



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI, MILIMANI LAW COURTS
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
CONSTITUTIONAL PETITION NO 159 OF 2015

**IN THE MATTER OF ENFORCEMENT OF FUNDAMENTAL RIGHTS, SECTION 84 (1) OF
THE FORMER CONSTITUTION**

AND

**IN THE MATTER OF INFRINGEMENT OF FUNDAMENTAL RIGHTS, SECTION 70,71, 72,
74, 75,77, 80 AND 81 OF THE FORMER CONSTITUTION OF KENYA.**

BETWEEN

PHILLIP TIROP KITUR.....PETITIONER

VERSUS

THE HON. ATTORNEY GENERAL.....RESPONDENT

JUDGMENT

The parties

1. The Petitioner, a male adult Kenyan avers that he brings this Petition on his own interest and to secure and protect the due process of the law.
2. The respondent is the honourable Attorney General of the Republic of Kenya and the Principal Government legal adviser pursuant to Article 156 of the Constitution.

The facts

3. The Petitioner avers that he was a student at the University of Nairobi in 1985 when he was unfairly expelled without being accorded due process. He avers that he was arrested on 13th June 1986 in Nakuru by KANU youth wingers who handed him over to CID officers, at Nakuru on 14th June 1986. He avers that the CID officers interrogated and subjected him to torture, denied him food, water and that the Police brought his father to denounce him and exert pressure on him to plead guilty.
4. He further aver that together with another suspect they were transported in a land rover lying face down to Kileleshwa Police Station where he was held in solitary confinement and he was denied food and water. He avers that the following day he was blindfolded and taken to Nyayo House in Nairobi where he was beaten and he was subjected to interrogation. He avers that the officers threatened to kill

him taunting him that he was the only Kalenjin opposing the government of a fellow Kalenjin. He states that he was blindfolded and subjected to torture and was held in solitary confinement in a dark tiny cell without food and at times was fed with leftovers.

5. He avers that during this period he was denied access to family members or an advocate and that on 2nd July 1986, he was taken to the then Traffic Head quarters near Kenyatta National Hospital where he was informed that he would be charged with the offence of Sedition, Malicious Damage to property and Sabotage. He states that together with a one Kangethe Mungai, they were arraigned at the Nakuru law courts where under duress he pleaded guilty and was sentenced to **8** years for sedition. He avers that on the same day he was charged with the offence of malicious damage to property and sabotage and was sentenced to **7** years and **3** years imprisonment on his own plea of guilty which was also under duress. He avers that after the conviction, he was held at Nakuru Prison in a cell together with mentally ill prisoners.

6. Further, he avers that he was transferred to Kamiti Prison on 5th July 1986 where he was subjected to physical beatings together with his co-accused until 8th July 1986 when they were transferred to Naivasha Prison. He states that at Naivasha he was held in solitary confinement and was subjected to mental and physical torture, was held at the disciplinary block and held in solitary confinement for 10 months without access to family members or friends. He also avers that he was subjected to hard labour for **4** years which included manually crushing stones to make ballast, that he was not provided with any protective gear, and as a consequence, he claims he suffered from health complications which affected his eyesight, chest and breathing. He also avers that he was tasked with weaving handmade yearns due to his deteriorating health. He also avers that his family was harassed on account of being related to him including being detained by the police. He avers that he was released through a presidential pardon on 22nd June 1992.

7. He further avers that the actions enumerated above violated his constitutional rights under Sections **70, 72,73,74,77,81** and **92** of the retired constitution and prays for the following reliefs:-

a. A declaration that his fundamental rights and freedoms were contravened and violated by the State in his apprehension, detention at Nyayo Hose for 18 days and incarceration at Prison.

b. A declaration that the Petitioner is entitled to the payment of damages and compensation for the violation and contravention of his fundamental rights and freedoms under the repealed constitution.

*c. General damages, exemplary damages and moral damages on an aggravated scale under section **84 (2)** of the former Constitution for the unconstitutional conduct of the Kenyan government servants and agents be awarded.*

d. Any further orders, writs, directions as this Honourable Court may deem fit and appropriate.

e. Costs of this suit.

