



Wanjohi v Director of Criminal Investigation & another (Petition E061 of 2023) [2024] KEHC 10959 (KLR) (2 August 2024) (Judgment)

Neutral citation: [2024] KEHC 10959 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
PETITION E061 OF 2023
BK NJOROGE, J
AUGUST 2, 2024**

BETWEEN

JAMES MAINA WANJOHI PETITIONER

AND

THE DIRECTOR OF CRIMINAL INVESTIGATION 1ST RESPONDENT

INSPECTOR GENERAL OF POLICE 2ND RESPONDENT

JUDGMENT

1. Petition before the Honourable Court is dated 25th October, 2023. It is presented pursuant to Articles 2, 19, 22, 23, 29, 39, 43, 47 and 10 (1) (2) 24, 39, 43, 47, 49, 50, 129 (2) ad 165 of [the Constitution](#) of Kenya. It alleges contravention of the Petitioner’s fundamental rights and freedoms.
2. It seeks the following orders:
 - a. The Honourable Court be pleased to issue an injunction restraining the 1st and 2nd Respondents from continuing any criminal processes against the Petitioner.
 - b. The Honourable Court be pleased to issue an injunction to the 1st and 2nd Respondents their agents from harassing, intimidating, arresting the Petitioner.
 - c. The Honourable Court do issue an order for compensation against the Respondent for violation, breach and infringement of the Petitioner’s constitutional rights.
 - d. The Honourable Court do issue an order for punitive damages.
 - e. Any other relief that the Honourable Court may deem fit to grant.
 - f. Costs of the Suit.



3. The Petition was filed contemporaneously with a Notice of Motion dated 25/10/2023 filed under a certificate of urgency. The Petitioner sought conservatory orders, restraining the Respondents from arresting the Petitioner pending the hearing and determination of this petition. The Petitioner also sought to be allowed to travel to DRC Congo to clear a consignment of timber held there.
4. The application was not certified urgent, but the following order was granted.

“ that the application be served within seven (7) days; responses be filed and served within seven (7) days of service; the Respondents their servants and agents are hereby restrained from harassing and intimidating the Petitioner pending hearing and determination.”
5. At the interpartes hearing date, the Respondents did not appear or file any responses, despite being served. The Court granted the following orders.
 - a) The 1st and 2nd Respondents, their servants and agents be restrained from arresting the Petitioner and or interfering with his liberty in relation to any dealings matter relating to Jemman Coffee & Mining Company Ltd and Super Sleeper Agencies dealing with Coffee products and timber respectively for a period of 3 months from the date of this order.
 - b. The orders are issued on condition that it will not interfere with Police investigation.
 - c. The Petitioner to file written submissions within 14 days.
 - d. Mention on 6/2/2024 for compliance and mention notice to issue to the Respondents.”
6. The interim orders above have been extended from time to time and this matter was flagged down for the Rapid Results Initiative (RRI) for the month of June 2024.
7. The Petition remains unopposed and the Petitioner having filed his written submissions dated 14/2/2024 with authorities, the Court has considered the submissions filed. The matter was reserved for a Judgment.

Brief Background

8. The Petitioner entered into a business relationship with other businessmen who are not parties to these proceedings. They were to import timber from DRC Congo to Kenya. The business arrangement was to fetch some profits for the parties involved.
9. When the expected profits did not materialize, the businessmen demanded their monies and made complaints to various Police stations in Kenya
10. The Petitioner alludes to the failure to deliver to his business partners to be the cause of complaints. The other is the detention of the good by the Kenya Revenue Authority (KRA) and Kenya Bureau of Standards (KEBS). The Petitioner has filed a separate suit against the two institutions being HCCC No. 97 of 2018. Jemman Coffee And Mining Company Limited –vs- Kenya Revenue Authority And Another.
11. The Petitioner complains that the complaints recorded to the Police have resulted to Police harassment. He also suspects that the Civil Proceedings filed have generated some pressure amongst officers of the



- two Government institutions. He alludes to the fact that since the goods were detained negligently, the Government officers fear reprisals and blow back when the Civil Case is resolved in his favour.
12. He states that he has been stalked by faceless persons in unmarked vehicles. That his telephone has been tapped by the Police. He is unable to move freely in the Country or step in his home.
 13. The questions to be answered by the Court to determine this Petition can be summarised as follows:
 - a. Is the Petition meritorious?
 - b. What Reliefs if any, should be granted?
 14. The Court proceeds to answer the two questions as follows:

Is the Petition meritorious?

