



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**

**PETITION NO. 351 OF 2017**

**AKUSALA A. BORNIFACE ..... PETITIONER**

**VERSUS**

**OCS LANGATA POLICE STATION ..... 1<sup>ST</sup> RESPONDENT**

**OCPD LANGATA POLICE DISTRICT ..... 2<sup>ND</sup> RESPONDENT**

**INSPECTOR GENERAL OF**

**NATIONAL POLICE SERVICE ..... 3<sup>RD</sup> RESPONDENT**

**NATIONAL POLICE SERVICE COMMISSION ..... 4<sup>TH</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 5<sup>TH</sup> RESPONDENT**

**JUDGMENT**

**INTRODUCTION**

1. The petitioner herein, who describes himself as an Advocate of the High Court of Kenya, a member of the Law Society of Kenya, a member of the Legal And Committee – Kibera Law Courts and a Human Rights Activist filed this petition against the respondents, claiming that his fundamental rights and Freedoms, under the Constitution, were violated when he was unlawfully arrested and detained. He alleges that he was in the course of discharging his duties as a lawyer by advising a senior citizen on his rights upon being arrested for a minor traffic offence when the police roughed him up before arresting him for no justifiable reason. He seeks the following reliefs:

- 1. A declaratory order that the actions of the police officers contravened the provisions of the Constitution under Articles 3, 4, 10, 20, 25, 28, 29, 32, 33, 35, 47 and 49, and thus contravened the rights and freedoms of the petitioner under Articles, 28, 29, 32, 33, 35, 47 and 49 of the Constitution.**
- 2. An Order of compensation in general damages of kshs 10,000,000.00 against the respondents jointly and severally for violating the petitioner’s constitutional rights.**
- 3. An order of mandamus directing the 3<sup>rd</sup> and 4<sup>th</sup> respondents to undertake disciplinary action against the culpable police officers who took part in the unlawful arrest and detention of your petitioner.**
- 4. Cost of this suit and interest thereon.**
- 5. Any other relief that this Honourable court deems fit and just in the circumstances.**

**THE PETITIONERS CASE.**

2. The petitioner’s case, as set out in the petition and supporting affidavit sworn on 27<sup>th</sup> March 2017, is that he was on 3<sup>rd</sup> September 2016 at about 9pm at a mini street in Nairobi West area when he witnessed three police officers viciously tugging an old man of Asian origin from his car and that, on moving closer to find out what was happening, he noted that the old man was in distress as he had been accused of

speaking on phone while during whereupon the petitioner advised him to cooperate with the police since the offence he had been accused of was a misdemeanor which could only attract a fine of kshs 1000 upon conviction.

3. The petitioner avers that his advice to the senior citizen annoyed the police officers who accused him of interfering with their work. He further states that the police then violently grabbed him and led him to a container where they threatened him with dire consequences before locking him up at the container where he was held for 2 hours before being taken to Langata Police Station where he was booked with 2 counts of incitement to violence and obstructing a police officer from performing his work.

4. He further states that he requested to go be released on bail pending appearance in court which request was turned down thereby leaving him with no option but to remain in custody under very unbearable and inhuman conditions among other remandees despite his protests on his innocence and plea for better treatment as an officer of the court.

5. The petitioner's case is that he did not obstruct the police officers from doing their work as all he did was to offer legal advice to the senior citizen who was then under threat of being arrested for speaking on phone while driving, but that in a strange turn of events, the senior citizen was set free while the petitioner who was only trying to help, was locked up.

6. He further avers that he was released the following day on 4<sup>th</sup> September 2016 without any charges being preferred against him and is apprehensive that the ordeal he went through at the hands of the police could be revisited on other young lawyers unless this court stamps its authority and brings it to an end through the remedies that he has sought in this petition.

7. Mr. Akusala, learned counsel for the petitioner submitted that the petition was a rallying call to save the Constitution and the rights of legal practitioners in Kenya as it had lately become a practice by the police to arrest advocates on framed up charges when all that the advocates were doing was to protect the interest of their clients. Counsel isolated the issues for determination to be:

1. Whether the petitioner was arrested and detained on 3<sup>rd</sup> and 4<sup>th</sup> September 2016.
2. Whether the arrest was lawful and justifiable.
3. Whether the petitioner's constitutional rights were violated.
4. Whether the petitioner is entitled to the orders sought.

