



**Mwonga & 4 others v Ogega & another (Petition E346 of 2023) [2024] KEHC 16469 (KLR)  
(Constitutional and Human Rights) (31 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16469 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CONSTITUTIONAL AND HUMAN RIGHTS  
PETITION E346 OF 2023  
LN MUGAMBI, J  
DECEMBER 31, 2024**

**BETWEEN**

**JOSHUA KIILU MWONGA ..... 1<sup>ST</sup> PETITIONER  
MERCY MUNYAO ..... 2<sup>ND</sup> PETITIONER  
BRIAN OLUNGA MUNG'AU ..... 3<sup>RD</sup> PETITIONER  
BECKY KATHURIMA ..... 4<sup>TH</sup> PETITIONER  
ROSE KINYUA ..... 5<sup>TH</sup> PETITIONER**

**AND**

**ERIC OGEGA ..... 1<sup>ST</sup> RESPONDENT  
NELLY KERUBO ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**Introduction**

1. The Petitioners filed a Petition dated 18<sup>th</sup> September 2023 is supported by the 1<sup>st</sup> Petitioner's affidavit of even date and a further affidavit dated 1<sup>st</sup> February 2024.
2. The gravamen of this matter is that the Respondents used the Petitioners' image on their platforms for advertisement and commercial gain without the authority of the Petitioners thereby violating their rights under Articles 28, 31 and 40 of *the Constitution*.
3. Accordingly, the Petitioners seek the following reliefs:
  - a. A declaration be issued that the Respondents violated the Petitioners' fundamental right to human dignity and privacy under Articles 28 and 31 of *the Constitution* of Kenya by publishing



the Petitioners' images for the purpose of commercial advertisements without the Petitioners' consent.

- b. A declaration be issued that the Respondents violated the Petitioners' privacy rights under Article 31 of *the Constitution* by publishing the Petitioners' image and likeness for their own commercial gain with no personal financial advantage gained by the Petitioners.
- c. A declaration be issued that the Petitioners' intellectual property rights, right of publicity, and personality rights were infringed when the Respondents decided to publish the Petitioners' images in advertising and marketing their courses, including diploma and certificate training, computer packages, and management consulting courses offered for financial gain without seeking authority/consent from the Petitioners.
- d. An order of permanent injunction be issued restraining the Respondents from publishing and/or using the Petitioners' image and likeness in their advertisement or promotion in any way without the Petitioners' consent.
- e. An order that the Respondents be compelled to compensate the Petitioners for damages and/or loss arising from the publication of the Petitioners' photographs without their express authority and the exploitation of the Petitioners by the Respondents for financial gain.
- f. Any other relief that the Court deems fit to grant.
- g. The Respondents bear the costs of the petition.

#### **Petitioners' case**

4. The Petitioners disclosed that they are practicing advocates who graduated from the University of Nairobi on 27<sup>th</sup> September 2017 and were subsequently admitted to the bar on separate dates in 2020.
5. They depone that during their graduation from the University of Nairobi, the University took various photographs of the jubilant students including the images herein. Following this, the University and other persons used these images for university education news whilst acknowledging the source.
6. It is asserted on the contrary that the Respondents illegally obtained these photographs and proceeded to publicize them on their several social media platforms without the Petitioners' consent or compensation for the use. Particularly these images were shared on the Respondents' Facebook, Instagram, youtube and website trading under Shinning Institute of Professional Studies.
7. The Petitioners aver that the aim of utilizing these images was to advertise the Respondents' commercial activities in the form of courses offered at their institution by using the images as if they were their own. The Respondents in addition published their images on their brochures, banners and billboards. The Petitioners assert that their images were used to promote visibility and traffic to the Respondents' platforms.
8. The Petitioners averred that the unauthorized use of their images by the Respondents is in violation of their constitutional and intellectual property rights and a commercial exploitation by the Respondents' institution.
9. It is alleged that their demand letter dated 12<sup>th</sup> July 2023 to the Respondents was blatantly ignored and the Respondents continued to violate their constitutional rights.
10. The Petitioners contend that the Respondents' actions is a gross intrusion of their private social life which has caused them psychological trauma. Further, that persons known to them have assumed that they are in partnership with the Respondents as their brand ambassadors thus putting them to shame.



