Linturi v Director of Public Prosecutions & 3 others (Petition E003 of 2022) [2024] KEHC 569 (KLR) (29 January 2024) (Judgment)

Neutral citation: [2024] KEHC 569 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAKURU

PETITION E003 OF 2022

HM NYAGA, J

JANUARY 29, 2024

IN THE MATTER OF ARTICLES 22(1), 23(1) &(3), 159(2) (A) (E), 165(3) (B), (D), (6) & (7),& 258 OF THE CONSTITUTION 2010 AND IN THE MATTER OF THE ALLEGED CONTRAVENTION OF ARTICLES 3,10(1), 10(2), 19 ,20, 21(1), 25(C), 27(1) &(2), 29, 47(1), 49(1), (F), (G), (H), 50(1), 50(2) (A), (B), (C), (J), (K),79,157(11) &249 OF THE CONSTITUTION OF KENYA ,2010

IN THE MATTER OF NAKURU CHIEF MAGISTRATE'S COURT CRIMINAL MISCELLENIOUS APPLICATION NO.E10 OF 2022- REPUBLIC THROUGH NATIONAL COHESION AND INTERGRATION COMMISSION VS FRANKLIN MITHIKA LINTURI AND IN THE MATTER OF THE NATIONAL COHESION AND INTERGRATION COMMISSION ACT NO.12 OF 2008

BETWEEN

HON. FRANKLIN MITHIKA LINTURI ..... PETITIONER

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS ..... 1ST RESPONDENT

THE DIRECTOR OF CRIMINAL INVESTIGATIONS ..... 2ND RESPONDENT

THE NATIONAL COHESION AND INTERGRATION COMMISSION .... 3RD RESPONDENT

THE ATTORNEY GENERAL ..... 4TH RESPONDENT

JUDGMENT

1. The Petitioner vide an amended petition dated 7th October,2022 seeks the following reliefs: -

    a. A declaration be and is hereby issued that investigations on the petitioner by the Director of Criminal Investigations, the Director of Public Prosecutions through the National Cohesion

and Integration Commission against the petitioner in Nakuru Misc. Criminal Application no. E010 of 2022 in Republic Through National Cohesion And Intergration Commission Vs Franklin Mithika Linturi were in violation of the Petitioner's constitutional rights.

b. An order of prohibition be and is hereby issued prohibiting the Respondents through the Director of Public Prosecution from pressing criminal charges against the petitioner and more particularly in respect of Nakuru Criminal Misc. Application No. E010 of 2022 or any subsequent proceedings premised on the impugned arrest and investigations.

c. An order directing the Respondents to jointly and severally make a monetary compensation to the petitioner of Ksh. 10,000,000/= for the financial constraints, inconveniences and expenses emanating from the unlawful arrest, detention and institution of the Miscellaneous Criminal Proceedings.

d. The costs of this petition be provided for.

2. The petition is based on the grounds set out therein and supported by an affidavit sworn by the Petitioner, Franklin Mithika Linturi on the even date.

3. In a nutshell, the petitioner states that: -On 8th January, 2022 while addressing a political rally by United Democratic Alliance Party (UDA) at Eldoret in Uasin Gishu County, he expressed himself using the following words "Niwaambie nyinyi msituchezee, watu wa Uasin Gishu msichezee kenya. Na kile nawaomba ni kwamba madoadoa yale mlio nayo hapa muweze kuondoa.Muweze kufanya nini? Hatuwezi kuwa tunasimama na William tukiwa kule Mt. Kenya na Meru alafu mko na wengine hapa hawaskii na hawaungani naye. Mko tayari kutuondolea hao? Mko tayari?"The above utterances were made in an attempt to vigorously urge the supporters of his political party to offer full support to UDA candidates in that years' general election.At the time of making the said utterances he was oblivious of the possibility that his choice of words would be construed negatively, and it also did not occur in his mind that using the said words would in certain contexts acquire sinister political overtones and come to be associated with incitement and hate speech.After finishing addressing the said rally he received summons from the 3rd Respondent dated 8th January 2022 inter alia indicating that the 3rd Respondent was investigating his said utterances pursuant to their mandate and scope as spelt out under section 25 of the *National Cohesion and Integration Act* No.12 of 2008 and that he was required to appear before the 3rd Respondent's offices to assist them with investigations touching on the said words which according to the 3rd respondent had been construed as having been calculated to be hateful and likely to affect harmonious coexistence between the Kalenjin and other communities.On the same day he learnt vide a letter dated 8th January,2022 by the 2nd respondent that it directed the 1st Respondent to immediately institute comprehensive investigations into his utterances on alleged "ethnic contempt" and submit the resultant investigation file to the 2nd respondent on or before 14th January,2022.In light of the foregoing, it became apparent that his said utterances had been taken out of context and as a responsible loving individual, on the same day he issued a public clarification through his Facebook account giving the true meaning and context of the said utterances and went ahead to apologize, unreservedly, for the discomfort the impugned utterances may have created.He also took the opportunity to assure all Kenyans of his commitment both as a citizen and as a leader, to national unity, peace, and cohesion within and among all communities.However, in a dramatic twist of events, at or about 2.00am on 9th January,2022(Saturday night) armed DCI Detectives stormed EKA Hotel in Eldoret town where he had spent the night and arrested him, and being driven at break-neck speed taken to Kaptembwa Police station in Nakuru where he only signed a visitor's book after which he was driven at the same speed to Naivasha Police station and finally to Gigiri Police Station in Nairobi County.At around 4.30 pm on 9th January,2022(Sunday) he was interrogated by the DCI