8. Counsel submitted that it was not disputed that the petitioner was arrested and detained. On legality of the arrest, counsel submitted that the petitioner did not commit any offence to warrant the arrest or detention. He added that the allegations on charges of incitement to violence and obstruction of a police officer were untrue and were not presented before a court of law.

9. Counsel referred to the Blacks- Law definition of the word obstruction and observed that there was need for physical restraint for the charge of obstruction to be satisfied and submitted that there was no obstruction.

10. On incitement to violence claim, counsel submitted that the contents respondents' replying affidavit did not meet the threshold of the charge of incitement to violence. Counsel relied on the decision in the case of **Rahab Wairimu Thuo vs. Republic [2006] eKLR** where it was held that even in a case where the petitioner insulted the police, the words were directed to the police and not to the public.

11. On violation of constitutional rights, counsel submitted that the ordeal that the petitioner went through at the hands of the police was not contested and that the petitioner was not informed of his rights or the offence that he had been arrested for even though the principle offender, the senior citizen, was not arrested.

12. He added that the petitioner was roughed up and denied bail contrary to the clear provisions of the constitution under the Bill of Rights and the rights of an accused person. Counsel prayed for an award of kshs 10 million while relying on the decision in **Kenneth Stanley Njindo Matiba vs. Attorney General [2017] eKLR** wherein an award of kshs. 504,000,000 was made for unlawful detention and arrest.

#### **THE RESPONDENTS CASE**

13. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> respondents opposed the petition through the replying affidavit of Chief Inspector Derick Nyaga the OCS Langata Police sworn on 13<sup>th</sup> March 2018 wherein he avers that the petitioner was arrested on 3<sup>rd</sup> September 2016 for the offence of obstructing of police officer contrary to Section 254 (b) of the Penal Code and incitement to violence contrary to Section 96 of the Penal Code.

14. He narrates the sequence of events that led to the petitioner's arrest and confirms that a motorist had blocked the road thereby creating a traffic jam and that when police officers asked him to move the car from the road, the petitioner approached the police, identified himself and asked the police officers why they are harassing the motorist. He further avers that the petitioner provoked the police officers by accusing them of being murderers of the slain lawyer Willy Kimani which prompted the said officers to arrest him for the offence of obstruction of the police officers and incitement as shown in the copy of an extract of the Occurrence Book under OB 18/3/09/2016 which was attached to the replying affidavit and marked as annexure "CIDN-1".

15. He further states that the petitioner was at the time of the arrest very violent and abusive but that on 4<sup>th</sup> September 2016 the petitioner's brother one Akusala visited the station and requested for his release while indicating that the petitioner was a lawyer. He further states that the petitioner was released on 4<sup>th</sup> September 2016 at 2.50 pm but on condition that he was to report back to the police on 14<sup>th</sup> September

2016 to enable police complete their investigations. He attached a copy of requisition to compel attendance to the replying affidavit as annexure "CIDN 3". He states that the petitioner did not return to the police station as required.

16. The 4<sup>th</sup> respondent filed grounds of opposition in response to the petition wherein it states that the petition, as framed against it is misconceived and bad in law as it purports to sue a party for actions outside its mandate. The 4<sup>th</sup> respondent reiterates that its powers and functions under Article 246 of the Constitution does not extend to arrest, investigation charging or prosecuting of offences committed by members of the public which function is the preserve of the National Police Service through the Inspector General.

17. Mr. Marwa, learned counsel for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> respondents submitted that based on the Occurrence Book report, the petitioner was lawfully arrested for obstructing the police while executing their lawful duties and for inciting members of the public against the police. Counsel confirmed that it is true that the petitioner was arrested around the same time that lawyer Willy Kimani was brutally murdered under circumstances that were alleged to be while he was in the hands and custody of the police but added that the circumstances of this case were different. Counsel relied on the decision in **Mumo Matemu vs. Trusted Society of Human Rights Alliance & 5 others [2013] eKLR** in support of his argument that anyone who alleges a violation of a constitutional right must prove the violation and the harm caused to him which violation the petitioner had not proved. He stated that under Article 27 of the Constitution everyone is equal before the law.

