

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT THIKA**

**CONSTITUTIONAL PETITION NO. E023 OF 2024**

**IN THE MATTER OF ARTICLES 22, 23, 24, 25, 27, 28, 29,  
31, 39, 47, 49, 50 AND 165 OF THE CONSTITUTION OF  
THE REPUBLIC OF KENYA**

**AND**

**IN THE MATTER OF ALLEGED VIOLATION OF RIGHTS AND  
FREEDOMS UNDER ARTICLES 27, 28, 29, 31, 39, 47, 49  
AND 50 OF THE CONSTITUTION OF KENYA**

**BETWEEN**

**HEZRON NGUGI MOGIRE.....  
.....PETITIONER**

**VERSUS**

**DIRECTOR OF PUBLIC PROSECUTIONS.....1<sup>ST</sup>  
RESPONDENT  
INSPECTOR GENERAL OF THE  
NATIONAL POLICE SERVICE.....2<sup>ND</sup>  
RESPONDENT**

**JUDGMENT**

**Brief Facts**

1. The petition for determination is dated 5<sup>th</sup> November 2024 and it seeks for orders of:-

- a) A declaration that the intended prosecution infringes on the petitioner's fundamental rights and amounts to an abuse of the respondent's constitutional mandate.
  - b) This Honourable Court be pleased to issue an order of prohibition, prohibiting the respondents from causing the apprehension of the petitioner, considering/or preferring any criminal charges against the petitioner in court.
  - c) Costs of the petition.
2. In opposition to the petition, the 1<sup>st</sup> respondent filed Grounds of Opposition dated 11<sup>th</sup> January 2025.

### **The Petitioner's Case**

3. The petitioner is an adult of sound mind and the Director of Jetset Journey Global Limited. The 1<sup>st</sup> respondent is a constitutional body established and deriving its mandate from Article 157 of the Constitution of Kenya. The 2<sup>nd</sup> respondent is an official entity created under the National Police Services Act No. 11A of 2011.
4. The petitioner avers that he has the locus standi to bring the instant petition under Articles 22(1) & (2) and 258(1) & (2) of the Constitution as he seeks to protect his rights and those of the individuals who were promised job

placements in Norway through the respondent's representations.

5. The petitioner states that his imminent arrest poses significant threats to his constitutional rights and freedoms particularly his right to freedom of movement and security protected under Article 29 and his business operations and professional reputation are at risk which could lead to significant financial and personal harm, his right to fair administrative action under Article 47, right to access to justice under Article 48, right to fair hearing under Article 50 and right to property under Article 40.
  
6. The petitioner states that in February 2024, Maryanne Njuguna approached him seeking assistance to find individuals for job placements in Norway. She presented a demand letter from Career Option Limited which required 800 individuals for job placements in Norway. The petitioner further states that he informed Maryanne Njuguna that his firm could only supply between 200 and 400 individuals. Upon inquiry, Maryanne confirmed that the process involved a sponsored visa meaning that the clients also had to pay for the placement fee and all other expenses including visa processing, medical examination and training.
  
7. The petitioner avers that he conducted due diligence and confirmed that Career Option Africa Limited was a registered entity and that Maryanne Njuguna was part of the team. Maryanne Njuguna was in charge of the entire

process and introduced a portal where applications were to be submitted at a cost of USD 49. After payment, applicants received details of the training and application process and upon completion of the training, they were issued a completion certificate and their applications were forwarded to Norway. The facilitation fee to his firm was Kshs. 51,000/- and Maryanne demanded Kshs. 10,000/- which was later adjusted to Kshs. 20,000/- and the amount was paid to her.

8. The petitioner states that he supplied Maryanne Njuguna with 400 individuals and she commenced training them in Mombasa including conducting medical examinations, which process took approximately three months from 21<sup>st</sup> February 2024 to 11<sup>th</sup> April 2024.
9. The petitioner states that on 28<sup>th</sup> June 2024, he inquired about the status of the applications but Maryanne Njuguna could not provide a satisfactory explanation and stated that the employer had gone silent. On 22<sup>nd</sup> July 2024, he reported the matter to the DCI and recorded a statement. Despite follow ups, no progress has been made and the individuals supplied are demanding refunds.

### **The 1<sup>st</sup> Respondent's Case.**

10. The 1<sup>st</sup> respondent states that it is not enough to merely state that the rights of the petitioner have been violated and infringed without specifically stating the nature of violation of such rights. The respondent further

states that the instant petition is premature as the Director of Public prosecution has not made a decision whether or not the petitioner is going to be charged with any offence.

11. The 1<sup>st</sup> respondent states that it is in the public interest that all complaints made to the police should be investigated and summons issued to the petitioner as part of the investigations carried out by the police. The police under Section 24 of the National Police Service Act have the mandate of carrying out investigations and if there is any offence alleged to have been committed then the police will arrest and charge the perpetrators of the crime. Further, the petitioner has not demonstrated how he will suffer any substantial injustice if charged in court as criminal cases are determined on merits.

12. Parties put in written submissions.

### **The Petitioner's Submissions.**

13. The petitioner submits that the DPP's mandate ought to be exercised in accordance with the principles stipulated in Article 10 and 157(11) of the Constitution. The petitioner argues that the issue he was summoned over is civil in nature and therefore the summons issued by the police violate the principles of Article 10 and 157(11) of the Constitution and unless the court intervenes, he stands to be prosecuted in a criminal court over a civil matter.

14. The petitioner relies on **Articles 22(1) and 258 of the Constitution** and the cases of **Ngunjiri Wambugu vs Inspector General of Police & 2 Others [2019] eKLR**; **Coalition for Reform and Democracy (CORD) & 2 Others vs Republic of Kenya & 10 Others [2015] eKLR**; **Centre for Rights Education & Awareness (CREAW) vs Attorney General & Another [2015] eKLR** and **Farzhan Aperera vs Officer Commanding Langata Police Station & 2 Others (2024) eKLR** and submits that he has demonstrated that his rights have been threatened which is reason enough to file a constitutional petition.

