



**Machage v Director of Criminal Investigations; Director of  
Public Prosecutions & another (Interested Parties) (Petition  
E006 of 2023) [2024] KEHC 4446 (KLR) (30 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4446 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
PETITION E006 OF 2023  
HM NYAGA, J  
APRIL 30, 2024**

**BETWEEN**

**DOUGLAS MUSA MACHAGE ..... PETITIONER**

**AND**

**DIRECTOR OF CRIMINAL INVESTIGATIONS ..... RESPONDENT**

**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... INTERESTED PARTY**

**NATIONAL TRANSPORT AND SAFETY AUTHORITY . INTERESTED PARTY**

**JUDGMENT**

1. Douglas Musa Machage, the Petitioner has sued the Respondent herein vide a petition dated 17<sup>th</sup> March, 2023 seeking the following reliefs;
  - i. A declaration that the Respondent's seizure of the Original Registration certificate, vehicle identification plates, speed governor and insurance stickers for the Petitioner's lorry with registration number KAM 577 L is unconstitutional and the respondent has violated the petitioner's right to property guaranteed and protected under Article 40 of *the Constitution*.
  - ii. A declaration that the petitioner's right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair guaranteed and protected under Article 47 of *the Constitution* has been violated by the Respondent.
  - iii. An Order compelling the Respondent whether acting by itself, its agents, officers, servant or whosoever to release to the Petitioner forthwith the



original registration certificate, vehicle identification plates, speed governor and insurance stickers for the petitioner's lorry with registration number KAM 577 L.

- iv. An order that the Respondent pays to the Petitioner general damages for the violation of the aforesaid rights.
- v. An Order prohibiting the respondent and the 1<sup>st</sup> interested party from arresting and or charging the petitioner regarding the registration of the lorry with number KAM 577 L.
- vi. Costs of this Petition.

2. The Petitioner's case arises from the following pleaded facts;

- i. That sometime in the year 2006, he, one Julius Ogato and Benson Maingi were carrying on farming business partnership and on or about 17<sup>th</sup> August, 2006 they purchased a lorry with a registration Number KAC 382 T for use in the partnership business from Eliud Mwangi Maina.
- ii. That upon dissolution of the Partnership, they shared the partnership assets and he was given the lorry with registration number KAC 382 T among other assets and he used the lorry peacefully.
- iii. That in the year 2018, the National Transport and Safety Authority, the 2<sup>nd</sup> interested party herein, migrated its manual records to digital forms and when he applied to transfer the lorry to his name, it was realised that there was another vehicle with registration Number KAC 382 T.
- iv. That he was advised to have the officers of the respondent conduct a tape lift of the chassis number to confirm if it had been tampered with, which exercise was done and a report submitted to the 2<sup>nd</sup> Interested party to the effect that the chassis and engine numbers were genuine and well aligned.
- v. That subsequently the 2<sup>nd</sup> interested party changed the registration details of the lorry from KAC 382 T to KAM 577L and issued a registration certificate and a new registration plates to the petitioner.
- vi. That when he applied for insurance cover for the Lorry, he was informed that there was another vehicle bearing a similar registration number KAM 577 L.
- vii. That he traced the owner of the said vehicle and advised him to take his vehicle to the nearest office of the respondent or the 2<sup>nd</sup> interested party for verification, and the petitioner got the information that the said person took the vehicle to the respondent for verification but he never received any report on the outcome of the exercise.
- viii. That subsequently he was issued with insurance cover and he continued using the lorry peacefully but sometime in early 2021, he was called by the Respondent's officer that a complaint of double registration had been made by the owner of the second vehicle and he was required to furnish a copy of the tape lift report and a copy of the registration certificate, and he complied.



