REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL PETITION NO. 54 OF 2019

LIBINUS ODUOR JUMA.....PETITIONER

VERSUS

THE DIRECTOR OF PUBLIC PROSECUTION ..... 1ST RESPONDENT

THE COUNTY POLICE OFFICER KAKAMEGA ..... 2ND RESPONDENT

THE HON. ATTORNEY GENERAL ..... 3RD RESPONDENT

JUDGMENT

1. The petitioner is the member of County Assembly for Mayoni Ward in Kakamega County. On the 17th May, 2019 he was arrested and incarcerated at various police stations on allegations that he was involved in some killings that had taken place in Matungu Sub-county of Kakamega County in the months of March, April and May, 2019. He was however released on 19/5/2019 without charges. He as a consequence filed a petition dated 25th May, 2019 seeking for:-

(i) A declaration that his arrest and release without being charged was unlawful and unconstitutional.

(ii) There be an order stopping further or other arrest and re-arrest and or the linking of the petitioner to the said Matungu Killings.

(iii) An order on costs.

2. The grounds in support of the petition are that the linkage of the petitioner to the killings at Matungu was false. That the arrest was unlawful and uncalled for. That the petitioner was incarcerated illegally and manhandled yet he remains on grave medical attention as per excerpts annexed. That he was denied bail contrary to his constitutional rights. That he was depicted as a criminal thereby seriously undermining his hard earned reputation and political career which is the bedrock of his livelihood. That as a consequence of the arrest and incarceration his opponents have craved cheap fodder with intent to exterminate him politically, socially and economically. That he has suffered social and religious humiliation which has no easy remedy hitherto having been of impeccable and high standing in society. That the conduct of the 2nd respondent is in sharp contradiction of the constitution. That the petitioner is apprehensive that further violations of arrest and re-arrest may occur unless stopped by orders sought.

3. The petition was opposed by the respondents vide their grounds of opposition dated 11th June, 2019 on the basis that:-

(1) The application and petition is bad in law, an abuse of the court process as the same is an attempt by the petitioner to evade investigations and probable prosecution.

(2) That the application/petition is against the constitutional mandate of the 1st and 2nd Respondent under Article 157 and 254 (4) (a) and (b) of the Constitution of Kenya, 2010.

(3) That the Petitioner has not satisfied the threshold for grant of orders of anticipatory bail as there is no real and imminent danger that his constitutional rights and freedoms under the Constitution will be violated by the respondents to attract immediate remedial attention or redress by this Honourable Court.

(4) That the investigations of the petitioner concerning the "Matungu Killings" does not amount to infringement of the fundamental rights and freedoms of the petitioner and the petitioner cannot pre-empt the outcome of the said investigations.

(5) That the petition as filed does not meet the constitutional threshold of filing constitutional petitions as was set out in Anarita

(6) That the orders being sought by the petitioner will be tantamount to clothing the petitioner with criminal immunity from investigations, arrest and prosecution with regard to said offences.

4. The petition was further opposed by the officer who was investigating the case Detective Geofrey Mwera vide his replying affidavit sworn on 11th June, 2019 in which he states that the arrest of the petitioner was not malicious. That the same was done in discharge of the 2nd respondent's constitutional mandate of investigating criminal complains. That the mere fact that the petitioner was arrested and released does not connote malice on the part of the respondents. That the arrest did not violate the petitioner's constitutional rights under the Constitution. That the investigations into the killings in Matungu Sub-county are still ongoing and if completed arrests will be made and hence the petitioner cannot pre-empt the outcome of the investigations. That if investigations lead to the arrest of the petitioner then the due process of the law require that the petitioner be charged in a court of law. That the petitioner has not demonstrated that the respondents are likely to infringe on the petitioner's rights. That it is in the public interest that the respondents be allowed to conduct investigations on the Matungu Killings and make arrest of anyone found criminally culpable including the petitioner. That should the petitioner be found culpable after investigations there are constitutional safeguards under the constitution including the right to bail.

SUBMISSIONS –

Submissions for the Petitioner:

5. The advocate for the petitioner **Mr. Ombito** submitted that the petitioner was arrested pending investigations. That the police statement issued releasing the petitioner dated 19/5/2019 marked LO1 attests to final proof that there were no investigations prior to arrest. That courts have held that arrest pending investigation is unprocedural and illegal. The cases of **Michael Rotich –Vs- R (2016) eKLR** and **Waiss Abdulaziz Mohammed –Vs- Republic (2017) eKLR** were cited. That the petitioner was not charged. That his rights were violated and therefore the orders sought ought to be granted.

