



Law Society of Kenya & 3 others v Inspector General of Police & 4 others (Petition E436 of 2024) [2024] KEHC 10534 (KLR) (Crim) (3 September 2024) (Ruling)

Neutral citation: [2024] KEHC 10534 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
PETITION E436 OF 2024
LN MUGAMBI, J
SEPTEMBER 3, 2024**

BETWEEN

**LAW SOCIETY OF KENYA 1ST PETITIONER
BOB MICHENI NJAGI 2ND PETITIONER
JAMIL LONGTON 3RD PETITIONER
SALAM LONGTON 4TH PETITIONER**

AND

**INSPECTOR GENERAL OF POLICE 1ST RESPONDENT
DIRECTOR OF PUBLIC PROSECUTIONS 2ND RESPONDENT
ATTORNEY GENERAL 3RD RESPONDENT
DIRECTORATE OF CRIMINAL INVESTIGATIONS 4TH RESPONDENT
NATIONAL INTELLIGENCE SERVICE 5TH RESPONDENT**

RULING

1. On 23rd August, 2024, the 1st Petitioner filed a Notice of Motion application under Certificate of Urgency alleging the abduction of the 2nd – 4th Petitioners on 19th August, 2024; and that they were subsequently kept incommunicado in undisclosed locations.
2. This court upon considering the application exparte in the first instance, made orders as follows: -
 1. That pending the hearing and determination of this application interpartes an order is hereby issued directing the Respondents to immediately disclose the whereabouts of the 2nd to 4th Petitioners to the 1st Petitioner.



2. That pending the hearing and determination of this Application Inter partes an order is hereby issued directing the Respondents to immediately release or produce the 2nd to 4th Petitioners before any Court of competent jurisdiction to make such orders as may be appropriate to uphold the rights and fundamental freedoms of the 2nd to 4th Petitioners.
4. The matter was then fixed for mention on Monday, 26th August, 2024 at 10.00 a.m. to confirm compliance.
3. On 26th August, 2024, the Advocate for the Petitioners M/s Omwenga appeared before this Court virtually. There was no appearance by the Respondents despite evidence of service. She informed the Court that even after duly serving the order and directions of the Court upon the Respondents none of orders had been complied with.
4. The Respondents did not even bother to attend Court on that particular day.
5. At this juncture, the Court varied its orders slightly and directed thus:
 - i. Pending the institution of charges, (if any), the Court now directs unconditional release of 2nd – 4th Petitioners by the 1st Respondent.
 - ii. It is further directed that physical service of the order be effected by close of business that day.
 - iii. The court further issued summons to the 1st Respondent to appear in court at the next mention to explain why the habeas corpus orders issued by this court had not been complied with. The matter was fixed for Mention on 3rd September, 2024.
6. Today 3rd September, 2024, this matter was mentioned virtually before Court this morning. The Attorney General, the DPP and the Director of National Intelligence Service, the Inspector General of Police and Directorate of Criminal Investigations appeared through counsel.
7. However, despite the court having directed the Inspector General of Police to appear, he did not even do so virtually.
8. The court postponed the matter to 3.00 p.m. for the physical attendance of the Inspector General as it sought to establish why its orders for the production of the three Petitioners have not been complied with.
9. This afternoon, the Inspector General of Police has equally skipped this afternoon Court session on the basis that he is out of Office on official reasons.
10. Today in the morning, I inquired when the orders were served, and I was informed that this was done on 26th August, 2024.
11. The court has not been told when the Inspector General left the Office for official reasons. It has also not been told, why he could not avail himself for the virtual session in the morning which he also skipped.
12. This matter involves the lives of three Kenyans whose whereabouts are unknown after their alleged abduction in two separate incidents on 19th August, 2024.
13. Under *the Constitution*, Article 20(2) – Every person is entitled to enjoy the rights and fundamental freedoms to the greatest extent possible consistent with the nature of the rights and fundamental freedom. Article 20(1) makes it clear that the Bill of Rights applies to all law and binds all state organs and all persons.



14. From the preliminary assessment of facts, the Petition and the Application raises an issue of grave concern which include the right not to be deprived of freedom arbitrarily or detained without trial and the freedom of movement hence the issuance of habeas corpus order.
15. Under Article 21(1), it is the fundamental duty of the state and every state organ to observe respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights. Respecting and observing the Bill of Rights means that the State shall not do anything that is detrimental to the Bill of Rights, while the obligation to protect, promote and fulfil requires the state to take positive measures that would ensure that even other persons or entities do not abuse or violate human rights.
16. To bring the matter closer home, Article 244 (c) specifically enjoins the National Police Service to comply with constitutional standards of human rights and fundamental freedoms.
17. In addition, Article under 10 (2) (b) prescribes the national values and principles of governance to be followed by all state organs, state officers and all persons in performance of their responsibilities and includes observance of human rights as part of those obligations.
18. It is thus crystal clear that if a State Officer or any person does not accord human rights the attention that it deserves while performing their responsibilities, then such a State Officer or person will have failed the constitutional threshold demanded of him or her by our Constitution.
19. This is a country that is led by the rule of law and constitutionalism not the might of men. The Respondents have no discretion to disregard an order of the Court that is meant to uphold the rule of law by protecting human rights. It is the duty of the 1st respondent to obey the orders of the court and cannot be excused from that responsibility.
20. Having failed to obey the first two Court orders; the 1st respondent equally failed to obey a 3rd one, that required him to attend this court this afternoon.
21. This court has teeth and can bite. It will not watch as its authority and constitutionalism slowly whittle away. Those that deliberately ignore or disobey court orders must be ready of the consequences, and for violation of *the constitution* even greater consequences.
22. I am aware that in Abdullah Kassam Esmail v Equip Agencies Ltd & 4 others [2014] eKLR the court stated that before punishing one for contempt, he must be given a hearing first.
23. I will accord the 1st Respondent that opportunity before spelling out any consequences that the Court may consider necessary.
24. The court has to assert its authority for maintenance of rule of law especially where deliberate disobedience of its order has been demonstrated.
25. I am equally aware that the power to punish for contempt must be exercised with great care and circumspection as was held by the Supreme Court in Republic v Ahmad Abolfathi Mohammed & another (2018) eKLR hence the need for a hearing.
26. I will thus order that the Inspector General of Police shall physically attend court on Thursday, 5th September, 2024 at 10.00 a.m. to purge the contempt before any further proceedings in this matter.
27. Mention on September 5, 2024 at 10.00 a.m.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 3RD DAY OF SEPTEMBER, 2024.

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L N MUGAMBI
JUDGE

