



**Mburu v Ministry of Interior & Co-ordination of National Government Kenya Prisons Service
& another (Petition E001 of 2025) [2025] KEHC 10125 (KLR) (25 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 10125 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
PETITION E001 OF 2025
GL NZIOKA, J
JUNE 25, 2025**

BETWEEN

JOSEPH KAMBO MBURU PETITIONER

AND

**MINISTRY OF INTERIOR & CO-ORDINATION OF NATIONAL
GOVERNMENT KENYA PRISONS SERVICE 1ST RESPONDENT**

THE HONOURABLE ATTORNEY GENERAL 2ND RESPONDENT

JUDGMENT

1. The petitioner commenced the litigation herein vide a Petition dated 19th December, 2024 seeking for the following orders;
 - a. A declaration that the petitioner’s fundamental rights and freedoms under Articles 25, 28, 29, 31, 49 and 50 of *the Constitution*, 2010 [similar provisions were provided under Section 70, 72 [1], 72[2], 72[3], 76[1], 77[1] and 77[2] of the Repealed Constitution of Kenya] have been and were contravened and grossly violated by the police officers at Naivasha police station, Directorate of Criminal Investigation officials at Naivasha police station and the Officer in Charge Naivasha Main Prison.
 - b. General damages, exemplary damages and aggravated damages under Article 23[3] of *the Constitution* of Kenya 2010 [Previously under Section 84[2] of the Repealed Constitution] for the unconstitutional conduct of police officers at Naivasha police station, Directorate of Criminal Investigation officials at Naivasha police station and the Officer in Charge Naivasha Main Prison.
 - c. Costs of this petition.
 - d. Interest on [b] and [c] above at court rates.



- e. Any further orders, writs, directions as this honourable court may consider appropriate.
2. The petitioner's case in a nut shell is that, he was arrested on 16th December, 2007 following an escape of prisoners on the night of 15th/16th December, 2007 from Naivasha main Prison where he worked as a warden. That an illegal search was conducted on 20th December, 2007 in his house without a search warrant where his personal items were confiscated in brazen violation of Article 31 of *the Constitution* previously under Section 76[1] of the Repealed Constitution of Kenya.
3. That he was maliciously and without reasonable or probable cause accused of having committed offences described under paragraph 32 of this petition. As a result, on 21st December, 2007 he was presented in court beyond the constitutionally mandated period of 24hrs in blatant violation of Article 49 of *the Constitution* previously under Section 72[2] and [3][b] of the Repealed Constitution and charged jointly with 10 others in Criminal Case No. 5788 of 2007 Nakuru with the offences of:
 - a. Aiding a prisoner to escape contrary to Section 124[a] of the *Penal Code*.
 - b. Neglect to prevent a felony contrary to Section 392 of the *Penal Code*.
4. That he successfully applied for the deferment of the taking of the plea until their High Court Petition No. 1 of 2008 Nakuru was heard and determined. In the meantime the Officer-in-charge Naivasha Main prison interdicted him from duty on 21st December, 2007, in brazen violation of Article 50 of *the constitution* previously under Section 77 [1] and 2[a] of the Repealed Constitution of Kenya. Furthermore, upon the hearing and determination of High Court Petition No. 1 of 2008 Nakuru, the charges against him were declared unconstitutional and the charges against them in Criminal Case No. 5788 of 2007 Nakuru dismissed and he was set free on 1st April, 2008.
5. The petitioner avers that he resumed his duties as an employee of the 1st respondent until his retirement on 30th April, 2018. However fearing victimization from his superiors and the possibility of loss of employment, he opted not to institute a suit for malicious prosecution while still in the employment of the 1st respondent.
6. The petitioner tabulates legal provisions of the law relied on in support of the petition at paragraphs 10 to 29 of the petition.
7. Be that as it may, by a memorandum of appearance dated 24th March, 2025, the 2nd petitioner entered appearance for both respondents and subsequently filed a response to the petition dated 25th March, 2025, denying all the allegations in the petition.
8. Subsequently, on 28th April, 2025, the court directed that the matter be disposed of vide filing of submissions. The petitioner informed the court on 12th May, 2025 that, the petitioner had filed his submissions. To accord the respondents an opportunity to file their submissions, the court issued a notice to show cause as to why the matter could not proceed without the respondent's submissions.
9. On 5th June, 2025, the court was informed that the respondents had been served with the notice to show cause and an affidavit of service filed. However, the respondents were not in court and neither had they filed their submissions and done so to date.
10. Be that as it were, the petitioner in submissions dated 7th May 2025 relied on the case of *Murungu v attorney General* [1979] KLR 138 where the High Court held that in a case of malicious prosecution, a plaintiff is required to prove four [4] things being: prosecution of the plaintiff by the respondent; the prosecution is terminated in the plaintiff's favour; that the prosecution was institute without reasonable and probable cause; and the prosecution was actuated by malice.