11. The Petitioners aver that later on in a letter dated 15<sup>th</sup> July 2023 the Respondents admitted to the using their images and purported to apologize for the unauthorized use. They additionally stated that they would remove those images from their platforms.
12. The Petitioners state that despite the Respondents' assertions, nothing has been done so far. This is with regard to taking down of these images and entering a settlement for the use of their images. Equally it is alleged that obtaining of their images online and claiming that anyone can use them amounts to ignorance of the law, which is not a defense in law. Additionally, that it is indicative of a lack of due diligence on the Respondents part.

### **Respondents' Case**

13. The Respondents in reply filed their response on 6<sup>th</sup> November 2023.
14. They depone that the impugned images were obtained from stock photos which are available online. It is stated that these photos were not licensed or accredited to the Petitioners. It is also alleged that these images are used widely by various websites and online users with reference to academic matters.
15. They take the view that if the Petitioners did not want their images to be used, they should not have shared the same online to prevent unauthorized use. Nevertheless, the Respondents deny any knowledge that the persons in these images are indeed the Petitioners as alleged.
16. Be that as it may, the Respondents assert that they had no intention of misappropriating the image of the persons that appear on the photographs. As a matter of fact, they aver that when the Petitioners engaged them in the demand letter dated 12<sup>th</sup> July 2023 purporting to be the persons in the impugned images, they offered an unconditional apology to them. Moreover, informed that they would pull down the images from their platforms.
17. The Respondents deny using the Petitioners images to drive traffic and increase the sale of their academic products. They inform that if this were true then they would not be a financially struggling in a one room facility. The Respondents further decry the Petitioners' failure to inform them in advance of these images and their disapproval of their use which could have been fair.
18. To this end, the Respondents urged the Court to declare their apology as sufficient and that they had not violated the Petitioners constitutional rights as argued. Correspondingly, that they did not benefit financially from the use of these images. Equally, that any further financial burden will collapse their institution.

### **Petitioners' Submission**

19. On 10<sup>th</sup> June 2024, Njaga and Company Advocates, filed submissions in support of the Petitioners' case. The issues set out for consideration were: whether the Respondents violated the Petitioners' constitutional rights to human dignity, privacy, and intellectual property and whether the Petitioners are entitled to the reliefs sought.
20. Counsel in the first issue answered in the affirmative. This is because the unauthorized use of the Petitioner's image by the Respondents violated their right to dignity under Article 28 and privacy under Article 31 of *the Constitution*.
21. Reliance was placed in T O. S v Maseno University & 3 others [2016] eKLR where it was held that:  

“From the above reasoning and expositions of the law, it is clear that publication or use of the images of an individual without his consent violates that person's right to privacy. I say



so because a person's life is a restricted realm in which only that individual has the power of determining whether another may enter, and if so, when and for how long and under what conditions.”

22. Comparable dependence was placed in *Jessica Clarise Wanjiru v Davinci Aesthetics & Reconstruction Centre & 2 others* [2017] eKLR, *Ann Njoki Kumena v KTDA Agency Ltd* [2019] eKLR and *Wanjiru v Machakos University* [2022] KEHC 10599.
23. Counsel as well argued that the Respondents’ claim of lack of knowledge that the images were the Petitioners and the Respondents’ claim of financial hardship was unmerited and lacks a legal basis in law. Likewise, that such arguments do not have mitigating effects on liability in light of violation of constitutional rights.
24. To that end, Counsel was certain that the Petitioners are entitled to the relief sought. Reliance was placed in *Ann Njoki Kumena (supra)* where the Court awarded the Petitioner Ksh.1,500,000 as damages for violation of her right to privacy and dignity. Similarly, the case of the *Wanjiru case (supra)* where the Court awarded Kshs. 700,000 for the unauthorized use of the Petitioner’s photograph without consent. On this premise Counsel urged the Court to award Kshs.3,000,000 for the unauthorized use of the Petitioners’ image.

### **Respondent’s Submissions**

25. The Respondents filed submissions dated 28<sup>th</sup> June 2023 wherein they reiterated the contents of their response to the Petition.

### **Analysis and Determination**

26. It is my considered view that the issues that arise for determination in this matter are:
  - i. Whether the Petitioners’ rights under Articles 28, 31 (c) and 40 of *the Constitution* were violated by the Respondents; and
  - ii. Whether the Petitioners are entitled to the relief sought.

