



Watembo v Passionist Missionaries of Africa - Kenya (Constitutional Petition E005 of 2022) [2023] KEHC 26985 (KLR) (20 December 2023) (Judgment)

Neutral citation: [2023] KEHC 26985 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
CONSTITUTIONAL PETITION E005 OF 2022**

RPV WENDOH, J

DECEMBER 20, 2023

IN THE MATTER OF ARTICLE 22(1) OF THE CONSTITUTION

AND

**IN THE MATTER OF ALLEGED CONTRAVENTION OF RIGHTS
OR FUNDAMENTAL FREEDOMS UNDER ARTICLES 26, 27,
28, 36, 43 AND 47 OF THE CONSTITUTION OF KENYA, 2010**

**IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS
AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013**

BETWEEN

EDWIN ORWA WATEMBO PETITIONER

AND

PASSIONIST MISSIONARIES OF AFRICA - KENYA RESPONDENT

JUDGMENT

1. The petition dated 29/9/2022 alleges contravention of Edwin Orwa Watembo (petitioner's) fundamental rights and freedom under Articles 26, 27, 28, 36, 43 and 47 of *the Constitution*.
2. The facts petitioner has pleaded is that he joined the Passionists Missionaries (the respondent) in the year 1998 to undergo training to become a priest and he was ordained on 4/10/2008; that under the respondent, he served as a priest in various places including Macalder, Tonga, Molo Community, Kadem, Sotik, Muhuru Bay, Maryhill Girls and finally Golgotha Centre for Evangelism.
3. The petitioner contended that he began to face work challenges whilst working in Maryhill Girls and he requested to be transferred to a parish but he was transferred to Golgotha Centre for Evangelism; that he was sent to open a new Parish at Muhuru Bay where he reported on 6/2/2019; that he faced numerous challenges in his new work station and informed the Bishop of the challenges culminating



in his transfer back to Golgotha Centre for Evangelism on the basis that he was unable to unite the Muhuru Bay community.

4. The petitioner stated that at the Golgotha Centre for Evangelism, he also faced challenges which mainly centred around financial impropriety which his colleagues were involved in. The petitioner was dejected with the frustrations which he was going through and he handed over his letter of resignation dated 17/10/2022 to the respondent of his intention to leave the priesthood; that the respondent resorted to allegedly tormenting and retaining him at the Emmanuel Treatment & Resource Centre for 61 days for being mentally unstable but later discharged him; that on 6/11/2021, the petitioner through his Counsel, wrote to the respondent demanding for his personal documents which had been confiscated by the respondent as follows:-
 - i. Original Degree Certificate in Philosophy.
 - ii. Original Certificate of Authorization to Conduct Marriages.
 - iii. Original KCSE Certificate.
 - iv. Original Passport.
 - v. Birth Certificate.
 - vi. Car logbook for Motor Vehicle KAX 166K.
 - vii. Original Driving Licence.
 - viii. Bundle of documents comprising original sale agreement, search, affidavit and advert notice in the Standard and Nation newspapers.
 - ix. Electronics - Laptop, Cables, Charger, Mobile phone accessories, assorted clothing material.
5. The petitioner contended that the actions of the respondent have hindered him from seeking job opportunities to enable him to sustain his livelihood; that the actions of the respondent have contravened his right to livelihood and freedom of association through the alleged confinement in the Emmanuel Treatment & Resource Centre.
6. The petitioner prayed as follows:-
 - a. A declaration that the petitioner's fundamental rights and freedoms as enshrined under Articles 26, 27,28,36,43 and 47 of *the Constitution* of Kenya 2010, have been contravened and infringed upon by the respondent;
 - b. A declaration that the petitioner is entitled to the payment of damages and compensation to be assessed by the court for violation and contravention of its fundamental human rights by the respondent as provided for under Articles 26, 27,28,36,43 and 47 of *the Constitution*;
 - c. A compulsory order compelling the respondent to unconditionally release to the petitioner the:-
 - a. Original Degree Certificate in Philosophy.
 - b. Original Certificate of Authorization to Conduct Marriages.
 - c. Original KCSE Certificate.
 - d. Original Passport.
 - e. Birth Certificate.



