



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**

**PETITION NO. 23 OF 2019**

**CONSOLIDATED PETITION NO. 299 OF 2016 AND PETITION NO. 300 OF 2016**

**AND**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS**

**UNDER ARTICLE 29, 32(1), 33, 49 & 77 (2) AND 79(1) OF THE CONSTITUTION OF KENYA, 1969**

**AND**

**IN THE MATTER OF ARTICLES 23, 29, 31, 32 AND 39 OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF PAST AND CONTINUING INFRINGEMENTS OF FUNDAMENTAL RIGHTS OF THE PETITIONER**

**SILLA MUHIA KINYANJUI.....1<sup>ST</sup> PETITIONER**

**RUTH WANGU MUHIA.....2<sup>ND</sup> PETITIONER**

**HENRY NDUGUTA KINYANJUI.....3<sup>RD</sup> PETITIONER**

**– VERSUS –**

**THE ATTORNEY GENERAL.....RESPONDENT**

**JUDGMENT**

1. The 1<sup>st</sup> Petitioner, **Silla Muhia Kinyanjui**, vide a petition dated 14<sup>th</sup> January, 2016 is challenging his arrest of 15<sup>th</sup> September, 1997 by a team of the Flying Squad Unit for allegedly killing his brother's wife. In addition, the 1<sup>st</sup> Petitioner avers that his wife, mother, father, brother and neighbour were also arrested before his own arrest at their rural home in Kanunga Ndakaini in Gatanga, Murang'a County without the knowledge of the alleged crime by the five police stations in his residence's vicinity. The 1<sup>st</sup> Petitioner further avers that he was taken to Makuyu Police Station in the boot of a Peugeot 504 station wagon vehicle and tortured at the nearby forest on 16<sup>th</sup> September, 1997 and was subjected to inhumane and degrading treatment in contravention of the provisions of **Section 74(1) of the Constitution, 1969 and/or Article 29 of the Constitution of Kenya, 2010**.

2. The 1<sup>st</sup> Petitioner also contended that he was suspended in the air by being tied up to a tree trunk and his wrists tied to the tree's branches while his knees and ankle joints pummelled by three policemen with wooden hoe handles as the officer in charge kept watch. Furthermore, the policemen lowered him to the ground and tied a string to his testicles against a stone and asked him to jump causing him grievous injuries. It was also his averment that the policemen beat him up aiming at his right hand side jaw. He further averred that his knee caps were completely mangled and the surrounding ligaments torn and he lost six teeth due to the extensive torture. Thereafter, he avers that he was taken to Thika Police Station where his family was informed of his condition and on their insistence, he was taken to a private hospital. However, on his first court appearance, the Judge ordered that the 1<sup>st</sup> Petitioner be hospitalized on 20<sup>th</sup> September, 1997 whereby he underwent treatment at the Kenyatta National Hospital for three months. Subsequently, the 1<sup>st</sup> Petitioner was referred to Nairobi High Court

after he refused to admit guilt and to acquiesce to the suggestions that he became a state witness and was remanded at the Industrial Area Prison for over four years. He was however acquitted on 20<sup>th</sup> September, 2001 for lack of evidence.

3. It is his averment that this experience traumatized his children who at the time were minors of ages 12, 10, 9 and 5 years and as a result of his arrest, he could not bring them up in their younger years. Moreover, the 1<sup>st</sup> Petitioner lost his tea holding business and his three butcheries closed down shortly after his arrest. Worse still, due to the imprisonment and torture, the 1<sup>st</sup> Petitioner suffered psychologically and sustained serious physical injuries. The 1<sup>st</sup> Petitioner therefore prays for:

**a) A DECLARATION that the Petitioner's fundamental rights and freedoms were contravened and grossly violated by the Respondent's police officers who were Kenyan government servants, agents, employees and in its institution on 15<sup>th</sup> September, 1997 and for four years in Industrial Area Prison.**

**b) A DECLARATION that the Petitioner is entitled to the payment of damages and compensation for the violations and contraventions of his fundamental rights and freedoms under the aforementioned provisions of the constitution.**

**c) General damages, exemplary damages and moral damages on an aggravated scale under Section 84(2) of the Constitution of Kenya, 1969, Articles 23 and 29 of the Constitution of Kenya 2010 for the unconstitutional conduct by the Kenyan government servants and agents awarded.**

**d) Any further orders, writs, directions as this Honourable Court may consider appropriate.**

**e) Costs of the suit and interest.**

4. The 2<sup>nd</sup> Petitioner, **Ruth Wangu Muhia**, on the other hand is challenging her arrest and that of her brother-in-law made on or about 22<sup>nd</sup> September, 1997 at their home in Kanunga, Ndakaini in Gatanga, Murang'a County for allegedly killing her brother-in-law's wife. She avers that she was taken to Makuyu Police Station and later taken to Karura Forest where she was tortured and subjected to inhumane and degrading treatment in contravention of the provisions of **Section 74(1) of the Constitution, 1969** and/or **Article 29 of the Constitution of Kenya, 2010**. It is further her averment that she was undressed, beaten up all over her body and three of her lower teeth were knocked off by about 5 police officers attached to Makuyu Flying Squad who even threatened to rape her.

5. Subsequently, she avers that she was given papers to sign and since she could not read or write, she agreed to thumbprint the papers without knowing their contents. However, she later came to learn that the papers she had been ordered to sign were statements in relation to the murder case of her sister-in-law Josephine Wanjiru. Thereafter, she was taken to Thika Police Station where she fell ill but no one arranged for her medical care and it was only on 11<sup>th</sup> October, 1997, twenty one days after being tortured that she was taken to Thika G. K. Prison Dispensary for treatment. Later on, she was acquitted of all the charges against her.