6. The advocate submitted that the petitioner has medical challenges as explained by the medical report attached marked LO2. That the arrest and incarceration exacerbated his medical condition.

7. It was further submitted that in the event of the orders being sought are granted the respondents are jointly and severally liable to the petitioner for costs to cover general and special losses incurred. The advocates urged the court to award costs of Ksh. 2 Million to cover the advocates costs as well as wrongful incarceration.

Submissions for 1st Respondent:

8. The 1st respondent, Director of Public Prosecutions through the Senior Prosecution Counsel **Mr. Ng'etich**, submitted that the particulars of malice have not been substantiated. That the treatment notes annexed to the supporting affidavit refer to treatment notes of 2017. That there is nothing annexed to show that the condition alluded to was complex. That the newspaper excerpt annexed to the petitioner does not expressly mention the applicant as a perpetrator of the crimes or even the full names of the applicant. That one cannot deduce political benefit for the applicant's opponents from the excerpt. That the petitioner has not demonstrated that he has suffered disrepute as a result of the publication or the arrest and detention. That the injury allegedly suffered cannot be deduced from the pleadings or affidavit evidence.

9. It was further submitted that it is the constitutional mandate of the 1st respondent to institute criminal proceedings against any person under the provisions of article 157 of the Constitution. That to grant the orders sought would be tantamount to ordering the 1st respondent not to discharge its constitutional mandate. That the 1st respondent has not made a decision to prefer charges against the petitioner. That to prohibit charges against the applicant when no decision has been arrived by the 1st respondent is premature. The cases of **Uganda –Vs- Jackline Uwera Nsenga Criminal Session No. 0312 of 2013** and **Charles Okello Mwanda –Vs- Ethics and Anti-Corruption Commission & 3 Others (2014) eKLR** were cited in support of the holding that the power to decide whether to charge a person with an offence is vested with the DPP.

10. The state counsel submitted that the police have a mandate to investigate crime. That the court ought not to usurp the constitutional mandate of the police to investigate crime. That the court can only interfere with the said powers in situations where the officers to whom the power is given fail to do so in a just manner and in the interest of justice. That the mere fact that allegations made are likely to be found worthless is not a ground for halting investigations into the complains or even prosecutions made or brought to the attention of the respondents since the purpose of a criminal investigation and prosecution conducted *bona fide* is to consider both incriminating and exculpatory material and not just to collect evidence on the basis of which criminal charge may be laid. That in making the application the petitioner is anticipating the outcome of investigations and is therefore premature. The case of **Republic –Vs- Commissioner of Police & Another Ex parte Michael Monari & Another (2012) eKLR** was cited.

11. it was further submitted that the petitioner has not satisfied the threshold for grant of orders of prohibition as set out by the Court of Appeal in **Kenya National Examination Council –Vs- Republic Ex parte Geoffrey Gathenji Njoroge & 9 Others (1997) eKLR** where it was stated that:-

"What does an ORDER OF PROHIBITION do and when will it issue" It is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. It lies, not only for excess of jurisdiction or absence of it but also for a departure from the rules of natural justice. It does not, however, lie to correct the course, practice or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings – See HALSBURY'S LAW OF ENGLAND, 4th Edition, Vol. 1 at pg. 37 paragraph 128."

Submissions for 2nd and 3rd Respondents:

12. **Mr. Tarus** state counsel for the 2nd and 3rd respondents submitted that the petition does not meet the threshold of filing constitutional petitions as was outlined in the case of **Anarita Karimi Njeru –Vs- Trusted Trustee for Human Rights and 5 Others (2013) eKLR** in which the court stated that pleadings in a constitutional petition should be precise on the provisions of the Constitution violated, the rights said to be infringed, the manner of infringement and the judicial basis for it. That in this petition there are no particulars in support of the alleged violations of the constitution. That all what the petitioner has stated is only that there was malice in his arrest without linking them to various articles of the Constitution. That arrest and release of the petitioner does not amount to violation of his rights and freedoms under the Constitution.