- f. Car logbook for Motor Vehicle KAX 166K.
 - g. Original Driving Licence.
 - h. Bundle of documents comprising original sale agreement, search, affidavit and advert notice in the Standard and Nation newspapers.
 - i. Electronics - Laptop, Cables, Charger, Mobile phone accessories, assorted clothing material.
- d. Costs of the petition.
 - e. Any other relied that this court may deem just to grant.
7. The petition was opposed. The respondent filed grounds of opposition dated 25/11/2022 on the following grounds:-
- a. That the petition invoked the court's jurisdiction before exhausting the internal remedies. This court should allow for exhaustion of internal mechanism before assuming jurisdiction in respect of such matters;
 - b. That the petitioner's claim is not justiciable. A member of the public like the petitioner who voluntarily joins and/or subscribes to a society is bound by its rules and regulations;
 - c. That the respondent is a religious order of the Catholic Church which apart from having a constitution of its own to deal with the membership of the society has Canon Laws that lay down an internal dispute resolution mechanism;
 - d. That there is no equitable basis for allowing the prayers sought in the petition and a court of equity ought not to allow it.
8. Further, the respondent through Raphael Mangiti filed a replying affidavit to the petition sworn and dated 25/11/2022. The respondent admitted that the petitioner was a Catholic Priest and a voluntary member of the respondent; that the petitioner was ordained as a priest on 4/10/2008; that the Catholic institution is governed by *the constitution* and Code of Canon Law and should there be a dispute, *the constitution* provides for a dispute resolution mechanism and wider reference to the Code of Canon Law; that the petitioner has not made formal complaints in any of the existing mechanisms within the respondent's structure or the wider Catholic Church hierarchy.
9. The respondent contended that the allegations that the petitioner faced challenges in furthering his studies is not true as he underwent 10 years of academic and spiritual training before being ordained as a priest; that the respondent is bound to treat its members fairly and a transfer is a normal occurrence; that the petitioner was transferred to head the Golgotha Centre in Karungu within Migori County which is one of the biggest agricultural projects run and operated by the respondent; that the respondent's transfer to the Muhuru Bay Parish was an indication of the respondent's trust in the management leadership of the petitioner which comes with opening a new parish; that the transfer from the Muhuru Bay was as a result of the petitioner being at loggerheads with the faithful; that with the petitioner's consent, he was transferred to Golgotha Centre for Evangelization only for the petitioner to desert without explanation.
10. The respondent, out of concern reported the disappearance of the petitioner at Sori Police Station but he was later found at a home within Karungu where he was living with a man and his wife; that through talks, the petitioner agreed to go back to Golgotha Centre for Evangelization; that once in Nairobi, the petitioner became violent and the respondent sought intervention from the Hardy Police Station; that



- the petitioner was placed and/or admitted at Emmanuel Treatment & Resource Centre which is not a detention centre; that the petitioner was eventually discharged but he handed over his resignation letter; that the process of vacating a solemn vow is procedural as outlined in Canon law 290 Nos. 1 -3 but not as purported by the respondent.
11. The respondent further contended that on 9/11/2021, the petitioner travelled to Golgotha Centre for Evangelization and packed his belongings; that through his various advocates, the petitioner wrote to the respondents letters dated 16/11/2021 requesting for his personal belongings and a letter dated 17/5/2022 which were both responded to by letters dated 14/12/2021 and 4/7/2022 respectively.
 12. The respondent's position is that it does not hold any of the personal belongings of the petitioner; that the petitioner did not hold a degree in philosophy but a diploma and this demand is strange; that the petitioner pursued a Masters in Religious Studies and he can pursue the certificate from the Catholic University of Eastern Africa; that on the certificate of authorization of marriages, it is administered from the Catholic Church to its priests and since the petitioner has severed the relationship with the respondent, the respondent will revoke the same; that the original passport and birth certificate are with the petitioner; that the log book of motor vehicle registration number KAX 166K is in the respondent's name and the same is not in contest and the electronic and personal items referred to are with the petitioner.
 13. The respondent reiterated that the issues being raised in this petition are capable of being addressed internally and the petition lacks merit and should be dismissed with costs.
 14. The respondent further filed a Notice of Preliminary Objection dated 9/5/2023. The grounds are condensed into three broad grounds as follows:-
 - i. That the petition does not meet the threshold of a Constitutional Petition set in Anarita Karimu Njeru vs Attorney General (1979) KLR 541 and Court of Appeal in the case of Mumo Matemu vs Trusted Society of Human Rights Alliance & 5 Others (2013) eKLR;
 - ii. That the entire suit contravenes provisions of canon law 1288, 1427 of *the Constitution* of the Passionist Missionaries of Africa, on internal dispute resolution hence this court lacks jurisdiction to hear and determine this matter on its merit;
 - iii. That this suit contravenes the well settled doctrines of constitutional avoidance and exhaustion of provided internal dispute resolution mechanisms within the Congregation and the Catholic Church.
 15. The petition proceeded by way of written submissions. On 6/12/2022, this court directed that the petition be heard and gave directions on filing of submissions. It is only the petitioner who complied by filing submissions on the main petition. The respondent did not file submissions on the petition but on the preliminary objection alone. Based on the directions issued on 6/12/2022, this court will exercise its discretion make a determination on both the preliminary objection and the main petition.
 16. In support of his petition, the petitioner filed written submissions dated 13/1/2023 on 16/1/2023. The petitioner submitted that the respondent infringed his rights to life and human dignity by its acts of confiscating and/or withholding his certificates; that the petitioner was unable to secure any form of employment opportunities thus not able to sustain his livelihood; that Article 28 of *the Constitution* provides that every person has inherent dignity and right to have that dignity respected and protected. The petitioner referred to the case of J.W.I vs Standard Group Limited & Another (2013) eKLR where the court stated that human dignity need not be pleaded as a right for it to be enforceable because it is inherent and together with the right to life, they form the basis of all other rights to be enjoyed by a human being.



