



**Stephenson v Director of Public Prosecutions & 3 others (Petition  
21 of 2019) [2024] KEHC 15039 (KLR) (6 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 15039 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
PETITION 21 OF 2019  
DO CHEPKWONY, J  
NOVEMBER 6, 2024**

**IN THE MATTER OF: ARTICLES 2, 3, 10, 19, 20, 21, 22, 23, 29, 31, 40, 47,  
50, 157, 159, 162, 258 AND 260 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF: ENFORCEMENT OF CONSTITUTIONAL  
RIGHTS AND FUNDAMENTAL FREEDOMS**

**BETWEEN**

**MARK LLYOD STEPHENSON ..... PETITIONER**

**AND**

**THE DIRECTOR OF PUBLIC PROSECUTIONS ..... 1<sup>ST</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**THE INSPECTOR GENERAL OF POLICE ..... 3<sup>RD</sup> RESPONDENT**

**CPL GIDEON WAMOCHA ..... 4<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. The Petitioner, a Director of Infinity Minerals Limited, filed the present Petition dated 20<sup>th</sup> June, 2029 seeking various declarations and orders for damages, while alleging violation of his constitutional rights. These violations are said to have occurred through a series of events involving arrests, unlawful detention, malicious prosecution, and a series of actions by Immigration Officers and Law Enforcement Officers from 2011 to 2014. In his Petition, the Petitioner seeks the following specific orders: -
  - a. A Declaration that the Petitioner was unlawfully arrested on 23<sup>rd</sup> April, 2011.
  - b. A Declaration that the Petitioner was unlawfully arrested on 21<sup>st</sup> May, 2014.



- c. A Declaration that the Petitioner was unlawfully arrested on 17<sup>th</sup> May, 2011.
  - d. A Declaration that the actions of the Immigrations Officers against the Petitioner were unlawfully and the same amounts to breach of his right to movement, equal treatment and benefit from the law as well his right to property.
  - e. A Declaration that the 4<sup>th</sup> Respondent acted with malice and ill intention against the Petitioner in the investigations, commencement and conduct of Kiambu CMCC No. 1645 of 2014.
  - f. General damages for false arrest on 23<sup>rd</sup> April, 2011.
  - g. General damages for false arrest on 17<sup>th</sup> May, 2011.
  - h. General damages for false arrest on 21<sup>st</sup> May, 2014.
    - i. General Damages for Malicious Prosecution in Chief Magistrate Court in Kiambu in Kiambu CMCC No. 1645 of 2014.
  - j. General damages for unlawful detention of the Petitioner's Australian Passport No. N7645239 and property on 8<sup>th</sup> April, 2014.
  - k. Special damages of Kshs.5,492,600/= only as per Paragraph 34 above.
  - l. General damages for interference with the Petitioner's Business.
  - m. Costs of the suit.
  - n. Interest on (a), (b), (c), (d) and (e) above at courts, rate until payment in full.
2. The Petitioner's claims are based on a sequence of events related to a financial agreement and subsequent criminal charges. In particular, the Petitioner avers that on 26<sup>th</sup> November, 2010, Susan Harris and Charlotte Bilstedfelt entered into a loan agreement with Infinity Minerals Limited, represented by the Petitioner and Stephen Ellie Barikan, as Directors, for USD67,000. These funds were deposited into various accounts, and eventually transferred to the account of Stephen Paino. Following this, certain financial transactions occurred, leading to Susan Harris filing a report with the Central Police Station on 3<sup>rd</sup> March, 2011, alleging impropriety.
  3. Consequently, on 23<sup>rd</sup> April, 2011, the Petitioner was arrested at Jomo Kenyatta International Airport by the 4<sup>th</sup> Respondent. He claims that this arrest was conducted without a warrant, causing him to lose his airfare and resulting in detention overnight at JKIA Police Station. He was later transferred to the Directorate of Criminal Investigations. The Petitioner was released on free bond but was required to report to the 4<sup>th</sup> Respondent, who allegedly made demands for personal benefits, including holding the Petitioner's passport and requesting payment for his children's shoes and lunch.
  4. On 21<sup>st</sup> May, 2014, the Petitioner was again arrested at the airport while attempting to travel to Australia to visit his ailing mother. He was taken to several locations, including Nairobi National Park, before being held at Muthaiga Police Station. The Petitioner alleges that this arrest was driven by a personal vendetta, with the 4<sup>th</sup> Respondent detaining him without clear justification and even placing him in precarious situations that compromised his safety.
  5. Petitioner asserts that he has suffered a lot for the period the 4<sup>th</sup> Respondent unlawfully detained his passport as he could not access his Bank Accounts until 15<sup>th</sup> May, 2011 when his passport was released to him. Thereafter, he immediately obtained air tickets to travel to Australia on 17<sup>th</sup> May, 2011 but the immigration officials did not clear him citing a stop order which had been put by the 4<sup>th</sup>