6. The 2<sup>nd</sup> Petitioner further contends that at the time of her and her husband's abrupt arrest, her children were minors of ages 12, 10, 9 and 5 years and were traumatized since they were left without any particular care giver. As result, she also suffered psychologically, economically, sustained serious physical injuries and still experiences pain and numbness on her fingers, knees and legs. The 2<sup>nd</sup> Petitioner therefore prays for:

**a) A DECLARATION that the Petitioner's fundamental rights and freedoms were contravened and grossly violated by the Respondent's police officers who were Kenyan Government servants, agents, employees and in its institution on or about 22<sup>nd</sup> September, 1997 and for 14 days in Makuyu Police Station and Karura Forest.**

**b) A DECLARATION that the Petitioner is entitled to the payment of damages and compensation for the violations and contraventions of her fundamental rights and freedoms under the aforementioned provisions of the Constitution.**

**c) General damages, exemplary damages and moral damages on an aggravated scale under Section 84(2) of the Constitution of Kenya, 1969, Articles 23 and 29 of the Constitution of Kenya 2010 for the unconstitutional conduct by the Kenyan Government servants and agents awarded.**

**d) Any further orders, writs, directions as this Honourable Court may consider appropriate.**

**e) Costs of the suit and interest.**

7. The 3<sup>rd</sup> Petitioner, **Henry Nduguta Kinyanjui**, contended that on or about 22<sup>nd</sup> September, 1997, he was arrested together with his sister-in-law, mother, father and neighbour at their home Kanunga, Ndakaini in Gatanga, Murang'a County for allegedly killing his wife, Josephine Wanjiru. The 3<sup>rd</sup> Petitioner avers that he was taken to Makuyu Police Station and the following day, he was taken to a nearby forest where he was tortured and subjected to inhumane and degrading treatment in contravention of the provisions of **Section 74(1) of the Constitution, 1969** and/or **Article 29 of the Constitution of Kenya, 2010**. It is his contention that he was beaten up on his legs, hands and head by about 5 police officers attached to Makuyu Police Station.

8. That due to this inhumane treatment, the 3<sup>rd</sup> Petitioner has become partially deaf. Furthermore, his physical, psychological and economic aspects of life were adversely affected. In view of the foregoing, the 3<sup>rd</sup> Petitioner prays for:

**a) A DECLARATION that the Petitioner's fundamental rights and freedoms were contravened and grossly violated by the**

*Respondent's police officers who were Kenyan Government servants, agents, employees and in its institution on or about 22<sup>nd</sup> September, 1997 and for 14 days in Makuyu Police Station and the nearby forest.*

*b) A DECLARATION that the Petitioner is entitled to the payment of damages and compensation for the violations and contraventions of her fundamental rights and freedoms under the aforementioned provisions of the Constitution.*

*c) General damages, exemplary damages and moral damages on an aggravated scale under Section 84(2) of the Constitution of Kenya, 1969, Articles 23 and 29 of the Constitution of Kenya 2010 for the unconstitutional conduct by the Kenyan Government servants and agents awarded.*

*d) Any further orders, writs, directions as this Honourable Court may consider appropriate.*

*e) Costs of the suit and interest.*

## **RESPONDENTS CASE**

9. In response, the Respondent filed Grounds of Opposition on 10<sup>th</sup> August, 2016 and 20<sup>th</sup> June, 2017. The Respondent argued that the Petitioners are guilty of laches as the instant petitions have been lodged after unreasonable delay all to the detriment of the Respondent. Furthermore, they argued that the Petitioners have not demonstrated how the Respondent violated their constitutional rights and there are no constitutional issues raised for the court to determine and that the Petitioners have failed to discharge, to the required standard, the evidentiary burden required to prove that they were tortured and/or treated in a cruel, inhumane and degrading manner.

## **PARTIES SUBMISSIONS**

### **a) PETITIONERS SUBMISSIONS**

10. The firm of Kinuthia Wandaka learned Counsel appearing for the Petitioners filed written submissions dated 17<sup>th</sup> November, 2017. On the issue whether the Petitioners were guilty of laches, counsel submitted that the actions complained of occurred nearly 19 years before the petitions herein were filed. To buttress his argument, he cited the case of **Lewis Wilkinson Kimani Waiyaki v Hon. Attorney General (2016) eKLR** where the Respondent opposed the Petition stating that there had been an inordinate delay of 49 years and the court observed that the promulgation of the Constitution 2010 has opened an unimaginable avalanche of claims particularly on the Bill of Rights because before that those who were tortured, or detained without trial had little faith in the judicial system which is a matter of judicial notice. Furthermore, the court maintained that constitutional matters have no time limit.

11. Counsel also relied on the case of **Florence Wakiuru Muchiri & Anor v Attorney General (2017) eKLR** where the court noted that courts will be reluctant to shut out a litigant on account of limitation of time and in considering such delays, the courts cannot avoid taking judicial notice of the immense difficulties which prevailed at the period of the alleged violations making it impossible for aggrieved persons to file cases of this nature against the government. Counsel therefore submitted that the Petitioners were only able to file their petitions after the promulgation of the Constitution of Kenya, 2010. Besides, they testified of the socio-economic impact their incarceration had on them and how it left them almost destitute and impecunious. It was also submitted that the advocate who had initially been instructed passed away thereby hindering their ability to move to court sooner. Accordingly, they urged court to determine their cases on merit.

12. On the issue whether the Petitioners had failed to discharge, to the required standards, the evidentiary burden required to prove that they were tortured and/or treated in a cruel, inhumane and degrading manner, counsel submitted that in spite of there being slight inaccuracies, the Petitioners' oral evidence was largely consistent with their affidavit evidence and a variation on the date of the arrest. To that end, counsel cited the case of **Mwangi Mathenge v Attorney General (2012) eKLR** where the Respondent had called to question some discrepancies in the Petitioner's case and the court held that it observed that the Petitioner's demeanour in court and also took into consideration the Petitioner's advanced age when he gave his testimony. The court also took note of the fact that the Respondent had not disputed the fact that the Petitioner was arrested just that he was not arrested on the date and time he said he was arrested.

13. Counsel also cited the case of **Herman Marine Nderi v The Attorney General (2012) eKLR** where the court held that it is common knowledge that torture was not being conducted post-1982 with meticulous record keeping accompanying the act and neither were lawyers and relatives being invited as witnesses but it was something done in secrecy. Counsel also relied on the case of **Kariuki Gathitu v Attorney General (2013) eKLR** where the court held that it is now trite law that although a party alleging a fact has the onus of proof of that fact, the opposing party is at the very least expected to file response to those allegations of fact. Further, where such a party actually appears in the proceedings but neither in pleadings nor in oral evidence does he answer to those facts, then the court can only but take it as those facts are actually uncontested. Accordingly, counsel submitted that the Respondent in these petitions did not file affidavits in response to the allegations of facts and it can only be concluded that these facts are not contested.

