



Machuki v Ag Chief Njoro Sub County Joseph Thuo & 13 others (Petition E008 of 2022) [2024] KEHC 15279 (KLR) (2 December 2024) (Ruling)

Neutral citation: [2024] KEHC 15279 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
PETITION E008 OF 2022
JM NANG'EA, J
DECEMBER 2, 2024**

BETWEEN

GLADYS BONARERI MACHUKI PETITIONER

AND

THE AG CHIEF NJORO SUB COUNTY JOSEPH THUO 1ST RESPONDENT

**THE ASSISTANT CHIEF NJORO SUB COUNTY MARY
KAMOTHO 2ND RESPONDENT**

THE SENIOR SERGEANT JAMES KUYIOMI 3RD RESPONDENT

SERGEANT OTIENO JACKSON O GAMBA 4TH RESPONDENT

CORPORAL KOROS 5TH RESPONDENT

**JAMES MWANGI MUTURI REGISTERED OWNER OF MOTOR VEHICLE
KAT 149C 6TH RESPONDENT**

**JAMES MWAURA WA NJOKI COUNTY ADMINISTRATOR
NAKURU 7TH RESPONDENT**

THE DCI NJORO SUB COUNTY MR. DENIS ONYANGO 8TH RESPONDENT

THE DCI NAKURU COUNTY MR DOUGLAS CHIKANDA 9TH RESPONDENT

**THE COUNTY COMMANDER NAKURU COUNTY BEATRICE
KIRAGUKI 10TH RESPONDENT**

THE DIRECTOR CRIMINAL INVESTIGATION 11TH RESPONDENT

THE INSPECTOR GENERAL OF POLICE 12TH RESPONDENT

THE DIRECTOR OF PUBLIC PROSECUTION 13TH RESPONDENT

THE HON ATTORNEY GENERAL 14TH RESPONDENT



RULING

1. This Constitutional Petition dated 24th March, 2022 filed on 29th March 2022 and amended on 27th September, 2022 seeks *inter alia* judicial review orders in the nature of certiorari and prohibition quashing criminal charges preferred against the petitioner in the Nakuru Chief Magistrate's Court's file number E066 of 2022 and restraining the respondents from instituting any future criminal charges against the petitioner. The petitioner complains that police officers raided her home on 5th January 2022 in the company of the 1st and 7th respondents and harassed her demanding to be told of the whereabouts of illicit brews she was allegedly selling to people. She denied dealing in such brews and when the officers failed to find the exhibits they seized her grains including many kilogrammes of maize and beans she was trading in. Some Kshs. 8,000/= were also allegedly taken from her.
2. The petitioner further states that she was arrested and charged with the offence of selling 52 litres of chang'aa vide the stated criminal case. The seized grains were not declared in the police occurrence book at Njoro Police Station where she was escorted to and charged after arrest. The grains were never returned to her despite lodging the complaint with the police.
3. James Kuyioni, a Senior Sergeant attached to Critical Infrastructure Protection Unit at an unnamed Sub County swore an affidavit in reply on behalf of the respondents. While confirming the petitioner's arrest for dealing in illicit brews, the respondents deny confiscating her money.
4. The petition was first placed before the court on 29th March 2022 when my senior brother (Joel Ngugi J), as he then was, directed that it be served for hearing interpartes on 27th April, 2022. The petition, however remained unprosecuted until about a year later on 22nd April 2024 when my brother (H. M. Nyaga J) directed that notice be issued to the petitioner to show cause why the petition should not be dismissed. The petitioner filed an affidavit in reply to the court's notice. This ruling follows the said notice to show cause.
5. The court's notice dated 24th October 2024 required the petitioner to show cause why the petition should not be dismissed for want of prosecution.
6. The petitioner in her reply blames her previous advocates (M/S. E. Kinyanjui & Company Advocates) for failing to inform her of the dates her petition was coming up in court. She informs the court that she has since hired another firm of advocates to pursue the matter, adding that she is keen to prosecute her petition since she was allegedly falsely charged and her property unlawfully confiscated. The petitioner urges the court not to punish her for the mistakes of her advocates who failed to brief her about progress of the matter.
7. The respondents did not comment on the notice to show cause.
8. I have read the petitioner's explanation for delay to prosecute the petition. I have also read through the record and note that on 6th June 2022 the petitioner sought to amend the petition and she was given seven (7) days to comply. By 24th May 2023, however, the petition had not been amended. After several other hiccups, the petitioner was given another hearing date of 19th February 2024 but none of the parties appeared. The default culminated in the court's notice to the petitioner to show cause why the petition should not be dismissed.
9. The petition remains unheard over one (1) years after it was filed. It was the responsibility of the petitioner to closely liaise with her advocates to prepare for hearing of the petition. Although her



explanation is not quite convincing, I am nevertheless minded to indulge the petitioner given the nature of the complaint which touches on violation of the Bill of Rights and Fundamental Freedoms.

10. In the result, the petitioner is granted the last chance to prosecute the petition

J.M NANG'EA , JUDGE.

JUDGEMENT DELIVERED VIRTUALLY THIS 2ND DAY OF DECEMBER, 2024 IN THE PRESENCE OF:

The Petitioner's Advocate, Mr Mochire

The Defendant's Advocate, Absent

J. M NANG'EA, JUDGE