detectives attached to National Cohesion and integration Commission and he recorded a statement on inquiry where he confirmed that the impugned utterances were made innocently with no intention of inciting or causing ethnic contempt.On the same day he was driven back to Nakuru County where he arrived at midnight and was detained at Kaptembwa Police station until the following day the 10th January,2022 when he was arraigned in court at around 4.30pm.Thereafter he was arraigned in court on 10th January,2022 at 4.30 pm where vide Criminal Miscellaneous Application No. E10 of 2022 the 1st ,2nd and 3rd respondents sought to have him detained for a further 7 days to allow them time to conclude investigations and in a ruling delivered on 11th January,2022, the Chief Magistrate Hon. E.A Nyaloti declined the Respondents' applications and instead released him on conditional bond of Ksh.5,000,000/= with one surety of a similar amount or cash bail of Ksh.2 million; directed Respondents not to make any comments on the case under investigations through the media and social media platform; ordered him to appear at the DCI headquarters once a week i.e. every Friday at noon; and the matter fixed for mention on 26th January, 2022 to confirm the status of the investigation.In compliance with the said order he has appeared twice at the DCI headquarters but to his utter shock and dismay there has been no meaningful engagement with the investigating agency save for the DCI keeping him at the waiting bay for hours till close of business.Since the time of his release no summons has been issued or given to him requiring him to respond to any inquiries by the 1st,2nd and 3rd respondents leaving one wondering what is the nature and scope of the investigations being carried out against him.When the matter came up for mention on 26th January,2022 the respondents had not concluded their investigations and they sought extension of bond/bail terms and the matter was fixed for a further mention on 28th February,2022 to confirm the status of the investigations.On 28th February,2022 when the matter came up for further mention the respondents withdrew the miscellaneous criminal file against him as they had not gathered any credible evidence to prefer any criminal charges against him and accordingly, he was released and the miscellaneous matter marked as closed.

4. On the nature of injury caused, the petitioner contended that as a result of inhuman arrest, false detention and the trumped up charges he incurred legal costs, travel costs, accommodation costs as well as other related expenses and inconveniences estimated at Ksh.10 million.

5. He averred that the actions of the 1st,2nd and 3rd respondents were deliberately and primarily calculated to subject him to public humiliation, embarrassment as well as gag his political and social rights. In addition, the respondents have exposed him to economic sabotage and hardships.

6. He contended that it is evident that the foundation or basis of the criminal charges that were intended to be preferred against him were based on other considerations other than the need to promote national unity, equity and the elimination of all forms of ethnic discrimination by facilitating equality of opportunities, peaceful resolution of conflicts and respect for diversity among Kenyan Communities.

7. That it is also evident that the predominant purpose of the actions by the state through the 1st,2nd and 3rd Respondents is an abuse of power and arbitrary exercise of authority to achieve a purpose unconnected with the rule of law or objective of the system of administration of justice.

8. The 1st, 2nd and 3rd respondents were seeking to intimidate and oppress him into backing down from his political stand and affiliation by brandishing the sword of punishment under the criminal law rather than in any genuine desire to punish on behalf of the public any alleged crime.

9. The petitioner therefore contends that he did not receive a square deal contrary to his rights under Article 27(1) of *the Constitution* and has suffered and will continue to suffer irreparable prejudice, loss and damage.