14. On the issue whether the Petitioners have demonstrated how the Respondent violated their constitutional rights and whether there are any constitutional issues raised for the court to determine, counsel submitted that whereas the police were entitled to arrest them on suspicion of committing a cognizable criminal offence, they had no duty to treat them in the inhumane and degrading manner that they did. It was further submitted that this amounted to a violation of their rights as protected by section 74(1) of the Repealed Constitution, 1969 and/or Article 29 of the Constitution of Kenya, 2010. Counsel further submitted that the abrupt arrest of the Petitioners and their neighbours in 1997 nearly 5 years after the alleged murders in 1992 on the unreasonable and outrageous suspicion of murder, torture of the Petitioners in an obvious and overzealous fishing expedition by Flying Squad officers, denial of their right to communicate with relatives, friends and advocates immediately after their arrest and their subsequent incarceration pending trial was an infringement of the Petitioners' rights as protected under **Sections 72(1), 72(3) and 77(1) of the repealed Constitution, 1969 and/or Article 29 of the Constitution of Kenya, 2010.**

15. To that end, counsel cited the case of **David Gitau Njau & 9 Others v Attorney General (2013) eKLR** where the court in interrogating

what amounts to torture relied on various definitions in international human rights instruments and on the definition of torture as posited by Visram J (as he then was) in **Samuel Rukenya Mburu v Castle Breweries, Nairobi HCCC 1119 of 2003** as prohibition against torture, cruel or inhuman and degrading treatment implies that an “action is barbarous, brutal or cruel” while degrading punishment is “that which brings a person dishonor or contempt.” Accordingly, counsel submitted that regardless of the crimes they had purportedly committed, the Petitioners should not have been subjected to torture or inhumane and degrading treatment by police officers. In conclusion, counsel cited the case of **Florence Wakiuru Muchiri & Anor (supra)** where the court held that an award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right under the constitution and urged that the Petitioners be awarded damages of Kshs. 30,000,000/- each plus costs and interests citing the case of **Otieno Mak’onyango v Attorney General & Anor HCC Misc. App. 845 of 2003** where the Petitioner was awarded damages in the sum of Kshs. 20,000,000/- for violation of his rights many years ago.

#### **b) RESPONDENT’S SUBMISSIONS**

16. Mr. Bitta learned State Counsel, appearing for the Respondent filed written submissions dated 10<sup>th</sup> February, 2020. Counsel submitted that there were three issues for determination. On the issue whether there was infringement of the Petitioners’ rights by the Respondent, counsel cited the cases of **Anarita Karimi Njeri v R (1976-1980) KLR 1272** and the **Mumo Matemo v Trusted Society of Human Rights Alliance & Anor, 5 others (2013) eKLR** whereby the court held that the Petitioner must state and identify the rights with precision and how the same have been or will be infringed in respect to him. It was counsel’s submission that the Petitioners’ case generally offends the provisions of the Evidence Act. Firstly, counsel argued that hearsay is not admissible contrary to Section 63 of the Evidence Act. Secondly, the 1<sup>st</sup> Petitioner did not produce any medical documents to show that he was actually treated for the alleged torture meted on him as alleged neither could he recall the name of the hospital in which he was treated while the 3<sup>rd</sup> Petitioner relied on a medical report prepared by Doctor Paul Chege who did not testify in court contrary to **Section 72 of the Evidence Act**.

17. Counsel further argued that if a party seeks to rely on a fact, he bears the burden to show that the facts exist and the law is clear to the extent that he who alleges must prove as provided under **Section 107(1) and 109 of the Evidence Act**. Accordingly, he argued that since the allegation of the violation of the Petitioners’ fundamental rights have been out rightly controverted by the Respondent, it is incumbent on the Petitioners to prove on a balance of probabilities that the allegations they have brought before this court are true. To buttress his argument, counsel cited Nyamu J (as he then was) in **Const. Petition No. 128 of 2006, LT Col. Peter Ngari Kagume & Others v Attorney General** where he held that when a court is faced by a scenario where one side alleges and the rival side disputes, the one alleging assumes the burden to prove the allegation. It was further submitted that no evidence has been produced by the Petitioners to prove the allegations of torture and/or brutality against them and they ought to have at least availed treatment notes from any Medical Centre where they alleged to have been treated. Justice Nyamu in the above matter further stated that it is incumbent upon the Petitioners to avail tangible evidence of violation of their rights and freedoms and the court is enjoined by law to go by the evidence on record. Counsel also relied on the case of **Charles Muturi Macharia v Standard Group & 4 Others (2017) eKLR** where Justice Mativo held that the person alleging breach of constitutional rights must prove the loss suffered.

18. On the issue whether the petition is time barred, counsel submitted that the events complained about occurred almost 20 years ago and that it is trite law that a court must always consider whether the delay in filing the petition alleging violation of constitutional rights is unreasonable and prejudicial to a Respondent’s defence. However, in the present case, counsel argued that no explanation has been preferred for the delay except for a lawyer that allegedly died before filing the petitions with no evidence of a death certificate. To that end, counsel cited the case of **Ochieng Kenneth K’Ogotu v Kenyatta University and 2 Others, High Court Petition No. 306 of 2012** where the court rightly observed that a delay of 10 years or more before one comes to court to allege violation of rights is clearly not justifiable and as observed by Nyamu J in **Ibrahim Kiasha Kanzika v Central Bank**, even where there is no specified period of limitation, it is proper for the court to consider the period of delay since the accrual of claim and the reasons for the delay must be explained satisfactorily by the Applicant.

19. He also relied on the case of **Joseph Migere Onoo v the Attorney General, HC Petition No. 424 of 2013** where Mumbi Ngugi J held that the case was one where the court was justified in reaching the conclusion that the delay was unreasonable because the alleged acts took place some 29 years ago with no explanation proffered for the delay. On the issue whether the Petitioner is entitled to the orders sought, counsel submitted that the Petitioners have failed to prove their cases on merit and as such, urged the court to dismiss the petition with costs.