15. The Petitioner alleges that the Police are tracking and following his movements. He has made reference to complaints made against him through Occurrence Book No. 01/10/21 at Kamukunji Police Station, Occurrence Book No. 53/7/3/2023 at Kiambu Police Station and Occurrence Book No. 10/11/2/23 at Tigoni Police Station. Save these references, there is no evidence of any Police activity in relation to the Petitioner.
16. The Petitioner has not placed any proof of any summons to appear issued to him by any Police Station. The interim orders were issued on 16/11/2023. The orders did not restrain any Police investigations. If the Police had interest in the Petitioner, this Court did not stop any investigations against him.
17. The materials placed before the Court do not show any interactions between the Respondents and the Petitioner. There is no exchange of correspondence between the Petitioner's Advocates and the Respondents.
18. The Petition appears to be borne out of some apprehension that the police are after him. The documents relating to the transaction between the Petitioner and the other Businessmen are attached to the Affidavit in support. They relate to a transaction for acquisition of some timber.
19. Those businessmen who number around nine (9) persons are not parties to this suit, even as interested parties. They may not be alive to this action and the orders that the Petitioner is seeking.
20. The Court has perused the Amended Complaint in (Nairobi) HCCC NO. 97 OF 2018 Jemman Coffee And Mining Company Limited –vs- Kenya Revenue Authority And Another. The Respondents in this Suit and the nine (9) businessmen are not parties to that suit.
21. Section 193(A) of the Criminal Procedure Code does provide that a party has a right to pursue a Criminal action as well as a Civil proceeding.

“ 193A. Concurrent criminal and civil proceedings. Notwithstanding the provisions of any other written law, the fact that any matter in issue in any criminal proceedings is also directly or substantially in issue in any pending civil proceedings shall not be a ground for any stay, prohibition, or delay of the criminal proceedings.”
22. Therefore, filing a Civil action will not bar the Police from investigating an alleged offence or pressing criminal charges if the facts reveal the commission of a criminal offence.
23. Pursuant to Article 245 (4) of *the Constitution*, the Inspector General of Police is an independent constitutional office holder. The office is insulated from directions or instructions from anyone, subject to *the Constitution*. The 1st Respondent carries out his duties and is answerable to the 2nd Respondent.



That is pursuant to Section 28 and 29(7) of The [National Police Service Act](#) Cap 85 of the Laws of Kenya.

24. The following decisions have considered the question of issuance of conservatory or injunctions to restrain the Police from proceeding with criminal investigations or processes. *Dande & 3 others v Inspector General, National Police Service & 5 others* (Petition 6 (E007), 4 (E005) & 8 (E010) of 2022 (Consolidated)) [2023] KESC 40 (KLR) and [Jirongo v Soy Developers Ltd & 9 others \(Petition 38 of 2019\)](#) [2021] KESC 32 (KLR)
25. The guiding considerations that can be gleaned from the authorities above as set out by the Supreme Court, as to where the Courts can interfere are as follows:
 - a. Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;
 - b. Where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g. want of sanction;
 - c. Where the allegations in the First Information Report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged;
 - d. Where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.
26. This Court is not satisfied that sufficient materials have been placed before the Court to warrant the granting of an injunction against the Respondents as sought.
27. The same goes to the issue of harassment, intimidation or arresting the Petitioner. The Court will grant such an injunction only in the clearest of cases. This would be in cases where the Police are abusing their powers or acting irrationally and irresponsibly.
28. In the submissions filed by the Petitioner, he has referred the Court to the decisions of *W’Njuguna – vs- Republic* [2005] eKLR and *Gladys Boss Shollei –vs- Attorney General and 3 others* [2015] eKLR. The two decisions are distinguishable from this case in that they relate to parties who had approached the Court for anticipatory bail. This form of bail is also known as bail pending arrest.
29. Anticipatory bail will only be granted upon the Applicant demonstrating that his Constitutional rights have been violated or are likely to be violated. A Petitioner would also have to demonstrate that they are under the imminent threat of arrest, in the process of trampling of their rights. This prayer has not been specifically sought for in this Petition. In this case, the Court is not persuaded from the material placed before it, that the Petitioner’s Constitutional rights have been violated or are likely to be violated.
30. On the issues of compensation for violation and infringement of the Petitioner’s Constitutional rights, the Court once more finds that the materials placed before the Court are not persuasive enough. There is no evidence of the Respondents having any interaction with the Petitioner. He has not even been summoned to record a statement, since he was granted interim orders by this Court.
31. As to the orders of punitive damages sought, the Court is similarly not inclined to grant the same. There is no evidence of any gross Constitutional violations. The petitioner has not been arrested or detained at any point.
32. The upshot is that the Court finds that from the evidence placed before it, the Petition has not been proved to the required standards.



33. It may be that the Respondents may investigate the case and find no merits in the complaint made against the Petitioner. The orders sought herein will not be necessary. It also may be that the Respondents may investigate the Petitioner. If in doing so they abuse their police powers and contravene or infringe on the Petitioner's Constitutional rights and fundamental freedoms, the doors of the Court remain open to the Petitioner. The Court will remain eternally vigilant to protect the fundamental rights and freedoms of all Kenyans. The orders sought are discretionary and will only issue, once the Court is fully persuaded as to the facts pleaded.

What reliefs should be granted?

- 34. The Petitioner falls short of persuading the Court to grant any of the orders sought.
- 35. The costs are awarded at the discretion of the Court. As the Respondents did not appear in this suit they are not entitled to any costs.

Determination

a. The Petition herein is dismissed and the Petitioner is to bear his own costs thereof.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 2ND DAY OF AUGUST, 2024.

.....

NJOROGE BENJAMIN K.

JUDGE

In the presence of:

Mr. Murage for the Appellant.

No appearance for the Respondents.