- ix. That on 15<sup>th</sup> July,2021, the Respondent's officers visited his office within Nakuru City and demanded to see the suit lorry and he took them to his home within Milimani Estate where they saw the lorry after which they seized the Lorry's vehicle identification plates, speed governor and insurance stickers.
  - x. That upon returning to his office, he gave the said officers the lorry's original registration certificate.
  - xi. That the respondent has arbitrarily seized his original registration certificate, vehicle identification plates, speed governor and insurance stickers for the lorry with registration number KAM 577 L since 15<sup>th</sup> July,2021.
  - xii. That due to the foregoing the said lorry has been grounded at his home where it is wasting away much to his prejudice and he continues to incur huge losses.
  - xiii. That the action by the respondent of arbitrarily and whimsically seizing his lorry's registration certificate, vehicle identification plates, speed governors and insurance certificate, vehicle identification plates, speed governors and insurance stickers negates the petitioners' constitutional rights and values as enshrined in Chapter IV of *the Constitution* under which he is entitled to protection.
3. The Petitioner thus avers that by continuing to seize the original registration certificate, vehicle identification plates, speed governor and insurance stickers for the lorry with registration number KAM 577 L, the said vehicle has been grounded and the respondent has violated his right to own and quietly enjoy the property contrary to Article 40 of *the Constitution* and he has suffered loss and damage, and that by failing to resolve the issue timeously, the respondent has violated his right to administrative action that is expeditious, efficient, lawful ,reasonable and procedurally fair contrary to Article 47 of *the Constitution*.
  4. PC MILTON MWANZI, the investigation officer of the Respondent, in opposition to the petition, swore a replying affidavit on 2<sup>nd</sup> June, 2023. He averred that the petition is mischievous and an abuse of the court process and it should be dismissed with costs.
  5. He also averred that the instant suit relates to double registration of the suit motor vehicle with the same chassis number and registration plates but different makes and owners, the owners being Ephantus Ndegwa and the Petitioner.
  6. He averred that as per the agreement dated 17.8.2006 the petitioner bought KAC 382 ISUZU LORRY, grey in color and with engine number 6RBI-121401. However, the log book dated 23.2.2021 indicates the engine number as 177719 and the color as white/cream.
  7. He contended that on 26<sup>th</sup> February, 2021 they received a complaint from Ephantus Ndegwa (complainant) who claimed that he co-owned KAM 577 L with Equity Bank LTD and that upon applying for registration of the said Motor Vehicle he discovered it was registered in the names of the petitioner, and to prove this assertion, the complainant issued them with a copy of the vehicle report dated 2.8.2019 and log book registration No.20143532656.
  8. He averred that in addition the above, the complainant produced a transfer form from equity bank to him dated 17.10.2014 and upon requesting for more details from the 2<sup>nd</sup> interested party, it confirmed that the current owner of the suit motor vehicle was the petitioner.



9. He also stated that further investigations revealed that the petitioner had obtained ownership of the suit motor vehicle through the 2<sup>nd</sup> interested party and forced transfer vide his letter to Director Licensing and Registrations at National Transport and Safety Authority (NTSA) and that his affidavit sworn on 29.11.2018 showed that his request was for a new log book under his name for Motor Vehicle ISUZU CXZ GRAY with registration number KAC 382 T but instead the 2<sup>nd</sup> interested party registered him as the owner of the suit motor vehicle.
10. He stated that at this point the 2<sup>nd</sup> interested party should be compelled to shed more light on the events leading to the Petitioner's registration/ownership of the suit motor vehicle and provide a solution.
11. He averred that the above prompted them to confiscate the Petitioner's registration certificates, plates, insurance and speed governor's ticket to enable them conduct further investigations to verify the authenticity of the Petitioner's ownership of the suit motor vehicle.
12. He disputed the Applicant's averments that they have caused the suit motor vehicle to waste and incur huge losses for reason that on 15<sup>th</sup> July, 2021 when they confiscated the petitioner's items, the suit motor vehicle was not roadworthy and had been in his compound for some time. He urged this court to take judicial notice that the number plates were not on the designated place. He also stated that the insurance sticker indicates the most recent insurance was paid for on 11<sup>th</sup> December, 2014 and was to expire on 21.10.2015.
13. It was his deposition that the confiscated log book indicates the suit motor vehicle was manufactured in 2000 and the affidavit sworn by the Petitioner on 29.11.2018 indicates that his Motor Vehicle was a CXZ model while the manual log book indicates that the petitioner bought KAC 382 T which is grey in colour and was manufactured in 1992.
14. He further deponed that the master register of KAC 382 T indicates that the same was a saloon car, the chassis and Engine numbers were 609030300 and 3A56795371983 which is in contradiction with the details in the copy of records from the 2<sup>nd</sup> interested party.
15. He averred that they conducted a forensic examination for the motor vehicle in the petitioner's possession and they are yet to receive a report from the forensic examiner. According to him the delay in obtaining the said report has been occasioned by the official duties undertaken by the designated officer at Shakahola Forest.
16. He asserted that the Applicant's ownership to the suit motor vehicle is questionable as he has failed to prove that Equity Bank LTD and Ephantus Ndegwa legally transferred the suit Motor Vehicle to him.
17. It was also his averment that the petitioner has failed to adhere to the principles of Constitutional Avoidance as the issues raised in this suit can be dealt with through an ordinary suit as opposed to a petition.
18. He thus prayed that the petition be dismissed with costs.
19. The 1<sup>st</sup> interested party similarly opposed the petition through a Replying Affidavit sworn by its state counsel Loice Nekesa Murunga on 15<sup>th</sup> May, 2023. She averred that these proceedings are not criminal proceedings where the 1<sup>st</sup> interested party is called upon on behalf of the state under the provisions of Article 157(6) of *the Constitution*.
20. She contended that it is in the interest of justice that the office of the Attorney General be made a party to these proceedings in order to represent the interest of the respondent and interested parties since they do not represent themselves.



