



REPUBLIC OF KENYA



Muthaura v Inspector General of Police & 2 others (Miscellaneous Criminal Application E017 of 2023) [2023] KEHC 20853 (KLR) (21 June 2023) (Ruling)

Neutral citation: [2023] KEHC 20853 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
MISCELLANEOUS CRIMINAL APPLICATION E017 OF 2023**

LW GITARI, J

JUNE 21, 2023

BETWEEN

FRIDAH KANJA MUTHAURA APPLICANT

AND

INSPECTOR GENERAL OF POLICE 1ST RESPONDENT

DIRECTOR OF CRIMINAL INVESTIGATIONS 2ND RESPONDENT

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTION 3RD RESPONDENT

RULING

1. The applicant filed a notice of motion dated June 16, 2023 seeking an order that a conservatory order restraining the respondents, their servants, agents, junior officer, informers and or anybody from effecting and/or anybody from arresting, harassing or otherwise however interfering with the applicant herein pending the hearing and determination of this application. The application is supported by her affidavit sworn on June 16, 2023. She has alleged that her rights have been violated and threatened as the police as well as informers have been traversing her and business premises with the aim of arresting her following a directive by the Deputy President in his campaign against alcohol. The respondents through Ms Mbithe, state counsel representing the DPP has opposed the application and stated that the police cannot be restrained from doing their work. She further submits there is nothing to show that she was been intimidated.
2. I have considered the application and the submissions. I find that the applicant has not laid any supporting evidence to proof that there is a real threat of her being arrested. The state has denied that the applicant has been intimidated or threatened. The applicant has not demonstrated that there is a real threat of violation of her rights.



3. On the other hand, the Constitution of Kenya 2010 has put in place measures to protect a citizen even where there may be arbitrary arrest. Article 49 (1) (a)&(f) provides inter alia that an arrested person has the right-
 - (i) to be informed the reason for the arrest.
 - (f) to be brought before court as soon as reasonably possible but not later than
 - (i) twenty four hours after being arrested.
 - (h) to be released on bond or bail on reasonable conditions pending charge unless there are compelling reasons not to be released.
4. It is therefore unlikely that her rights will be violated as the police have a duty to produce her in court promptly. It is my view that the applicant has not demonstrated that she is likely to be arrested or that her rights will be violated.
5. On the other hand, as submitted by Ms Mbithe, the police have a duty to investigate crimes and the court cannot restrain them from performing their work. The applicant has not demonstrated that the actions by the police and their informers amounts to harassment. I find that the applicant has not demonstrated that there are merits in her application.
6. I decline to issue the orders.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 21ST DAY OF JUNE 2023.

L.W. GITARI

JUDGE