17. The petitioner further submitted that the respondent violated his rights under Articles 27 and 43 by infringing on his right to non-discrimination and economic and social rights; that the actions of the respondent of withholding the personal belongings of the petitioner with his academic certificates made him unable to seek for any job opportunities thus was unable to sustain his livelihood. The petitioner urged this court to be persuaded by the findings in *Joseph Letuya & Others vs The Attorney General & Others* ELC No. 821 of 2012 (O.S).
18. The petitioner submitted that Article 36 of *the Constitution* allows every person the right to freedom of association; that the respondent after receiving his resignation letter tormented him after his exit to the point of having him arrested and force him to return to service; that he was further detained for 61 days at Emmanuel Treatment & Resource Centre as being mentally unstable where he was later discharged for lack of the same. The petitioner contended that this was a breach, threat and / or infringement on his right on association which by extension encapsulates his right to dissociate with the respondent. The petitioner urged this court to find that the respondent properly dissociated himself with the respondent.
19. On the entitlement for damages, the respondent submitted that he is entitled to damages because his fundamental rights to livelihood, to be treated with human dignity, not to be subjected to any form of discrimination, freedom to dissociate and his economic and social rights were infringed by the respondent. Reliance was placed in the case of *Charles Kaindo Kuria & 20 Others vs Technical University of Kenya* (2019) eKLR where the court delved into the principles that guide awarding damages for constitutional violations under *the Constitution*; that in that case, the Learned Judge awarded damages to students for the delayed graduation by the university and certificates not issued. In the case of *Douglas Moturi Nyairo vs University of Nairobi* (2018) eKLR the court awarded damages for certificates that had not been released despite numerous follow ups.
20. On whether this court can issue an order compelling the respondent to release the documents, it was submitted that this court is enjoined to remedy an individual whose rights have been infringed as provided for under Article 23 of *the Constitution*.
21. The petitioner urged this court to find that he has demonstrated that his rights and freedoms have been infringed by the actions of the respondent and order that the respondent do pay costs for this petition.
22. In opposing the preliminary objection, the petitioner filed written submissions dated 26/5/2023 on 29/5/2023. It was submitted that the petition is properly structured as a constitutional petition. The petitioner submitted that he pleaded with specificity how his fundamental rights and freedoms were infringed by the respondent; that the rights which the petitioner claimed to have been infringed include: right to life and human dignity, right to non-discrimination and economic and social rights, freedom of association as pleaded in paragraphs 28 - 46, 47 & 48 of the petition as read together with paragraphs 1 - 21 in the affidavit in support of the petition.
23. The petitioner further submitted that courts are a social structure which decide how far to implement, uphold and respect the constitutional rights and fundamental freedoms; that this petition is brought by dint of Article 165 (3) (b) of *the Constitution* and this court has the jurisdiction to determine the question of whether the infringement of a fundamental freedom in the Bill of rights has been denied, violated, infringed or threatened. Further, Article 23 as read together with Article 258 this court has the powers to grant the relief sought by the petitioner.
24. The petitioner submitted that it has been held that there are exemptions to the doctrine of exhaustion; that courts can intervene where there is a clear abuse of discretion, where there is arbitrariness, malice, capriciousness and disrespect of rules of natural justice as it was held in the case of *Fleur Investments*



