



**Kipkorir v KCB Bank Kenya Limited (Constitutional Petition E019 of 2021)
[2023] KEHC 26420 (KLR) (Constitutional and Human Rights) (15 December 2023) (Judgment)**

Neutral citation: [2023] KEHC 26420 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
CONSTITUTIONAL PETITION E019 OF 2021**

AC MRIMA, J

DECEMBER 15, 2023

BETWEEN

CHARITY CHERUTO KIPKORIR PETITIONER

AND

KCB BANK KENYA LIMITED RESPONDENT

JUDGMENT

1. Charity Cheruto Kipkorir, the Petitioner herein, undertakes her banking services with the Respondent herein, a leading commercial Bank duly registered in Kenya under the *Banking Act* (hereinafter referred to as 'KCB' or 'the Bank' or 'the Respondent').
2. On 7th January 2020, KCB deducted Kshs. 29,135.81 from the Petitioner's Account. Upon following it up with the Respondent's Customer Care Officer on 8th January 2021, she was informed that it was a recovery action by the Respondent.
3. The Petitioner informed the Customer care personnel that she did not owe the Bank any monies. In a bid to find the underlying cause of the matter, she wrote e-mails to the Respondent as well as through their twitter handle requesting for answers to no avail.
4. Eventually, the Respondent informed the Petitioner that the deduction was partial recovery for a transaction dated 21st December 2019 for the transfer of Kshs. 30,000/- from her M-Pesa account which had been reversed to her account, only for the bank to realize upon reconciliation that she had indeed received the money in her M-Pesa.
5. Upon reading the statement of account issued by the Respondent on 20th January 2020, the Petitioner noticed it indicated that on 21st December 2019, she deposited Kshs. 30,000/- via Mobi Bank platform and immediately withdrew the said monies via the same procedure from her bank to her M-Pesa.



6. Contrary to the foregoing, the Petitioner posited that the only authorized transaction was on 21st December 2019 being a withdrawal of Kshs. 100,000/-.
7. The Petitioner was aggrieved that the transaction of 21st December 2019 in respect of Kshs. 30,000/- was unauthorized much as it was fraudulent and violated her constitutional rights.

The Petition:

8. Through the Petition dated 30th June 2021, supported by the Affidavit of Charity Cheruto Kipkorir deposed to on a similar date, the Petitioner averred that the unauthorized access to her account violated her right to property and privacy guaranteed under Articles 31 and 40 of *the Constitution* respectively.
9. She pleaded that despite numerous inquiries from the Bank as to the person that breached her account, no feedback was received. She claimed that the sum of Kshs. 29,135.81 was credited back to her account on 31st January 2020.
10. The Petitioner pleaded that her account was used irregularly to deposit the sum of Kshs. 30,000/- which was immediately withdrawn and the Respondent went ahead to deduct the amount from her account without her prior notice or consent.
11. The Petitioner averred that the action greatly inconvenienced her since she intended to send the money for her cousin's school fees who was joining Form one.
12. It was her case further that, being a judicial officer, her account statement may be subject to investigation in so far as vetting on her reputation, livelihood and suitability to hold office is concerned.
13. The Petitioner averred that the totality of the Petitioner's conduct was a derogation of her right to privacy and that the failure to avail her explanation on what transpired in her account was in violation of her right to information provided for under Article 35(1)(b) of *the Constitution*.
14. Further to the foregoing, the Petitioner claimed that her consumer rights guaranteed under Article 46 of *the Constitution* were violated. She pleaded that as the Respondent's consumer, she did not receive services of reasonable quality and neither was she availed information necessary for her to gain full benefit of the Respondent's services.
15. The Petitioner further claimed that the Respondent's conduct was in breach of Central Bank of Kenya Prudential Guidelines on Consumer Protection provided for under Section 33(4) of the *Banking Act*.
16. The Petitioner further pleaded that her right to fair administrative action was violated by the failure of the Respondent, an administrative body, that had the duty of ensuring that its action was lawful, reasonable and procedurally fair.
17. On the foregoing, the Petitioner prayed for the following reliefs;
 - a. A Declaration that the action taken by the Respondent of deducting Kshs. 29,135.81 from the Petitioner's bank account on January 7th January 2020 under reference number Transfer AT-Swift FT19355CH37K MOBI is unconstitutional and illegal.
 - b. A Declaration that the petitioner's right to privacy under Article 31 of *the Constitution* as read with section 25(a)(b) and (c) and Article 26 of Data Protection Act 2019 has been violated.
 - c. A Declaration that the Petitioner's right of access to information under Article 35 of *the Constitution* as read with section 4(1)(b) of the *Access to Information Act* No. 31 of 2016 has been violated.



