come that day, the prosecution informed the court that, "Matter can be withdrawn under sec. 87 (a) CPC as Respondent was charged in Meru Law Courts with the offence of impersonation."
12. This court finds that the applicant's detention and prosecution was done in accordance to the law.
13. In admitting the applicant to bail, the trial court noted that, "The last issue was that accused be granted bond terms however the same should be strict. Accused on the other hand stated that he was sick and needed medical attention and as such bond terms given should be commensurate to offence charge. Article 49 (1) (h) of *the Constitution* requires one to be released on bond unless there are compelling reasons as to why he should not be released on bond. There are no compelling reasons by the state as to why accused should not be released on favourable bonds terms – in the end I order as follows:-
1. Accused to be released on bond of Kshs. 600,000/= (six hundred thousand) with surety of similar amount or an alternative cash bail of Kshs. 300,000/= (three hundred thousand)."
14. It is clear from the foregoing that the applicant was legally detained and subsequently charged with impersonation before the trial court. This court refrains from descending into the arena of the trial court, which is properly seized with the matter and the documentary evidence to fairly adjudicate upon whether the applicant is an accredited mediator or not.
15. The issues of whether to set aside the 3rd respondent's ruling of 10/12/2021 and whether to compel the 3rd respondent to issue the applicant with a practicing certificate can only be fully addressed in a competent petition or judicial review application filed for that purpose.
16. The present proceedings initiated by a Notice of Motion herein are with tremendous respect incompetent as it is not based on any suit by way of Plaint or petition or leave granted upon a judicial review application. The Motion has numerous complaints haphazardly presented ranging from the challenge on the ruling of withdrawal of accreditation, arrest and detention through Tigania Court proceedings and the trial on charges of impersonation at Meru Law Courts. On the test of *Anerita Karimi Njeru No. 1 (1976-80) KLR 1272, 1275* the Notice of Motion is bad for lack of particularity of the claims, and it must be rejected.
17. Moreover, without making a decision, as no competent suit exists, there would appear to have been full proceedings before the Accreditation Committee which decided to withdraw the provisional accreditation upon his failure to complete requirements of the process.



18. The question of his innocence or otherwise in the criminal proceedings shall be determined by the trial court in the criminal case, Meru CM Criminal Case No. E368 of 2023.
19. On the question of bond, as accurately urged by the 2nd respondent's counsel, the grant of bail/bond is at the discretion of the trial court and such discretion ought to be exercised judiciously. The purpose of bail is to ensure that the applicant attends court whenever required to do so by the court. Bail terms should not be excessive as to amount to a denial of bail. see Cyril Kipruto Serem v Republic [2020] eKLR. However, as the applicant is out on bail, nothing now turns on the issue.

Orders

20. Accordingly, for the reasons set out above, the applicant's application dated 3/4/2023 is without merit and it is accordingly dismissed.
21. There shall be no order as to costs.
Order accordingly.

DATED AND DELIVERED THIS 15TH DAY OF FEBRUARY, 2024.

EDWARD M. MURIITHI

JUDGE

Appearances:

The Applicant in person.

Mr. Masila for DPP.

Mr. Wachira Nguyo for AG.