- Limited vs Commissioner of Domestic Taxes & Another (2018) eKLR. It was submitted that Article 50 provides for fair hearing; that the petitioner has indicated how vengeful the respondent through its officials were and he was forcefully detained in a mental institution. The petitioner relied on the case of William Odhiambo Ramogi & 3 Others vs AG & 4 Others (2020) eKLR where the court held that while there was exhaustion of remedies under the *Competition Act*, the issues raised involved questions of breach of fundamental rights which warranted an exception to the doctrine of exhaustion.
25. The petitioner urged that the petition before this court is a constitutional petition that seeks enforcement of fundamental human rights and/or freedoms of the petitioner and pursuant to Article 165 (3) as read with Articles 22 and 23 of *the constitution*, this court has jurisdiction. t
 26. The respondent filed in court its written submissions dated 23/5/2023 on 24/5/2023. In support of its preliminary objection, the respondent submitted that it challenged this court's jurisdiction on the basis that the petitioner has not exhausted all the available alternative dispute resolution mechanisms available to him before invoking this court's inherent jurisdiction and it also challenged the fact that the petition does not meet the threshold of Constitutional petitions.
 27. The respondent submitted that a party seeking to institute a constitutional petition alleging breach of that person's constitutional right or infringement must plead the infringement with precision and clearly outline the basis of the said infringement; that it is a factual allegation and not speculative; that the petitioner has not been able to demonstrate the respondent's violation and/or the contravention of the alleged constitutional rights. The respondent relied on the case of Anarita Karimi Njeru vs Republic (1979) eKLR, Mumo Matemu vs Trusted Society of Human Rights Alliance & 5 Others (2013) eKLR and Kiambu County Tenants Welfare Association vs Attorney General & Another (2017) eKLR where the courts restated the manner in which the pleadings in a constitutional petition should be framed. The petitioner refers to Articles 26,27,28,36,43 and 47 of *the Constitution* and merely reiterates the provisions of the said articles but does not state to what extent such articles have been infringed.
 28. Further paragraphs 47 and 48 of the petition, are suggestions to court that the petitioner's rights to livelihood and freedom of association have been contravened but the petitioner does not provide the particulars on the manner the respondent violated and/or contravened those Articles of *the Constitution*. The respondent submitted that it is not clear how the rights and whose rights have been violated. The petitioner has not produced evidence that his constitutional rights or statutory provisions have been violated.
 29. On the jurisdiction of this court, it was submitted that this court lacks jurisdiction to hear this matter in view of the doctrine of exhaustion of internal dispute resolution mechanism which should have been invoked first. The respondent relied on the case of Martin Kabubii Mwangi vs County Government of Laikipia (2019) eKLR, the Court of Appeal decision in Republic vs National Environment Management Authority ex - parte Sound Equipment Ltd (2011) eKLR and in William Charles Fryda vs Lance P Nadeau & Another where the courts held that where there is an alternative remedy it should be followed first before the court can exercise its jurisdiction.
 30. The respondent urged that it has made out a case on why the purported petition has failed to satisfy the threshold of a constitutional petition, the petitioner has not exhausted the alternative dispute resolution available to him and the petition should be dismissed with costs.
 31. I have carefully considered the petition, its supporting affidavit, the respective annexures, the response to the petition, the notice of preliminary objection and the rival submissions. On that account, it is this court's considered opinion that the issues for determination which arise therefrom are:-