### **Whether the Petitioners’ rights under Articles 28, 31 (c) and 40 of *the Constitution* were violated by the Respondents;**

27. The law that governs personal data in Kenya is the Data Protection Act which gives effect to Article 31(c) and (d) of *the Constitution*. Section 2 of the Act defines personal data as:

any information relating to an identified or identifiable natural person.

28. In dealing with personal data the Act under Section 25 provides the following principles:

Principles of data protection

Every data controller or data processor shall ensure that personal data is—

- i. processed in accordance with the right to privacy of the data subject;
- ii. processed lawfully, fairly and in a transparent manner in relation to any data subject;
- iii. collected for explicit, specified and legitimate purposes and not further processed in a manner incompatible with those purposes;



- iv. adequate, relevant, limited to what is necessary in relation to the purposes for which it is processed;
- v. collected only where a valid explanation is provided whenever information relating to family or private affairs is required;
- vi. accurate and, where necessary, kept up to date, with every reasonable step being taken to ensure that any inaccurate personal data is erased or rectified without delay;
- vii. kept in a form which identifies the data subjects for no longer than is necessary for the purposes which it was collected; and
- viii. not transferred outside Kenya, unless there is proof of adequate data protection safeguards or consent from the data subject.

29. Correspondingly the Act outlines the rights of a person referred to as a data subject as follows under Section 26:

- i. A data subject has a right—
- ii. to be informed of the use to which their personal data is to be put;
- iii. to access their personal data in custody of data controller or data processor;
- iv. to object to the processing of all or part of their personal data;
- v. to correction of false or misleading data; and
- vi. to deletion of false or misleading data about them.

30. In this regard, the Court in the Wanjiru case (supra) discussing whether there was violation of personal data in this suit opined as follows:

“

“ 38. Section 2 of the Data Protection Act defines data as; data” means information which—

is processed by means of equipment operating automatically in response to instructions given for that purpose;

is recorded with intention that it should be processed by means of such equipment;

is recorded as part of a relevant filing system;

where it does not fall under paragraphs (a), (b) or (c), forms part of an accessible record; or

is recorded information which is held by a public entity and does not fall within any of paragraphs (a) to (d)

39. The same section defines an identifiable Natural person as a person who can be identified directly or indirectly, by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic,



cultural or social or social identity. The identifiable natural person in this case is the Petitioner.

...

43. The factors to consider when determining whether the right to privacy has been violated are whether the information was obtained in an intrusive manner; whether it was about intimate aspects of the applicants' personal life; whether it involved data provided by the applicant for one purpose which was then used for another; whether it was disseminated to the press or the general public or persons from whom the applicant could reasonably expect such private information would be withheld. - *Mistry v Interim National Medical and Dental Council of South Africa* (1998) (4) SA 1127 (CC),
44. In *T.O.S v Maseno University & 3 Others* [2016] eKLR to the extent that publication or use of the images of an individual without her consent violates the Petitioner right to privacy. The extent to which the right to privacy may be invaded or exposed is upon a person. The Petitioner contends that she is a private person and to that extent I find that her right to privacy has been infringed by the Respondent who ought to have known and sought consent. The practice the Respondent claims to have pictures taken of its graduates and using it without consent is unlawful. The Petitioner as a data subject has rights that must be protected. She has a right to know what her image is to be used for. This is clearly spelt out under Section 29 of the Data Protection Act, that;

A data controller or data processor shall, before collecting personal data, in so far as practicable, inform the data subject of—

- i. the rights of data subject specified under Section 26;
- ii. the fact that personal data is being collected;
- iii. the purpose for which the personal data is being collected;
- iv. the third parties whose personal data has been or will be transferred to, including details of safeguards adopted;
- v. the contacts of the data controller or data processor and on whether any other entity may receive the collected personal data;
- vi. a description of the technical and organizational security measures taken to ensure the integrity and confidentiality of the data;
- vii. the data being collected pursuant to any law and whether such collection is voluntary or mandatory; and
- viii. the consequences if any, where the data subject fails to provide all or any part of the requested data.”



31. From the foregoing, the central focus is this petition is the use of one's image without prior authorization or consent. A person's image rights were aptly articulated in the case of Jessicar Clarise Wanjiru (Supra) as follows:

“17. In simple terms, image rights refer to a person's right to commercialize aspects of his personality such as physical appearance, pictures or caricatures, signature, personal logos and slogans, and also the right to prevent other people from commercially making use of them. In a claim of this nature, the plaintiff raises wrongful infringement of three inter-related, but distinct, personality interests, namely identity, privacy and dignity.