8. The Petitioner testified orally in court before **Lenaola J.** He essentially adopted and reiterated the contents of his supporting affidavit. The Respondents opted not to call witnesses nor did they file a replying affidavit. Parties agreed that the case proceeds from where it had reached before **Lenaola J.**

Grounds of opposition

9. The Hon. Attorney General filed grounds of opposition. He states that the Petition is incurably defective; that there were no records at various Police Stations showing that the Petitioner was held in the said stations; that in any event the said records cannot be traced after over **20** years; that the delay in filing this Petition is inordinate; that this Petition is aimed at enriching the Petitioner rather than vindicating constitutional rights and that the Police are mandated to investigate crime once reported.

Issues for determination

10. Upon analysing the above facts as presented by the parties herein, I find that three issues fall for determination, namely, **(a)** *whether this Petition is time barred*, **(b)** *Whether the Petitioner proved violation of his fundamental rights and freedoms under the retired Constitution*, **(c)** *Whether the Petitioner is entitled to damages and if so, what is the quantum?*

11. Before addressing the above issues, I find it necessary to address the issue of the Respondent's failure to file a Replying affidavit to this Petition and failure to call witnesses. The Petitioners counsel citing *Harun Thungu Wakaba vs A.G.*^[1] argued that in absence of a replying affidavit, hence the Petitioners averments remain uncontested. The Respondents' counsel did not specifically address this issue.

12. It is common ground that the only evidence on record is the evidence tendered by the petitioner. Failure to file a Replying Affidavit or adduce evidence on the part of the Respondent means that the evidence adduced by the Petitioner is uncontroverted and therefore unchallenged.^[2] In *Interchemie EA Limited vs. Nakuru Veterinary Centre Limited*^[3] it was held that where no witness is called on behalf of the defendant, the evidence tendered on behalf of the plaintiff stands uncontroverted.

13. A similar position was held in the case of *Trust Bank Limited vs. Paramount Universal Bank Limited & 2 Others*^[4] that it "is trite that where a party fails to call evidence in support of its case, that party's pleadings remain mere statements of fact since in so doing the party fails to substantiate its pleadings. In the same vein the failure to adduce any evidence means that the evidence adduced by the Plaintiff against them is uncontroverted and therefore unchallenged."

14. The Respondent in this case did not adduce evidence, but cross-examined the Petitioner. The purpose of cross-examination is three-fold; **(a)** *To elicit evidence in support of the party cross-examining*; **(b)** *To cast doubts on, or undermine the witness's evidence so as to weaken the opponent's case*; **(c)** *to undermine the witness's credibility*; **(d)** *To put the party's case and challenge disputed evidence*. But once a party cross-examines an opponent's witness, he can only rebut the issues raised during cross-examination by calling witnesses. Thus, failure on the part of the Respondent to adduce evidence or file response to the Petition means that the Petitioners case remains unchallenged.

a) Whether this Petition is time barred

15. On the question of limitation, counsel for the Petitioner submitted that the doctrine of laches does not and cannot apply in cases of violation of constitutional rights.^[5] He attributed the delay in filing this Petition to the Petitioners' previous advocates. He further argued that the court should take into account the hostile political environment prevailing then and urged the court to grant the reliefs sought in the Petition.^[6] On his part, counsel for the Respondent argued that that there was an in ordinate delay in filing this petition.^[7]

16. In *Eliud Wefwafwa Luucho vs The Attorney General*^[8] I addressed the question of limitation in cases of violation of Fundamental Rights enshrined in the Constitution as follows:-

"The question of limitation of time in regard to allegations of breach of fundamental rights has in many cases been raised by the State and our courts have consistently held that there is no limitation with respect to constitutional petitions alleging violation of fundamental rights^[9] with a section of our judiciary holding that a court must always consider whether the delay in filing a petition alleging violation of constitutional rights is unreasonable and prejudicial to a respondent's defense^[10] and further the state cannot shut its eyes on its past failings^[11] nor can the court ignore the dictates of transitional justice discussed below.