- a. Whether this court has jurisdiction to hear and determine this petition.
 - b. Whether the petition meets the threshold of a constitutional petition.
 - c. Whether the petition dated 29/9/2022 is merited.
 - d. Whether the orders and reliefs sought should be granted.
32. The issue of jurisdiction is central and determinative as it is through it, a court is given its lifeline to determine the disputes before it. The Supreme Court of Kenya in Civil Application No. 11 of 2016 Hon. (Lady) Justice Kalpana H. Rawal vs. Judicial Service Commission & Others Ibrahim JSC while referring to the issue of jurisdiction, referred to the Nigerian decision Supreme Court of Nigeria Supreme Case No. 11 of 2012 Ocheja Emmanuel Dangana vs. Hon. Atai Aidoko Aliusman & 4 Others where Walter Samuel Nkanu Onnoghen, JSC expressed himself as follows: -
- ‘...It is settled that jurisdiction is the life blood of any adjudication because a court or tribunal without jurisdiction is like an animal without blood, which means it is dead. A decision by a court or tribunal without requisite jurisdiction is a nullity - dead - and of no legal effect whatsoever, That is why an issue of jurisdiction is crucial and fundamental in adjudication and has to be dealt with first and foremost...’
33. The Supreme Court further elaborated on the court’s source of jurisdiction in the case of Samuel Kamau Macharia & Another vs. Kenya Commercial Bank Limited & others (2012) eKLR as follows: -
- “A court’s jurisdiction flows from either *the Constitution* or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by *the Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsels for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality, it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings...where *the Constitution* exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by *the Constitution*. Where *the Constitution* confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.”
34. Therefore, once the issue of jurisdiction of a court is raised, it should be determined at the first instance and if the court finds that it has no jurisdiction, it should down its tools instead of undertaking proceedings “that will end in barren cui-de-sac. Courts, like nature, must not sit in vain.” As it was held by the Court of Appeal in Kakuta Maimai Hamisi -vs- Peris Pesi Tobiko & 2 Others (2013) eKLR.
35. The jurisdiction of the High Court is set out in Article 165(3) which states;
- (3). Subject to clause (5), the High Court shall have —
 - (a) unlimited original jurisdiction in criminal and civil matters;
 - (b) jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;



- (c) jurisdiction to hear an appeal from a decision of a tribunal appointed under this Constitution to consider the removal of a person from office, other than a tribunal appointed under Article 144;
- (d) jurisdiction to hear any question respecting the interpretation of this Constitution including the determination of—
 - (i) the question whether any law is inconsistent with or in contravention of this Constitution;
 - (ii) the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution;
 - (iii) any matter relating to constitutional powers of State organs in respect of county governments and any matter relating to the constitutional relationship between the levels of government; and
 - (iv) a question relating to conflict of laws under Article 191; and
- (e) any other jurisdiction, original or appellate, conferred on it by legislation.

36. The jurisdiction of this court has been challenged on two grounds: the doctrine of exhaustion of remedies and that the petition is non suited for not being properly drafted.

37. On whether the petition meets the threshold of a constitutional petition, the petitioner claimed his various constitutional rights under *the Constitution* have been violated. The jurisdiction of the High Court is as set out in Article 165(3) (supra). Article 165 (3) (b) provides that this court has the mandate to hear matters where there is alleged breach or violation of an individual’s rights.

38. Article 259 of *the Constitution* invites this court to interpret *the Constitution* in a manner that promotes its purpose, values, principles and advances the rule of law, human rights and fundamental freedoms in the Bill of Rights.

39. The instant petition raises various issues of denial, violation or infringement of the petitioner’s fundamental rights and freedoms guaranteed in the Bill of Rights and as such it is an appropriate one to be handled by this Court. The petitioner’s grievance is that he was arbitrarily held by the respondent and taken to a mental health facility and some of his important personal documents have been confiscated.

40. A party who alleges violation of his rights must plead his or her case with precision as was held in the case of Anarita Karimi Njeru (supra). The court in Timothy Njoya v Attorney General & another (2014) eKLR held:-

“...The petitioner must also plead his case with some degree of precision and set out the manner in which *the Constitution* has been violated, by whom and even state the Article of *the Constitution* that has been violated and the manner in which it has been violated.”

41. In Mumo Matemu (supra) the Court of Appeal had this to say: -

“...The principle in Anarita Karimi Njeru (supra) that established the rule that requires reasonable precision in framing of issues in constitutional petitions is an extension of this principle. What Jessel, M.R said in 1876 in the case of Thorp v Holdsworth (1876) 3 Ch. D. 637 at 639 holds true today:



“The whole object of pleadings is to bring the parties to an issue, and the meaning of the rules...was to prevent the issue being enlarged, which would prevent either party from knowing when the cause came on for trial, what the real point to be discussed and decided was. In fact, the whole meaning of the system is to narrow the parties to define issues, and thereby diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing.”

