



REPUBLIC OF KENYA



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Mathenge v Inspector General of Police & 2 others (Constitutional Petition E006 of 2023) [2025] KEHC 15310 (KLR) (31 October 2025) (Judgment)

Neutral citation: [2025] KEHC 15310 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CONSTITUTIONAL PETITION E006 OF 2023
MA ODERO, J
OCTOBER 31, 2025**

BETWEEN

JOSEPH MUCHEMI MATHENGE PETITIONER

AND

THE INSPECTOR GENERAL OF POLICE 1ST RESPONDENT

THE DIRECTOR OF PUBLIC PROSECUTION 2ND RESPONDENT

THE ATTORNEY GENERAL 3RD RESPONDENT

JUDGMENT

1. Before this Court is the Petition dated 16th August 2023 filed by the Petitioner Joseph Muchemi Mathenge in which he prays for the following orders;-

- “(a) A declaration be issued that the actions of the 1st and 2nd Respondent as averred are unconstitutional and infringe on the Petitioner’s rights and freedoms being; Right to protection and benefit of the law. Right to protection of right to property. Right to fair administrative action.
- (b) Damages for breach of the Petitioner’s constitutional rights and freedoms.
- (c) Spent.
- (d) Restitution for any damage to or loss of the said property.
- (e) Compensation to the Petitioner for loss of user of the motor vehicle at Kshs. 40,000 per day from 6th July 2023 to the date of release of the motor vehicle to the Petitioner in good working condition.
- (f) Costs and interest.”



2. The Respondents opposed the Petition through the Replying Affidavit dated 30th October 2023 sworn by one Kazungu Charo on behalf of The Inspector General of Police (the 1st Respondent) The matter was canvassed by way of oral evidence.

Background

3. The Petitioner stated that he was the registered owner of a motor vehicle Registration No. KDK 259R Isuzu Lorry (hereinafter ‘the vehicle’) which vehicle he uses for his timber and other related businesses.
4. The Petitioner stated that at all material times he was the holder of a valid licence issued by the Kenya Forest Service to cut and remove forest produce within Tetu Sub-county in Nyeri County. That he obtained a valid movement permit authorizing him to transport the timber from Nyeri to Kajiado County.
5. The Petitioner went onto testify that on 5th July 2023 his vehicle was on its way to Kajiado from Nyeri when police stopped the vehicle at the Skuta Area along the Nyeri-Karatina Road on grounds that the timber loaded on the vehicle was being transported using a forged movement permit. The petitioners driver and employee who were in the vehicle at the time were arrested and charged vide Nyeri CMCC No. E1015 of 2023.
6. The petitioner stated that the police impounded his vehicle on suspicion that the timber loaded on the vehicle had been unlawfully acquired and was being transported outside of the hours allowed under the licence. The vehicle was taken to Ruringu Police Station where it was detained from 6th July 2023 until 11th October 2023 when the vehicle was eventually released back to the Petitioner.
7. The Petitioner states that as a result of the seizure of his vehicle by police his business was negatively impacted. That in order to sustain the timber business the petitioner was forced to hire an alternative lorry at a cost of Kshs. 40,000 daily.
8. The Petitioner asserts that the seizure of his vehicle was done unlawfully and without any just cause, thereby subjecting him to lack of protection of his right to own property for which he is entitled to damages. The Petitioner also avers that his right to Fair Administrative Action and right to Protection of his business were also infringed.
9. In their Reply the 1st Respondent concedes to having detained the subject vehicle at the Skuta-Thunguma Road on 5th July 2023 at about 1930 hours. It was admitted that the police intercepted the vehicle transporting timber and upon questioning the occupants they produced a movement permit which in the view of the police officers was faulty.
10. The police then instructed that the vehicle be driven to the police station but the driver declined to move the vehicle. Shortly thereafter another vehicle Registration No. KCR 642 Q came to the scene. The driver of the KCR blocked the path of the lorry with his car and collected the ignition keys then and drove away.
11. Sometimes later a Forest Official was brought to the scene and examined the permit and declared that the movement permit only allowed transportation of timber between the hours of 6.00am to 6.00pm. The officer also confirmed that the permit had been overwritten. The police acting in the reasonable belief that crimes had been committed arrested the occupants of the vehicle and detained the vehicle at Ruringu Police Station.
12. The vehicle was finally taken to the police station where it was held as an exhibit whilst the two occupants were arraigned in court on criminal charges which were still ongoing at the time this petition