- d. A Declaration that the Petitioner's consumer rights under Article 46 of *the Constitution* of Kenya 2010 as read with the Central Bank of Kenya Prudential Guideline on Consumer Protection issued under section 33(4) of the *banking Act*, have been violated.
- e. A Declaration that the Petitioner's right to Fair Administrative Actions under Article 47 of *the constitution* as read with Fair Administrative Actions Act, 2015 has been violated.
- f. An Order restraining the Respondent from interfering or in any other way dealing with the Petitioner's bank and financial information unless and except with the knowledge and approval of the Petitioner.
- g. General damages.
- h. Exemplary damages
- i. Any other order the Court deems fit just and

The Submissions:

- 18. In her written submissions dated 31st March 2022, the Petitioner submitted that the Respondent did not have power or authority to withdraw money from her account. It was her case that the Bank had a duty to ensure safety of her money.
- 19. To that end the Court of Appeal decision in Fidelity Commercial Bank Limited -vs- Italian Market Kenya Limited (2017) eKLR was referred to where it was observed;
 - A bank's duty of care to its customers includes protecting the customer from exposure to fraud by its agents such as directors, business partners and others...
- 20. The Petitioner further submitted that the Respondent could not debit her account without reference to her by relying on the Court of Appeal decision in Lazarus Masayi Onjalla -vs- Kenya Commercial Bank Ltd where it was observed that;
 - ...a robber would clearly not be intitled to the proceeds of the robbery deposited in his account and the receiving bank would be in law, justice and fairness entitled to pay out the money to the robbed bank, secure in the knowledge that it would be able to prove, if asked that the money so paid out form the customer's account had been proceeds of a robbery committed against the bank to which the money had been paid.
- 21. In buttressing violation of her right to privacy, the Petitioner relied on the decision in Intercom Services Ltd & 4 Others -vs- Standard Chartered Bank (2002) eKLR where the Court observed;
 - It is an implied term of the contract that the banker will not divulge to third persons, without the express or implied consent of the customer, either the state of the customer's account or any of his transactions with the bank or any information relating to the customers relating to the customers acquired through the keeping of his account unless the bank is compelled to do so by order of a court...
- 22. The Petitioner further submitted that she was denied access to information in breach of section 4(1) (b) of the *Access to Information Act* and Article 35 of *the Constitution*. She relied on Petition No. 468



of 2017 Katiba Institute -vs- President's Delivery Unit & 3 Others (2017) eKLR where it was observed that;

.... *The Constitution* is therefore clear that information held by the State is accessible by citizens and that information is available on request. What this means is that once a citizen places a request to access information, the information should be availed to the citizen without delay.

23. As regards failure of the Respondent to protect her consumer rights, the Petitioner referred to Petition No. 325 of 2015 Mark Ndumia Ndung'u -vs- Nairobi Bottlers Ltd & Another (2018) eKLR where the Court spoke to *Consumer Protection Act* to the effect that;

If a supplier is required to deliver information to a consumer under this Act, the information must, in addition to satisfying the requirements in section (1) be delivered in a form in which it can be understood by the Consumer.

24. In respect to the claim of violation of the right to fair administrative action, The Petitioner submitted that since the actions the Respondent were likely to adversely affect her, it had to obligation to give her an opportunity to be heard as per the dictates of Article 47(2) of *the Constitution*.
25. In conclusion, the Petitioner submitted that she is entitled to general damages and exemplary damages for the Respondent's irregular access to her account. She claimed to be entitled to the exemplary damages to the tune of Kshs. 2,000,000/- since the Respondent's actions were aggravated by the failure to give sufficient reasons for breach of its duty to customers.