21. She averred that the orders sought in the petition are meant to interfere with the constitutional mandate of the respondent which is to investigate and if need be, effect arrests.
22. She further contended that if the orders sought are granted then the ongoing investigations will be curtailed and items which would be treated as exhibits returned to the owner.
23. The petitioner swore a supplementary affidavit to the aforesaid Replying Affidavit on 16<sup>th</sup> June, 2023. He averred that his application to be issued with a duplicate logbook was in respect of Motor Vehicle Registration Number KAC 382T and that he swore an affidavit in support of this application and furnished the 2<sup>nd</sup> interested party with appropriate documents, and upon being satisfied about the propriety of the application, the 2<sup>nd</sup> interested party determined to register the vehicle as KAM 577L.
24. He asserted that he was aware the 2<sup>nd</sup> interested party called the other owner of the same registration number and asked him to take it for tape lifting at the respondent but he did not cooperate and he equally reached out to him in vain.
25. He stated that the 2<sup>nd</sup> interested party approved the forced transfer of the vehicle to him and issued him with the registration plates for KAM 577L.
26. He averred that if the respondent was desirous of compelling the 2<sup>nd</sup> interested party to shed light on any issue it ought to have done that in appropriate proceeding but it has not done so since the year 2021.
27. He contended that there is no evidence that the suit motor vehicle was un-roadworthy and the fact that it was seen in his compound for some time does not justify detention of his documents and registration plates.
28. It was his deposition that if the respondent had been desirous of resolving the issue it would have procured the report by now since the unnamed forensic examiner is an officer within its ranks.
29. He averred that he is not required to produce a transfer form from Equity Bank and Ephantus Ndegwa as he has not stated anywhere that he acquired the suit motor vehicle from them.
30. It was his further averment that there is no evidence that he acquired the ownership of the motor vehicle illegally.
31. The 2<sup>nd</sup> interested party did not file any response to the Application.
32. The matter was canvassed via submissions which parties filed.

### **Petitioner's Submissions**

33. With respect to whether his rights have been violated by the Respondent, the Petitioner submitted that an owner of the property is entitled to enjoy the bundle of rights in his property including the right of possession, control, exclusion, enjoyment and disposition free from disturbance.
34. He argued that contrary to the Respondent's averment, there are two vehicles bearing a similar registration number KAM 577L registered to different owners, him and one Ephantus Ndegwa. He argued that his sole ownership of the lorry is not questionable at all.
35. He asserts that this court vide its ruling dated 18<sup>th</sup> October, 2023 noted that there was need to carry out investigation expeditiously to ascertain the process that led to the legal ownership of the suit motor vehicle as the delay was causing harm to the petitioner and the complainant, but despite the said ruling, several months have passed and he is unaware of the efforts made by the respondent towards concluding the investigations.