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 persons

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.

These petitions were filed on 7th April 2016, almost 7 years after the promulgation of the 2010 constitution. I appreciate that 7 years is a long period of time and the delay has not been explained, but considering the prevailing political situation prior to the promulgation of the 2010 constitution which made it impossible for victims to file cases of this nature in court and bearing in mind the dictates of transitional justice, and in particular the need to uphold and strengthen the rule of law, and to hold the perpetrators of violations of human rights accountable, and the need to provide victims with compensation, and the need to effectuate institutional reform, I find that it would be unfair to uphold the defense of limitation in the circumstances of the present case.

The Constitution of Kenya 2010 gives prominence to national values and principles of governance. Article 10 (2) of the Constitution provides the national values and principles of governance which include the rule of law, human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised. These principles are binding on all State organs, State officers, public officers and all persons whenever any of them applies, or interprets, the Constitution; enacts, applies or interprets any law; or makes or implements public policy decisions.

There is no doubt that the 2010 constitution brought a fundamental change to this country with a strong emphasis on the rule of law and national values. It was a major transition from the dark past to a future where constitutionalism would reign supreme. But the key question that boldly requires to be addressed is what would happen to all those Kenyans whose rights were grossly violated by state agents. Was Kenya simply going to transit to the new constitutional dispensation and simply forget such atrocities. Andrea Bonime-Blanc^[12] defines "transition" as referring to "a period of reformist change between regimes - not to a change of government within the same constitutional framework nor to a revolutionary transformation."

This brings into sharp focus the concept of transitional justice and because of its importance and relevance to the issue under consideration, I will spare some ink to discuss it below.

The end goals of transitional justice in general should be to prevent similar recurrence of human rights violations in future; to repair the damage caused through systematic patterns of human rights violations; to uphold the rule of law; to recognize the human dignity and worth of those who have been victimized and to create a stable and governable political environment."

The primary objective of a transitional justice is to end the culture of impunity and establish the rule of law in a context of democratic governance. In general, therefore, one can identify the broad objectives that transitional justice aims to serve:- These are; establishing the truth, providing victims a public platform, holding perpetrators accountable, strengthening the rule of law, providing victims with compensation, effectuating institutional reform, promoting reconciliation. Transitional justice is not a special form of justice. It is, rather, justice adapted to the often unique conditions of societies undergoing transformation away from a time when human rights abuse may have been a normal state of affairs.^[13]

It is important to repeat that owing to the political climate of the day, it was not possible for victims of human rights abuses to seek court redress and this door was opened by the promulgation of the 2010 constitution.

In the abstract at least, the transition of transitional justice connotes unspecified change. Yet, for **Ruti Teitel**, who arguably coined the term 'transitional justice' in 1991,^[14] the transition at issue is essentially a political one involving 'the move from less to more democratic regimes.'^[15] This conceptualization of transition is hardly unique to Teitel, and indeed it can be said that liberal democratic transitions constitute the paradigmatic transition of transitional justice.^[16] Implicit in

this understanding of transition is a sort of teleological or 'stage theory' view of history. [17] If barbarism, communism and authoritarianism lie at one end of the narrative, then western liberal democracy sits at the other 'end of history.' [18] With law as the master discipline and lawyers as the high priests, the mechanisms of transitional justice become a sort of secular rite of passage symbolizing political evolution. [19]

Dustin N. Sharp observes that the label 'transitional justice' has for some time been applied to contexts that do not involve a liberal political transition (Rwanda, Chad, Uganda, Ethiopia), if they involve a political transition at all (Kenya, Colombia), or contexts that involve transition from one nominally liberal ethno-regime to another (Côte d'Ivoire). Beyond illiberal transitions, the term has also been invoked to describe the use of truth commissions and other commissions of inquiry in consolidated liberal western democracies (Australia, Canada). [20]

17. I believe the above excerpt correctly and explicitly addresses the subject of limitation of actions in cases of violation of Fundamental Rights and the principle of transitional justice and the approach adopted by courts in many jurisdictions in such cases. I have nothing useful to add. Instead I adopt it wholly in this case.

