

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KITALE
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO.E025 OF 2024

MAUREEN KOKI.....
....PETITIONER

VERSUS

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

**THE OFFICER COMMANDING
KITALE POLICE STATION.....2ND
RESPONDENT**

**LINET NYAMBURA AKA NJERI.....3RD
RESPONDENT**

**THE ATTORNEY GENERAL.....4TH
RESPONDENT**

JUDGMENT

1. Maureen Koki, the petitioner herein has come to this court seeking the following reliefs namely;

(a) A declaration that the summons dated 14/10/2024 by the 2nd Respondent herein is malicious and an abuse of criminal justice system to harass and intimidate the petitioner into withdrawing the criminal charges of assault against the 3rd respondent.

(b) A declaration that the summons dated 14/10/2024 by the 3rd respondent is a violation

of the petitioner's right to liberty and fair hearing.

(c) That an order do issue directing the 2nd respondent to forthwith and unconditionally withdraw the summons issued against the petitioner.

(d) An order of permanent injunction do issue against the respondents restraining them, their servants or agents from interfering with the petitioner's right to liberty and practice of law as an advocate of the High Court of Kenya and an officer of this court.

(e) Any other further order this Hon court deems fit and just to grant in the interests of justice.

(f) That the respondents do bear costs of this petition.

2. The Petitioner's Case

The petitioner alleges that she was assaulted by the 3rd respondent on 4th October 2024 at YES PLAZA within Kitale Town and she reported the matter vide OB No.81/4/10/2024. She further asserts that she was issued with a P3 Form on 4/10/2024 which was filled and returned to Kitale Police Station the same day.

3. According to the petitioner the 3rd respondent was to be arraigned on 7/10/2024 but the 1st respondent refused and/or neglected to prosecute the matter. That when the petitioner inquired why the case was not presented to court, she was promised that the 3rd respondent would be arraigned the following day which never materialized.

4. That in view of the failure by the 1st respondent to prosecute the 3rd respondent, the petitioner was prompted to institute private prosecution proceedings which prompted the 1st respondent to arraign the 3rd respondent on 11/10/2024 when she took plea.
5. She avers that upon taking plea the 3rd respondent reported an assault case three days after taking plea stating that the petitioner had assaulted her on 4/10/2024 at YES PLAZA yet on 4/10/2024 when she appeared at the police station she never made such allegations.
6. The petitioner alleges that the allegation of assault by the 3rd respondent was an afterthought and attempts to shift or alter the course of justice.
7. The petitioner contends that it is fair and imperative to stay any criminal proceedings against her so that fundamental constitutional issues raised can be determined first.
8. She claims that being subjected to connived criminal process is a blatant disregard of constitutional safeguards/rights to fair hearing and to equal protection of the law under Articles 27 and 50 of the Constitution.
9. The petitioner pleads that the respondents' action of charging her with the offence violated Article 157(11) of the Constitution as the 1st and 2nd respondents have breached the constitutional duty owed to the petitioner having regard to public interest, the interest of administration of justice and the need to prevent and avoid abuse of legal process.

10. The petitioner in her supporting affidavit sworn on 16/10/2024 avers that on 4/10/2024 at around 1700hrs she reported an assault case at Kitale police station after being assaulted by the 3rd respondent at YES PLAZA within Kitale Town.
11. That after reporting she was given an OB No.81/4/10/2024 and a P3 Form which she later filled and took to the investigating officer at the said station.
12. She reiterates that the 3rd respondent was to be arraigned on 7/10/2024 but she, was not prompting her to seek leave of court to mount or institute criminal proceedings. That the action prompted the 1st respondent to arraign the 3rd respondent to court on 11/10/2024.
13. She avers that she later learnt that the 3rd respondent on 7/10/2024 three days after she had reported her for the assault, she reported that she had been assaulted too.
14. That on 4/10/2024 the 3rd respondent admitted to having assaulted the petitioner before police officers at Kitale police station and did not state that she had been assaulted herself. That the allegations of assault by the 3rd respondent was an afterthought.
15. The petitioner claims that on 14/10/2024 she got a call from one Inspector Peter Mwangi of Kitale police station demanding that she goes to the said station to record a statement regarding assault case reported on 7/10/2024. That the summons were malicious and an abuse of criminal

justice system, solely aimed at intimidating and harassing with a view to compel her to withdraw the criminal case against the 3rd respondent.

16. The petitioner in her further affidavit sworn on 16/4/2025 and witness statement dated 18th December 2025 gives a background of the sore relationship she had had with the 3rd respondent which she says began from the time the two worked together at Chege Kibathi LLP with the petitioner working as an advocate and the 3rd respondent as a clerk.
17. The petitioner claims that on several occasions previously, the 3rd respondent insulted her and demanded that the petitioner hands over her personal stamp for her use to witness clients' documents. That when she declined, hostility grew which led to the 3rd respondent assaulting her before resigning. That she forgave her for the first assault.
18. The petitioner further alleges that the 3rd respondent blamed her for losing her job at Chege Kibathi LLP. She avers that she also later resigned from the firm and began her own firm and four months down the line, she met the 3rd respondent at YES PLAZA on 4/10/2024 and that is when she claims she assaulted her in full glare of the public.
19. She avers that she pressed to have the 3rd respondent charged and after a long struggle she was eventually charged though she claims the Office of the Director of Public Prosecution advised her to withdraw the charges

because she was a young advocate and needed to protect her reputation.