The Respondent's case:

26. Kenya Commercial Bank Limited opposed the Petition through the Response to the Petition dated 31st March 2022.
27. It was its case that on 21st December 2019, the Petitioner initiated two transactions being numbers FT FT193551Q40R and FT19355CH37K each for Kshs. 30,063/- plus charges. That the transaction number FT19355CH37K was fully reversed to the Petitioner's account.
28. The Respondent further stated that on 7th January 2020, upon receiving a reconciliation report for the period between 21st December 2019 and 3rd January 2020, it was noted that there were some anomalies on some transactions where funds successfully transferred by some customers from their accounts to M-Pesa, erroneously reversed from suspense account back to the customer's account.
29. To that end, it was the Respondent's case that the Petitioner's transaction of Kshs.30,000/- and a charge of Kshs. 63/30 was part of the recoveries and the Petitioner's bank account balance at the time being Kshs.29,135.81 was used to partly restore the related suspense account deficit of Kshs. 30,063.30/-.
30. The Respondent further stated that it was later discovered that the reconciliation reports, on account of a temporary system glitch were erroneous and correction was undertaken. To that end, it reversed the amount of Kshs. 29,135.83 deducted from the Petitioner's account on 7th January 2020 back to the Petitioner's account.
31. In conclusion, the Respondent stated that there was no violation of the Petitioner's constitutionally guaranteed rights. It denied the averments of the Petitioner and any injury caused.
32. It prayed that the Petition is dismissed with costs.



The Submissions:

33. In its written submissions dated 31st March 2022, the Petitioner submitted that it in no way disclosed the Petitioner's information to third parties in violation of her right to privacy.
34. It was submitted that on a balance of probabilities, the Petitioner had failed to establish violation of her consumer and privacy rights. Support to that end was drawn from *ARA -vs- Pamela Aboo* (2018) eKLR and in *Macfoy -v-s United Africa Co. Ltd* (1961) 3 All ELR where it was observed;

... Where a party fails to produce certain evidence, a presumption arises that the evidence produced would be unfavourable to that party.
35. The Respondent further submitted that according to the decision in *Foley -vs- Hill* (1848) 2HLC 28, 9 ER 1002, when a customer deposits money into his or her account, the bank becomes a debtor of the customer but the money paid into the bank becomes the property of the bank and the bank has the right to use the money as it likes.
36. In the end, the Respondent maintained that it neither breached the bank customer relationship between it and the Petitioner nor her constitutional rights.
37. It urged that the Petition be dismissed with costs for failing to prove the case to the expected standard.

Analysis:

38. This Court has carefully considered the Petition, the response, the parties' written submissions and the decisions referred thereto. The following issues arise for determination: -
 - i. Whether the Petitioner's rights and fundamental freedoms were infringed.
 - ii. Reliefs, if any.The Court will now deal with the issues in seriatim.

(a) Whether the Petitioner's rights and fundamental freedoms were infringed:

39. The Petitioner contended that her rights and fundamental freedoms under Articles 31, 35, 46 and 47 of *the Constitution* were variously infringed. The Respondent denied as such.
40. There is no doubt that a resolution of the issue at hand majorly revolves around the facts as adduced by the rival parties. In that case, parties were bound to prove what they alleged.
41. The matter before Court is a constitutional Petition. Like other disputes, the conduct of constitutional Petitions is generally governed by *the Constitution* and the law.
42. Article 159(2)(d) of *the Constitution* call upon Courts and Tribunals to administer justice without undue regard to procedural technicalities.
43. Speaking of the essence of Article 159(2)(d) of *the Constitution*, the Supreme Court of Kenya in *Law Society of Kenya v. The Centre for Human Rights & Democracy & 12 Others*, Petition No. 14 of 2013 held that: -

Article 159(2) (d) of *the Constitution* is not a panacea for all procedural shortfalls.



45. And, in *Patricia Cherotich Sawe v Independent Electoral & Boundaries Commission (IEBC) & 4 others* [2015] eKLR the Supreme Court further held that: -

Not all procedural deficiencies can be remedied by Article 159....