13. It was further submitted that the petition is an attempt to scatter investigations and probable prosecution should investigations point out that the petitioner is culpable. That the petitioner cannot pre-empt the outcome of such investigations. The case of **Pamela Akinyi Odhiambo –Vs- Ethics & Anti-corruption Commission (2018) eKLR** was cited where it was held that:-

> ***"Furthermore, if the matters in question are still under investigation the outcome of those investigations cannot be pre-empted by the applicant or by this court. Should the investigations culminate in the arrest of the applicant, arrest and arraignment are known processes of our legal system and per se do not amount to infringement on the fundamental rights and freedoms of the applicant. In any case she will be entitled to bail as provided by the Constitution. To my mind, the apprehension by the Applicant does not meet the threshold of serious breach of his rights by a state organ."***

Analysis and Determination –

14. The questions for determination are:-

> ***(1) Whether the arrest of the petitioner was unlawful.***
>
> ***(2) Whether further arrest of the petitioner and linking him to Matungu Killings should be stopped.***
>
> ***(3) Whether the petition meets the threshold of a constitutional petition.***

Arrest of the Petitioner –

15. The powers of the Director of Public Prosecutions are set out in Article 157 of the Constitution. Among those powers are those provided in sub-section (4) that provides that:-

> ***"The Director of Public Prosecutions shall have power to direct the Inspector-General of the National Police Service to investigate any information or allegation of criminal conduct and the inspector-General shall comply with any such direction."***

16. The police powers of arrest without warrant are provided in Section 58 of National Police Service Act that provides that:-

> ***"Subject to Article 49 of the Constitution, a police officer may without a warrant, arrest a person –***
>
> ***(a) ……***
>
> ***(b) ……***
>
> ***(c) Whom the police officer suspects on reasonable grounds of having committed a cognizable offence;***
>
> ***(e)……***
>
> ***(f) ……***
>
> ***(g) Whom the police officer suspects upon reasonable grounds of having committed or being about to commit a felony; or***
>
> ***(h) ……"***

Further powers of arrest without warrant are provided in Section 29 of the Criminal Procedure Code.

17. Besides the powers of arrest, the police have power to summon any person believed to have information which may assist in investigation to appear before a police officer in a police station. Section 52 (1) of the National Police Service Act provides that:-

> ***"A police officer may, in writing, require any person whom the police officer has reason to believe has information which may assist in the investigation of an alleged offence to attend before him at a police station or police office in the county in which that person resides or for the time being is."***

18. The petitioner herein was arrested without warrant. It was therefore the duty of the police to establish that there were reasonable grounds to suspect that the petitioner had committed a cognizable offence.

19. What constitutes reasonable cause was defined a long time ago in the case of **Hicks v Faulkner, (1878), 8 Q.B.D. 167 at para 171 where** Hawkins J. held as follows:-

> ***"Reasonable and probable cause is an honest belief in the guilt of the Accused based upon a full conviction founded upon reasonable grounds of the existence of a state of circumstances, which assuming them to be true, would reasonably lead an ordinary prudent and cautious man placed in the position of the accuser to the conclusion that the person charged was probably guilty of the crime imputed."***

20. Rudd, J. in **Kagane V Attorney General & Another, (1969) EA 643** reiterated the same definition and stated as follows:-

> ***"... to constitute reasonable and probable cause the totality of the material within the knowledge of the prosecutor at the time he instituted the prosecution, whether that material consisted of the facts discovered by the prosecutor or information which has come to him or both, must be such as to be capable of satisfying an ordinary reasonable prudent and cautious man to the extent of believing that the accused is probably guilty."***

21. The House of Lords in **O'Hara v Chief Constable of the Royal Ulster Constabulary (cited in Kenneth Omondi Ochiengo & 38 Others –Vs- Republic, Nairobi Criminal Revision No. 141 & 143 of 2019 (Consolidated) (2019) eKLR)** considered whether the police had established that there were *prima facie* grounds to arrest the appellant. The court, in interpreting **Section 12(1)** of the English **Prevention of Terrorism (Temporary Provisions) Act 1984** which read as follows:

> ***"…a constable may arrest without warrant a person whom he has reasonable grounds of suspecting to be –***
>
> ***(b) a person who is or has been concerned in the commission, preparation or instigation of acts of terrorism to which this part of this act applies…"***

held thus:

> ***"Certain general propositions about the powers of constables under a section such as section 12(1) can now be summarised. (1) In order to have a reasonable suspicion the constable need not have evidence amounting to prima facie case. Ex hypothesi one is considering a preliminary stage of the investigation and information from an informer or a tip-off from a member of the public may be enough: Hussien v. Chong Fook Kam [1970] A.C. 942,949. (2) Hearsay information may therefore afford a constable a reasonable grounds to arrest. Such information may come from other officers: Hussien's case, ibid. (3) The information which causes the constable to be suspicious of the individual must be in existence to the knowledge of the police officer at the time he makes the arrest. (4) The executive "discretion" to arrest or not as Lord Diplock described it in Mohammed-Holgate v. Duke [1984] A.C. 437,446, vests in the constable, who is engaged on the decision to arrest or not, and not in his superior officers. Given the independent responsibility and accountability of a constable under a provision such as section 12(1) of the Act of 1984 it seems to follow that the mere fact that an arresting officer has been instructed by a superior officer to effect the arrest is not capable of amounting to reasonable grounds for the necessary suspicion within the meaning of section 12(1)."*** Per Lord Steyn.

Lord Hope of Craighead held thus:

> ***"My Lords, the test which section 12(1) of the Act of 1984 has laid down is a simple but practical one. It relates entirely to what is in the mind of the arresting officer when the power is exercised. In part it is a subjective test, because he must have formed a genuine suspicion in his own mind that the person has been concerned in acts of terrorism. In part also it is an objective one, because there must also be reasonable grounds for the suspicion which he has formed. But the application of the objective test does not require the court to look beyond what was in the mind of the arresting officer. It is the grounds which were in his mind at the time which must be found to be reasonable grounds for the suspicion which he has formed. All that the objective test requires is that these grounds be examined objectively and that they be judged at the time when the power was exercised."***

23. It is the duty of the police to investigate commission of crime. Warsame J. (as he then was) in **Republic –Vs- Commissioner of Police & Another Ex parte Michael Monari & Another** (Supra), held that:-

> ***"The police have a duty to investigate on any complaint once a complaint is made. Indeed the police would be failing in their constitutional mandate to detect and prevent crime. The police only need to establish reasonable suspicion before preferring charges. The rest is left to the trial court. The predominant reason for the institution of the criminal case cannot therefore be said to have been the vindication of the criminal justice. As long as the prosecution and those charged with the responsibility of making the decisions to charge act in a reasonable manner, the High Court would be reluctant to intervene."***

24. It is then clear that it is not unlawful for the police to arrest a person where there is reasonable suspicion that the person has committed a crime. Mere arrest of a person who is suspected to have committed a crime cannot amount to a breach of a fundamental right. Neither is undergoing a lawful investigation a breach of fundamental right. In **Hassan Ali Joho –Vs- Inspector General of Police & 3 Others (2017) eKLR**, Ogolla J. held that:-

> ***"In my view, threat of arrest itself or threat of violation of fundamental rights and freedoms per see is not a reason enough to stop the DPP from carrying out his functions. What the law seeks to prevent is arbitrary arrest without probable cause. An***

objective justification must be shown to validate arrest of any individual. The Kenya Constitution recognizes that if a criminal offence is committed, investigation arrest and prosecution might ensue. In this context, the Constitution anticipates arrest of individuals and that is why Articles 49 and 50 (2) make provision for the rights of arrested persons. Therefore, a threat of arrest of a person per see is not unconstitutional so long as due process of law is followed and the rights of the arrested person are observed."

25. In the instant case it was the duty of the respondents to show that there was a reasonable cause for the arrest of the petitioner and that there was no ulterior motive to the arrest other than him being investigated of commission of a crime or crimes. The officer who was investigating the petitioner's case, Detective Mwera did not give sufficient explanation as to why they arrested the petitioner. He did not state that they had received information from any quarters linking the petitioner to the *Matungu Killings*. He did not allude that there was the remotest evidence linking the petitioner to the killings. Failure by the investigating officer to explain the reason behind the arrest of the petitioner can only lead to the conclusion that there was no reasonable cause for his arrest. The arrest can only have been out of an ulterior motive that was unrelated to the petitioner being suspected of committing an offence.