20. She avers that she declined the advise because she felt she was being denied justice and that her life was at risk and if she did not seek justice early enough, she stood the risk of further and even severe attacks.
21. She contends that she was pressurized to go for mediation and have the matter settled failure to which the Office of the Director of Public Prosecution would instead prefer affray charges turning her into a criminal suspect yet she was the victim.
22. That she later learnt that the 3rd respondent had been advised by the investigating officer handling her case to report that she had been assaulted on the same day to turn the matter into affray because she had refused to compromise and withdraw the complaint.
23. That the respondents are hell bent on proceeding with affray yet the incident happened at a basement which is a private property and not the open street. That the matter left her traumatized and humiliated when the agencies mandated to protect the rights of citizens failed her by acting with impunity.
24. That the incident occurred in a place with direct CCTV cameras yet the investigating officer refused to review it despite her pleas which made her believe that the

investigating officer was not interested in investigating the matter.

25. That the Officer Commanding Station Kitale police station kept harassing her after issuing summons and told her he would look for and find her and from then on she felt her freedom had been constrained.
26. That the issuance of the said summons was and is malicious and an abuse of the criminal justice system solely aimed at intimidating and harassing her to compel her to withdraw the criminal case against the 3rd respondent.
27. The petitioner alleges that the episode has left her traumatized and her reputation as an advocate has taken a hit yet the claims by the 3rd respondent to her are false and embarrassing to the judicial system.
28. That the criminal case No.E2902 of 2024 against the 3rd respondent is ongoing and there is a potential risk to have the case compromised.
29. The respondents in this petition save for the 3rd respondent did not file any response and even then the response filed was in respect to an interlocutory application.
30. The 3rd respondent, Linet Nyambura filed a replying affidavit sworn on 25/10/2025 which affidavit was in respect to Notice of Motion dated 16/10/2024.
31. In the said replying affidavit the 3rd respondent gives a different view of what transpired on 4/10/2024 at YES PLAZA. According to her she was going about her errands when she

inadvertently placed her bag on the phone of the petitioner which caused an altercation even after she had apologized. She claims that the petitioner insulted her by telling her that she was **“mama maiti”** among other unprintables leading to a scuffle.

32. That after the scuffle, the petitioner went and reported her at Kitale police station and that Advocate Jason Kimani arrested her and took her to the police station where she was locked in and later released on cash bail of Kshs.10,000/-.
33. She claims that she was traumatized and she did not report that she had been assaulted and on 7/10/2024. She felt better and she went and reported the assault and was given a P3 Form which was filled and that she was also treated and given medication.
34. That the petitioner is trying to use her knowledge as an advocate to curtail her rights and bully her but asserts that the petitioner cannot be immune to prosecution.
35. She further claims that before she resigned from her previous employment, the petitioner had assaulted her and that she reported the matter under OB No.40 of 25th April 2024 but she later dropped the case after request by her former employer.
36. She avers that she is also equally entitled to the same rights cited by the petitioner under Article 27 49 and 50 of the Constitution adding that the investigations should be left

to the investigating agencies and sees no reason why the petitioner should be shy to obey the summons and subject herself to the said authorities.

37. This court on 8/10/2025 after failure of mediation process directed the petition to go for trial and directed parties who were all represented to file written submissions with regard to the main petition and fixed the matter for mention on 3/2/2026 for further orders. On 3/2/2026 only the petitioner's counsel appeared the others did not appear. The petitioner was also the only party who had complied with the directions to file written submissions. The others did not file any. Technically therefore the petition before me is unopposed but this court nevertheless is inclined to determine it on the merits.

38. The petitioner has brought the petition herein claiming that the respondents have contravened her fundamental rights and freedom by failing to protect her constitutional rights under Articles 3,10, 25(c), 27(1), 50(1) and 157(11) of the Constitution.

39. This court has considered all the allegations made in this petition and I have gone through the evidence tendered. There is no doubt that for whatever reason, there is no love lost between the petitioner and the 3rd respondent. This court wishes not to go into that slippery issue in this petition because of the attendant risk of getting blurred with the main issue(s) raised in this matter.

40. One of the greatest pillars in the Constitution of Kenya 2010 is the Bill of Rights and its place in Kenya. Article 19 of the Constitution spells out that pillar quite clearly. It provides;

“(1) The Bill of Rights is an integral part of Kenya’s democratic state and is the framework for social, economic and cultural policies.

(2) The purpose of recognizing and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realization of the potential of all human beings.

(3) The rights and fundamental freedoms in the Bill of Rights—

(a) belong to each individual and are not granted by the State;

(b) do not exclude other rights and fundamental freedoms not in the Bill of Rights, but recognized or conferred by law, except to the extent that they are inconsistent with this Chapter; and

(c) are subject only to the limitations contemplated in this Constitution.”