15. Relying on the cases of **Republic vs Director of Public Prosecutions & 2 Others ex parte Miscellaneous Application No. 40 of 2016** and **Jane Nyaboke Magi vs Inspector General of the National Police Service & 3 Others; Steve Mwendwa & Another (Interested Parties) [2021] eKLR**, the petitioner submits that the selective prosecution is being misused for unfair and unreasonable purposes. The petitioner further submits that he is apprehensive that his arrest may expose him to undue harm including the risk of police brutality and potentially dying under mysterious circumstances while in custody.

### **The 1<sup>st</sup> Respondent's Submissions**

16. The 1<sup>st</sup> respondent refers to **Article 157 of the Constitution** and the cases of **Saisi & 7 Others vs Director of Public Prosecutions & 2 Others (Petition 39 & 40 of 2019) (Consolidated) [2023] KESC 6 (KLR) (Civ) (27 January 2023) (Judgment); Dande & 3 Others vs Inspector General National Police Service & 5 Others [2023] KESC 40 (KLR)** and **Geoffrey K. Sang vs DPP & 4 Others [2020] eKLR** and submits that the DPP is independent and not subject to directions of any person. Further it is empowered to institute and undertake criminal proceedings against any person before any court in respect of any offence alleged to have been committed.

17. The 1<sup>st</sup> respondent further refers to the cases of **Thuita Mwangi & Another vs The Ethics and Anti-Corruption Commission & 3 Others Petition No. 153 & 369 of 2013** and **Charles Okello Mwanda vs Ethics and Anti-Corruption Commission & 3 Others (2014) eKLR** and argues that the decision to prosecute is discretionary and in its discretionary power, depending on the evidence gathered, the DPP may decide to prosecute where it is considered that there is sufficient evidence or refuse to prosecute where it is considered that there is no sufficient evidence, the strong opinion of the investigator notwithstanding.

18. The 1<sup>st</sup> respondent refers to the decision in **Richard Malebe vs Director of Public Prosecutions, Chief Magistrate's Court (Anti-Corruption Court) (Nairobi)**

**& Attorney General [2020] KEHC 5413** and argues that the petitioner has not demonstrated any issues for the court to determine and further the petitioner's rights as claimed are not absolute but subject to some limitations. It is the public interest that all complaints made to the police should be investigated and the police under Section 24 of the National Police Act have the mandate of carrying out investigations and if there is any offence alleged to have been committed then the police will arrest and charge the perpetrators of the crime. Further, the petitioner has not demonstrated that he will suffer any substantial injustice if charged in court as criminal cases are determined on merits.

19. The main issues for determination are:-

- a) Whether the court has jurisdiction to hear and determine the petition.
- b) Whether the petition meets the threshold for a constitutional petition.
- c) Whether the petitioner's rights were violated.
- d) Whether the petitioner is entitled to the orders sought.

### **The Law**

20. The 1<sup>st</sup> respondent on 7<sup>th</sup> May 2025 raised the issue of jurisdiction in the instant court on the grounds that the

matter ought to be handled in the High Court at Nairobi. The petitioner opposed the transfer of the matter arguing that he is a resident of Thika and therefore the instant court had jurisdiction to deal with the matter.

21. The law on the question of jurisdiction was enunciated in the case of **Owners of the Motor Vessel “Lilian S” vs Caltex Kenya Limited [1989] KLR 1** where the court held:-

**Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction....Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.**

22. Jurisdiction is a very fundamental issue that it can be raised at any time including on appeal. This principle was stated by the Court of Appeal in **Kenya Ports Authority vs Modern Holding [EA] Limited [2017] eKLR** as follows:-

**We have stressed that jurisdiction is such a fundamental matter that it can be raised at any stage and even on appeal, though it is always prudent to raise it as soon as the occasion arises. It can be raised at any time, in any manner, even for the first time on appeal, or even viva voce and indeed, even by the court itself provided that where the court raises it *suo moto* parties are to be accorded the opportunity to be heard.**

23. On the source of jurisdiction, it was held in the case of **Samuel Kamau Macharia & Another vs Kenya Commercial Bank Limited & Others (2012) eKLR** that:-

**A court's jurisdiction flows from either the Constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.**

24. It is noted in the foregoing authorities that jurisdiction of the court must be established before any case can be entertained for hearing. I have perused the record and noted that the alleged violation of the petitioner's rights arose from him carrying out his duties vide his company Jetset Journey Global Ltd which has its registered offices in Nairobi. Furthermore, the petitioner made a report on 22<sup>nd</sup> July 2024 to the police station in

particular Central Police Station which is in Nairobi. Therefore it is clear that this court is not equipped with the jurisdiction to hear and determine the said petition. **Rule 8(1) of the Constitution of Kenya (The Protection of Rights and Fundamental Freedoms) Practice and procedure Rules, 2013** outline that **every case shall be instituted in the High Court within whose jurisdiction the alleged violation took place.** It follows that this petition ought to have been filed in Nairobi. If parties were to be allowed to file cases in courts of their choice and ignore the law and rules that speak to jurisdiction, there would be chaos in the administration of justice. It is, therefore, imperative that the law must be followed.

25. I declare that this court lacks the geographical jurisdiction in regard to this petition dated 5<sup>th</sup> November 2024.

26. This petition is hereby struck out with no order as to costs.

27. It is hereby so ordered.

***JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 12<sup>TH</sup> DAY OF MARCH 2026.***

**F. MUCHEMI**  
**JUDGE**