was filed. The Respondents deny having detained the vehicle maliciously. They state that they acted impartially in accordance with the law and urge the court to dismiss this petition in its entirety.

13. Upon conclusion of hearing oral evidence the parties were invited to file and exchange written submissions. The Petitioner filed the written submissions dated 20th June 2025 whilst the Respondents relied upon their written submissions dated 16th July 2025.

Analysis and Determination

14. I have carefully considered the Petition before this court, the reply filed thereto, the evidence on record as well as the written submissions filed by both parties. The three questions which emerge for determination are:-
 - i. Has the Petition met the threshold for a constitutional petition.
 - ii. Were the Petitioner's rights infringed.
 - iii. Is the Petitioner entitled to damages.

I. Threshold for a Constitutional Petition

15. The threshold for a constitutional petition were set out in the case of Anarita Njeru -vs- Republic [1997] KLR, 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.....”

16. Similarly in Communications Commission of Kenya & Others -vs- Royal Media Services Limited & 5 Others [2014] eKLR the Court stated that

“Although article 22(1) of *the Constitution* gives every person the right to initiate proceedings claiming that a fundamental right or freedom has been denied, violated or infringed or threatened, a party invoking this article has to show the rights said to be infringed, as well as the basis of his or her grievance. This principle emerges clearly from the High Court decision in Anarita Karimi Njeru v Republic, (1979) KLR 154:

The necessity of a link between the aggrieved party, the provisions of *the Constitution* alleged to have been contravened, and the manifestation of contravention or infringement. Such principle plays a positive role, as a foundation of conviction and good faith, in engaging the constitutional process of dispute settlement.”

17. The court while considering the elements of a sustainable Constitutional Petition in Grays Jepkemoi Kilplagat v Zakayo Chepkoga Cheruiyot [2021] eKLR stated that:-

“It is indisputable that a constitutional petition to be sustainable as such must at a minimum satisfy a basic threshold. It must with some reasonable degree of precision identify the constitutional provisions that are alleged to have been violated or threatened to be violated and the manner of the violation and/or threatened violation. I do not suppose it is enough to merely cite constitutional provisions. There has to be some particulars of the alleged infringements to enable the respondents to be able to respond to and/or answer to the allegations or complaints.....Although I have in my foregoing discussion adverted



to grounds (c) and (d) of the preliminary objection that there are no Constitutional issues that warrant adjudication by the Court and that the Petition may very well constitute an abuse of the due process of the court, I need to observe that parties are increasingly filing matters that are essentially Civil matters and christening the same as Constitutional Petitions which is not proper. Where there is the alternative remedy of filing a suit in the ordinary Civil Courts, a party ought to invoke the jurisdiction of the Constitutional Court.” [Own emphasis]

18. Rule 4(1) of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms Practice and Procedure Rules 2013 (the Mutunga Rules) provides as follows:-

“Where any right or fundamental freedom provided for in *the constitution* is allegedly denied, violated, or infringed, or threatened a person so affected or likely to be affected, may make an application to the High Court in accordance to these rules.”

19. Rule 4(1) of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013 (the Mutunga Rules) provides as follows:-

“Where any right of fundamental freedom provided for in *the constitution* is allegedly denied, violated, or infringed or threatened a person so affected or likely to be affected may make an application to the High Court in accordance to these rules.”

20. The petitioner has alleged that the Respondents infringed on his constitutional rights. He has alleged violation of his Right to Protection under Article 27 of *the Constitution* of Kenya 2010 and Right to fair administrative action as guaranteed by Article 47 of the same Constitution and Right to Property under Article 60 of *the constitution*.