- Respondent. He consequently lost the air ticket and in a sworn Statement, the 4<sup>th</sup> Respondent stated that the Petitioner did not receive or benefit from the alleged monies and thus did not commit any crime. That he obtained another air ticket for 18<sup>th</sup> May, 2011 and successfully travelled to Australia to visit his family. He returned back to Kenya on 12<sup>th</sup> July, 2011. The Petitioner again travelled on 23<sup>rd</sup> September, 2011 and returned on 29<sup>th</sup> October, 2011, then left on 12<sup>th</sup> December, 2011 and returned on 4<sup>th</sup> January, 2014.
6. However, on 21<sup>st</sup> May, 2014 while at Jomo Kenyatta International Hospital with intention to travel to see his ailing mother in Australia, the Petitioner was again arrested by the 4<sup>th</sup> Respondent who indicated that he had obtained Warrants of his Arrest in December, 2013 and he lost his air ticket. The Petitioner holds that the actions of the 4<sup>th</sup> Respondent were based on vengeance against him. To support these assertions, he claims that the 4<sup>th</sup> Respondent picked him from the Airport Police Station, switched off his phones and drove him together with his companion to the Nairobi National Park. That later on in the same night, the 4<sup>th</sup> Respondent was called by the then Deputy Director of Director of Criminal Investigations who demanded that he produces the Petitioner and the companion along Kiambu Road following a complaint by the Petitioner's colleagues over his safety.
  7. The Petitioner asserts that the 4<sup>th</sup> Respondent sought the membership details of several companies, including Stemrich International Limited and Universal Resources International Limited. The membership information indicated that the Petitioner was not a Director of Stemrich International, leading him to claim that the investigations and his subsequent arrest were driven by malice and personal vendettas rather than legitimate legal concerns.
  8. He later faced charges in Kiambu Criminal Case No. 1645 of 2014 on 22<sup>nd</sup> May, 2022 but was acquitted under Section 210 of the Criminal Procedure Code on 14<sup>th</sup> October, 2016, with the trial court finding no criminal element in the proceedings. He was remanded at Kiambu Prison, during his trial and claims to have contracted various infections then. The Petitioner further alleges that the trial was marred by bias, particularly the testimony of the 4<sup>th</sup> Respondent and other witnesses.
  9. Petitioner argues that these actions were malicious, unlawful, and prejudiced, directly causing substantial damage to his personal and professional life. Specifically, he contends that the actions violated his rights under Articles 19, 20, 2(1), (2), 3(1), 10, 73(2), 19, 22(1), 23(1), 23(3), 27(1) (4) (5), 30, 39, 40, 47(1), 50(2), 50(4), and 157 of *the Constitution* of Kenya. He also asserts that these actions resulted in his loss of liberty, emotional distress, financial loss, damage to his reputation, and disruption to his business.
  10. The Petitioner outlined the specific damages and special damages he suffered including economic hardship as the sole breadwinner of his family while in detention and during his trial, mental anguish and distress, and special damages made of Legal fees, air ticket losses, and medical expenses totalling to Kshs.5,492,600.00.
  11. The 1<sup>st</sup> Respondent opposed the Petition through a Replying Affidavit filed on November 18, 2019, by Stephen Syano Musyoka, who contends that: the Petition is unsubstantiated, frivolous, and lacking in evidence of any constitutional infringement. That the Petitioner's arrests and prosecution were conducted lawfully within the scope of statutory mandates and asserts that the Petitioners have failed to demonstrate any overreach or unlawful conduct by the 1<sup>st</sup> Respondent or any violation of the Petitioner's constitutional rights. According to them, the actions taken were within legal and procedural bounds, guided by evidence and devoid of any malice or ill intent as alleged.
  12. The 1<sup>st</sup> Respondent emphasizes that the role of the prosecution was to ensure a fair trial process and contends that the allegations of harassment and malice lack evidential backing, as such claims



were not raised during the trial proceedings. The Respondents further assert that any detention of the Petitioner's passport or other procedural matters were executed in compliance with lawful requirements and in the interest of justice thus maintains that due process was observed throughout the Petitioner's trial, which concluded in an acquittal under Section 210 of the Criminal Procedure Act. It is therefore in the interest of justice that the Petition is dismissed.

### **Analysis and Determination**

13. After careful consideration of the submissions and facts presented, the court identifies the following primary issues for determination: -
  - a. Whether the claim for malicious prosecution has been proven?
  - b. Whether the Petitioner is entitled to the compensation sought?
  - c. Which Orders should the court grant in this Petition?

