

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
CONSTITUTIONAL PETITION NO. E007 OF 2024

GSELL BENJAMINPETITIONER
VERSUS
OFFICER COMMANDING STATION (BUSIA).....1ST RESPONDENT
INSPECTOR GENERAL
NATIONAL POLICE SERVICE.....2ND RESPONDENT
DEPARTMENT OF IMMIGRATION.....3RD RESPONDENT
DIRECTOR OF CRIMINAL INVESTIGATIONS...4TH
RESPONDENT
DCIO MAKADARA.....5TH RESPONDENT

JUDGMENT

1. The petitioner has moved this court by a petition, dated 22nd November 2024. He complains that he was arrested, on 20th November 2024, at the Busia border point, by State agents, enroute to Uganda, and was detained by them beyond the 24 hours allowed in law, and was denied right to consular access. He asserts violation of various constitutional rights and freedoms, as well as contravention of international law, specifically the Vienna Convention on Consular Relations, 1963, and the International Covenant on Civil and Political Rights, 1966. He prays for declarations with relation to violation of his rights under Articles 22, 23, 25(d), 47, 49, 50 and 51 of the Constitution; special damages, general damages, aggravated damages, costs and interests.
2. The respondents were served. They have filed responses.
3. The 1st respondent replied to the petition through an affidavit sworn, on 30th May 2025, by Chief Inspector of Police Maxmillar Onyango. She confirms seeing the petitioner at the Busia Police Station, on 20th November

2024, having been arrested by another police officer. He was processed and booked, to await collection, by police officers from Makadara Police Station, Nairobi, where the offence, in respect of which he had been arrested, had been reported. He was picked from the Busia Police Station, on 22nd November 2024, ostensibly by officers from Makadara. It is averred that transport arrangements were made within the shortest time possible, given the great distance between Nairobi and Busia.

4. The 2nd, 4th and 5th respondents reacted to the petition vide an affidavit sworn by Police Corporal David Meli, on 23rd May 2025. He avers that a complaint had been lodged at the Directorate of Criminal Investigations at Makadara, on 11th November 2024, relating to theft of funds. The complaint was reviewed and investigations carried out. The deponent has detailed the investigations conducted, and the findings made. Fears were expressed that the petitioner planned on fleeing the jurisdiction, whereupon his passport was temporarily suspended, on 13th November 2024. On 20th November 2024, the police, at Busia, acting on intelligence, apprehended the petitioner, as he sought to cross the border into Uganda, and he was detained at the Busia Police Station, pending transfer to Nairobi. He was subsequently transferred, on 22nd November 2024, to the Industrial Area Police Station, Nairobi. He was, thereafter, released on police bond.
5. Directions, regarding disposal of the petition, were given, on 28th October 2025, for filing of written submissions, on the petition, which had since been amended. I have only found the written submissions by the petitioner, which I have read, and noted the arguments made.
6. The principal claim is on the arrest and detention of the petitioner, on 2 occasions, on 20th November 2024 and 4th

February 2025. There are issues around the arrests and the detentions.

7. It is argued that the arrests were not justifiable, for no cognisable offences had been committed, to warrant the arrests. I have seen the material from the affidavit of Corporal Meli. A criminal complaint had been made at Makadara, against the petitioner, relating to theft of funds, through false pretences. That is a cognisable offence. There is material demonstrating that investigations had been carried out, and were ongoing, when intelligence was received, that the petitioner was fleeing jurisdiction. The petitioner was apprehended at Busia, enroute to Uganda, at a time when his passport had been suspended. That aroused suspicion, which provided basis for effecting an arrest, to obviate frustration of the criminal investigations, by the flight of the suspect.
8. On the detentions, the one that should be key is that between 20th November 2024 and 22nd November 2024, inclusive. It went over the 24 hours that the Constitution allows, by a few hours. However, the same was explained, in the affidavits of Chief Inspector Onyango and Corporal Meli. The arrest happened at Busia, yet the complaint had been launched in Nairobi. The police at Busia could not handle the matter, beyond detaining the petitioner, until he was collected by officers from the Station which was processing the complaint. That was eventually done, just slightly over the 24 hours. The distance between Nairobi and Busia is noted, and so is the logistics that would be involved in arranging for, and actually carrying out, the transfer. The resources, ordinarily available to the police in Kenya, are also noted. I conclude that the respondents acted fairly and reasonably quickly, within the circumstances, to have the petitioner transferred from Busia to Nairobi. The detention did not become unlawful, nor unconstitutional, upon the lapse of the 24 hours.

9. There is the issue of access to consular services. I am not persuaded that the same was denied. The police, at Busia, could not possibly arrange that, given that the complaint was not being handled from there, and the petitioner was only being held temporarily. It was the police at Makadara who should have arranged for that, but I note that the petitioner was released on police bond, shortly after he was transfer to Nairobi.
10. On the matter of the police being used, to apply pressure in a pure civil dispute, I would start by stating that civil and criminal liability very often overlap, particularly in cases such as the instant one, of obtaining money, or goods or services, by false pretences, where money, or goods or services, are received, for supply of services or goods, or a consideration, which are then not timeously rendered or delivered or given, and suspicions arise, as to the honesty and genuineness of the party who received the money, on a promise to deliver the service or goods; or who received goods or services, on a promise to pay for them.
11. Secondly, parties are at liberty to approach the police, on any matter, and to make a complaint. Upon receipt of such a complaint, the police would be under duty to make inquiries and carry out investigations. If they establish that no criminality was involved, or the threshold for it was low, they would drop the inquiries, and advise the parties to seek civil remedies. If the incidence of criminality is on the higher side, prosecution would be recommended. In this case, no charges had been preferred, as at the time this cause was initiated, and the police appeared to be still investigating. No decision had been made yet, to prosecute, hence it would be premature, to conclude that the police were being used to apply pressure in a private dispute. I have not seen any proof of abuse of the police system.

12. My finding is that whatever the police were doing was within its mandate to detect and prevent crime. The inquiries and investigations were toward that goal. The arrest and detention was only necessitated by the suspicious movements of the petitioner, which suggested an intent to escape or flee the jurisdiction, either to frustrate the investigations, or the eventual, if at all, proceedings to obtain justice for the complainants. I am not persuaded that the arrest and detention reached the threshold for a constitutional violation.

13. I am not persuaded, overall, that a case has been made out, for grant of the orders sought. Consequently, I find that the petition herein is not merited, and I hereby dismiss the same. There shall be no order on costs. Orders accordingly.

**DELIVERED VIA EMAIL, DATED AND SIGNED IN CHAMBERS,
AT BUSIA, ON THIS 23RD DAY OF FEBRUARY 2026.**

**W. MUSYOKA
JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Ochieng, instructed by Alex & Amersi, Advocates for the petitioner.

Mr. Simiyu, Ms. Odero & Mr. Nyauma, instructed by the Attorney-General, for the respondents.