10. The said affidavit largely adopts the averments contained in the amended Petition.

11. In response to the amended Petition, the 2nd and 4th Respondents filed their response dated 2nd November,2022 denying the petitioners case.

12. It was their averment that they acted in accordance with the law and that if at all the petitioner was arrested and arraigned in court to face any charges then the same was done after a legitimate arrest was made, proper investigations conducted and a reasonable and probable cause established against the petitioner to warrant preferring charges against him.

13. The 2nd and 4th respondents further averred that the petitioner has failed to evince a cause of action against them thereby rendering this petition a nonstarter and an abuse of court process and thus not entitled to the prayers/orders sought against them.

14. They prayed that the petition be dismissed with costs.

15. The petition was urged through written submissions. Only the 2nd and 4th Respondents filed their submissions.

2nd and 4th Respondents' Submissions

16. On whether the criminal case and proceedings were in violation of Constitutional rights of the petitioner, the respondents submitted that the petitioner has not offsetted the burden of proof by providing evidence of the said infringement and has not pleaded the same with specific particularity especially against them. To buttress their submissions, the respondents cited the cases of Communications Commission of Kenya & 5 others vs Royal Media Services Limited & 5 others [2014] eKLR where the supreme court addressed the burden of proof on a petitioner in a constitutional petition and Anarita Karimi vs Republic (No.1) (1979) 1 KLR 154 for the proposition that a person seeking redress from the High Court on a matter which involves a reference of *the constitution* he must set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed and the manner in which they are alleged to be infringed.

17. It was the 2nd and 4th Respondents submissions that the executed their mandate as per the law in investigating the case and the petitioner has not proven the allegations or violations complained about against them.

18. On whether the petitioner is entitled to the reliefs sought, the respondents herein argued that the petitioner has failed to state with reasonable precision which constitutional rights were infringed and the manner of infringement. In support of the proposition reliance was placed on the case of Anarita Karimi Njeru vs Republic (supra) & Mumo Matemu vs. Trusted Society of Human Rights Alliance & 5 Others Civil Appeal No. 290 of 2012 [2013] eKLR.

19. The respondents submitted that there is no evidence to prove the accusations on inhuman arrest, false detention, intimidation, oppression, arbitrary exercise of authority and trumped up charges as against them. More so on the issue of prosecution and later withdrawal of the said charges that is within the mandate of the 1st Respondent.

20. The respondents submitted that the petitioner has failed to prove his case on balance of probability and prayed that the petition be dismissed with costs to them.

Analysis & Determination

21. I have considered the petition, response by the 2nd and 4th Respondents and submissions by the 2nd and 4th Respondents. The issues that crystallize for determination are: -

    a. Whether the petition meets the threshold of a petition.

    b. Whether the petitioner's rights under Articles 27,28,49(1),50(2) and 157(11) were violated.

    c. Whether the petitioner is entitled to the orders sought

    d. Who should bear the costs of the Petition?

Issue No.1

22. The court in Anarita Karimi Njeru vs The Republic (supra) held that a Constitutional petition should set out with a degree of precision the petitioner's co-plaint, the provisions infringed and the manner in which they are alleged to be infringed.

23. This principle was later reaffirmed by the Court of Appeal in the case of Mumo Matemo vs Trusted Society of Human Rights Alliance & 5 others (2013) eKLR when the Court at paragraph 87(3) of the judgment stated as follows: -

> "It is our finding that the petition before the High Court was not pleaded with precision as required in Constitutional Petitions. Having reviewed the petition and supporting affidavit we have concluded, that they did not provide adequate particulars of the claims relating to the alleged violations of *the constitution* of Kenya and the *Ethics and Anti-Corruption Commission Act*, 2011, accordingly the petition did not meet the standard enunciated in the Anarita Karimi Njeru case."