26. The petitioner contended that the act of his being arrested and released without charge was unlawful and unconstitutional. The act of the arrest of the petitioner was not by itself unlawful. What was unlawful was his arrest without reasonable cause.

27. The petitioner states that he was not granted bail after the arrest. Article 49 (1) of the Constitution provides as follows:-

"An accused person has the right to –

(h) to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released."

28. Article 49 (1) (h) gives an accused person who is in custody the right to be released on bond pending a charge or trial. In my view the right to be released on bond applies to an accused person who is in police custody notwithstanding whether he has been taken to court or not. The police in this case detained the petitioner in custody for 2 days, i.e. Friday and Saturday without granting him bond or bail. They did not have reasonable cause to arrest him yet they failed to release him on bond. I hold that the respondents infringed on the fundamental rights of the petitioner in not releasing him on bond when there were no compelling reasons to have him remain in custody.

29. The petitioner urges the court to issue orders stopping his arrest and further arrest and linking him to *Matungu Killings*. It is the mandate of the police to investigate commission of crimes. If the police happen to get sufficient evidence to form a basis of charging the petitioner with an offence, it would be utterly wrong for this court to issue blanket orders stopping his arrest. The court therefore cannot make an order to stop the police from linking the petitioner to the *Matungu killings*. To do so would, as submitted by the respondents, amount to granting him criminal immunity from investigations.

Whether the petition meets the threshold of a constitutional petition –

30. The title of the petition indicates that the petition is brought under Articles 49 (1) (f), (g) and (h) and Articles 50, 26, 36 and 43 of the Constitution of Kenya 2010. It is not specified which provisions of Article 50 are applicable in the case for the petitioner. Article 26 of the Constitution deals with the right to life. Article 36 deals with the right to freedom of association. Article 43 deals with economic and social rights. These articles are thereby not applicable in the petitioner's case.

31. Further to this, the body of the petition does not specify the particular articles of the Constitution that were infringed as a result of the unlawful arrest of the petitioner. A petitioner in a constitutional petition is required to set out with due particularity the nature of his claim by identifying the specific right violated and how it is violated. This principle was set out in the case of **Anirita Karimi Njeri –Vs- Republic** (supra) where the court held that:-

"If a person is seeking redress from the High Court on a matter which involves a reference to the Constitution, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed." (See also Meme Vs. Republic & another [2004] 1 KLR 637)

32. The same was emphasized by the Court of Appeal in **Mumo Matemu –Vs- Trusted Society for Human Rights & 5 Others** (Supra) where it stated that:-

"…the principle in Anarita Karimi Njeru (supra) underscores the importance of defining the dispute to be decided by the court… Procedure is also a handmaiden of just determination of cases. Cases cannot be dealt with justly unless the parties and the court know the issues in controversy. Pleadings assist in that regard and are a tenet of substantive justice, as they give fair notice to the other party. The principle in Anarita Karimi Njeru (supra) that established the rule that requires reasonable precision in framing of issues in constitutional petitions is an extension of this principle."

33. The petition herein does not comply with the principles set out in the above two cases. The question then is whether the court should dismiss the petition or whether it should identify from the pleadings and the evidence the particular articles of the Constitution that were infringed.

34. In **Mumo Matemo –Vs- Trusted Society of Human Rights Alliance & 5 Others (2013) eKLR**, the High Court seemed to be of the view that as long as the breach of the Constitution is apparent on the face of the petition and the evidence the court has the duty to enforce the right even though the article violated is not identified in the petition. Stated the court:-

"We do not purport to overrule Anarita Karimi Njeru as we think it lays down an important rule of constitutional adjudication; a person claiming constitutional infringement must give sufficient notice of the violations to allow her adversary to adequately prepare her case and to save the court from embarrassment on issues that are not appropriately phrased as justiciable controversies. However, we are of the opinion that the proper test under the new Constitution is whether a Petition as stated raises issues which are too insubstantial and so attenuated that a court of law properly directing itself to the issue cannot fashion an appropriate remedy due to the inability to concretely fathom the constitutional violation alleged. The test does not demand mathematical precision in drawing constitutional Petitions. Neither does it require talismanic formalism in identifying the specific constitutional provisions which are alleged to have been violated. The test is a substantive one and inquires whether the complaints against the Respondents in a constitutional petition are fashioned in a way that gives proper notice to the Respondents about the nature of the claims being made so that they can adequately prepare their case."