11. The petitioner submitted that he had proved the afore elements through the particulars of false imprisonment and malicious prosecution enumerated at paragraph 40 of his petition.
12. The petitioner further reiterated the averments in the petition that an illegal search was conducted in his house without a warrant and his personal items confiscated in violation of Article 31 of the Constitution, previously under section 76 [1] of the Repealed Constitution.
13. That, he was not presented in the court within the mandate period of 24 hours in blatant violation of Article 49 of the Constitution of Kenya 2010, previously under section 72 [2] and [3][b] of the Repealed Constitution.
14. Furthermore, he was charged jointly with ten [10] others in Nakuru Chief Magistrate’s Criminal Case No. 5788 of 2007 with the offence[s] of; aiding a prisoner to escape contrary to section 124 [a] of the Penal Code; and neglect to prevent a felony contrary to section 392 of the Penal Code.
15. That additionally, on 21st December 2007, the Officer In Charge Naivasha Main Prison interdicted him from duty in violation of Article 5 of the Constitution of Kenya previously under section 77 [1] and [2] [a] of the repealed Constitution.
16. That he successfully applied for the deferment of plea pending the hearing and determination of High Court Petition 1 of 2018, and on 12th March 2008, the High Court declared the charges against him and his co-accused unconstitutional and dismissed the charges against them.
17. The petitioner argued that the respondent had not provided any evidence to counter the pleadings and that their response was mere denial.
18. On whether he is entitled to general damages, the petitioner submitted that Article 23 of the Constitution entitles a citizen to damages for constitutional violation. That, due to the respondents’ actions, he was interdicted on 21st December 2007 and as a consequence he received not less than half of his salary causing him great loss and mental anguish.
19. The petitioner proposed Kshs. 5,000,000 as general damages being adequate compensation. That the court has discretion to award general damages. He relied on the case of *Gitobu Imanyara & 2 others v Attorney General* [2016] KECA 557 [KLR] where the appellants aggrieved by the general damages awarded by the High Court as being manifestly low appealed to the Court of Appeal. That the Court of Appeal in dismissing the appeal, stated that assessment of general damages is a discretionary relief.
20. The petitioner further prayed that the court grant his costs of the suit and interest at court rates.
21. Pursuant to the aforesaid and considering the matter, I note the key issues raised by the petitioner are as follows:
 - a. That an illegal search was conducted in his house without a search warrant thus violating Article 31 of the Constitution of Kenya.
 - b. Due to the malicious prosecution by the 1st respondent, and interdiction on half salary his fundamental rights were violated.
 - c. That, he has proved elements of malicious prosecution stated herein.
 - d. That under Article 23 of Constitution of Kenya, a citizen is entitled to damages for constitutional violation.
 - e. That Ksh 5,000,000 be awarded as general damages and compensation.



22. In considering the petitioner further, I note that the petition is supported by an affidavit of six [6] paragraphs only. Notably, it reiterates the averments in the petition and annexed thereto documents marked as “JKM 1”. An analysis of the aforesaid documents reveals that they are:
- a. Inventory of the items collected from the petitioner’s house.
 - b. The charge sheet in CMCC No. 5788 of 2007.
 - c. Interdiction letter.
 - d. Ruling in High court Petition No. 1/2008.
 - e. Order in CMCC No. 5788 of 2007 and
 - f. Copy of certificate of discharge from Kenya Prison Service.
23. In the considered opinion of the court, these documents marked afore as [a] and [b] supports the averment that the petitioner was arrested, investigated and charged accordingly. The ruling of the High Court in Petition No. 1 of 2008 is of great significance herein. The ruling was rendered in a petition filed by the petitioner and therefore it is important from the outset to interrogate inter alia the prayers therein and those sought for herein, and the timelines in the matter.
24. In considering the same, I note that among the issues raised in that petition is the violation of the petitioner’s rights. The petitioner argued that, he was not arraigned in court within 24 hours as provided for under the law. The petition was anchored on the provisions of Section 70, 72[1], [2], [3] and 77[1] of Constitution of Kenya and Section 123 of *Criminal Procedure Code*. The petitioner also questioned why he was charged at the Chief Magistrate’s Court at Nakuru when the offence took place at Naivasha Prison. In the final determination, the court found that the petitioner had not been availed in court within the 24 hours of arrest and declared his prosecution as unconstitutional.
25. Be that as it may, the question is, are the issues that were canvassed in that petition the same as herein Do both refer to violation of the petitioner’s rights? The decision of the High Court in the petition No. 1 of 2008 was rendered on 12th March 2008. Notably, the petition herein was filed in the year 2025, a period of seventeen [17] years. Is there a time limit within which a petition for violations of fundamental human rights should be filed, will it be in the interest of justice to pursue a claim against the respondents after seventeen [17] years. What reason does the petitioner advance for the delay? I note that he avers as follows: -
- “fearing victimization from my superiors and the possibility of loss of employment, the petitioner opted not to institute a suit for malicious prosecution while he was still an employee of the 1st respondent”.
- Is the afore sufficient or adequate or reasonable explanation of the delay in the light of the period of delay.
26. The limitation of a cause of action is a matter of law. In that regard, civil cases are subject to statutory limitation periods, meaning there is a time limit within which a lawsuit must be filed from the date of the cause of action arises. Failure to file a suit within the prescribed period will result in the case being time barred and the court may decline to hear it.
27. It suffices to note that claims against the Government or public authority are subject to a one [1] year limitation period. Section 3[1] of the *Public Authorities Limitation Act* [Cap 39] Laws of Kenya that states: -



- [1] No proceedings founded on tort shall be brought against the Government or a local authority after the end of twelve months from the date on which the cause of action accrued.
28. However, the court may exercise discretion to extend the limitation period if there are justifiable reasons for the delay. However, there must be an application for extension of time or leave sought to file the suit out of time. That is not the case herein.
29. Pursuant to the aforesaid, taking into account the period that has expired since the cause of action herein arose, and the fact that the petitioner has not sought for leave to extend the time within which to file the petition, the suit is time-barred and is not available for hearing and determination on merit. It is thus struck out accordingly. In that case, the merits thereof is not considered.

DATED, DELIVERED AND SIGNED ON THIS 25TH DAY OF JUNE, 2025.

GRACE L. NZIOKA

JUDGE

In the presence of:

Ms Kimanchia for the petitioner

No appearance for the respondent

Court Assistant - Hannah