24. The court in Peter Michobo Muiru vs Barclays Bank of Kenya Ltd & another [2016] eKLR while discussing the Principles enunciated in Anarita Karimi Njeru's case observed as follows: -

> "The principle, as this court has previously stated, does not however equate absolute precision. There is no need for absolute and artificial specificity: see Kevin Turunga Ithagi vs Hon. Justice Fred Ochieng & 5 Others (No.1) HCCP No.442 of 2015 [2015] eKLR. The general approach should be that each case must be independently viewed and understood by the court and where the court as well as the Respondent can painlessly identify and understand the petitioner's case as well as the constitutional trajectory the case takes, then the merits of the case ought to be ventured into. Stalling the case through the technicality of want of formal competence will take a back seat. As was stated in the case of Donovan Earl Hamilton –v- Ian Hayles (Claim No. 2009 HCV 04623) by the Supreme Court of Judicature in Jamaica, the striking out of pleadings in constitutional petitions should be done only in the clearest of cases.
>
> The principle established in the Anarita Karimi Njeru's case should thus not be applied line hook and sinker and the court must always be cautious to avoid impeding the course of justice by denying a party access to the court: see Samuel Gunja Sode & Another vs The County Assembly of Marsabit & 2 others [2016] eKLR, Nation Media Group Ltd –v- Attorney General [2007] 1 EA 261 as well as the Court of Appeal decision in Peter M. Kariuki –v- Attorney General [2014] eKLR."

25. It is thus well settled law that in a constitutional petition therefore, a party is not supposed to merely cite constitutional provisions. He/she must with some reasonable degree of precision identify the constitutional provisions that are alleged to have been violated or threatened to be violated and the manner of the violation and/or threatened violation and state some particulars of alleged infringement to enable the respondent to be able to respond to each allegation accordingly.

26. I have perused the amended petition and I do note that the Petitioner did indeed cite Articles 3, 10(1), 10(2), 19, 20, 21(1), 25(c), 27(1) & (2), 29,47(1), 49(1) (f, g &h),50(1),50(2) (a, b, c, j, k), 79, 157(11) & (249) of *the Constitution* purportedly infringed but only set out the manner in which Articles 27, 28, 49(1),50(2), and 157(11) were infringed, as set at paragraphs 37, 38, 40,41,42, 43, and 49 thereof.

27. In my view, it is incorrect to state that the petition has not met the threshold of a constitutional petition. Some articles do not require to be elaborated as they merely refer to general rights and powers under *the Constitution*. In any case, the Petitioner's claims are easily discernible from the amended petition and the Affidavit filed. It is also evident from the responses and submissions filed by the Respondents that they were able to understand the issues in controversy.

28. I therefore decline to accept the argument that the Petition was imprecisely drafted.

Issue No.2

29. The Petitioner contended that arresting and detaining him for a total of 38 hours without bringing him before court was a violation of his rights under Article 49(1) of *the Constitution*.

30. Article 49 (1) (a) (b) (c) and (d) of *the Constitution* deals with rights of arrested persons and are meant to ensure an accused person enjoys fair trial immediately from the time of the arrest. Article 49 (a) (a) (b) (c) and (d) of *the Constitution* provides: -

> " 49. Rights of arrested persons
>
> (1) An arrested person has the right—
>
> a) to be informed promptly, in language that the person understands, of—
>
> (i) the reason for the arrest;
>
> (ii) the right to remain silent; and
>
> (iii) the consequences of not remaining silent
>
> b) to remain silent;
>
> c) to communicate with an advocate, and other persons whose assistance is necessary;
>
> d) not to be compelled to make any confession or admission that could be used in evidence against the person"

31. The petitioner has admitted that it was brought to his attention that the 2nd and 3rd respondents were investigating his aforesaid utterances and that on 9th January,2022 he was arrested and on the same day at around 4.30 pm he recorded his statement. On 10th Januray,2022 he was arraigned in court.

32. It is clear therefore from the above that the petitioner was informed promptly of his reason of his arrest in accordance with the said Article 49. I therefore hold that the petitioner's rights under Article 49(1) were not infringed.

33. It was the Petitioners contention that more than four weeks after his arrest and detention he was not informed of any factual basis or foundation to give rise to criminal charges as required under Article 50(2) of *the Constitution*.