18. Identity is defined as a person's uniqueness which individualizes such person, and is manifested in various facets of personality (or indicia) which include, among other things, one's physical appearance or image and is considered a separate right of personality.”

32. Likewise, the England and Wales High Court in *Proactive Sports Management Ltd v Wayne Rooney & 3 Others* [2010] EWHC 1807 (QB) at paragraph 187 defined image rights in a wider scope as follows:

“...The definition of Image Rights is comprehensive and it may be helpful to set it out in full. It is in these terms:

“Image rights means the right for any commercial or promotional purpose to use the Player's name, nickname, slogan and signatures developed from time to time, image, likeness, voice, logos, get-ups, initials, team or squad number(as may be allocated to the player from time to time), reputation, video or film portrayal, biographical information, graphical representation, electronic, animated or computer-generated representation and /or any other right or quasi-right anywhere in the world of the player in relation to his name, reputation, image, promotional services, and/or his performances together with the right to apply for registration of any such rights.”

33. It is as a consequence now well appreciated that the nature of this right should indeed be protected as held in the South African case of *Wells v Atoll Media (Pty) Ltd and Another* (11961/2006) [2009] ZAWCHC 173; [2010] 4 All SA 548 (WCC) where the Court opined that:

“(48) In *Grutter v Lombard and another* 2007 (4) SA 89 (SCA), at para 8 Nugent JA, in a most carefully researched judgment, noted that it was generally accepted academic opinion that features of a personal identity are capable and indeed deserving of legal protection.

(49) In the context of this case, therefore, the appropriation of a person's image or likeness for the commercial benefit or advantage of another may well call for legal intervention in order to protect the individual concerned. That may not apply to the kinds of photographs or television images of crowd scenes which contain images of individuals therein. However, when the photograph is employed, as in this case, for the benefit of a magazine sold to make profit, it constitutes an unjustifiable invasion of the personal rights of the



individual, including the person's dignity and privacy. In this dispute, no care was exercised in respecting these core rights.”

34. *The Constitution* under Articles 28 and 31 provide for protection of these rights as follows:

Every person has inherent dignity and the right to have that dignity respected and protected.

Every person has the right to privacy which includes the right not to ....

have information relating to their family or private affairs unnecessarily required or revealed.

35. The Court in the Coalition for Reform and Democracy (CORD) & 2 Others vs. Republic & 10 Others (2015) eKLR emphasized the importance of the right to privacy as follows:

“285 The right to privacy is guaranteed under Article 31 of *the Constitution*...

286. The right to privacy has also been expressly acknowledged in international and regional covenants on fundamental rights and freedoms. It is provided for under Article 12 of the UDHR, Article 17 of the ICCPR, Article 8 of the European Convention on Human Rights (ECHR) and Article 14 of the African Charter on Human and Peoples’ Rights.

287. B. Rossler in his book, *The Value of Privacy* (Polity, 2005) p. 72, explains the right to privacy as follows:

“The concept of right to privacy demarcates for the individual realms or dimensions that he needs in order to be able to enjoy individual freedom exacted and legally safeguarded in modern societies. Such realms or dimensions of privacy substantialize the liberties that are secured because the mere securing of freedom does not in itself necessarily entail that the conditions are secured for us to be able to enjoy these liberties as we really want to”.

288. As to whether there is need to protect privacy, he goes on to write that:

“Protecting privacy is necessary if an individual is to lead an autonomous, independent life, enjoy mental happiness, develop a variety of diverse interpersonal relationships, formulate unique ideas, opinions, beliefs and ways of living and participate in a democratic, pluralistic society. The importance of privacy to the individual and society certainly justifies the conclusion that it is a fundamental social value, and should be vigorously protected in law. Each intrusion upon private life is demeaning not only to the dignity and spirit of the individual, but also to the integrity of the society of which the individual is part”.



36. With reference to the right to dignity, the court in *Mutuku Ndambuki Matingi v Rafiki Microfinance Bank Limited* [2021] eKLR held that:

“ 50. As regards the right to dignity, in *Ahmed Issack Hassan vs. Auditor General* [2015] the Court held that:

“...the right to human dignity is the foundation of all other right and together with the right to life, forms the basis for the enjoyment of all other rights...put differently thereof, if a person enjoys the other rights in the Bill of rights, the right to human dignity will automatically be promoted and protected and it will be violated if the other rights are violated”. See *Francis Coralie Mullin v Administrator, Union Territory of Delhi* (1981) SCR (2) 516.”