44. The practice and procedure in constitutional Petitions is further provided for under *The Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (hereinafter referred to as ‘the Mutunga Rules’).
45. Rule 20(1) of the Mutunga Rules is on the manner in which constitutional Petitions ought to be heard. Such Petitions may be heard by way of affidavits or written submissions or oral evidence. Rule 20(3) of the Mutunga Rules provide that a Court may upon application or on its own motion direct that the Petition or part thereof be heard by oral evidence. Rule 20(4) and (5) of the Mutunga Rules provide for the summoning and examination of witnesses.
46. The conduct of constitutional Petitions is also guided by various laws. For instance, the *Evidence Act* applies to matters generally relating to evidence. The *Evidence Act* is clear on its application to constitutional Petitions and affidavits in Section 2 thereof. The provision provides as follows: -
1. This Act shall apply to all judicial proceedings in or before any Court other than a Kadhi’s Court, but not to proceedings before an arbitrator.
 2. Subject to the provisions of any other Act or of any rules of Court, this Act shall apply to affidavits presented to any Court.
47. Sections 107(1), (2) and 109 of the *Evidence Act* are on the burden of proof. They state as follows:
- 107
- (1) Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
 2. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.
- and
109. Proof of particular fact
- The burden of proof as to any particular fact lies on the person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.
48. The burden of proof on a Petitioner in a constitutional Petition was addressed by the Supreme Court in *Communications Commission of Kenya & 5 Others vs. Royal Media Services Limited & 5 Others* [2014] eKLR as follows: -

Although Article 22(1) of *the Constitution* gives every person the right to initiate proceedings claiming that a fundamental right or freedom has been denied, violated or infringed or threatened, a party invoking this Article has to show the rights said to be infringed, as well as the basis of his or her grievance. This principle emerges clearly from the High Court decision in *Anarita Karimi Njeru vs. Republic*, (1979) KLR 154: the necessity of a link between the aggrieved party, the provisions of *the Constitution* alleged to have been contravened, and the manifestation of contravention or infringement. Such principle plays a positive role, as a



foundation of conviction and good faith, in engaging the constitutional process of dispute settlement.

49. Turning back to this matter, the Petition was heard by way of reliance on the pleadings, affidavit evidence and the exhibits thereto.
50. On the basis of the foregoing, a consideration of whether the Petitioner's rights and fundamental freedoms were infringed shall now follow.

Article 31 of *the Constitution*:

51. The provision is on the right to privacy. It states as follows: -

Every person has the right to privacy, which includes the right not to have-

- (a) their person, home or property searched;
 - (b) their possessions seized;
 - (c) information relating to their family or private affairs unnecessarily required or revealed; or
 - (d) the privacy of their communications infringed.
52. From the factual background of this case, it is unclear how the right to the Petitioner's privacy was infringed. That is because the Bank account is in the custody and control of the Respondent. The Bank has the liberty to access the account at any time and carry out transactions therein. The only limitation is that such transactions must be lawful.
 53. There is also no allegation, and/or evidence, that the Petitioner's account details and transactions were disclosed to third parties.
 54. To this Court, it seems that the contention that the Petitioner's right to privacy was infringed does not hold. It is hereby rejected.

Article 35 of *the Constitution*:

55. This constitutional provision is on the right to access to information. It accords every citizen the right to access to information held by the State or information held by another person and required for the exercise or protection of any right or fundamental freedom.
56. On 8th January 2020, the Petitioner realized that her account had been debited by the Bank on 7th January, 2020. Immediately, the Petitioner wrote to the Bank seeking an explanation on what happened to her account. As the response was not forthcoming, the Petitioner continued communicating with the Bank until when she realized that the Bank had, without any word, reversed the debit transaction on 31st January 2020.
57. The failure by the Bank to render the information sought by the Petitioner was affirmed in the Response to the Petition which made no reference to the issue.
58. This Court, therefore, finds that the Petitioner sought for information relating to a transaction in her account on 8th January 2020 which information was neither availed nor any otherwise communication made to her. That is a clear derogation of Article 35 rights.



Article 46 of *the Constitution*:

59. Consumer rights are the subject of the above provision. Article 46(1) states as follows: -
Consumers have the right—
- (a) to goods and services of reasonable quality;
 - (b) to the information necessary for them to gain full benefit from goods and services;
 - (c) to the protection of their health, safety, and economic interests; and
 - (d) to compensation for loss or injury arising from defects in goods or services.
60. In this case, the Petitioner was a consumer of the Respondent's banking services. As such, she was entitled to the protection of her economic interests. She was, however, denied the access and use of her money which was in the Respondent's custody as from 7th January 2020 to 31st January 2020. The Petitioner, no doubt, suffered loss and psychological torture given that she deposed that she had planned to use the money in the account for purposes of paying school fees in the month of January 2020.
61. The Petitioner's right to protection of her economic interests by the Bank under Article 46(c) of *the Constitution* was, hence, infringed.