> " Article 50(2) of *the constitution* provides that Every accused person has the right to a fair trial, which includes the right—
>
> (a) to be presumed innocent until the contrary is proved;
>
> (b) to be informed of the charge, with sufficient detail to answer it;
>
> (c) to have adequate time and facilities to prepare a defence;
>
> (d) to a public trial before a court established under this Constitution;
>
> (e) to have the trial begin and conclude without unreasonable delay;
>
> (f) to be present when being tried, unless the conduct of the accused person makes it impossible for the trial to proceed;
>
> (g) to choose, and be represented by, an advocate, and to be informed of this right promptly;
>
> (h) to have an advocate assigned to the accused person by the State and at State expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
>
> (i) to remain silent, and not to testify during the proceedings;
>
> (j) to be informed in advance of the evidence the prosecution intends to rely on, and to have reasonable access to that evidence;
>
> (k) to adduce and challenge evidence;
>
> (l) to refuse to give self-incriminating evidence;
>
> (m) to have the assistance of an interpreter without payment if the accused person cannot understand the language used at the trial;
>
> (n) not to be convicted for an act or omission that at the time it was committed or omitted was not—
>
> (i) an offence in Kenya; or
>
> (ii) a crime under international law;
>
> (o) not to be tried for an offence in respect of an act or omission for which the accused person has previously been either acquitted or convicted;
>
> (p) to the benefit of the least severe of the prescribed punishments for an offence, if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and

(q) if convicted, to appeal to, or apply for review by, a higher court as prescribed by law. information shall be given in language that the person understands.

34. The petitioner has expressly stated in his petition that when he was arraigned in court the 1st,2nd and 3rd respondent sought to have him detained for 7 days to allow them time to conclude investigations but the court declined the respondent's application and he was released on bond of Ksh.5million with surety of a similar amount or cash bail of Ksh.2million. It is clear therefore that the petitioner was not detained as alleged.

35. It is worth noting that in the case in the lower court, the trial had not commenced. The State moved to court vide a miscellaneous application to have the applicant detained pending investigations. The trial court declined to detain the applicant, released him on conditional bond terms. At that stage the State had not formally charged the applicant and so the issue of witnesses did not arise. Suffice to state that the state can move the court under Article 49(1) (g) for such orders. The article provides that an arrested person has the right;

(g) at the first court appearance, to be charged or informed of the reason for the detention continuing, or to be released; and

(h) to be released on bond or bail, on reasonable conditions pending a charge or trial, unless there are compelling reasons not to be released."

36. It is clear therefore that the foundation giving rise to criminal charges is a continuing process that the prosecution is allowed to follow. That process had just began, with the arrest of the petitioner and he had not been formally charged. The argument would have held water if the petitioner's trial had began without availing the evidence to be relied upon. For these reasons, the State cannot be faulted for making the miscellaneous application.

37. In light of the above, I am unable to find that the Petitioners' right to a fair trial as provided under Article50(2) of *the Constitution* has been violated as alleged.

38. The petitioner also averred that his right to human dignity under Article 28 of *the Constitution* was violated. He contended that his right to dignity and to have that dignity by virtue of the office he presently holds as a senator was not being respected and protected as the respondents have deliberately gone out their way to undermine his dignity and to humiliate and embarrass him. He further stated that the 1st 2nd and 3rd respondents have particularly acted in bad faith and have chosen to delay the conclusion of investigations so as to continue holding him captive and hostage both physically, financially and psychologically.

39. This court is a bastion of justice and should determine parties' rights based on facts and evidence.

40. The rule of evidence is clear that "He who alleges must prove". The maxim has been grounded in law under Section 107 of the Law of Evidence. The said section provides as follows;

(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exists..."

36. In John Cheruiyot Rono vs Attorney General, Petition No. 536 of 2015, the Court observed that:

" 32. The burden of proving violation of a right or freedom enshrined in *the Constitution* rests on the person alleging the violation: See Matiba vs Attorney General [1990] KLR 666. Such

burden is to be discharged on a balance of probabilities by the Petitioner showing that the right existed and that it has been violated and the manner of such violation…"

36. The petitioner therefore is under a duty to prove on a balance of probability that his constitutional rights were infringed by the respondents.

37. It is my opinion that the petitioner has shown that such right existed and elaborated on the manner of infringement but failed to present tangible evidence to prove his above assertions to enable the court find that his rights under Article 28 was infringed.

38. Even though the applicant was a lawmaker, he cannot have expected preferential treatment in the matter. Everyone is equal before the law and I have not found any ground to hold that he was treated differently, to his prejudice, from any other ordinary person.

39. The petitioner further averred that whereas the DPP can give directions under Article 157(11) of *the Constitution* only to the Inspector General of Police and whereas he exercised his said mandate and directed investigations be commenced into the said allegations and the resultant file be submitted to him, on or before 14th January,2022, it was a blatant violation of his rights to presumption of innocence for the DCI to put the cart before the horse and arrest him before conducting any investigations. He accused the Respondents for acting in bad faith and discriminatorily.

