



REPUBLIC OF KENYA



**Kihoro v Mwangi & 4 others (Petition E021 of 2022)  
[2025] KEHC 11349 (KLR) (27 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 11349 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
PETITION E021 OF 2022  
DO CHEPKWONY, J  
JUNE 27, 2025**

**BETWEEN**

**HENRY WAINAINA KIHORO ..... PETITIONER**

**AND**

**JOHN MAINA MBURU ..... 1<sup>ST</sup> RESPONDENT**

**PETER MUTURI MWANGI ..... 2<sup>ND</sup> RESPONDENT**

**LUCY NJERI KIHARA ..... 3<sup>RD</sup> RESPONDENT**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... 4<sup>TH</sup> RESPONDENT**

**THE ATTORNEY GENERAL OF KENYA ..... 5<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. This Petition, dated 23<sup>rd</sup> January, 2022, was filed by the Petitioner, Henry Wanaina Kihoro, seeking declarations and reliefs against the Respondents on grounds of alleged violations of his constitutional rights. The specific reliefs sought are as follows:-
  - a. A declaration that the arrest and prosecution of the Petitioner was malicious and unlawful.
  - b. A declaration that the Petitioner's rights to liberty were violated.
  - c. A declaration that the Petitioner is entitled to compensation from the Respondents in the sum of Kshs.5,000,000.00.
  - d. Costs of the Petition.
  - e. Any other orders, writs, and directions that the Honourable Court considers just and appropriate for the purpose of protecting the Petitioner's constitutional rights.



## Background of the Case

2. On 14<sup>th</sup> June, 2016, the Petitioner was arrested and subsequently charged at the Thika Law Courts with Two[2] Counts of Publishing False Statements, allegedly made in Media Appearances on Kameme Radio and iNooro FM, where he claimed to represent Githunguri Ranching Company. The prosecution alleged these statements were false, likely to cause public fear and alarm, and intended to mislead. The charges were based on Section 66[1] of the *Penal Code*, which penalizes publishing false information likely to disturb public order.
3. After a full trial, the Petitioner was acquitted under Section 215 of the *Criminal Procedure Code* due to a lack of sufficient evidence to establish guilt beyond reasonable doubt.

## Petitioner's Claims

4. The Petitioner claims that his rights to liberty, dignity, and security of the person, as protected under Articles 28, 29, and 49 of the *Constitution of Kenya, 2010*, were violated due to unwarranted arrest, detention, and prosecution. He argues that the Respondents' actions were driven by malice and were intended to eliminate his influence within the company. Consequently, he seeks compensation for the unlawful arrest, loss of liberty, mental anguish, and financial strain he allegedly suffered from June, 2016 until his acquittal in September, 2021.

## Respondents' Position

5. The 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Respondents filed a joint Replying Affidavit, sworn by the 1<sup>st</sup> Respondent, John Maina Mburu on 26<sup>th</sup> July, 2023. They maintain that the complaint was filed in good faith after the Petitioner allegedly impersonated company officials and interfered with company operations. They argue that the report made at Ruiru Police Station led to independent investigations, with the Director of Public Prosecutions [4<sup>th</sup> Respondent] sanctioning the charges based on probable cause. The Respondents contend they acted without malice and within their rights to safeguard the company's interests, and they argue that the Petition lacks merit and should be dismissed.

## Analysis and Determination

6. Upon reviewing the pleadings, submissions, and applicable legal principles, the following issues arise for determination:
  - a. Whether the Petitioner has established a claim for malicious prosecution.
  - b. Whether the Petitioner is entitled to the compensation sought.
  - c. What reliefs, if any, the Court should grant.

### a. Whether the Claim for Malicious Prosecution has been proved

7. To establish a claim of malicious prosecution, a Petitioner must satisfy the requirements that were set forth in the case of *Murunga v The Attorney General* [1976-1980] KLR 1251, where the court outlined the four elements of malicious prosecution:-
  - a. That the prosecution was initiated by the Respondents or their agents.
  - b. That the prosecution terminated in favor of the Plaintiff.
  - c. That the prosecution was initiated without reasonable or probable cause.



