



**Perera v Officer Commanding Langata Police Station & 2 others; Maina (Interested Party) (Petition E008 of 2024) [2024] KEHC 10843 (KLR) (17 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 10843 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
PETITION E008 OF 2024  
DR KAVEDZA, J  
SEPTEMBER 17, 2024**

**BETWEEN**

**FARZHANA PERERA ..... PETITIONER**

**AND**

**OFFICER COMMANDING LANGATA POLICE STATION ... 1<sup>ST</sup> RESPONDENT**

**INSPECTOR GENERAL OF POLICE ..... 2<sup>ND</sup> RESPONDENT**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**JULIET WANJIRU MAINA ..... INTERESTED PARTY**

**RULING**

1. The applicant, Farzhana Perera, has through a notice of motion application dated 4<sup>th</sup> September 2024, sought conservatory orders from this court against the 1<sup>st</sup> respondent Officer Commanding Langata Police Station, the 2<sup>nd</sup> respondent Inspector General of Police and the 3<sup>rd</sup> respondent the Director of Public Prosecutions. The application is brought under Articles 10, 47, 50, 73, 75, 157, 201, 232, 236, 249 and 252 of the Constitution of Kenya. The application is filed under certificate of urgency supported by an affidavit of even date sworn by the applicant.
2. The applicant has sought conservatory orders to restrain the respondents either by themselves, their servants, agents, assigns and/or any persons claiming under them from arresting, commencing any prosecution or preferring any criminal charges against the petitioner or continuing any prosecution before any competent court in Kenya based on a complaint made by Juliet Wanjiru Maina, or any other person on security and welfare issues the petitioner raised in her capacity as Chairperson of Samburu Court Residents Association at Phenom Estate in Langata pending hearing and determination of the petition.



3. Secondly, she has sought a conservatory order to restrain the respondents either by themselves, their servants, agents, assigns and/or any persons claiming under them from arresting, commencing any prosecution or preferring any criminal charges against the petitioner or continuing any prosecution before any competent court in Kenya based on a complaint made by Juliet Wanjiru Maina, or any other person and in respect of matters that are pending in Nairobi Chief Magistrates Court Civil Case No. E4921 of 2023: *Major Dennis Mutai, Juliet Wanjiru Maina, Debbie Wangari, Michael Oteyo, Daniel Muya Kativo v Patrick Muchele Kuchio, Bernard Wainaina and Farzhana Perera* pending hearing and determination of the petition.
4. Thirdly, the petitioner sought a conservatory order to restrain the Officer Commanding Lang'ata Police Station from harassing or intimidating the petitioner in any manner pending hearing and determination of the petition.
5. The motion is based on the grounds inter alia that: The Petitioner is bedridden and has been intermittently undergoing cancer treatment at Nairobi and in India and, the treatment is intense and ongoing and lastly that the petitioner was the Chairperson Phenom Park Estate and the residents of Samburu Court had reported a series of thefts and burglary.
6. Through the residents' WhatsApp page, the petitioner-initiated discussions for tracking and collective decision by the residents who raised security concerns. Following intense discussions, the interested party also a resident, raised a complaint that the Petitioner had defamed her in the WhatsApp page leading to the filing of a civil suit against the petitioner and others, seeking damages.
7. Further on 1<sup>st</sup> September 2024, the Petitioner received a text message from one George, an officer from Lang'ata Police Station asking her to answer to charges of creating a disturbance. When contacted by Counsel for the Petitioner, the said officer claimed that the Office of the Director of Public Prosecutions had approved charges for the arrest of the Petitioner and others.
8. The Petitioner has averred that the intended charges are oppressive and trumped up, are a reaction to the Petitioner's push for security of the residents of Phenom Estate and finally that the intended prosecution is an abuse of the court.
9. On 9<sup>th</sup> September 2024, the court certified the application urgent and directed the petitioner to serve the respondents for inter-partes hearing on 17<sup>th</sup> September 2024. When the matter come up for inter-partes hearing today the respondents had not filed any response to the application despite having been served.
10. At this juncture, the duty of this court is not to interrogate whether the applicants' allegations are true, but rather, to protect her constitutional rights and fundamental freedoms guaranteed to all persons.
11. Having gone through the notice of motion application and the supporting affidavit of the applicant, it is clear that the threat directed against the petitioner is harassment, intimidation, arbitrary arrest and malicious prosecution.
12. Article 22(1) of the *Constitution* states that every person has the right to institute court proceedings claiming that a right or fundamental freedom in the bill of rights has been denied, violated or infringed or is threatened. The said Article of the constitution does not discriminate applicants such as the petitioner that are likely to face intimidation, harassment, arbitrary arrest and malicious prosecution.
13. Before issuance of such an order however, the court must be convinced that the threat complained of, is real and not just imagined. The applicant must demonstrate that unless the orders sought are granted by the court, her rights and freedoms will be infringed.



14. The applicant herein has alleged that the interested party (complainant) has colluded with the respondents in an attempt to prosecute her over trumped up charges despite being a cancer patient and has annexed documentary evidence in support of the application.
15. Having considered the application, the supporting affidavit and the annexures thereto, I am satisfied that unless the orders sought are granted, the applicant's right under the Constitution will be compromised.
16. For the foregoing reasons, the court hereby issues the following orders:
  - i. A conservatory order is hereby issued restraining the respondents either by themselves, their servants, agents, assigns and/or any persons claiming under them from arresting, commencing any prosecution or preferring any criminal charges against the petitioner or continuing any prosecution before any competent court in Kenya based on a complaint made by Juliet Wanjiru Maina, or any other person on security and welfare issues the petitioner raised in her capacity of Chairperson of Samburu Court Residents Association at Phenom Estate in Langata pending the hearing and determination of the Petition.
  - ii. A conservatory order is hereby issued restraining the respondents either by themselves, their servants, agents, assigns and/or any persons claiming under them from arresting, commencing any prosecution or preferring any criminal charges against the petitioner or continuing any prosecution before any competent court in Kenya based on a complaint made by Juliet Wanjiru Maina, or any other person and in respect of matters that are pending in Nairobi Chief Magistrates Court Civil Case No. E4921 of 2023: Major Dennis Mutai, Juliet Wanjiru Maina, Debbie Wangari, Michael Oteyo, Daniel Muya Kativo v Patrick Muchele Kuchio, Bernard Wainaina and Farzhana Perera pending hearing and determination of the Petition.
  - iii. A conservatory order is hereby issued restraining the Officer Commanding Lang'ata Police Station from harassing or intimidating the petitioner in any manner pending hearing and determination of the Petition.
  - iv. The petition and order of this court be served upon the respondents and interested party within 7 days from the date hereof.
  - v. Upon service, the respondents and interested party shall file their respective responses within 14 days.
  - vi. The petition shall be mentioned on 11<sup>th</sup> November 2024 for directions.

Orders accordingly.

**RULING DATED AND DELIVERED VIRTUALLY THIS 17<sup>TH</sup> DAY OF SEPTEMBER 2024**

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**D. KAVEDZA**

**JUDGE**

In the presence of:

Wanyama for the Petitioner

Mongare for the Respondent.

Achode Court Assistant