18. I may perhaps add that where the delay is inordinate, particularly taking into account the period that has lapsed after the promulgation of the 2010 constitution, the same must be explained. This Petition was filed in 2015, five years after the promulgation of the 2010 Constitution. Counsel for the Petitioner explained that the Petitioner's previous advocate failed him and added that due to the prevailing political environment, it was not possible for a party to file a case of this nature in court prior to 2010, a position that has been acknowledged in numerous decisions of this court. I find that the delay in this case both prior to 2010 and after 2010 has been satisfactorily explained. Consequently, the defense of limitation must fail.

(b) Whether the Petitioner proved violation of his fundamental Rights and freedoms under the retired constitution.

19. Counsel for the Petitioner submitted that the Petitioner's right to equal protection of the law, right to liberty, right not to be subjected to inhumane conditions, right to a fair trial and freedom from discrimination were violated. On his part counsel for the Respondent submitted that the Petitioner has not discharged the burden of prove. [21]

20. As stated above, the Honourable Attorney General opted not to file any Responses or adduce oral evidence. Thus, the only evidence on record is the evidence tendered by the petitioner. Thus, the Petitioner's evidence is uncontroverted and therefore unchallenged. [22] In short, the petitioner's evidence remained unchallenged.

21. It must be borne in mind that the Constitution must be interpreted in a broad way and not in a narrow and pedantic sense. Certain rights have been enshrined in our Constitution as fundamental and, therefore, while considering the nature and content of those rights the Court must not be too astute to interpret the language of the Constitution in so literal a sense as to whittle them down. On the other hand the Court must interpret the Constitution in a manner which would enable the citizens to enjoy the rights guaranteed by it in the fullest measure subject, of course, to permissible restrictions. [23]

22. The Petitioner narrated the torture and inhuman treatment subjected to him by the police. I have repeatedly held that every act of the state and its organs must pass through the test of constitutionality which is stated to be nothing but a formal test of rationality. The repealed constitution just like the 2010 constitution prohibited torture and acts of inhuman and degrading treatment. It also prescribed in clear that an arrested person charged with a criminal offence shall be tried within a reasonable time.

23. The constitutional provisions in the retired constitution which guaranteed the right to be charged in court within a reasonable time and freedom from torture and inhuman degrading were violated. The callous acts of police officers enumerated by the Petitioner cannot be justified in any way. The repealed

constitution out rightly outlawed such inhumane and degrading treatment and it is regrettable that security agents had degenerated to such a level. Such acts should only be consigned in the dustbin of our history never to resurface again.

24. Chapter 5 of the Repealed constitution contained the Bill of Rights, that is Protection of fundamental rights and freedoms of the individual. The notion of inhuman treatment covers at least such treatment as deliberately causes suffering, mental or physical, which, in the particular situation is unjustifiable. The word torture is often used to describe inhuman treatment, which has a purpose, such as the obtaining of information or confessions, or the infliction of punishment, and it is generally an aggravated form of inhuman treatment. Treatment or punishment of an individual may be said to be de-grading if it grossly humiliates him before others, or drives him to an act against his will or conscience.[\[24\]](#)

25. The term "harassment" in its connotative expanse includes torment and vexation. The term "torture" also engulfs the concept of torment. The word "torture" in its denotative concept includes mental and psychological harassment.[\[25\]](#)The actions visited upon the petitioner in my view amount to torture and a gross violation of his constitutional rights. It is a correct statement of the law that when a citizen is arrested on allegations of committing an offence as was alleged in the present case, his/her Fundamental Rights are not abrogated in *toto*. Also, his or her dignity cannot be allowed to be comatose.