35. In **ANM & Another (Suing in their own behalf and on behalf of ANM (Minor) as parents and next friend) –Vs- FPA & Another (2019) eKLR**, Odunga J. was of the view that the principle in *Anirita Karimi* case ought not to be religiously followed and held that:-

"52. It must therefore be remembered that a High Court is by virtue of the provisions of Article 165 of the Constitution a Constitutional Court and therefore where a constitutional issue arises in any proceedings before the Court, it is enjoined to determine the same notwithstanding the procedure by which the proceedings were instituted. In my view where it is apparent to the Court that the Bill of Rights has been or is threatened with contravention, to avoid to enforce the Bill of Rights on the ground that the supplicant for the orders has not set out with reasonable degree of precision that of which he complains has been infringed, and the manner in which they are alleged to be infringed where the Court can glean from the pleadings the substance of what is complained of would amount to this Court shirking from its constitutional duty of granting relief to deserving persons and to sacrifice the constitutional principles and the dictates of the rule of law at the altar of procedural issues. Where there is a conflict between procedural dictates and constitutional principles especially with respect to the provisions relating to the Bill of Rights it is my view and I so hold that the later ought to prevail over the former."

36. I am of the view that the court should not dismiss a petition alleging contravention of the Constitution where it is apparent from the petition and the evidence that there was a breach of the Constitution. Article 22 of the Constitution provides that when considering a petition touching on contravention of the Constitution, the court though required to observe the rules of natural justice should not be unreasonably restricted by procedural technicalities. The **Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013** provides the procedure of filing constitutional petitions. It is evident from the provisions of the rules that a petition need not be that formal. Rule 10 (3) allows filing of a petition by informal documentation. The Rule provides that:-

"Subject to rules 9 and 10, the court may accept an oral application, a letter or any other informal documentation which discloses denial, violation, infringement or threat to a right or fundamental freedom."

In my considered view the fact that the court can accept an oral petition by implication means that a petition should not be dismissed for want of form. The spirit of the Constitution and the Rules seem to be that the priority of the court should be to enforce the rights infringed notwithstanding the defect in form of the petition. Only a petition that is hopeless for which no life can be breathed into it can be dismissed.

37. The purpose of pleadings is to notify the opposite party of the issue in controversy. In this petition the issue at hand was the arbitrary arrest and unlawful incarceration of the petitioner in police custody. This was brought to the attention of the respondents in the petition. The respondents responded to the petition and denied the allegations. The petitioner did prove in court that he was unlawfully incarcerated in custody for no just cause. The respondents failed to show that there was reasonable cause for the arrest of the petitioner.

38. Article 29 of the Constitution provides that:-

"every person has the right to freedom and security of the person, which includes the right not to be –

a) deprived of freedom arbitrarily or without just cause."

b)

39. The petitioner has established that his arrest was arbitrary and for no just cause. His right to freedom of the person was thereby infringed. I do hold that there was a contravention of the petitioner's right to freedom and security of the person as stipulated under article 29 (a) of the Constitution of Kenya, 2010. His arrest was unlawful and unjustified.

40. The advocate for the petitioner has asked the court to award costs to the sum of Ksh. 2 million to the petitioner. The costs incurred by the petitioner in filing the petition cannot be computed in a judgment. The court can only award costs which can be computed thereafter in a separate application. The submission to award costs of Ksh. 2 million is not legally tenable.

41. The upshot is that the court finds that the respondents infringed on the petitioner's right to freedom by arresting him arbitrarily without reasonable cause in contravention of Article 29 (a) of the Constitution of Kenya, 2010. The petition therefore partially succeeds and I make the following orders:-

(i) A declaration be and is hereby issued that the arrest and detention of the petitioner by the respondents was a breach of the petitioner's right to freedom from arbitrary arrest without just cause.

(ii) Costs of the petition to go to the petitioner.

Delivered, dated and signed in open court at Kakamega this 17th day of October, 2019.

J. NJAGI

JUDGE

In the presence of:

Mr. Namatsi holding brief for Ombito for petitioner

Miss Kibet for respondents

Petitioner - absent

Court Assistant - George

14 days right of appeal.