21. From the pleadings filed in this matter the petitioner has certainly identified with specificity the constitutional violations he alleges that he suffered. He has alleged violation under Article 27 of *the Constitution* of Kenya 2010 and Right to fair administrative action as guaranteed by Article 47 of the same constitution and Right to Property under Article 60 of *the Constitution*. I am therefore satisfied that this petition has met the legal threshold for a constitutional petition.

22. Article 27 of *the Constitution* of Kenya 2010 provides

“Every person is equal before the law and has the right to equal protection and equal benefit of the law.”

23. The Petitioner claimed that the arbitrary actions of the Respondents violated his rights under this provision of *the Constitution*.

24. The Petitioner contends that he was the lawfully registered owner of the motor vehicle Registration KDK 259R. He has annexed to his supporting Affidavit a copy of the vehicles log-book (Annexure J1) as proof of said ownership.

25. It is not in dispute and was in fact conceded by all the Respondents witnesses that the Petitioner's vehicle was intercepted by police on 5th July 2023 on the Skuta area of Nyeri County at about 7.30pm.

26. The Petitioner contends that the detention and seizure of his vehicle were unlawful as he had at the material time a valid licence to fell trees issued to him by the Kenya Forest Service (Annexure J2) and states that the occupants of the vehicle had in their possession a valid movement permit (Annexure



- J5) authorising the movement of forest produce from Nyeri to Kajiado. That all these licences were shown to the police who still insisted on seizing the vehicle which at the time was loaded with timber.
27. On their part the Respondents deny that the detention and seizure of the Petitioners vehicle was done in an arbitrary and/or malicious manner. DW1 Sergeant Kazungu stated that the vehicle was arrested at 7.30pm which was outside of the hours permitted by the licence for transportation of Forest Produce.
28. DW 1 further stated that the police suspected the licences to be forgeries as there was some overwriting on the movement permit. DW1 also claimed that PW1 who was the owner of the vehicle obstructed police when he came to the scene by parking in the middle of the road and by taking away the ignition keys from the lorry thereby preventing the vehicle from being driven to the police station. Thus according to DW1 the police had valid grounds to detain the vehicle.
29. However DW2 Samuel Gicheha who was the Forest Officer who went to the scene testified that these time limits (on transportation of forest produce) were removed in the year 2017. More importantly DW2 stated that he informed the police that the time limits had been removed and he confirmed that all the licenses and permits held by the driver of the vehicle were genuine and valid. Why then in light of this verification did the police insist on detaining the vehicle?
30. DW5 Jecinta Nyaguthii Mureithi the chief of Thuguma Location told the court that on the material day at about 7.30pm she was on her way home from work when she came across a vehicle loaded with timber in Makutano Village of Thuguma Location. That she became curious as she had not issued any permit to cut trees in her area. DW5 then called police who came to the scene.
31. According to DW5 the trees were being cut outside of Tetu which was the area permitted under the licence. DW5 further claimed that the trees were being cut from the land of the ‘Njeru family’
32. Firstly no member of the Njeru family came to court or swore an affidavit to confirm that trees were being cut in their land. Secondly under cross-examination DW5 admitted that she had not stated in the lower court case that trees were being cut in her area of jurisdiction. This was likely a creation of DW5 to strengthen the Respondent cause.
33. Whilst the initial actions of the police in detaining the vehicle may have been justified, the continued detention of the vehicle even after DW2 had confirmed that all the licences were valid and genuine was uncalled for. In any event police often do take photographs of exhibits for production in court. Why was this option not explored in this case.
34. Section 62 of the *Forest Conservation and Management Act* 2016 Laws of Kenya provides that seizure of forest products can only be done by the chief conservator of Forest not the police. Section 62(1) (d) of the said Act provides as follows:-
- “The Chief Conservator of Forests or any authorized Officer of the Service may search any vehicle or vessel and seize and detain any forest produce in respect to which there is reason to believe that an offence has been committed together with any tools, vehicles or livestock used in the commission of the offence. Provided that the officer seizing such property shall forthwith report the seizure to the court of competent jurisdiction having jurisdiction over the area where the offence takes place.”
35. In this case the Petitioner did have the requisite licences for cutting trees and for movement of the forest produce to Kajiado. This was confirmed to police by an officer from the Forest Service.
36. Furthermore there is evidence that the driver of the vehicle who was charged in Nyeri CMCC No. E1015 of 2023 was eventually acquitted vide the judgment delivered by Hon. M. Okuche SPM on