42. The long-standing principle in constitutional pleadings is that the petitioner must identify the constitutional entitlements threatened, infringed or violated and to demonstrate with some level of precision the manner of violation to enable a respondent to mount a defence.
43. I have read through the petition. The petitioner stated the gravamen of the petition. The petitioner pleaded the legal foundation of the petition outlining the Articles in *the Constitution* allegedly infringed. The petitioner further outlined the facts he relies upon and finally the contravention/ nature of injury caused and how in particular the actions of the respondent allegedly violated his rights. I find that this is precise enough and the petitioner has met the threshold for filing constitutional petitions as held in the case of Anarita Karimi Njeru (supra).
44. The respondent contends that this petition offends the doctrine of exhaustion. The petitioner on the other hand is of the view that where there are breach of rights, the court is seized with proper jurisdiction.
45. The Doctrine of Exhaustion is defined in Blacks Law Dictionary 10th Edition as follows:-

“exhaustion of remedies. The doctrine that, if an administrative remedy is provided by statute, a claimant must seek relief first from the administrative body before judicial relief is available. The Doctrine’s purpose is to maintain comity between the courts and administrative agencies and to ensure that courts will not be burdened by cases in which juridical relief is unnecessary.
46. In William Odhiambo Ramogi (supra) the Court held as follows: -

“The question of exhaustion of administrative remedies arises when a litigant, aggrieved by an agency’s action, seeks redress from a Court of law on an action without pursuing available remedies before the agency itself. The exhaustion doctrine serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is, first of all, diligent in the protection of his own interest within the mechanisms in place for resolution outside the Courts.”
47. The main principle which can be derived from the doctrine of exhaustion is that a party must first seek redress within the organization or agency if one exists, which he seeks redress from before approaching the courts for remedies. A party who seeks to approach the court, will be doing so prematurely and the suit becomes non suited if there is internal dispute resolution mechanism.
48. In its response to this petition, the respondent referred to Canon 290 Nos. 1-3. I have considered the said provision which is annexed as “RM1.” The said provision provides for loss of the clerical state. I have also taken the liberty to thoroughly read through and consider the bundle of document filed in court as “Constitutions: Congregation of the Passion of Jesus Christ.”
49. What the respondent has failed to do is to outline the said procedure for internal dispute mechanism as it is found in their internal regulations, Constitution or Canon Laws or any other relevant document. I



would expect an elaborate procedure which states for instance that in the case of a dispute, the aggrieved party is to write a letter to a certain office and a special sitting is done to address the issues and the appeal process upto a certain hierarchy.

50. To merely assert that there is a particular procedure to be followed before a party approaches the courts, without explicitly outlining the said procedure amounts to nothing. This begs the question on how exactly and/or what channels the respondent was expected to have passed to present his grievances.
51. The court is not seized with jurisdiction to hear and determine a case where there is an internal dispute resolution mechanism. The fact that no such procedure has been furnished to this court, is reason enough not to debar an aggrieved party from approaching this court. I find that the jurisdiction of this court cannot be ousted in the circumstances.
52. The petitioner expressed his interest to sever his relationship with the respondent through a resignation letter dated 17/10/2021. There is no evidence that the respondent replied to that letter requesting to be laycised and dispensed from ministerial priesthood. What followed is a letter from the petitioner's Counsel dated 16/11/2021 asking the respondent to release some of the personal belongings of the petitioner. The respondent through its Counsel in a letter dated 14/12/2021 annexed as "RM4" purported to respond to the letter of 16/11/2021 but it is incomplete and this court cannot make anything out of it.
53. The petitioner further wrote a letter dated 17/5/2021 reiterating the contents of the earlier letter dated 16/11/2021. The letter was on a without prejudice basis but it has been exhibited in this court as evidence. The respondent responded to the letter on 14/12/2021 and referred the petitioner to Cann 668/3 on the subject of the belongings being referred to. I refer again to the document of Constitutions: Congregation of Passion of Jesus Christ produced in this court. There is no such clause as Cann 668/3 touching on how the personal properties or otherwise of priests are to be handled upon exit of the priesthood. There is no guiding clause in the aforesaid document.
54. The respondent has denied holding any of the documents being demanded by the petitioner in this petition. At paragraph 41 of its replying affidavit, the respondent stated that the petitioner joined the Catholic University of Eastern Africa in 2015 to pursue Masters in Religious Studies and the petitioner might have presented the same to the institution and he can trace it from there. The respondent also contended that the petitioner did not hold a degree thus the one being demanded is strange.
55. It is common knowledge that the minimum requirement for a person to enrol for a Master's Degree is that, they have to be a holder of a Degree Certificate. I did not see how the petitioner would have enrolled in a Master's Degree in the absence of a Degree Certificate, The respondent is not being forthright in the allegation that the petitioner did not have a Degree Certificate.
56. The respondent further denied that he has the petitioner's passport and birth certificate and that he holds any personal effects and electronics of the petitioner. The motor vehicle registration is not in contest and the same is admitted by the respondent. The respondent further stated that it would not be in a position to release the original certificate of authorization to conduct marriages as it is only has effect when the authorized minister offers the services from the Catholic Church.
57. This court agrees with the respondent that it does not hold the personal effects and electronics of the petitioner to the extent that there is evidence that the petitioner picked the same and signed on 9/11/2021. This is not contested. There is a sale agreement dated 28/3/2019 and a payment slip of Kshs. 500,000/= which shows that it is the petitioner who bought the motor vehicle himself. I also agree that the respondent is not bound to release the original certificate of authorization to conduct