36. He therefore argued that the said delay is causing him harm and thus the respondent has violated his right to own and quietly enjoy his property provided under Article 40 of *the Constitution* and right to administration action that is expeditious, efficient, lawful, reasonable and procedurally fair provided under article 47 of *the constitution*.
37. In regards to the reliefs sought, the petitioner relied on the case of *Kenya Human Rights Commission & Another vs Non-Governmental Organizations Co-ordination Board & another* [2018]eKLR where the court emphasized on the need of the state and every state organ to observe ,respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights, and argued that under Article 23 of *the Constitution* this court can grant appropriate relief for violation of rights and fundamental freedoms in the Bill of Rights.
38. Further reliance was placed on *Tinyefuza vs Attorney General of Uganda* Constitutional Petition 1 of 1997 (1997 UGCC 3) where it was held that *the Constitution* must be read as an integrated whole, without any provision destroying the other but each sustaining the other.
39. The petitioner submitted that based on the above, prayer nos. a & b of the petition should be granted.
40. On prayer C, the petitioner submitted that the respondent seized his documents and vehicle identification plates on 15<sup>th</sup> July, 2015 and have retained them since. He posited that the respondent in his replying affidavit deposed that the 2<sup>nd</sup> Interested Party should be compelled to shed light on the events leading to the petitioner’s ownership/registration of the suit motor vehicle and provide solution but to date the respondent has not followed up on the same and there is no evidence of failure by the 2<sup>nd</sup> interested party in discharging its mandate.
41. He argued that there is no justification whatsoever for the continued seizure of the documents and urged the court to grant prayer no. C.
42. With respect to prayer no. D, the petitioner citing the case of *Peter M. Kariuki vs Attorney General* [2014] eKLR submitted that our courts favour the making of global awards for violation of rights. He prayed for a global ward of Kshs. 3,000,000/=. In buttressing his submissions, he relied on the following cases;
- a. *Multiple Hauliers East Africa Limited vs Attorney General & 10 others* [2013] eKLR where the court made an award of Kshs 2,000,000 for violation of the petitioner’s right to fair administrative action.
  - b. *Arnacherry Limited vs Attorney General* [2014] eKLR where the court awarded General damages of Kshs. 3,000,000(Three Million) for breach of right to property under Article 40 of *the Constitution*.
  - c. *Sebastian Kirunya Limbitu v. National Police Service Commission & Another* [2017] eKLR damages in sum of Kshs. 3 million was awarded to the Claimant, for violation of Article 47 right.
  - d. *Kenya Human Rights Commission vs Non-Governmental Organisations Co-Ordination Board & another* [2018] eKLR where the high court awarded damages in the sum of Kshs. 2,000,000/ = for the violation of the right to fair administrative action under Article 47 of *the Constitution*.
43. Regarding prayer no. e, the petitioner submitted that this court vide its ruling dated 18<sup>th</sup> October, 2023 was of the view that the nature of the investigations do not necessitate his physical arrest and granted him anticipatory bail pending the hearing and determination of the application. He contends that the threat to arrest still persists and that unless the orders are confirmed then he will be exposed to arrest.



44. Regarding costs of the petition, the petitioner posited that it is the respondent's violation of his rights that necessitated him to file this petition. He thus urged the court to award him costs. In support of this position, he relied on the case of *Jasbir Singh Rai & 3 others vs Tarlochan Singh Rai & 4 others* [2014] eKLR

### **Respondent's Submissions**

45. On whether the respondent violated the petitioner's rights under Articles 40 and 47 of *the Constitution*, the respondent submitted that the suit motor vehicle was acquired illegally by the petitioner hence cannot be protected by *the Constitution*. To support its submissions, reliance was placed on the case of *Daudi Kiptugen vs Commissioner of Lands & 4 others* [2015] eKLR where the court held inter alia that Article 40(6) of *the Constitution* provides that a title that has been unlawfully acquired cannot be protected and that this is echoed at section 26 of the *Land Registration Act*, 2012.
46. The respondent contended that Article 47 of *the Constitution* was not infringed since the petitioner recorded a statement on 15<sup>th</sup> July, 2021 before the documents complained of were confiscated and relied on the reasons advanced by the PC MILTON MWANZI on why the investigations have not concluded.
47. In regards to whether the petitioner adhered to the principles of constitutional avoidance, the respondent submitted in the negative. It was its contention that the petitioner ought to have filed a plaint as opposed to a constitutional petition. In this regard reliance was placed on the case of *KKB vs SCM & 5 others (Constitutional Petition 014 of 2020)* [2022] KEHC 289 (KLR) where the court held that;
- “Constitutional avoidance has been defined as a preference of deciding a case on any other basis other than one which involves a constitutional issue being resolved. As a principle, constitutional avoidance has been linked to the doctrine of justiciability. In broad terms, justiciability governs the limitations on the constitutional arguments that the courts will entertain...”
48. With respect to whether the orders sought should be granted, the respondent submitted in the negative for reasons that granting of the same would amount to condemning a non-party to this case unheard. He argued that releasing the documents complained of would mean that the petitioner is the genuine owner of the suit motor vehicle as opposed to Ephantus. The respondent posited that it is wise and just that the same remains in the custody of the respondent until the issue is resolved. In support of this proposition this court was referred to the case of *Gladys Nduku Nthuki vs Letshego Kenya Limited; Mueni Charles Maingi (Intended Plaintiff)* [2022] eKLR.

### **Analysis & Determination**

49. From the foregoing, the issues that arise for determination are:
- I. Whether the Petitioner's Constitutional Rights have been violated.
  - II. Whether the Petitioner deserves the prayers in the Petition.
50. It is important to note that in my earlier ruling, I had addressed some of the issues raised in the petition. Specifically, and in response to prayer (a) of the petition, I had addressed the issue of whether by the respondent instituting the investigations, the petitioner's rights had been violated. I made a finding on this issue and thus I need not revisit the same.