37. Correspondingly with regards to the right to privacy, the Court in *Jessicar Clarise Wanjiru* (Supra) underscored as follows:

“ 23. ‘Privacy’, ‘dignity’, ‘identity’ and ‘reputation’ are facets of personality. All of us have a right to privacy and this right, together with the broader, inherent right to dignity, contributes to our humanity.

24. It is the personality rights of dignity and privacy that underscore individuality and set both the limits of humanity and of human interaction. But, the reasons for protecting privacy are wider than just protecting the dignity of the individual.”

38. Similarly, the European Court of Human Rights in *Von Hannover v. Germany* (no. 2) (nos. 40660/08 and 60641/08) opined as follows:

“(i) Concerning private life

95. The Court reiterates that the concept of private life extends to aspects relating to personal identity, such as a person’s name, photo, or physical and moral integrity; the guarantee afforded by Article 8 of the Convention is primarily intended to ensure the development, without outside interference, of the personality of each individual in his relations with other human beings. There is thus a zone of interaction of a person with others, even in a public context, which may fall within the scope of private life. Publication of a photo may thus intrude upon a person’s private life even where that person is a public figure (see *Schüssel v. Austria* (dec.), no. 42409/98, 21 February 2002.

96. Regarding photos, the Court has stated that a person’s image constitutes one of the chief attributes of his or her personality, as it reveals the person’s unique characteristics and distinguishes the person from his or her peers. The right to the protection of one’s image is thus one of the essential components of personal development. It mainly presupposes the individual’s right to control the use of that image, including the right to refuse



publication thereof (see *Reklos and Davourlis v. Greece*, cited above, § 40).”

39. On proof of violation of one’s image rights, the Court in *N W R & another v Green Sports Africa Ltd & 4 others* (2017) eKLR highlighted the elements as follows:

“The key elements of a Claim for unlawful use of Name or image which a petitioner ought to establish to hold someone liable for unlawful use of name or likeness can be summarized into three, which I find have been proved in the present case. These are: -

- i. Use of a Protected Attribute: The plaintiff must show that the defendant used an aspect of his or her identity that is protected by the law. This ordinarily means a plaintiff’s name or likeness, but the law protects certain other personal attributes as well...

In my view, the images used belong to the minors and their images are protected by the law.

- ii. For an Exploitative Purpose: The plaintiff must show that the defendant used his name, likeness, or other personal attributes for commercial or other exploitative purposes. Use of someone’s name or likeness for news reporting and other expressive purposes is not exploitative, so long as there is a reasonable relationship between the use of the plaintiff’s identity and a matter of legitimate public interest.

In my view, the first Respondent has not demonstrated that the use of the images was purely for public interest and not for commercial interest or benefit on their behalf. The second Respondent is on record stating that it sponsors such activities. Whether or not the first Respondent benefits from such sponsorship is an issue that was not adequately addressed nor can it be ruled out.

- iii. No Consent: The plaintiff must establish that he or she did not give permission for the offending use...”

40. In the same way, the High Court in Uganda in *Asege Winnie v Opportunity Bank (U) Ltd & Another* HCCS No. 756 of 2013 observed as follows:

“Under the common law jurisprudence, a personality right is the right of an individual to control the commercial use of his or her name, image, likeness, or other unequivocal aspects of one’s identity. This right to personality is classified into two categories;

The right of publicity or to keep one’s image and likeness from being commercially exploited without permission or contractual compensation and the right to privacy, and;

The right to be left alone and not have one’s personality represented publicly without permission.

Basically, under common law jurisprudence publicity rights fall in the realm of the tort of “passing off” which idea was developed on the notion of natural rights that every individual should have a right to control how, if at all, his or her “persona” is commercialized by third parties who intend to help propel their sales or visibility of own product or service.



This means that where there is a publicity rights contention then the issue for the court to deal with and decide upon is whether a significant section of the public would be misled into believing (correctly or incorrectly) that a commercial arrangement had been concluded between a plaintiff and a defendant under which a plaintiff agreed to an advert involving the image or reputation of a famous person. The actionable cause, therefore, under misrepresentation would then bring the suggestion that a plaintiff did in fact endorse or license a defendant's product or somehow has control over those products. Arising from this seemingly clear common law jurisprudence, it is my humble view that for one to succeed in an action for infringement of image rights such a person has to prove the following basic elements:

- i. The plaintiff must be identifiable.
- ii. The defendant's action was intentional.
- iii. The defendant must have acted for the purpose of commercial gain.