#### **BRIEF ANALYSIS OF THE CASE**

20. The repealed Constitution required that an arrested person be produced in Court within twenty four hours where he was suspected of committing a normal criminal offence and within twenty four hours where the offence was punishable by death. The Constitution was also clear that it was upon the respondents to show that they complied with this constitutional requirement. The reason for limiting one’s liberty through arrest was for purposes of producing him or her in Court to be dealt with in accordance with the law, thereby checking on arbitrary arrest and unlawful detention of people in violation of their human rights to liberty. On the issue whether there was inordinate delay in filing the petition, the Petitioners told the court that they had procured the services of another advocate however, he died before filing the petitions. The Petitioner has brought the instant suit 19 years after the alleged arrest and detention.

#### **ANALYSIS AND DETERMINATION**

21. I have very carefully considered the Petitioners Petitions, the Respondent’s grounds of opposition, the proceedings interest of the Parties evidence, Counsel rival written submissions; and from the above the following issues arises for consideration in this Petition thus:-

**a) Whether the Petitioners are substantially guilty of laches?**

**b) Whether the Petitioners have failed to discharge, to the required standards, the evidentiary burden required to prove that they were tortured and /or treated in a cruel, inhumane and degrading manner?**

**c) Whether the Petitioner have demonstrated how the Respondent violated their constitutional rights and whether there are any constitutional issues raised for the court to determine?**

**A. WHETHER THE PETITIONERS ARE SUBSTANTIALLY GUILTY OF LACHES?**

22. In the instant Petitions, the 1<sup>st</sup> Petition was filed on 22<sup>nd</sup> January 2016; whereas the 2<sup>nd</sup> and 3<sup>rd</sup> Petitions were filed on 11<sup>th</sup> July 2016. The actions complained of occurred on 15<sup>th</sup> September, 1997, a period of 19 years before the Petitions herein were filed.

23. The Respondent contend that the events complained about occurred almost 20 years ago, and the delay in filing the Petitions is inordinate, inexcusable and the Petitions should not be entertained. The Respondent further state that it is trite that a Court must always consider whether the delay in filing a Petition alleging violation of constitutional rights is unreasonable and prejudicial to the Respondent's defence.

24. In the present Petitions, and upon perusal of the Petitions, as well as, the supporting affidavits and petitioners' supplementary affidavits/statements, I have not found any plausible explanation or any explanation for the delay.

25. The Petitioners on the issue on whether they are guilty of laches, urge the delay was because before promulgation of the Constitution 2010, claims on Bill of Rights could not be instituted as the victims of torture or those who had been detained without trial had little faith in the Judicial system; urging that is a matter of judicial notice. The Petitioners further urge the constitutional matters have no time limit. To buttress their argument, they cited the case of **Lewis Wilkinson Kimani Waiyaki V. Hon. Attorney General (2016) eKLR**, in which the Petitioner filed his claim against the Attorney General claiming that on or about 7<sup>th</sup> March 1968 at 2 AM, he had been roused from sleep by officers from the Special Branch Department of Kenya, at his house in Kampala, Uganda. He claimed that about 20 officers had raided his home, conducted a search then took him to forests, manned by Ugandan Research Bureau officers, where he was physically tortured.

Through an affidavit sworn by a Commissioner of Police in the Operations Department of the Kenya Police Service, the Respondent had opposed the Petition stating inter alia that there had been an inordinate delay of 49 years in the commencement of the Petition and no viable reason had been given for this.

The Respondent also pointed out that the Petitioner was a lawyer and ought to have come to court promptly, after regime change and the passing of the Constitution, 2010.

The Court observed that;

*"1. The Promulgation of the Constitution 2010 has opened an unimaginable avalanche of claims particularly on the Bill of Rights. Like caged birds, the freedom heralded by a robust, barely inhibitive Constitution has given litigants who had long despaired, an opportunity to test the judicial system with both recent and very old claims. One such old claim is the present one as the alleged violation of fundamental freedoms is said to have occurred in 1968."*

In analysing what it admitted was a vexing issue, the court took into account the decisions of various courts on the issue. The court maintained that constitutional matters have no time limit. It allowed the Petition which had been filed 49 years after the cause of action and noted that;

*"35. ...the Petitioner stated that he came to Court late only after the Constitution 2010 had been promulgated and when Mr. Charles Njonjo who he largely blames for his predicament, was no longer in power. I also note that during cross-examination, Counsel for the Respondent did not press the point but submitted on the issue in his written submissions. Is the above explanation reasonable?"*

*36. In my view, it is indeed true that prior to the promulgation of the Constitution 2010, those who were tortured, or detained without trial had little faith in the judicial system to right the injustices meted out to them. This is a matter of judicial notice and it is also true that Petitions such as the present one were only filed from 2003 onwards after the end of the Moi regime."*

26. The Petitioner further rely on the case of **Florence Wakiuru Muchiri & another vs. Attorney General (2017) eKLR** where the Court held that :-

*"My understanding of the jurisprudence on the issue of limitation is that courts will be reluctant to shut out a litigant on account of limitation of time unless there are obvious reasons to do so. In considering such delays, the court cannot avoid taking judicial notice of the immense difficulties which prevailed at the period of the alleged violations making it impossible for aggrieved person to file cases of this nature against the government. In fact it is the promulgation of the constitution of Kenya 2010 that opened the doors of justice thereby making it possible for aggrieved persons to institute cases of this nature."*

*This Petition was filed on 1<sup>st</sup> August 2013, almost three years after the promulgation of the 2010 Constitution. I do not think that there was inordinate delay in filing it. Considering the prevailing political situation which made it impossible for victims to file cases of this nature and bearing in mind the dictates of transitional justice discussed above, and in particular the need to uphold and strengthen the rule of law, and to hold the perpetrators of human rights abuse accountable, and providing victims with compensation, and the need to effectuate institutional reform, I find that it would be unfair to uphold the defense of limitation in this circumstances."*

27. The Petitioners contend that in the previous regimes, before promulgation of the Constitution of Kenya, 2010, there was rampant abuse of

human rights by the state agents. That torture then was used to make suspects “confess” to crimes having been sufficiently been subdued. It is submitted that the Petitioners were only able to file their petitions after the promulgation of the Constitution of Kenya 2010.

28. It is noted from the proceedings herein, that the Petitioners only testified of the socio-economic impact, that incarceration has had on them, and how it had left them almost destitute and impecunious. The Petitioners testified, that they had instructed an advocate to file a suit for compensation only, for them to realize later, that he had passed away, urging all the above had collectively hindered their ability to move to court sooner.