26. Inhuman treatment has many a facet. Other than inflicting physical pain, it would also include a treatment that is inflicted that causes humiliation and compels a person to act against his will or conscience. It is also correct to state that there is no shadow of doubt that any treatment meted out to a citizen which causes pain, humiliation and mental trauma corrodes the concept of human dignity.

27. The majesty of law protects the dignity of a citizen in a society governed by law. It cannot be forgotten that the State is governed by rule of law which must be paramount. When citizenry rights are sometimes dashed against and pushed back by the members of the police force, there has to be a rebound and the Constitution springs up to action as a protector.

28. The normative idea underlying this broad consensus is that fundamental rights are owed to persons as a matter of human dignity and should be honored no matter what form of government a particular community chooses to adopt. As David Feldman has written, "there are certain kinds of treatment which are simply incompatible with the idea that one is dealing with a human being who, as such, is entitled to respect for his or her humanity and dignity."[\[26\]](#)

29. The rights of political freedom, right to life, freedom from inhuman and degrading treatment, due process, and equal protection are among the minimal rights that the world has come to demand of any society. In the words of the U.S. Supreme Court, these rights are "implicit in the concept of ordered liberty."[\[27\]](#)

30. Determining a similar issues as raised in these Petition, in *Eliud Wefwafwa Luucho vs The Attorney General*,[\[28\]](#)cited above, I observed as follows:-

"... Courts simply do not and cannot countenance a denial or violation of the fundamental right to due process or violation of constitutionally guaranteed fundamental rights which are a cornerstone of our legal system. After all, it is the Court's primary duty to protect the basic rights of the people vis-à-vis government actions.

"...it would be fitting to recall the words of Albert Camus,..."either cooperate with injustice or fight with it" and... Elie Wiesel,... who remarked that "...we must always side with the Rule of Law."
[\[29\]](#)

No matter how noble and worthy of admiration the purpose of an act, but if the means to be employed in accomplishing it is simply irreconcilable with constitutional parameters, then it cannot still be allowed. The Court cannot just turn a blind eye and simply let it pass. It will continue to uphold the Constitution and its enshrined principles."

31. The majesty of the law protects the dignity of a citizen in a society governed by law. It cannot be forgotten that the State is governed by rule of law which must be paramount. The restrictions imposed on fundamental rights have the sanction of law by which the enjoyment of fundamental right is curtailed but the citizens basic human rights are not crippled so that the police officers can treat citizens in an inhuman manner. On the contrary, they are under an obligation to protect fundamental rights of the citizens and prevent all forms of atrocities. I find that the police subjected the petitioner to inhuman and degrading treatment which was not justifiable at all under the repealed constitution.

(c) Whether the Petitioner is entitled to damages and if so, what is the quantum?

32. Counsel for the Petitioner argued that the Petitioner's rights were violated, and as a result of the inhuman treatment, the Petitioner suffered health complications. He also submitted that absence of medical reports is not sufficient to deny the Petitioner an award of damages.^[30] The respondents' counsel argued that the petitioner did not prove his claim and urged the court in the "unlikely" event it considers awarding damages, to consider a moderate award.

33. Having found that the Petitioner's rights were violated, the next question is whether they are entitled to damages as claimed. The purpose of public law is not only to civilize public power but also to assure the citizens that they live under a legal system which aims to protect their interests and preserve their rights.

34. When the court moulds the relief by granting 'compensation' in proceedings under Article 23 of the constitution or seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalizing the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen.

35. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, by not protecting the fundamental rights of the citizen or by subjecting the citizen to acts which amount to infringement of the constitution.

36. It is thus now well settled that 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. The quantum of compensation will, however, depend upon the facts and circumstances of each case.

