



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

PETITION NO. 34 OF 2011

IN THE MATTER OF ARTICLE 22 AND 23 OF THE CONSTITUTION OF KENYA

AND

**IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND
FREEDOMS UNDER ARTICLE 26(1), 40(1), (2), (B) OF THE CONSTITUTION OF KENYA**

BETWEEN

MUCHIRI KIUMA MAINA.....PETITIONER

VERSUS

ATTORNEY GENERAL.....RESPONDENT

JUDGMENT ON ASSESSMENT OF DAMAGES

1. The Petitioner, Muchiri Kiuma Maina, is a retired School teacher. He was a director of a company called Kieni East Farmers Company Limited ("Company"). He brought a suit before this Court alleging certain violations of his fundamental rights. The suit sought the following declarations

- a. The Petitioners fundamental rights and freedom more so as set out in article 36(1), 40(1), 50(1)(2)(b) of the Constitution of Kenya were violated.*
- b. The Petitioner is the one and only accredited secretary/director of the dissolved Kieni East Farmers Company Limited.*
- c. The company seal, the two members register the three files, memorandum and articles of association taken from the Petitioner by the officers from DCIO Laikipia West and O.C.S Kinamba Police Station on Saturday, 13/8/2011 be immediately surrendered back to the Petitioner to await official surrender to the relevant authority.*
- d. The Petitioner be granted general damages*
- e. The costs of this Petition be awarded to the Petitioner*
- f. Such other orders as this Honourable court shall deem just.*

2. The High Court dismissed the Petition as unmeritorious. The Petitioner appealed to the Court of Appeal. The Appellate Court reversed the High Court finding and substituted the High Court order dismissing the Petition with one allowing it. The Court of Appeal, then, remanded the case back to the High Court for assessment of damages.

3. When the matter came up before me on 25/06/2018, I directed both the Petitioner and the State Counsel, Mr. Ondieki to file written submissions and return on 02/10/2018 for highlighting. The Petitioner complied with the orders of the Court and filed Written Submissions dated 04/07/2018. The Honourable Attorney General neither filed submissions nor appeared on 02/10/2018. I will, therefore, give my ruling on assessment of damages without the benefit of the Honourable Attorney General's views.

4. The Court of Appeal accepted the following as the undisputed account of what happened to the Petitioner:

[O]n 19th July, 2011, the Appellant received telephone calls from a person who identified himself as Mr. Kimathi of Kinamba Police Station in Ng'arua, Laikipia West, requiring him to report to that station; that the appellant to confirm legitimacy of the summons told the caller to serve with official written summons; that on the 12th August, 2011, the appellant received another telephone call from the Land Registrar in Laikipia who made inquiries over an unstated issue; that in answer to this the appellant proceeded to Nyeri and was promptly arrested, forced into a motor vehicle where the Land Registrar was with two other occupants and he was taken to Kinamba Police Station where was confined....He was denied release on bail, was asked for a bribe which he refused to give; that he was shown some documents and that the next day, which was a Saturday, he was taken to his home by the Police who were armed with AK47 rifles which they used to threaten him and because of this he surrendered to the Members Register, 3 files, the Memorandum and Articles of Association and the Company Seal of the Company. Further, that he was taken back to the said Police Station where he was held in further confinement. The next day, Sunday, the Police Officers forced him to record a statement whereafter he was released. He was not charged with any offence.

5. From this account, the Court of Appeal deduced three specific constitutional contraventions which, they further concluded, must have caused much humiliation and embarrassment to the Petitioner:

- a. First, the bundling of the Petitioner into the Police vehicle without any or any valid reason being given to him;
- b. Second, the detention of the Petitioner at the Police Station for three days; and
- c. Third, the fact that the Petitioner was escorted to his home by heavily armed Police Officers where a search was conducted and company documents, which he was entitled to keep as the Secretary and Director of the Company, were carted away.

6. In his submissions, the Petitioner says that the illegal arrest has had a huge impact on him. He enumerates some of the impacts thusly:

- a. That the arrest occurred as he was recuperating from a surgical operation to remove his thyroid gland;
- b. That the court battles has exacerbated his condition making the hormonal imbalances worse;
- c. That the unlawful arrest stressed and depressed him exacerbating his chronic hypertension;
- d. That the fact that the High Court judgment implied that he was never a director of the Company painted him as an imposter and fraudster damaging his reputation;
- e. That he has been unable to manage his “economic establishments” as a result of the suit;
- f. That as a “prominent teacher in Nyeri”, he has lost a “legacy”;
- g. That, in part, he lost the Kieni Constituency parliamentary elections in 2013 and 2017 due to his arrest

7. The Petitioner relied on *Jaston Ongale Onyango v The Attorney General (Nairobi Petition No. 512 of 2012)* in submitting that general damages of Kshs. 12 Million would be sufficient to compensate him. In that case, the Court awarded the Petitioner Kshs. 4 Million as general damages for malicious prosecution and illegal confinement.

8. I can readily state that the cited case is not comparable to the present one. In that case, the Petitioner was held in custody for a total of 127 days – 11 days before being charged and the rest after being charged but before he could afford bail. The Learned Judge found as a fact, as the Court of Appeal found here, that there was no valid reason to arrest let alone charge the Petitioner in that case. Still, in that case, the Petitioner was charged with the offence of robbery with violence which, by then, carried a mandatory death penalty. Additionally, the Petitioner was arrested in very humiliating circumstances – in his house while he was naked and was forced to stand naked before many Police Officers some of whom were women.

9. In the present case, the Petitioner was confined illegally for three days. As the Court of Appeal found, his arrest must have caused him embarrassment and humiliation. And it no doubt caused him stress and distress. However, it is probably stretching it beyond what would be considered consequential damages to hung his loss of parliamentary elections as well as his deteriorating health on the illegal confinement for three days. The impact on his reputation is also uncertain in economic terms. In the end, what the Petitioner must be compensated for is for emotional and physical distress caused by his illegal arrest; illegal confinement for three days; and the oppressive way in which the Police escorted him to his house to illegally confiscate Company materials.

10. Taking this into consideration, the more comparable cases include *Thomas Mboya Oluoch vs Lucy Muthoni Stephen & Another Nairobi HCCC No. 1729 of 2001* (where an award of Kshs. 500,000/- was made); *Crispus Karanja Njogu v The Attorney General [2008] eKLR* (where an award of Kshs. 800,000/- was made); and *Chispine Otieno Caleb v The Attorney General (Nairobi High Court Civil Suit No. 782 of 2007)* (where an award of Kshs. 2,000,000/- was made). In all the above cases, the initial illegal arrests and confinement were followed by many months of pointless and malicious prosecutions of the Petitioners. In the present case, while the arrest and confinement was illegal and highly oppressive, the Petitioner was released after three days and no charges were brought against him.

11. Consequently, in the present, taking all the circumstances into account and considering the comparable awards in the cases cited above, I am satisfied that an award of Kenya Shillings One Million (Kshs. 1,000,000/-) is justified. I hereby award that amount as general damages. It will be paid together with interests at court rates from the date hereof until payment in full.

12. Orders accordingly.

Dated and delivered at Nakuru this 15th day of January, 2019

JOEL NGUGI

JUDGE