29. The Respondent maintain that no explanation has been preferred for the delay. It is further contended, that it is doubtful whether the Petitioners, had instructed a lawyer earlier as alleged. This is based on the grounds that no receipts of payment of legal fees were produced in court. It is stated that the Petitioners averred that the said lawyer passed on before filing their petition. The death certificate of the said lawyer was not produced nor his particulars.

30. It is Respondents’ contention that the delay is unreasonable and the Petitions are time barred. To buttress its argument, the Respondent referred to the *High Court Petition No. 306 of 2012 Ochieng Kenneth K’Ogute v Kenyatta University & 2 Others* where the Court stated:-

*“[35] As I conclude this matter, I will address the issue of delay in filing this petition. The respondent has argued that the petitioner is guilty of inordinate delay, and I am inclined to agree with it. The events complained of took place more than 12 years ago. There is nothing before the court that explains or justifies the delay in coming to court to vindicate his rights. The petitioner’s counsel submitted that he was so traumatised that he could not come to court before, but I can see no basis for this submission. While the petitioner alleges that he was arrested and charged, and that he served for 15 days before his fine was paid, I cannot see any basis for alleging that he was so traumatised that it has taken him 12 years to recollect that he had a claim against the respondents. While the reason for delay in cases such as those involving the Nyayo House torture cases may be acceptable, at least for a time, that they were not able to file claims because of the politically repressive climate then prevailing, there is no such justification in this case. Even had I found that the facts demonstrated a violation of the petitioner’s rights (which I have not), I would have had difficulty in excusing the 12 years’ delay in this matter.*

*[36] There is a great danger that parties are abusing the constitutional protection of rights to bring claims before the court whose sole aim is enrichment rather than vindication of rights. A delay of 10 years or more before one comes to court to allege violation of rights is clearly not justifiable. As Nyamu J observed in Abraham Kaisha Kanzika and Another vs Central Bank of Kenya (supra): “Even where there is no specified period of limitation it is proper for the court to consider the period of delay since the accrual of the claim and the reasons for the delay. An applicant must satisfactorily explain the delay. In this case a delay of 17 years is inordinate and it has not been explained. The prosecution of the claimant took 6 years and although he gives this as the reason for the delay he has not explained the balance of eleven years.*

*In my view failure by a Constitutional Court to recognize general principles of law including, limitation expressed in the Constitution would lead to legal anarchy or crisis. It would also trivialize the constitutional jurisdiction in that applicants would in some cases ignore the enforcement of their rights under the general principles of law in order to convert their subsequent grievance into a “constitutional issue” after the expiry of the prescribed limitation periods.” (Emphasis added)*

31. The issue relating to delay in filing Constitutional Petitions has ably been dealt with in myriads of cases and courts have clearly pronounced themselves, that explanation has to proffered for the delay or has to be justified in instituting of proceedings regarding Constitutional Petitions at the time of filing the Petition.

32. In the case of *Wamahu Kihoro Wambugu v. Attorney general (2016) eKLR* the court expressed itself as follows:-

*“Then there is the period it has taken the petitioner to file this petition. It was filed on 18<sup>th</sup> September 2014, more than 28 years after the alleged events. The petitioner alleges that he did not file his claim because there was a repressive government in place. However, as pointed out by the respondents, there have been more than three changes in government in the twelve years or so preceding the filing of the petition. A large number of petitions alleging violation of constitutional rights have been filed as far back as 2003 and 2004 by persons who had been arrested, held in Nyayo House, tortured and jailed. Cases in point include the two decisions relied on by the petitioner in his submissions- that of Mugo Theuri vs Attorney General and Simon Maina Waweru vs Attorney General. The delay may have been as a result of the petitioner’s own doubts about the credibility of his claim. Whatever the reason, however, this is one of the cases in which I would agree with the reasoning of Nyamu J (as he then was) in the case of Lt. Col. Peter Ngari Kagume vs Attorney General (supra) when he stated:*

*“I do not wish to give a specific time frame but in my mind there can be no justification for the Petitioners delay for 24 years. A person whose constitutional rights have been infringed should have some zeal and motivation to enforce his or her rights. In litigation of any kind, time is essential as evidence may be lost or destroyed and that is possibly the wisdom of time limitation in filing cases.”*

33. Similarly, in the recent case of *Wellington Nzioka Kioko v. Attorney General (2018) eKLR*, the learned Judges of Court of Appeal in dismissing the Appeal held that:-

*“We need to look at the logic behind limitation of actions generally in order to place this issue in proper perspective. When a person suffers a wrong at the hands of another and feels the need to redress the wrong, it is reasonable to expect that redress will be sought before the claim gets stale. This enables a person to preserve and adduce the evidence that is necessary to support the claim. It also accords the purported wrong doer an opportunity to address the grievance and if possible remedy it. That way both parties are spared the agony of losing important evidence, or even witnesses. Memory is sometimes transient and it is important that a person adduces evidence when the memory of the incident complained of is still intact. There is also this idea of people*

*moving on in life. If somebody wrongs you, you need to seek redress when the offending act still has an impact on your life, and when the evidence necessary to prove the wrong is still available. There is also the converse situation where the alleged wrongdoer should know that there is a claim against him which he needs to remedy. If a wrong is committed and then the person wronged waits for time on end before even notifying the other party, then a travesty of justice occurs because the claim might be made at a time when the offending party has forgotten about the incident and is no longer in a position to defend himself. There is of course a rebuttable presumption that if you don't seek redress within a reasonable time, there is a possibility that you have not suffered any loss from the act complained of. That would explain the maxim that equity does not aid the indolent."*

34. A similar position was taken by the learned judges of the Court of Appeal in the case of *Monica Wangu Wamwere v. Attorney General (2019) eKLR* where it was held as follows:-

*"We also note that the Petition was filed 20 years from when the last alleged violation took place. The appellant stated that the reason for the delay was that she did not have faith in the Judiciary under the old constitutional disposition and especially under the Moi regime. The learned Judge took issue with the explanation given for the delay by the appellant. He noted that since 2003 after end of the Moi era, many aggrieved persons approached the courts seeking redress for their constitutional violations. We dare say, that the appellant's famous son Koigi Wamwere filed his case in 2008, before the promulgation of the current Constitution. In any case, the said promulgation took place in 2010 yet the appellant filed her Petition in 2013 and that delay has not and indeed cannot be sufficiently explained. We have no difficulty agreeing with the learned Judge that the delay was inordinate and cannot be cured. It is apparent that the petition was no more than a speculative afterthought."*

35. The present Petitions were filed 19 years from when the last alleged violation of the Petitioners' constitutional rights took place. The Petitioners state the reason for the delay was, that they did not have faith in the previous regimes and that they were only able to file their petitions after the promulgation of the Constitution of Kenya 2010. They further stated that they had instructed an advocate to file a suit for compensation only for them to realize later, the lawyer had passed away and for those reasons they had been hindered from moving to the court.