marriages since it would only serve its useful purpose if the petitioner was in the employment of the Catholic Church.

58. However, I am of the view that the respondent, if per chance, it holds any original academic certificates and personal documents like the passport, birth certificates and the logbook of car registration number of motor vehicle KAX 166X it is only prudent that it releases them immediately to the petitioner immediately. I find and hold that the withholding of such important documents with no good cause, amounts to breach of the petitioner's fundamental rights and freedoms.
59. The petitioner alleged that the respondent took him into a detention centre against his will. The respondent states that the Emmanuel Treatment & Resource Centre was not a detention centre as alleged but a treatment facility. There is a discharge summary and clinical sheet "EOW-2." It confirms that the petitioner was admitted to the facility on 23/8/2021 and discharged on 23/10/2021. The facility observed that the petitioner did not exhibit any form of mental issues and related with others peacefully.
60. The explanation the respondent gave that the petitioner was violent and it even had to seek intervention from the Hardy Police Station is not proved. If at all the intervention was needed, the proper procedure was to report to the matter to the Police and produce an OB number. I am of the view that the incarceration of the respondent to the Emmanuel Treatment & Resource Centre without his consent or his voluntary admission to the facility was an abuse of power and amounted to the fundamental breach of the respondent's right to human dignity contrary to Article 28 of *the Constitution* and the freedom of association contrary to Article 36 of *the Constitution*.
61. On the damages to be awarded, Article 23 of *the Constitution*, enjoins this court when upholding the enforcement of the Bill of Rights, to order for compensation. This court is of the view that the petitioner is entitled to damages for the breach of his fundamental rights and freedom as outlined above. I make an award of Kshs. 500,000/=.
62. I hereby make the following orders:-
- a. A declaration be and is hereby given that the petitioner's fundamental rights and freedoms as enshrined under Articles 26, 27,28,36,43 and 47 of *the Constitution* of Kenya 2010, have been contravened and infringed upon by the respondent;
 - b. A declaration be and is hereby given that the petitioner is entitled to the payment of damages and compensation of Kshs. 500,000/= for violation and contravention of his fundamental human rights by the respondent as provided for under Articles 26, 27,28,36,43 and 47 of *the Constitution*;
 - c. A compulsory order is hereby given compelling the respondent to unconditionally release to the petitioner the;
 - i. Original Degree Certificate in Philosophy.
 - ii. Original KCSE Certificate.
 - iii. Original Passport.
 - iv. Birth Certificate.
 - v. Car Logbook for Motor Vehicle KAX 166K.
 - vi. Original Driving Licence.



- vii. Bundle of documents comprising original sale agreement, search, affidavit and advert notice in the Standard and Nation newspapers.
 - viii. Electronics - Laptop, Cables, Charger, Mobile phone accessories, assorted clothing material if these are still in the custody of the respondent.
- d. Costs of the petition awarded to the petitioner.

DATED, SIGNED AND DELIVERED AT MIGORI THIS 20TH DAY OF DECEMBER 2023

R. WENDOH

JUDGE

Judgement delivered in the presence of:

Mr. Arati for the Petitioner.

Mr. Holy for the Respondent.

Emma & Phelix - Court Assistants