16th January 2024. In that judgment the trial court castigated police for proceeding to charge the driver even after they had been informed that there was no time limit to the movement of forest produce.

37. In his judgment the learned trial magistrate stated thus

“The police having found that forest produce could now be moved on twenty-four hours period, they had no basis stopping the accused person 2 (the driver) who was legally within his duties. The act of the police was unfair and illegal.” [Own emphasis]

38. This was a finding by a court of competent jurisdiction. No party has to date appealed against this judgment nor sought to review the same.

39. Similarly I am of the opinion that the continued detention of the vehicle even after police had confirmation that the Petitioners licences were valid was unfair and arbitrary. The actions of the 1st Respondent deprived the Petitioner of the use of his vehicle for a period of four (4) months and violated the petitioners right to property as guaranteed by Article 60 of *the Constitution*. However I find no evidence of violation of the Petitioners right to Fair Administrative Action.

Damages

40. Having found that the 1st Respondent violated the Petitioners right to Property is the Petitioner is entitled to damages for such violation?

41. In the case of William Musembi & 13 Others v. Moi Educational Centre Co. Ltd & 3 Others [2021] eKLR the Supreme Court of Kenya stated as follows:-

“...that the questions and issues that a Court has to consider in order to make an award of damages with regards to constitutional violation is manifestly different to what the Court would consider in say, tortious or civil liability claim. In the latter, the issues are clear cut and quantification of the appropriate award is in most instances, straight forward. The same, however, is not true of constitutional violation matters, such as the instant one. Quantification of damages in such matters does not present an explicit consideration of the issues; other issues such as public policy considerations also come into play. A Court obligated and mandated in evaluating the appropriate awards for compensation in constitutional violations does not have an easy task; there is no adequate damage standard that has been developed in our jurisprudence that recognizes that an award for damages in constitutional violations is quite separate and distinct from other injuries.”

42. Likewise in CMM (Suing as the next friend and on behalf of CWM) & 6 others Vrs The Standard Media Group & 4 Others (2023) KESC 68 KLR, the Supreme Court equally addressed itself to what a trial court should do in its assessment of an award of compensation in Constitutional rights violation claims, when it held that;

“All the trial court was expected to do in considering this prayer was to assess what, in the circumstances of the case would be the appropriate compensation, or what other relief would vindicate the appellants contravened rights.....that once the burden of proving a violation was discharged, it was not necessary for the applicant to prove any damages or loss so as to be entitled to any of the reliefs contemplated under Article 23(3).”



43. The petitioner's vehicle was detained from 5th July 2023 to 11th October 2023 when it was released by the Lower court as per the court proceedings. Thus the vehicle was detained for a period of four (4) months.
44. The Petitioner claimed that in order to keep his timber business going he was forced to hire another lorry at a cost of Kshs. 40,000/= per day and claims Kshs. 2.0 million as damages. However the Petitioner did not present before the court any evidence to show that he hired another vehicle or for how much.
45. Having said that there can be no doubt that the detention of his vehicle for a period of four (4) months certainly had a negative impact on the petitioners business for which I find he is entitled to an award of damages.
46. In the circumstances I find that an award of Kshs. 1,000,000/= (one million only) for the unlawful detention of the motor vehicle Registration KDK 259 R Isuzu Lorry by the 1st Respondent will suffice. No orders on costs.

DATED IN NYERI THIS 31ST DAY OF OCTOBER 2025

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MAUREEN A. ODERO

JUDGE