36. The explanation given for delay is not part of the Petitioners pleadings and the same was only introduced through submissions. The law do not allow a party to rely on evidence which he/she has not pleaded in his/her pleadings. That even, if that was pleaded, since 1997 to 2016, a period of 19 years has lapsed before filing of the Petitions. The Petitioners have had all the time to file claim under the ordinary law invoking the jurisdiction of the court but never did so; and, as the claim under the Limitation of Actions Act, is time barred, are now contrary to the constitution urging their claim is not time barred by virtue of the provision of the Constitution. The Petitioners have not given any plausible explanation why they delayed filing the case for 19 years. I note there is great danger, if parties are allowed to bring claims which are inordinately delayed and without any explanation for delay. If the courts were to allow such inordinately delayed claims this may result to abusing Constitutional protection of rights to bring stale claims before court with sole aim of enriching such Petitioners, rather than vindication of rights. A delay of 10 years or more before one comes to court to allege violation of rights is clearly not justifiable. Further the promulgation of our Constitution took place in 2010 yet the Petitioners have taken six (6) good years thus upto 2016 to file their Petitions. This delay of 6 years since the promulgation of the Constitution 2010 has not been explained. The socio-economic impact and being destitute and impecunious is not sufficient explanation, as the courts have always on application and proof allowed litigants to sue as paupers. In view of the aforesaid I find the delay of 19 years before filing the Petitions herein having not been explained. The Petitioners contention with urging, that there is no limitation in Constitutional Petitions is unjustified and is not a basis for a party to sit on his rights and moves the court for reliefs when, its claim is inordinately delayed and without any plausible explanation begin given. The delay in filing the Petitions was inordinate and incurable. I agree with the Respondent that the Petitions are inordinately delayed and time barred.

***B. WHETHER THE PETITIONERS HAVE FAILED TO DISCHARGE, TO THE REQUIRED STANDARDS, THE EVIDENTIARY BURDEN REQUIRED TO PROVE THAT THEY WERE TORTURED AND /OR TREATED IN A CRUEL, INHUMANE AND DEGRADING MANNER?***

37. The Respondents contend that it is trite that the Petitioners must state and identify the rights with precision and how the same have been or will be infringed in respect of them as stated in the case of *Anarita Karimi Njeru v. R (1976 – 1980) KLR 1272*. The Respondent avers therefore the Petitioners herein have failed on that limb by failing to demonstrate how they were tortured and the nature of injuries they sustained.

38. Precision is urged by the Respondent, that it requires the Petitioner to categorically state in the supporting affidavit, the particulars of each and every relevant event including where first the Petitioner was allegedly tortured, urging that it is not enough to state that they were tortured in a nearby forest, pointing out that the Kakuzi forest was only introduced in cross-examination.

39. To buttress its argument the respondent further referred to the case of *Mumo Matemu v. Trusted Society of Human Rights Alliance & 5 others [2013] eKLR* where the Court held that,

*"It is our finding that the petition before the High Court was not pleaded with precision as required in constitutional petitions. Having reviewed the petition and supporting affidavit, we have concluded that they did not provide adequate particulars of the claims relating to the alleged violations of the Constitution of Kenya and the Ethics and Anti-corruption Commission Act, 2011."*

40. In the instant Petitions the Respondent filed grounds of opposition which he relies on in discrediting the Petitioners' case, through cross-examination, but did not file any affidavits in response to controvert the facts raised in the Petitions by the Petitioners.

41. The Petitioners were duly cross-examined, and it is noted that there were slight inaccuracies, in the Petitioners' oral evidence; however their evidence was largely consistent with their affidavit evidence. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents clarified they had been arrested on 15<sup>th</sup> September 1997. Their Petitions were drawn to include the possibility of such a variation by indicating that they were arrested ***"on or about 22<sup>nd</sup> September 1997"***.

42. The Petitions in support of the above proposition sought to rely on the case of *Mwangi Mathenge v. Attorney General (2012) eKLR* in which the Respondent had called to question some discrepancies in the Petitioner's case. The Respondent had pointed out that the averments in the affidavit stated that the Petitioner was arrested at 6.20 pm by 5 special branch officers and put in a green land rover whereas on oath he had testified that he was arrested by 6 special branch officers at 10.00 pm and put in blue land rover.

43. In that case, the court held that it had observed the Petitioner's demeanour in court and also took into consideration the Petitioner's advanced age when he gave his testimony. The court also took note of the fact that the Respondent had not disputed the fact that the Petitioner was arrested; just that he was not arrested on the date and time that he said he was arrested.

44. Further the petitioners sought support from the case of *Herman Marine Nderi versus The Attorney General [2012] eKLR* where the Court held thus;

***“19. I note that the Respondent's main argument is that evidence of torture should have been presented by the Petitioner. By what means I don't know. Documentation? Medical records? Eye witnesses?”***

***20. It is common knowledge that torture was not being conducted post-1982 with meticulous record keeping accompanying the act. Neither were lawyers and relatives being invited as witnesses. It was something done in secrecy and in that I am reminded of the apt words of Mohamed, DP in Azania People's Organization (AZAPO) & others vs. President of the Republic of South Africa & Others [1996] ZACC 16, when he stated as follows:***

***“Most of the acts of brutality and torture which have taken place have occurred during an era in which neither the laws which permitted the incarceration of persons or the investigations of crimes, nor the methods and the culture which informed such investigations, were easily open to public investigations, verification and correction. Much of what transpired in this shameful period is shrouded in secrecy and not easily capable of objective demonstration and proof...”***