41. A further look at the provisions of Article 20 clearly indicates that the Bill of Rights applies to all and binds all State Organs and all persons.

42. When any person presents a complaint to the police regarding any infringement of any right, the police are

bound to carry out investigations and take appropriate action as provided by the law.

43. In this matter the petitioner has given a chronology of what transpired on the 4/10/2024 at YES PLAZA and what transpired thereafter, after she reported the matter to the police. The petitioner submits that this was a bona fide invocation of criminal process against the 3rd respondent which process is anchored on the right to seek protection and redress under the law. This court finds this contention right in light of the provisions of Article 27(1) of the Constitution which stipulates that every person is equal before the law and has the right to equal protection and equal benefit of the law.

44. The 3rd respondent in her affidavit claims that she was also insulted and assaulted on the same date of 4/10/2024. However I have considered the reasons she gave for not reporting the assault immediately she was arrested on 4/10/2024. She says she was traumatized but this court is not persuaded for the following reasons;

- (i) *The 3rd respondent in her own version of events says she was arrested and taken to the police station by one Jason Kimani Advocate at around 5pm and that she secured police cash bail at around 8pm same day. So if she was at the police station for 3 hours what was so hard to report a complaint that she was the one assaulted and not vice versa.*

- (ii) *The police booked her in custody on 4/10/2024 and if it was true that she had injured the police could have noted the same.*
- (iii) *The 3rd respondent did not request the police for P3 Form or ask to be taken for treatment when she was taken to the police station.*
- (iv) *Fourthly and more importantly the 3rd respondent has not explained why it took her 3 days to report to the police that she had been assaulted.*

45. This court finds that from the evidence tendered before this court, it is more probable than not that the claims by the 3rd respondent that she had been assaulted were just an afterthought as claimed by the petitioner.

46. The petitioner's assertion is even more fortified by the fact that the police through the 2nd and 3rd respondents have not disputed or challenged the claims made by the petitioner.

47. This court further finds that going by the evidence tendered showing that the 3rd respondent was presented to court on 11/10/2024 and only after the petitioner had sought the court's leave to institute private prosecution vide Miscellaneous Application No.177 of 2024, there was level of reluctance by the respondents to process charges against the 3rd respondent.

48. The claim by the petitioner that there was some unexplained reluctance by the Office of the Director of Public Prosecution and the police to arraign the 3rd respondent to court is found legitimate and well grounded

49. This court has further considered the timing of the impugned summons to the petitioner (which she avers were issued on 14/10/2024) and finds that the same reeks of malice and lack of impartiality by the 2nd respondent. This is because neither the 2nd nor the 4th respondents have denied or challenged those claims made by the petitioner.

50. It is evident that the alleged complaint by the 3rd respondent and subsequent summons issued by the 2nd respondent were simply made for collateral purpose of derailing the criminal matter against the 3rd respondent. That conduct by the 2nd respondent was not done in the interest of justice but it was an attempt to blatantly abuse a criminal process which is an affront to the provisions of Article 27(1) and 157(11) of the Constitution.

51. The provisions of Rule 4(1) of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules (commonly referred to as MUTUNGA RULES) provide 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 the Rules...”

52. This court finds that the petitioner has proved her case against the respondents who have not challenged or rebutted any of the claims raised. It is apparent that the 2nd

respondent by issuing the impugned summons was out to derail the course of justice by making the petitioner's claim of assault look like it was an affray and therefore give the 3rd respondent a route to escape accountability of her alleged actions against the petitioner. In light of the fact that this court has been made aware that there is an ongoing trial in that respect, I will leave the matter at that so the court seized of the criminal case can proceed freely without any fetter or distraction.

53. This court further finds that the fears expressed by the petitioner in regard to the 1st respondent with respect to its exercise of its powers under Article 157(11) of the Constitution has again not been challenged by the Office of the Director of Public Prosecution. What this means is that the petitioner's claim that respondents were out to weaponize criminal process to make her withdraw her complaint or charge against the 3rd respondent remains unchallenged and therefore legitimate. This court in its exercise of its powers under Article 165(3) (b) and (6) finds basis to intervene and stop violation of the petitioner's constitutional rights under Article 27(1) and 50 of the Constitution.

This court in the end finds merit in this petition which as I have observed above is unopposed and I hereby allow it in the following terms;

- (a) A declaration is hereby made/issued that the summons issued against the petitioner by the 2nd respondent were malicious and an abuse of the criminal justice process.**
- (b) A declaration is hereby made that the said summons issued to the petitioner are a violation of the petitioner's constitutional rights.**
- (c) The said summons are hereby quashed and the respondents are restrained from issuing any other summons to the petitioner with respect to the events of 4/10/2024 at YES PLAZA.**
- (d) The respondents are condemned to pay costs of this petition jointly and severally to the petitioner.**

**DELIVERED, DATED and SIGNED at KITALE this11th day of
.....MARCH....., 2026.**

**HON JUSTICE R.K. LIMO
KITALE HIGH COURT**

Judgment delivered in open court

In the presence of

Koki the petitioner in person

Mugun for 1st respondent

Duke/Chemosop- Court assistants