37. Award of damages entails exercise of judicial discretion which should be exercised judicially and that means that it must be exercised upon reason and principle and not upon caprice or personal opinion. ^[31] Arriving at the award of damages is not an exact science. Also, no monetary sum can really erase the scarring of the soul and the deprivation of dignity that some of these violations of rights entailed. ^[32]

38. When exercising this constitutional jurisdiction the court is concerned to uphold, or vindicate, the constitutional right which has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases more will be required than words. If the person wronged has suffered damage, the court may award him/her compensation. The comparable common law measure of damages will often be a useful guide in assessing the amount of this compensation. But this measure is no more than a guide because the award of compensation is discretionary and, moreover, the violation of the constitutional right will not always be coterminous with the cause of action in law. ^[33] An award of compensation will go some distance towards vindicating the infringed constitutional right.

39. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach, and deter further breaches. All these elements have a place in helping the court arrive at a reasonable award. The court must consider and have regard to all the circumstances of the case.

40. An injury suffered as a result of discrimination, harassment or inhuman and degrading treatment is no less real because it does not possess tangible physical or financial consequences. And the difficulty in assessing the amount of compensation for that type of injury should not deter a court from recognizing its potential.^[34]

41. The award must be fair and reasonable, fairness being gauged by earlier decisions; but the award must also of necessity be arbitrary or conventional. No money can provide true restitution. I am persuaded that the petitioner proved to the required standard that he was tortured, treated to inhuman and degrading treatment and that his rights were violated by the police. The Petitioner stated that he suffered health complications. I have no reason to doubt this.

42. Considering the nature of the violations of the constitutional rights, the health complications he suffered, the torment, torture and degrading treatment he was subjected to and considering the above legal principles and bearing in mind the fact that it may not be easy to quantify denial or violation of fundamental rights and freedoms, I find that the petitioner is entitled to an award of damages.

Appropriate reliefs

43. In view of my conclusions herein above, I find that this Petition succeeds. This Court is empowered by Article 23 (3) of the Constitution to grant appropriate reliefs in any proceedings seeking to enforce fundamental rights and freedoms such as this one. Perhaps the most precise definition "appropriate relief" is the one given by the South African Constitutional Court in *Minister of Health & Others vs Treatment Action Campaign & Others*^[35]thus:-

"...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 court may even have to fashion new remedies to secure the protection and enforcement of these all important rights...the courts have a particular responsibility in this regard and are obliged to "forge new tools" and shape innovative remedies, if need be to achieve this goal."

44. I fully adopt the above definition of "appropriate reliefs" and shall deploy it in my disposition of this suit. Arising from the findings of evidence, conclusions of facts and law, constitutional and statutory interpretations and various pronouncements of law, I have reached above, and considering that the degrading and inhuman treatment subjected upon the Petitioner was at the material time a University Student on the verge of commencing his career, I find that an award of **Ksh. 6,000,000/=** would be reasonable in the circumstances. Accordingly, I enter judgement in favour of the petitioner against the Respondent and make the following orders:-

- i. **A declaration** be and is hereby issued that the petitioners' Fundamental Right and Freedom from torture, degrading and inhuman treatment was violated by the police and or state agents.
- ii. **A declaration** be and is hereby issued that the petitioner is entitled to damages for violation of his Fundamental Rights enshrined in the Repealed constitution.
- iii. **That** judgement be and is hereby entered in favour of the petitioner against the Respondent by way of general damages in the sum of **Ksh. 6,000,000/=**.
- iv. **That** the above sum shall attract interests at court rates from date of filing this Petition until payment in full.
- v. The Respondent do pay the costs of these proceedings to the petitioner plus interests thereon at court rates.

Orders accordingly.

Signed, Dated, Delivered at Nairobi this **19th** day of **April** 2018.