18. Counsel faulted the petitioner for failing to lodge his complaint against the police officers to the Independent Police Oversight Authority (IPOA) as required by Section 24 of the Independent Police Oversight Authority Act. Mr. Marwa further submitted that under Article 24 of the Constitution the rights that the petitioner claims were violated are not absolute but can be limited and further that the claim for KShs 10 million compensation was not justifiable as the petitioner's alleged ordeal was not comparable to the suffering, that Honourable Stanley Matiba underwent.

19. Mr. Odinga, learned counsel for the 4<sup>th</sup> respondent submitted that Section 10(1) (g) of the National Police Service Commission Act prohibits the service from undertaking any investigations which is the preserve of the Inspector General under Article 245 of the Constitution. He added that if indeed the petitioner's rights were violated, then he could have taken advantage of Independent Police Oversight Authority to probe the officers involved in the alleged violations.

20. M/S Nyaguthie, learned counsel for the 1<sup>st</sup> interested party submitted on Article 238(2) of the Constitution on national security which she stated must be pursued within the confines of the Rule of Law, democracy, human rights and fundamental freedoms. She submitted that the petitioner, as an advocate of the High Court of Kenya, is expected to offer legal services to the society and that advocates cannot operate under the fear of victimization if they stand up for public good. Counsel stated that an advocate who assists in the interpretation of the law on behalf of the general public ought to be commended as advocates have taken oath of office to act without fear or favour.

21. Counsel submitted that advocates who act in public interest ought not to be harassed and that the lingering question remains why the petitioner was arrested in the course of his duty. She maintained that the circumstances of the case did not warrant the arrest and detention of the petitioner for more than 12 hours considering the fact that the Willy Kimani murder was still fresh in the minds of the advocates. Counsel reiterated that unless the orders sought are granted police will continue to disregard the crucial role that lawyers play in the society as high priests in the shrine of justice.

### **Determination**

22. I have considered the pleadings filed herein, the parties' respective submissions and the authorities that they cited. Three main issues fall for determination, namely;

- a. Whether the petitioner's arrest and detention was unlawful in the circumstances.
- b. Whether the arrest and detention of the petitioner was a violation of his fundamental rights and freedoms.
- c. Whether the petitioner is entitled to the orders sought.

23. It was not disputed that the petitioner was arrested and detained by the police and that the arrest was precipitated by his intervention in the encounter that the police had with a senior citizen, a motorist who had allegedly blocked the road thereby causing a jam. It was also not disputed that from the word go, the petitioner introduced himself, to the police officers at the scene, as an advocate of the High Court of Kenya.

24. The police on the other hand, claim that the petitioner obstructed them from doing their work and incited members of the public to violence. It is noteworthy that the incident took place on 3<sup>rd</sup> September 2016 at about 9pm and if the petitioner's statement in the affidavit in support of the petition is anything to go by, he was perturbed by the way the senior citizen who was visibly shaken and was almost in tears.

25. My own assessment of the circumstances of this case portray the petitioner as a very brave man who, true to his calling as an advocate of the High Court, took his time to assist a senior citizen in the dead of the night and a time when most people would have chosen to look the other way or go on with their own business. This court therefore finds it quite baffling that the senior citizen who was the principle suspect in the case of causing a traffic jam on a busy road was left to go scot free while the petitioner, who acted purely on humanitarian grounds and out of genuine concern for the poor old man, was locked up for hours on end without being granted the option of a cash bail or bond only to be released later without any charges being filed against him before a court of law.