***All that often effectively remains is the truth of wounded memories of loves (Sic) ones sharing instinctive suspicions, deep and traumatizing to the survivors but otherwise incapable of translating themselves in objective and corroborative evidence which could survive the rigours of the law.”***

45. Similarly in the case of *Kariuki Gathitu v Attorney General [2013] eKLR* the Honourable court held that;

***It is now trite that although a party alleging a fact has the onus of proof of that fact, the opposing party is at the very least expected to file a response to those allegations of fact. Where such a party actually appears in the proceedings but neither in pleadings nor in oral evidence does he answer to those facts, then the Court can only but take it that those facts are actually uncontested.”***

46. In cases where a matter takes a considerable period of time pending hearing both parties are not spared the agony of losing important evidence. Memory sometimes fails parties on important facts and inaccuracies are not uncommon. This matter was heard after a period of 19 years from the incident, it would be unreasonable and unrealistic for anyone to expect the parties who are aged and had not kept record to be accurate on each and every fact of the case. Parties may not repeat word for word from their affidavits evidence when giving oral evidence. There will always be inconsistencies and as long as they are not affecting the substance of the matter, parties should be excused. The Court of Appeal addressed itself on similar point, in the case of *Wellington Nzioka Kioko v. Attorney General (2018) eKLR*, the Court stated :

***“We need to look at the logic behind limitation of actions generally in order to place this issue in proper perspective. When a person suffers a wrong at the hands of another and feels the need to redress the wrong, it is reasonable to expect that redress will be sought before the claim gets stale. This enables a person to preserve and adduce the evidence that is necessary to support the claim. It also accords the purported wrong doer an opportunity to address the grievance and if possible remedy it. That way both parties are spared the agony of losing important evidence, or even witnesses. Memory is sometimes transient and it is important that a person adduces evidence when the memory of the incident complained of is still intact. There is also this idea of people moving on in life. If somebody wrongs you, you need to seek redress when the offending act still has an impact on your life, and when the evidence necessary to prove the wrong is still available. There is also the converse situation where the alleged wrongdoer should know that there is a claim against him which he needs to remedy. If a wrong is committed and then the person wronged waits for time on end before even notifying the other party, then a travesty of justice occurs because the claim might be made at a time when the offending party has forgotten about the incident and is no longer in a position to defend himself. There is of course a rebuttable presumption that if you don't seek redress within a reasonable time, there is a possibility that you have not suffered any loss from the act complained of. That would explain the maxim that equity does not aid the indolent.”*** (Emphasis added)

47. In view of the above and the Respondent having not filed any affidavits in response to the allegations of fact and averred by the Petitioners, I find that the Petitioners evidence was not challenged. I find therefore the Petitioners evidence was not contested. It is not proved that the Petitioners were not indeed tortured and mistreated at the time of their arrest by mere inaccuracies in their evidence.

48. The Respondent aver that the 1<sup>st</sup> Petitioner did not produce any medical documents, to show that, he was actually treated for the alleged torture meted on him as alleged. The 1<sup>st</sup> Petitioner it is urged he could not recall the name of the hospital in which he was treated at and only recalls that it was owned by an Asian. The 3<sup>rd</sup> Petitioner relied on a medical report allegedly prepared by Doctor Paul Chege of Ndungu Chege Medical Surgical Clinic dated 16<sup>th</sup> June 2016. The said doctor did not however testify in court and did not therefore produce the said document.

49. Under **Section 72 of the Evidence Act** it is provided:

***“72. Where evidence is required of a document which is required by law to be attested, and none of the attesting witnesses can be found, or where such witnesses is in capable of giving evidence or cannot be called as a witness without an amount of delay or expense which the court regards as un reasonable, it must be proved that***

***The attestation of one attesting witness at least is in handwriting and that the signature of the person executing the document is in the handwritten of that person.*** (Emphasis mine).

50. It is trite that if a party seeks to rely on a fact, he bears the burden to show that the fact existed. The law is clear to the extent that he who alleges must prove. **Section 107 of the Evidence Act** provides:-

***“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 exists.”***

Further **Section 109 of the same Act** provides:-

***“109. The burden of proof as to any particular fact lies on the person who wishes the court to belief in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”***

51. In the instant Petition, the Petitioners filed supporting affidavits, which each of the Petitioner duly swore. The Petitioners further gave evidence before this court and relied on their averments in their respective affidavits. The Respondent did not file any affidavit controverting the averments in the Petitioners affidavits. It is trite that a party alleging a fact has the onus of proof of the fact, whereas the opposing party is at the very least, expected to file a response to those allegations of fact. The grounds of opposition cannot be taken as response to the allegations of facts. It should be noted where such a party appears in the proceedings but neither in the pleadings nor in oral evidence, as was the case herein, it cannot be taken as having responded to the allegations of facts. The court can only take that the facts deponed upon remains uncontested and as true.

52. In view of the above, and from the contents of Petitioners affidavits and evidence which has not been controverted by way of filing response, I find the Petitioners have discharged the burden of proof and demonstrated that they were tortured, however the petitioners by failure to produce medical documents, I find they did call evidence on the nature and extent of injury sustained by each of them. On establishing the nature of injuries and their extent the Petitions were duty bound to call medical experts, which none of them called any.

53. The Petitioners were under obligation to proof the nature of injury suffered as a resultant of torture, which by their failure to produce medical documents have failed to demonstrate the injuries sustained by each of them. In the case of **Charles Muturi Macharia vs. Standard Group & 4 others (2017)** eKLR; Hon. Justice Mativo held that:-

***“...the person alleging breach of constitutional rights must prove the loss suffered. The evidence tendered on behalf the petitioners in my view did not demonstrate the alleged loss to the required standard. A report by the relevant professional could have assisted the court to show if at all the girls in question suffered mental or physiological or physical harm and if so to what extent if at all it affected their lives or academic standards. No school report forms prior to the incident or after were tendered or any reports on their conduct or behaviour after and before the incident were produced.”***

54. From the Petitioners evidence and their failure to avail medical Reports and failure to call medical experts and or doctors who treated them following the alleged torture, I find that the Petitioners failed to discharge to the required standard the evidentiary burden required to proof the nature of injury and to what extent as they allege in this Petition.