#### **a. Whether the claim for malicious prosecution has been proved**

14. To establish a claim for malicious prosecution, the Petitioner must satisfy four essential elements as highlighted in the case of *Murunga –vs- Attorney General (1976-1980) KLR 1251*, where the court outlined the four elements of malicious prosecution:-
  - a. That the prosecution was initiated by the Respondents or their agents.
  - b. That the prosecution terminated in favor of the Plaintiff.
  - c. That the prosecution was initiated without reasonable or probable cause.
  - d. That the prosecution was actuated by malice.

#### **Prosecution by the Defendant or their agent**

14. Under this head, the Petitioner must demonstrate that the prosecution was indeed initiated by the Respondents for this ground to succeed. The 1<sup>st</sup> Respondent concedes that Susan Harris lodged a complaint against the Petitioner, which led to the arrest, detention and initiation of Kiambu Criminal Case No. 1645 of 2014. As such, the first requirement is satisfied, as the Respondents' actions initiated the criminal proceedings against the Petitioner.

#### **Termination of Prosecution in the Petitioner's Favour**

14. The criminal case concluded in favor of the Petitioner, with the trial court acquitting him under Section 215 of the Criminal Procedure Code for lack of sufficient evidence. This acquittal satisfies the second requirement of malicious prosecution.

#### **Lack of reasonable or probable cause**

14. The third element requires an absence of reasonable grounds for the prosecution. Here, the matter stemmed from a loan agreement of USD67,000.00 where the Petitioner was allegedly one of the signatories. The court noted that his involvement in signing the agreement justified an investigation, as there was a legitimate interest in probing the circumstances surrounding the loan. Given these facts, this Court finds that the Respondents reasonably pursued the case, thus the prosecution was not without cause.



### **Malice in instituting the prosecution**

14. For malice to be proved, there must be evidence of an improper or ulterior motive beyond simply enforcing criminal action. The court reviewed the evidence, including the timing and circumstances of the Petitioner's arrests, but found no clear indication of malice. While the Petitioner's arrests occurred at inconvenient times, this alone does not imply malice without further corroborating evidence of wrongful intent. In line with the decision in the case of James Karuga Kiiru –vs- Joseph Mwamburi & 3 Others, malicious prosecution requires a demonstration of dishonesty or unreasonable action by the Respondents, which is lacking in the instant case.
14. While the Petitioner asserts that the trial lacked substantive evidence, the Court must note that an acquittal does not necessarily imply malicious intent in initiating prosecution. Malice must be demonstrated as a driving factor in the proceedings, and in this case, the Petitioner avers that he was arrested and detained maliciously in different places including Nairobi National Park. However, these assertions are unsupported by the evidence presented in this case.
14. The Petitioner further claims that his right to freedom of movement, fair administrative action, and equality were violated hence malice should be inferred in those acts. However, this Court observes that procedural and lawful arrests do not necessarily constitute a violation of these rights unless proven to be unjustified and malicious. The actions undertaken by the Respondents, including the brief detention of the Petitioner's passport, were actions aimed at ensuring his availability for investigation and did not unduly or unjustifiably infringe upon his rights.
14. Lastly, this court refers to Article 157 of *the Constitution*, which grants the Director of Public Prosecutions authority to institute criminal proceedings independently. Additionally, law enforcement officers, including the 3<sup>rd</sup> and 4<sup>th</sup> Respondents, are mandated to investigate and take lawful action when presented with credible complaints and this court finds that no corroborative evidence has been placed before it to show that the Respondents acted maliciously and illicitly outside their mandate while investigating the financial complaint made against the Petitioner.
14. Consequently, the court finds that the Petitioner failed to satisfy the critical element of malice. Thus, the claim for malicious prosecution is unproven.

### **b. Whether the Petitioner is entitled to the compensation sought**

14. As the court has determined that the malicious prosecution claim lacks merit, the Petitioner's request for compensation also fails. Malicious prosecution, by definition, aims to provide redress for damages resulting from an unjustified or malicious criminal process. However, since the prosecution was deemed reasonable and without malice, there is no basis for an award of damages. An acquittal, as held in the case of Robert Okeri Ombeka –vs- Central Bank of Kenya (2015) eKLR, does not automatically lead to compensation for malicious prosecution hence the Petitioner has not demonstrated a basis for compensation.
14. Based on the analysis, the Court dismisses the Petition dated 20<sup>th</sup> June, 2019 for lack of merit but with no orders as to costs.

It is so ordered.

**JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 6<sup>TH</sup> DAY OF ... NOVEMBER 2024.**

**D. O. CHEPKWONY**



## **JUDGE**

In the presence of:

M/S Kimeu counsel holding brief for Mr. Kago counsel for Petitioner.

M/S Ndeda counsel for 1<sup>st</sup> Respondent

Court Assistant - Martin