26. I find that the respondents claim that the petitioner was booked for obstructing police officers and for incitement to violence have no bearing or probative value in this case considering the fact that the alleged offences were never pursued or proved before a court of law. I further find that the respondents' claim that the petitioner did not come back to the station as required is also neither here nor there as the

police did not explain what prevented them from arresting the petitioner and presenting him before a court of law if indeed he failed to heed their request to report back to them.

27. My take is that this is a classic case of high handedness by the police who are never short of charges to bring up against an arrested person and who continue to operate as if the provisions of the Constitution on the rights of an arrested person under Article 49 (1) (h) of the Constitution do not exist.

28. Even assuming, for a moment, that the police had a reason to arrest the petitioner, there was no explanation as to why he was not released on police bond and had to spend the night in custody only to be released the following day after the intervention of his brother which means that he would have continued to stay in custody for a second day had it not been for the said intervention. My take is that considering that the petitioner had already introduced himself as an advocate of the High Court and an officer of the court, nothing would have been easier that for the police to release him on free bond and require him to attend court considering that the offences he was booked for are bailable. The fact that the petitioner was in police custody from 3<sup>rd</sup> September to 4<sup>th</sup> September 2016 was not contested. The petitioner stated in his affidavit, that the cells were clogged with a mixture of water and urine from the remandee's suspects. He explained that the conditions in the cells were unbearable and traumatizing. The petitioner's case was exacerbated by the fact that he was eventually released without any charges being brought against him. I find that in the circumstances of this case, there was a violation of the petitioner's right to liberty and dignity.

29. I have considered the averments contained in the replying affidavit of the officer Commanding Police Station C.I Derrick Nyaga and I note that he does not state that he personally witnessed the arrest, detention or release of the petitioner and in the same vein he does not indicate which police officer informed him of the sequence of events that led to the arrest of the petitioner. In the circumstances I find that his claims that the petitioner was abusive and violent during arrest are matters of hearsay which this court cannot rely on in determining a serious matter such as the petition before court.

30. Needless to say this court takes judicial notice of the fact that lawyers in this country have, in recent past, been victimized by police officers while in the normal course of their duties of representing their clients. In this regard the case of lawyer Willy Kimani, who was brutally murdered in circumstances that are reported and alleged to be in the hands of police officers while in the course of representing his client is a case in point which this court cannot ignore. While in the instant case there was no disappearance and murder, the question that this court must ask itself is what if the worst happened? Who will stand up for the rights of the down-trodden in the society? It would appear that the actions of the police if not checked would make the legal practice a matter of life and death. Lord Denning M.R., in the case of **Rondel -v- Worsley [1966] 3 ALL ER 657**, stated as follows on the relationship of advocate and client with regard to the performance by the advocate of his work thus:

***“It is a mistake to suppose that he is the mouthpiece of his client to say what he wants: or his tool to do what he directs. He is none of those things. He owes allegiance to a higher cause. It is the cause of truth and justice.”***

31. From the dictum in the above cited case, it is clear that the critical role that lawyers play in the pursuit of the truth and justice must be appreciated as it is a role that should make them partner with the police in fighting crimes and other vices afflicting the society rather than be at cross purpose as was the position in the instant case. What I can infer from the circumstances of this case is that there was no basis whatsoever to arrest or detain the petitioner and that in order to justify their activities, the police made entries of framed up charges of incitement to violence and obstruction of police officers while knowing too well that they had no intentions of pursuing the said charges to their logical conclusion.

32. On the claim against the 4 respondent, I agree with the submissions by counsel for the 4<sup>th</sup> respondent that the 4<sup>th</sup> respondent was improperly included in this case. I note that the powers and functions of the National Police Service Commission under Article 246 of the Constitution, do not include arrest of suspects or investigation and prosecution for crimes committed by members of the public which is the preserve of the 3<sup>rd</sup> respondent and its officers. I therefore dismiss the petitioner's claim against the 4 respondent with no orders as to costs.

33. On the petitioners claim for general damage of kshs. 10 million and the reliance on the case of **Stanley K. Njindo Matiba** (supra) I find that even though the nature of the physical injuries suffered by Honourable Matiba were more serious and not comparable to the suffering that the petitioner underwent following his arrest, I find that the petitioner suffered both mental and physical torture while in custody for which he deserves compensation in damages.