40. Under Article 157(11) the D.P.P is mandate to:

(11) In exercising the powers conferred by this Article, the Director of Prosecutions shall have regard to public interest, the interests of the administration of justice and the need to prevent and avoid abuse of legal process."

36. In Justus Mwenda Kathenge vs Director of Public Prosecutions & 2 Others [2014] eKLR, it was held at para 8 that:

"It is now trite that Courts cannot interfere with the exercise of the above mandate unless it can be shown that under Article 157(11):

(i) he has acted without due regard to public interest,

(ii) he has acted against the interests of the administration of justice,

(iii) he has not taken account of the need to prevent and avoid abuse of Court process.

These considerations are not new and have over time been taken as the only bar to the exercise of discretion on the part of the 1st Respondent. I say so taking into account the following decisions where the issue has been addressed;"

36. Author Bradner on evidence made the following statement

"the presumption of innocence is not a mere phrase without meaning, it is in the nature of evidence for the defendant, it is as irresistible as the heavens till overcome, it hovers over the prisoner as a guardian angel throughout the trial, it goes with every part and parcel of the evidence." (See article on presumptions and the Law of Evidence 3 Harv. Law Review, 141, 165.)"

36. Relating the above Article to this matter, I find the police only need to establish some reasonable suspicion before preferring charges against any of the suspected criminals. The weight of the evidence

to sustain a conviction is always left to the trial court to ascertain whether the prosecutions has or not proved its case beyond reasonable doubt.

37. In the instant case, the 2nd Respondent withdrew the charges against the Petitioner. The 2nd respondent is constitutionally mandated to withdraw criminal proceedings at any stage before judgement is delivered.

> " Article 157(6)(c) states;
>
> "The director of Public Prosecutions shall exercise state powers of prosecution and may;
>
> Subject to clauses 7 and 8, discontinue at any stage before Judgment is delivered any criminal proceedings instituted by the Directors of Public Prosecution or taken over by the Director of Public Prosecutions under paragraph (b)."

36. In view of the foregoing, I do not find any evidence to show the 2nd respondent infringed Articles 27 and 157(11) of *the constitution*.

Issue No.3

36. Having found that the petitioner's rights have not been infringed, prayer no. (a) of the amended petition cannot issue.

37. Regarding prayer for no. (b), the same cannot issue for reasons that the 2nd Respondent acted within its constitutional mandate.

38. The independence of the office of Director of Public Prosecutions is guaranteed under article 157(10) of the Prosecutions, that;

> " The Director of Public Prosecutions shall not require the consent of any person or authority for the commencement of Criminal proceedings and in the exercise of his or her powers or functions, shall not be under the direction or control of any person or authority"

36. In the case of Harrison Auko vs Republic HCMCR Application No 55 of 2006, the judge noted;

> " It is expected that the DPP is to exercise his power to enter a nolle prosequi for public good and in good faith. In short, his action is expected to promote public interest...."

36. The court therein went on to refer to the decision in Seenoi Ene Persimei Esho Sisina & 8 others vs AG (2013)eKLR, that;

> " An application to enter a nolle prosequi can only be a subject of courts intervention where it has been shown what the DPP has abused has discretion where the decision maker exercises discretion for an improper purpose where the decision maker is in breach of duty to act fairly, where the decision maker has failed to exercise statutory discretion...."
>
> The Honourable Judge in the case cited went on to hold that it is of fundamental importance to hold that the DPP has power to recharge the accused person after a nolle prosequi. And that the significance of the nolle prosequi is that if the circumstances which led to the entry of the nolle rosequi remain the same, the accused will remain discharged of the offence until such a time there is prima facie evidence incriminating him of the offence."

36. In light of the above precedents, I do not find any basis for prohibiting the Respondents through the 2nd respondent from pressing criminal charges in Nakuru Criminal Misc. Application No. E10 of 2022 or any subsequent proceedings premised on the impugned arrest and investigations against the petitioner.

37. There was no concrete evidence led in support of prayer no. (c) of the Petition. I will therefore not grant the same.

38. The upshot is that the petition is without merit and I hereby dismiss it in its entirety with costs to the 2nd and 4th Respondents.

39. Orders accordingly.

DATED, SIGNED & DELIVERED IN NAKURU THIS 29TH DAY OF JANUARY, 2024.

H. M. NYAGA,

JUDGE.

In the presence of;

C/A Jeniffer

Ms Wanjeri for 2nd and 4th respondents

N/A for petitioner