John M. Mativo

Judge

[1] Misc App No. 1411 o 2004

[2] Trust Bank Limited vs. Paramount Universal Bank Limited & 2 Others Nairobi (Milimani) HCCS No. 1243 of 2001

[3]{Milimani} Hccc no. 165b of 2000

[4] Nairobi (Milimani) HCCS No. 1243 of 2001

[5] Counsel cited Charles Gachathi Mboko vs A.G ibid

[6] Counsel urged the court to be guided by the decision in Oduor Ongwen & 20 Others vs AG {2011}Eklr

[7] Counsel relied on Priscillah Mwara Kimai & Others vs A.G. Pet No. 197 of 2014

[8] Supra note 1

[9]See Joan Akinyi Kabasellah and 2 Others vs Attorney General, Petition No 41 of 2014, Dominic Arony Amolo vs Attorney General, Nairobi High Court Misc. Civil Case No 1184 of 2003 (OS) [2010] eKLR, Otieno Mak'Onyango vs Attorney General and Another, Nairobi HCCC NO 845 of 2003

[10] Joseph Migere Onoo vs Attorney General, Petition No. 424 of 2013

[11] Gerald Gichohi and 9 Others vs Attorney General Petition No. 487 of 2012

[12]Andrea Bonime-Blanc *Spain's Transition to Democracy* (1987) 8-9.

[13]http://www.un.org/en/peacebuilding/pdf/doc_wgll/justice_times_transition/26_02_2008_background_note.pdf

[14] Ruti G. Teitel, 'Transitional Justice Globalized,' *International Journal of Transitional Justice* 2(1) (2008): 1-4.

[15] Ruti G. Teitel, *Transitional Justice* (New York: Oxford University Press, 2000), 5.

[16] Padraig McAuliffe, 'Transitional Justice's Expanding Empire: Reasserting the Value of the Paradigmatic Transition,' *Journal of Conflictology* 2(2) (2011): 32-44.

[17] See, Alexander Hinton, 'Introduction,' in *Transitional Justice: Global Mechanisms and Local Realities after Genocide and Mass Violence*, ed. Alexander Hinton (New Brunswick, NJ: Rutgers University Press, 2010).

[18] See generally, Francis Fukuyama, *The End of History and the Last Man* (New York: Avon Books, 1992).

[19]See, Michael Rothberg, 'Progress, Progression, Procession: William Kentridge and the Narratology of Transitional Justice,' *Narrative* 20(1) (2012): 1-24.

[20]Dustin N. Sharp, Emancipating Transitional Justice from the Bonds of the Paradigmatic Transition; <https://academic.oup.com/ijtj/article/9/1/150/678021/Emancipating-Transitional-Justice-from-the-Bonds>

[21] Counsel cited Peter Ngari Kagume & Others vs AG Pet No.128 of 2006

[22] Trust Bank Limited vs. Paramount Universal Bank Limited & 2 Others Nairobi (Milimani) HCCS No. 1243 of 2001

[23] See Mudholkar J in Sakal Papers v Union of India AIR 1962 SC 305 at p 311

[24] Greek Case 1969 Y.B. Eur. Con. on H.R. 186 (Eur. Comm'n on H.R). Also see Lenaola J. (As he then was) in the case of Milka Wanjiku Kinuthia & Others vs The Attorney General

[25]See Joginder Kumar v. State of U.P. (1994) 4 SCC 260, paragraph 23

[26] David Feldman, Human Dignity as a Legal Value -Part I, 1999 Pub. L. 682, 690-91.

[27] Palko v. Connecticut, 302 U.S. 319, 325 (1937).

[28] Constitutional Petition No 121 of 2016 consolidated with Petition Nos. 122 to 125 OF 2016

[29] Mr. Dainius Zalimas, President of the constitutional Court of the Republic of Lithuania, The Rule of Law and Constitutional Justice in the Modern World, 11-14 September 2017, Vilnius, Lithuania, delivering a speech at the Farewell Dinner for the 4th Congress of the World Conference on Constitutional Justice, 13th September 2017.

[30] Counsel cited Charles Gachathi Mboko vs A.G {2014} eKLR

[31]*Mbogo & Another vs Shah*{1968} EA 93

[32] Koigi Wamwere v Attorney General{2015} eKLR

[33]Attorney General v Ramanoop [2005] UKPC 15, [2006] 1 AC 338

[34]This concept was well expressed by Mummery LJ in Vento v Chief Constable of West Yorkshire Police [2003] ICR 318, at 331: -

[35] (2002) 5 LRC 216 at page 249