51. The applicant has averred that his rights to an expeditious administrative action has been violated.

52. Article 47 provides:

- “(1) Every person has the right to administrative action, that is, expeditious, efficient, lawful, reasonable and procedurally fair.
- (2) if a right or fundamental freedom of a person has been or is likely to be adversely affected by an administrative action, the person has right to be given written reasons for the action.
- (3) Parliament shall enact legislation to give effect to the rights in clause (1) and the legislation shall –
  - a. provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and
  - b. promote efficient administration.”

The *Fair Administrative Act*, 2015 at Section 4(1) thereof provides;

- (1) “Every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair.
- (2) Every person has the right to be given written reasons for any administrative action that is taken against him.
- (3) Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision—
  - (a) prior and adequate notice of the nature and reasons for the proposed administrative action;
  - (b) an opportunity to be heard and to make representations in that regard;
  - (c) notice of a right to a review or internal appeal against an administrative decision, where applicable;
  - (d) a statement of reasons pursuant to section 6;
  - (e) notice of the right to legal representation, where applicable;
  - (f) notice of the right to cross-examine or where applicable; or
  - (g) information, materials and evidence to be relied upon in making the decision or taking the administrative action.

53. This court, in its Ruling of 18<sup>th</sup> October 2023 regarding the duty of the respondent stated as follows: -

“Section 52 of the *National Police Service Act* allows a police officer to require any person, in writing, if they have reason to believe that person has information which may assist in investigation of an alleged offence, to appear before him at the police station. The respondent ought to do so reasonably.



The Director of Criminal Investigations has powers under Section 35 of the *National Police Service Act* to conduct necessary investigations into claims reported to it. It provides: -

“The Directorate shall—

- (a) collect and provide criminal intelligence;
- (b) undertake investigations on serious crimes including homicide, narcotic crimes, human trafficking, money laundering, terrorism, economic crimes, piracy, organized crime, and cybercrime among others;
- (c) maintain law and order;
- (d) detect and prevent crime;
- (e) apprehend offenders;
- (f) maintain criminal records;
- (g) conduct forensic analysis;
- (h) execute the directions given to the Inspector-General by the Director of Public Prosecutions pursuant to Article 157 (4) of *the Constitution*;
  - (i) co-ordinate country Interpol Affairs;
- (j) investigate any matter that may be referred to it by the Independent Police Oversight Authority; and
- (k) perform any other function conferred on it by any other written law.”

Investigations are known legal processes in our justice system and do not amount to infringement on the fundamental rights and freedoms to any person. The said processes must be allowed to run their course for proper administration of justice.”

- 54. The matter has been under investigation for several years now. Surely, the petitioner ought to have known his fate by now. In my said ruling I had urged the respondent to expedite the process, but even at the time of writing this judgment, it was apparent that nothing further had been done. Whilst it is only right that the respondent be allowed to freely perform its constitutional mandate without any interference, the continued seizure of the documents that led to the grounding of the motor vehicle in question for all these years is clearly unreasonable.
- 55. In view of the foregoing, it is my view that the continued detention of the petitioner’s documents for several years amounts to a violation of his rights to expeditious administrative action.
- 56. Consequently, I am inclined to grant prayer (b) of the petition.
- 57. Should this court order the release of the petitioner’s documents as sought?
- 58. The respondent has been holding the documents for years. The court was not updated on the fate of the investigations. More importantly the NTSA, which is the institution mandated by the law to deal with the registration/deregistration of motor vehicles, did not file any response, despite repeated service of the pleadings herein.
- 59. I am of the view that the release of the documents to the petitioner will not prejudice the respondent in any way as the NTSA will still have to verify them before it can take any further action. The applicant must adhere to any directive given by the said Authority.



60. Therefore I also grant prayer (c) of the petition. The same is subject to the applicant making the requisite applications to the NTSA as required by the law.
61. As regards the prayer (d) for damages, I am of the view that the same is untenable for the reason that the respondent was acting pursuant to its mandate, as I have already found herein.
62. As regards prayer(e) of the petition, it is to be noted that the court has already granted the petitioner bond/bail. His fear was that he would be physically arrested. I will confirm the orders that I gave at the interlocutory stage on the same terms.
63. On costs, I appreciate that the ordinary course is to order the costs to follow the event.
64. I have already made a finding that the respondent was justified in executing its mandate. It would thus not be right to order it to pay costs of this petition.
65. Thus I order that each party bears its own costs.

Dated and Delivered at Nakuru this 30<sup>th</sup> Day of April 2024.

**H.M. NYAGA,**

**JUDGE.**

**In the presence of;**

Court Assistant Kipsugut

Ms Wangari for Plaintiff/Applicant

No appearance for Respondent

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