The Canadian courts have examined this position and in the case of *Krouse v Chrysler Canada Ltd* (1973) 13 CPR (2d) 28 it was noted that where a person has marketable value in their likeness and it has been used in such a manner that suggests an endorsement of a product then there is ground for an action in appropriation of such a person's personality with the case of *Athans v Canadian Adventure Camps* (1977) CAN H1 1255, having the view that personality right included both image and name."

41. In the instant case, the Petitioners have through the evidence on publication of their image was only met with a meek and self-contradictory refutation from the Respondents. I am satisfied that on a balance of probability, the Petitioners have established that the Respondents published the Petitioners images to promote their business without their prior consent.
42. The act of randomly picking the images of the Petitioners online and using them to advertise their work without the Petitioners prior knowledge or consent is an unjustifiable intrusion into their dignity and privacy and a violation of their inherent dignity under Article 28 and privacy under Article 31 (c) of *the Constitution*. This leads me to the next issue on appropriate relief to grant.
43. The Court of Appeal addressed the manner of computing damages constitutional matters in *Gitobu Imanyara & 2 others vs Attorney General* [2016] eKLR by stating as follows:

"...the South African Case of *Dendy v University of Witwatersrand, Johannesburg & Others* - [2006] 1 LRC 291 (where) the Constitutional Court of South Africa held that:

"...The primary purpose of a constitutional remedy was to vindicate guaranteed rights and prevent or deter future infringements. In this context an award of damages was a secondary remedy to be made in only the most appropriate cases.

"...The primary object of constitutional relief was not compensatory but to vindicate the fundamental rights infringement and to deter their future infringement. The test was not what would alleviate the hurt which plaintiff contended for but what was appropriate relief required to protect the rights that had been infringed. Public policy considerations also played a significant role. It was not only the plaintiff's interest, but the interests of society as a whole that ought as far as possible to be served when considering an appropriate remedy."



Similarly, in the case of Peter Mauki Kaijenja & 9 others vs Chief of the Defence Forces & another (2019) eKLR said:

“96. Award of damages entails exercise of judicial discretion, which should be exercised judicially. The discretion must be exercised upon reason and principle and not upon caprice or personal opinion... Arriving at the award of damages is not an exact science. No monetary sum can really erase the scarring of the soul and the deprivation of dignity that some of these violations of rights entailed. When exercising this constitutional jurisdiction, the court is concerned to uphold, or vindicate, the constitutional right, which has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases more will be required than words. If the person wronged has suffered damage, the court may award him compensation. The comparable common law measure of damages will often be a useful guide in assessing the amount of this compensation. However, this measure is no more than a guide, because the award of compensation is discretionary and, moreover, the violation of the constitutional right will not always be coterminous with the cause of action in law.”

44. In *GSN v NAIROBI HOSPITAL & 2 OTHERS* (2020) eKLR where Kshs. 2,000,0000 was awarded for the breach of right to privacy while in High Court at Meru, Civil Appeal No. E083 of 2021 *Dhabiti Sacco Limited v Sharon Nyaga* Ksh.1,500,000/- was awarded for publication of Petitioner’s picture in the annual calendar.
45. I take into account the fact that the Respondents apologized for the infraction in their letter of 15/7/2023 which fact the Petitioners equally acknowledge. They stated that they also promptly discontinued the use of the images immediately they received the Petitioners complaint.
46. In view of this fact, and guided by the authorities referenced above, I find that Kshs 280,000 payable to each Petitioner (Totaling to Kshs 1,120,000/- for all the Petitioners) is fair and reasonable compensation for the violation of her right to privacy and dignity through the unauthorized use of their images for promoting the Respondents commercial activity.
47. Further, an order of permanent injunction is granted directing the Respondent to pull down and cease using the images of the Petitioners for commercial purposes if they have not done so yet.
48. I award costs of this Petition.

**DATED, SIGNED AND DELIVERED ELECTRONICALLY VIA EMAIL IN NAIROBI THIS 31<sup>ST</sup> DAY OF DECEMBER, 2024.**

.....

**L N MUGAMBI**

**JUDGE**

