



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**CONSTITUTIONAL & HUMAN RIGHTS DIVISION**  
**PETITION NO. 183 OF 2016**

**BETWEEN**

**FRANCIS KIRIMA M'IKUNYUA..... PETITIONER**

**AND**

**THE INSPECTOR GENERAL OF POLICE.....1<sup>st</sup> RESPONDENT**

**THE POLICE SERVICE COMMISSION.....2<sup>nd</sup> RESPONDENT**

**THE INDEPENDENT POLICE OVERSIGHT AUTHORITY.....**  
**.....3<sup>rd</sup> RESPONDENT**

**THE OFFICER COMMANDING POLICE,DISTRICT MACHAKOS..4<sup>th</sup> RESPONDENT**

**JUDGMENT**

**Introduction**

1. The Petition herein runs half a page.

2. It was filed by the Petitioner who claims to be the Chairman of an informal settlement in Athi River Kenya. The Petitioner sought four substantive orders mainly to stop or prohibit his arrest. The Petitioner also sought a compensatory as well as an order directed to the 3<sup>rd</sup> Respondent to give reasons for the alleged unilateral cancellation of the Petitioner's bond.

3.The Petition was not opposed. The Respondents despite having been served with the Petition did not enter appearance or file any response.

**Basic background facts**

4. The background facts are scarce, as are the allegations.

5. The Petitioner claims to have been arrested and charged in court over skirmishes concerning a disputed piece of land. The Petitioner claims to have been admitted to bail on 18 February 2016. The Petitioner then states that the 3<sup>rd</sup> Respondent on 4 March 2016 unilaterally cancelled his bail and then held him in

custody for one month before releasing him. That is all.

### **Petitioners' case and evidence**

6. The Petitioner's case is thereafter simple. The Petitioner seeks an order to stop his being arrested again and additionally that his arrest was unconstitutional. The supporting affidavit as well as the accompanying witness statement simply reiterates what the Petition states without any particulars.

7. The Petitioner does not state either in the Petitioner or in the supporting affidavit that his rights were violated. The Petitioner does not also plead the rights allegedly violated. The affidavit is completely scanty and wanting in evidence. There is also no indication of any Article of the Constitution allegedly infringed or violated.

### **Arguments by the Parties**

8. The Petitioner was represented by Mr. S.G Kimathi who urged the Petitioner's case orally before me besides having filed written submissions.

#### *Petitioner's submissions*

9. The Petitioner's counsel submitted that the Petitioner's constitutional rights had been grossly violated. Counsel submitted that the Petitioner had been arrested on 16 February 2016 and informed that he would be charged with misuse of a firearm and then subsequently informed that he would be charged with assault causing grievous harm only to be later charged with murder on 18 February 2016. He was admitted to bond but on 4 March 2016 the bond was allegedly cancelled by the 3<sup>rd</sup> Respondent. He was then remanded and was later again re-admitted to bond on 14 April 2016

10. The Petitioner's counsel submitted that the Petitioner was never involved in any crime and that the Respondents are only bent on having the Petitioner convicted. The Petitioner further submitted that from the facts, the Petitioner's liberty is at stake and that Article 29 of the Constitution is under threat of violation. Reference was made by Mr Kimathi to the treatise **Constitutional and Administrative Law** by **O Hood Philip and Jackson** for the proposition that a person's freedom must never be taken away without justification.

### **Discussion and Determinations**

#### *Competency of the Petition*

11. It would be important to look at the first sentence of this Judgment and then consider the competence of the Petition.

12. There is no doubt that the generally accepted principle of the law is that where a person alleges constitutional violations and infringements and brings a claim to court, the Constitutional violations must not only be pleaded with a reasonable degree of precision but must also be particularized in a precise manner. The aggrieved party must also enumerate the Articles of the Constitution granting the rights complained to have been violated and the manner in which the rights have been violated or threatened with violation: see the cases of **Anarita Karimi Njeru vs. Republic [1976] -80] KLR 1272** and the Court of Appeal decision in **Trusted Society of Human Rights Alliance vs. The Attorney General & 2 Others [2014] eKLR**.

13. The precision required is however not absolute precision and where the court can painlessly identify the Petitioners claim then the claim must be heard on its merits. The rationale behind the reasonable-precision rule is to ensure that the Respondent is aware of the case it is faced with.

14. The sentiments expressed by the Court of Appeal in **Peter M. Kariuki vs. Attorney General [2014]eKLR** and **Nation Media Group Ltd vs. Attorney General [2007] 1 EA 261**, that a

Constitutional court should be liberal in the way it dispenses justice are relevant. As long as a party is aware of the case he is faced with, the matter ought to proceed to substantive hearing and determination on its merits.

15. I have perused the Petition as drawn. It is not easily discernible what the Petitioner's claim is about. The Petition is evidently not precise enough and does not reveal with the requisite degree the Articles of the Constitution violated as well as the manner of violation.

16. In my view the Petition fails to meet the competency threshold. It was not drafted with the requisite precision which enables one to painlessly identify a petitioner's claim.

17. It is true that the court always ought to be reticent when called upon to dismiss constitutional claims summarily. The instant case however calls for such drastic action. I was unable to painlessly or at all discern the Petitioner's claim. There was no way of showing that the Respondents had violated or threatened to violate the Petitioner's rights. The details were completely lacking. The accusations and allegations were not well grounded at all and appeared far-fetched. Even on the allegation that the Petitioner's bail rights had been infringed, no factual basis was laid. Given that bail issues are dealt with by the court and not the Police service, the latter's officers could not have unilaterally cancelled the Petitioner's bail as alleged.

18. I am inclined to deny the Petitioner the reliefs claimed for the simple lack of proof and want of reasonable precision.

19. I would dismiss the petition not just for want of competence but also for want of the requisite evidence. The petition is dismissed.

20. I however make no order as to costs.

**Dated, signed and delivered at Nairobi this 7<sup>th</sup> day of September, 2016**

***J.L.ONGUTO***

**JUDGE**