Article 47 of *the Constitution*:

62. The Article provides for fair administrative actions. It entitles every person the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
63. Section 2 of the Fair Administrative Actions Act, 2015 defines an 'administrative action' to include the powers, functions and duties exercised by authorities or quasi-judicial tribunals; or any act, omission or decision of any person, body or authority that affects the legal rights or interests of any person to whom such action relates.
64. Section 4(3) and (4) of the Fair Administrative Actions Act provides as follows: -
- (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.



- (4) The administrator shall accord the person against whom administrative action is taken an opportunity to-
 - (a) attend proceedings, in person or in the company of an expert of his choice;
 - (b) be heard;
 - (c) cross-examine persons who give adverse evidence against him; and
 - (d) request for an adjournment of the proceedings, where necessary to ensure a fair hearing.
65. The above provision has to be juxtaposed against the peculiar relationship between the Petitioner and the Respondent herein. As stated, the parties are a Bank and its customer. When one opens an account in a Bank or a financial institution and deposits some money, the money is fully assumed and controlled by the Bank or the financial institution as the case may be. Such money is at the discretion of the Bank and it can even be invested at will and without any reference to the customer. Activities of such nature are generally regarded as the back-office transactions and do not necessarily reflect in one's account.
66. Regardless of what the Bank does with the money deposited in an account under the back-office transactional arrangements, the most important thing to the customer is how his/her/its account is managed and transacted. Every transaction in a customer's account must be accounted for, be it a credit or a debit.
67. In the event of any wrong entry into an account, the Bank must be able to rectify such anomaly at the earliest reasonably possible opportunity and inform the client. The duty to inform the client is germane especially to clients like the Petitioner herein who is a judicial officer and whom, in accordance with the Judiciary Code of Ethics, the Petitioner must always conduct her financial dealings so as to avoid financial embarrassment. One, therefore, wonders what would have happened had the Petitioner issued a cheque during the time when the Bank had 'silently' debited her account. The Petitioner would have risked being put through a disciplinary process with the possibility of losing her employment.
68. Having said so, this Court must, however, clarify that there are other permissible instances when the Bank may undertake transactions in a client's account without the necessity of readily informing the client. For instance, when the Bank is acting on a valid Court order or is complying with a law such as in taxation matters. In such instances, among many others, the Bank will not stand to be blamed for such unilateral transactions.
69. The position in this case was, however, different. The Bank made the impugned transaction during its reconciliation processes. Agreed, a Bank customer consents directly or otherwise to such reconciliatory processes by the Bank. However, when a customer raises a red flag over a transaction and it takes a whole month for the Bank to remedy its wrong and without offering any explanation, it smacks negligence or breach of duty of care on the part of the Bank. That was the case in this matter.
70. Therefore, whereas the requirements of Article 47 of *the Constitution* would not be expected to be adhered to whenever a Bank is undertaking its usually reconciliatory processes, any resultant transactional effects to a client's account, except as demonstrated above, must be readily brought to the knowledge of the customer.
71. Deriving from the foregoing, this Court finds and hold that the Respondent did not infringe the Petitioner's Article 47 rights in the unique circumstances of this case.



(c) Reliefs:

72. The Petition has partly succeeded. Whereas the Petitioner failed to prove that her rights under Articles 31 and 47 of *the Constitution* were contravened, she, however, managed to prove infringement of her rights as guaranteed under Articles 35 and 46(c) of *the Constitution*.
73. This Court has been asked to grant various orders given the now partial success of the Petition. The orders sought include declarations, damages, among others.
74. In deciding on the nature of the relief to issue, this Court must consider the most appropriate relief. Even in instances where a party fails to ask for a specific relief, a Court, depending on the nature of the matter ought to craft an appropriate relief.
75. Courts have severally rendered on reliefs. The Court of Appeal in *Total Kenya Limited vs Kenya Revenue Authority* (2013) eKLR held that even in instances where there are express provisions on specific reliefs a Court is not precluded from making any other orders under its inherent jurisdiction for ends of justice to be met to the parties. The High Court in *Simeon Kioko Kitheka & 18 Others vs. County Government of Machakos & 2 Others* (2018) eKLR held that Article 23 of *the Constitution* does not expressly bar the Court from granting conservatory orders where a challenge is taken on the constitutionality of legislation.
76. In *Republic Ex Parte Chudasama vs. The Chief Magistrate's Court, Nairobi and Another* Nairobi HCCC No. 473 of 2006, [2008] 2 EA 311, Rawal, J (as she then was) stated that:

While protecting fundamental rights, the Court has power to fashion new remedies as there is no limitation on what the Court can do. Any limitation of its powers can only derive from *the Constitution* itself. Not only can the court enlarge old remedies, it can invent new ones as well if that is what it takes or is necessary in an appropriate case to secure and vindicate the rights breached. Anything less would mean that the Court itself, instead of being the protector, defender, and guarantor of the constitutional rights would be guilty of the most serious betrayal. See *Gaily vs. Attorney-General* [2001] 2 RC 671; *Ramanoop vs. Attorney General* [2004] Law Reports of Commonwealth (From High Court of Trinidad and Tobago); *Wanjuguna vs. Republic* [2004] KLR 520...The Court is always faced with variety of facts and circumstances and to place it into a straight jacket of a procedure, especially in the field of very important, sensitive and special jurisdiction touching on liberties and rights of subjects shall be a blot on independence and many faceted jurisdiction and discretionary powers of the High Court. See *The Judicial Review Handbook* (3rd Edn) by Michael Fordham at 361.

77. The Constitutional Court of South Africa in *Fose vs. Minister of Safety & Security* [1977] ZACC 6 emphasized the foregoing as follows: -

Appropriate relief will in essence be relief that is required to protect and enforce *the Constitution*. Depending on the circumstances of each particular case the relief may be a declaration of rights, an interdict, a mandamus or such other relief as may be required to ensure that the rights enshrined in *the Constitution* are protected and enforced. If it is necessary to do so, the courts may even have to fashion new remedies to secure the protection and enforcement of these all-important rights.

78. On the award of damages in constitutional violations vis-à-vis making of declarations as part of the available remedies, the Court of Appeal in *Gitobu Imanyara & 2 Others v Attorney General* [2016]



eKLR while dealing with the issue of damages as a relief in constitutional violations emphasized the need for appropriate and just remedies. On the power of declarations, the Learned Judges stated as follows: -

Consistent with the above judicial experience and philosophy, it seems to us that the award of damages for constitutional violations of an individual's right by state or the government are reliefs under public law remedies within the discretion of a trial court, however, the court's discretion for award of damages in Constitutional violation cases though is limited by what is "appropriate and just" according to the facts and circumstances of a particular case. As stated above the primary purpose of a constitutional remedy is not compensatory or punitive but is to vindicate the rights violated and to prevent or deter any future infringements. The appropriate determination is an exercise in rationality and proportionality. In some cases, a declaration only will be appropriate to meet the justice of the case, being itself a powerful statement which can go a long way in effecting reparation of the breach, if not doing so altogether. In others, an award of reasonable damages may be called for in addition to the declaration. Public policy considerations is also important because it is not only the petitioner's interest, but the interests of society as a whole that ought as far as possible to be served when considering an appropriate remedy.

79. Having carefully considered this matter, this Court is convinced that the Petitioner is entitled to compensatory damages. The Petitioner was not treated properly. She was denied access to her money for a whole month and no explanation was rendered despite repeated requests. In arriving at the sum payable, this Court will not only look at the amount of money involved, but also the uncalled-for hardship and psychological torture the Petitioner went through during the entire month.

Disposition:

80. Deriving from the foregoing, the following final orders do hereby issue: -

- a. A declaration be and hereby issue that the Respondent's decision/action of debiting the Petitioner's Bank account and not offering any explanation despite request for a whole month, was contrary to Articles 35 and 46(c) of *the Constitution*. The said decision/action is, therefore, constitutionally infirm, null and void ab initio.
- b. The Petitioner shall be entitled to damages in the sum of Kshs. 500,000/= (Kenya Shillings Five Hundred Thousand Only) for the infringement of her rights by the Respondent.
- c. The Respondent shall bear the costs of the Petition.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT KITALE THIS 15TH DAY OF DECEMBER, 2023.

A. C. MRIMA

JUDGE

Judgment delivered virtually and in the presence of:

Mr. Mukingi Learned Counsel for the Petitioner.

N/A for the Respondent.

Chemosop/Duke – Court Assistants.