- d. That the prosecution was actuated by malice.

### **i. Institution of Prosecution by the Respondents**

8. For this ground to succeed, the Petitioner must demonstrate that the prosecution was indeed initiated by the Respondents. The Respondents concede that they reported the matter to Ruiru Police Station, leading to the Petitioner's prosecution. As such, the first requirement is satisfied, as the Respondents' actions initiated the criminal proceedings against the Petitioner.

### **ii. Termination of Prosecution in the Petitioner's Favor**

9. It is not disputed that the Petitioner was acquitted under Section 215 of the *Criminal Procedure Code*, which indicates that the trial court found the evidence insufficient to substantiate the charges against him. This acquittal satisfies the second requirement that the prosecution terminated in the Petitioner's favor.

### **iii. Lack of Reasonable and Probable Cause**

10. Reasonable and probable cause is the honest belief in the facts and circumstances that would lead a reasonable person to conclude that the accused is guilty. In the case of *Hicks v Faulkner* [1878] 8 QB 167, it was held that probable cause is present if the accuser honestly believed in the veracity of the accusation, supported by facts. Here, the Respondents argued that they were obligated to report the Petitioner's actions based on his claims to be a company director, which they believed violated a court order restricting his role. The 4<sup>th</sup> Respondent on the other hand submitted that the complaints raised reasonable grounds and legal basis to support the prosecution. On this basis, the 4<sup>th</sup> Respondent referred the court to various authorities on what constitutes reasonable cause and malicious prosecution.
11. In the persuasive case of *Nzoia Sugar Company Ltd v Fungututi* [1988] KLR 399, the Court held that reasonable grounds exist where facts or statements substantiate a genuine belief in the accused's culpability, thus warranting prosecution. In this case, it was established during the trial that the Petitioner indeed identified herself as a director of Githunguri Ranching Company. These averments were indeed made through iNooro and Kameme FM. In this Court's view, this constituted reasonable grounds for the belief that the Petitioner was acting in a capacity he did not lawfully hold, therefore justifying the Respondents' decision to pursue legal action against him. As such, this element of lack for reasonable and probable cause fails.

### **iv. Existence of Malice**

12. For a claim of malicious prosecution to succeed, there must be an indication that the prosecution was motivated by an improper purpose rather than to enforce the law. In the case of *Mbowa v East Mango Administration* [1972] EA 352, it was held that malice can be inferred when the prosecution lacks any reasonable basis. In the case of *Mary Kanini Muriuki v DCIO Imenti North & AG* [Meru HCCC No. 28 of 2018], the Court further clarified that malice may be established where there is a lack of any lawful intent behind the prosecution.
13. In the present case, the Petitioner has not sufficiently demonstrated that the Respondents acted with malice. The evidence on record indicates that the Respondents were primarily motivated by their intent to protect the company's interests rather than intimidating or attacking the Petitioner.
14. Based on the foregoing analysis, it is this Court's finding that the Petitioner has not proven malicious prosecution against the Respondents, and therefore, the claim must fail.



### **b. Whether the Petitioner is Entitled to Compensation**

15. Since the claim for malicious prosecution has not been substantiated, the Petitioner's prayer for compensation is thus not warranted. As articulated in the case of *James Karuga Kiiru v Joseph Mwamburi & 3 Others* [CA 171 of 2000], compensation for malicious prosecution is only available where the prosecution has been conducted with dishonesty or without reasonable cause. Having failed to meet the criteria for malicious prosecution, the Petitioner is not entitled to damages.

### **Conclusion**

16. Having reviewed all facts, submissions, and applicable legal standards, this court concludes that the Petition dated 23<sup>rd</sup> January, 2022 lacks merit.
17. Consequently, the Petition is hereby dismissed. Each Party shall bear its own costs.
18. It is so ordered.

**JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 27<sup>TH</sup> DAY OF JUNE, 2025.**

**D. O. CHEPKWONY**

**JUDGE**