### **C. WHETHER THE PETITIONER HAVE DEMONSTRATED HOW THE RESPONDENT VIOLATED THEIR CONSTITUTIONAL RIGHTS AND WHETHER THERE ARE ANY CONSTITUTIONAL ISSUES RAISED FOR THE COURT TO DETERMINE?**

55. The Petitioners sued the Respondent in its capacity as the legal representative of the Government of Kenya and in particular the representative of the principal secretary ministry of Interior and Co-ordination of National Government as stipulated under **Article 156(4)(b) of the Constitution**.

56. It is the Petitioners' case that whereas the police were entitled to arrest them on suspicion of committing a cognizable criminal offence, they had no duty to torture them or treat them in inhumane and degrading manner that they did. The Petitioners relies on the facts on torture as clearly said out in their supporting affidavits and oral evidence adduced before court.

57. The petitioners contend that the treatment they were subjected to and as detailed in their respective affidavits amounted to a violation of their rights as protected by **Section 74(1) of the Repealed Constitution, 1969** and **Article 29 of the Constitution of Kenya, 2010**. **Section 74(1) of the Constitution of Kenya 1969** provided that :-

***“74.(1) No person shall be subject to torture or to inhuman or degrading punishment or other treatment.”***

**Article 29 of the Constitution of Kenya 2010** provides thus:-

***“29. Every person has the right to freedom and security of the person, which includes the right not to be-***

***a) deprived of freedom arbitrarily or without just cause;***

*b) detained without trial, except during a state of emergency, in which case the detention is subject to Article 58;*

*c) subjected to any form of violence from either public or private sources;*

*d) subjected to torture in any manner, whether physical or psychological;*

*e) subjected to corporal punishment; or*

*f) treated or punished in a cruel, inhuman or degrading manner.”*

58. The Petitioners aver that whereas the Flying Squad Police Officers were entitled to arrest them for alleged murder of Josephine Wanjiru and her 3 daughters, they had no statutory authority to keep them in cells and torture them.

59. I agree with Petitioners contention, that though the Police were entitled in the course of investigation to arrest, the Petitioners as murder suspects, they had no statutory authority, to torture them while under their custody. The petitioners were arrested nearly 5 years after the alleged murder in 1992, when the police had statutory authority to discharge the Petitioners; but the torture of the Petitioners by the Flying Squad Officers, and denial of their right to communicate with their relatives, friends and advocates after their arrest and their subsequent incarceration pending trial was an infringement of the Petitioners' rights as protected under **Section 72(1), 72(3), and 77(1) of the Repealed Constitution, 1969 and Article 29 of the Constitution of Kenya 2010.**

60. The aforesaid sections provide as follows:-

*“72.(1) No person shall be deprived of his personal liberty save as may be authorized by law...*

*72(3) A person who is arrested or detained –*

*(a)...;*

*(b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence, and who is not released, shall be brought before a court as soon as is reasonably practicable...*

*77.(1) If a person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.”*

61. The Petitioners sought reliance in support of the above proposition from the case of **David Gitau Njau & 9 Others versus Attorney General (2013) eKLR**, where the Petitioners, former officers of the Kenya Air Force, claimed that they were arrested between 1<sup>st</sup> and 4<sup>th</sup> August 1982 and subjected to torture, cruel, inhuman and degrading treatment by officers of the Kenya Army in violation of **Sections 70(a) and 74(1) of the Repealed Constitution.**

62. The court in interrogating what amounts to torture relied on the various definitions in international human rights instruments and on the definition of torture as posited by Visram J. (as he then was) in **Samuel Rukonya Mburu vs. Castle Breweries, Nairobi HCC 1119 of 2003** where the Court stated as follows:

*“Prohibition against torture, cruel or inhuman and degrading treatment implies that an “action is barbarous, brutal or cruel” while degrading punishment is “that which brings a person dishonour or contempt”*

63. The treatment meted upon the Petitioners herein, qualifies to be a torture as each of them was treated in a cruel or inhuman and degrading manner, while in the hands of the Flying Squad officers. I find that their action to say the least, was not only unjustified but was barbaric, brutal, cruel and degrading.

64. From the contents of the Petitioners affidavits and oral evidence, which was not contested at all by the Respondent, through filing of an affidavit, I am satisfied, the Petitioners have demonstrated through the affidavits and oral evidence, that they were subjected to torture, cruel and degrading treatment contrary to **Section 74(1) of the (Repealed) Constitution**, which is not permissible nor excusable under any circumstances. I further find that regardless of whatever crimes the Petitioners were suspected of or had purportedly committed, the Petitioners should not have been subjected to torture or inhuman and degrading treatment by Police Officers, as the Petitioners were under the protection of the Constitution not to be subjected to torture or to inhuman or degrading punishment or any other treatment.

65. The Petitioners counsel urge that as Petitioners rights were violated by the Police officers who were Kenyan Government servants, agents and employees they are entitled to payment of damages.

66. The Petitioners on issues of award of damages rely on the decision of **Florence Wakiuru Muchiri & another (supra)** where the court held that **“an award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right under the Constitution.”**

67. The Petitioners pray for an award of Kshs.30,000,000,000 plus costs and interest. The Petitioner is seeking the said award sought to rely in the case of **Otieno Makionyang v. Attorney General & another HCC Misc. Appl. No. 843 of 2003** where the Petitioner was awarded damages in the sum of Kshs.20,000,000 for violation of his rights.

68. The Respondent on the reliefs sought by the Petitioner urge they have failed to prove their case to merit any award of damages.

69. I have very carefully analysed the Petitioners and Respondent's case; and whereas I have found the Petitioners rights were violated when they were held at state institutions; I have equally come to the conclusion that the Petitioners Petitions were inordinately delayed and therefore time bared.

70. The upshot is that the delay in filing the Petitions herein is unreasonably inordinate and the Petitions are time barred. I therefore proceed to make the following orders:-

*a) The Petitions are inordinately delayed, time barred and are struck out and dismissed.*

*b) Had the Petitions not been found to be time barred, they would have succeeded. I would have awarded each Petitioner Kshs.5,000,000 as general damages with costs.*

*c) Each party to bear its own costs.*

**Dated, Signed and Delivered at Nairobi on this 24<sup>th</sup> day of September, 2020.**

.....

**J. A. MAKAU**

**JUDGE**