34. It is at this juncture important to consider the comparative jurisprudence and general principles applicable to awards and assessment of damages for the violation of the Constitutional rights of an individual by a State. It is not in doubt that under common law principles, an injured party is entitled to damages for the loss and injury suffered under private law causes of action, such as tort, where compensation of personal loss is at issue. However, in this case, I will consider what appropriate remedies are available for damages arising out of the violation of Constitutional and fundamental rights of an individual by a State under public law.

35. The relevant principles applicable to award of damages for constitutional violations under the Constitution was explained exhaustively by the Privy Council in the famous case of **Siewchand Ramanoop v The AG of T&T**, PC Appeal No 13 of 2004. It was held that a monetary award for constitutional violations was not confined to an award of compensatory damages in the traditional sense.

Per Lord Nicholls at Paragraphs 18 & 19:

***When exercising this constitutional jurisdiction the court is concerned to uphold, or vindicate, the constitutional right which has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases more will be required than words. If the person wronged has suffered damage, the court may award him compensation. The comparable common law measure of damages will often be a useful guide in assessing the amount of this compensation. But this measure is no more than a guide because the award of compensation under section 14 is discretionary and, moreover, the violation of the constitutional***

right will not always be co-terminous with the cause of action at law.

*An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. 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, emphasize the importance of the constitutional right and the gravity of the breach, and deter further breaches.*

*All these elements have a place in this additional award. “Redress” in section 14 is apt to encompass such an award if the court considers it is required having regard to all the circumstances. Although such an award, where called for, is likely in most cases to cover much the same ground in financial terms as would an award by way of punishment in the strict sense of retribution, punishment in the latter sense is not its object. Accordingly, the expressions “punitive damages” or “exemplary damages” are better avoided as descriptions of this type of additional award.*

36. In the Tamara Merson v Drexel Cartwright and Ag (Bahamas) Privy Council Appeal No. 61 of 2003 the Privy Council held that in some cases, a suitable *declaration* may suffice to vindicate the right which has been breached. The Court quoted the postulation by Lord Scott of Foscote in *Merson* (supra) in which, after citing a passage from *Ramanoop* (supra) including the paragraphs set out above, stated thus:

*“[[18]. These principles apply, in their Lordships’ opinion, to claims for constitutional redress under the comparable provisions of the Bahamian constitution. If the case is one for an award of damages by way of constitutional redress – and their Lordships would repeat that ‘constitutional relief should not be sought unless the circumstances of which complaint is made include some feature which makes it appropriate to take that course’ (para 25 in Ramanoop) – the nature of the damages awarded may be compensatory but should always be vindicatory and, accordingly, the damages may, in an appropriate case, exceed a purely compensatory amount. The purpose of a vindicatory award is not a punitive purpose. It is not to teach the executive not to misbehave. The purpose is to vindicate the right of the complainant, whether a citizen or a visitor, to carry on his or her life in the Bahamas free from unjustified executive interference, mistreatment or oppression. The sum appropriate to be awarded to achieve this purpose will depend upon the nature of the particular infringement and the circumstances relating to that infringement. It will be a sum at the discretion of the trial judge. In some cases a suitable declaration may suffice to vindicate the right; in other cases an award of damages, including substantial damages, may seem to be necessary.”*

37. Taking cue from the above decisions, the Privy Council in Alphie Subiah v The Attorney General of Trinidad and Tobago Privy Council Appeal No. 39 of 2007 pronounced itself on the same point stating that:

*“The Board’s decisions in Ramanoop, paras 17-20, and Merson, para 18, leave no room for doubt on a number of points central to the resolution of cases such as the present. The Constitution is of (literally) fundamental importance in states such as Trinidad and Tobago and (in Merson’s case), the Bahamas. Those who suffer violations of their constitutional rights may apply to the court for redress, the jurisdiction to grant which is an essential element in the protection intended to be afforded by the Constitution against the misuse of power by the state or its agents. Such redress may, in some cases, be afforded by public judicial recognition of the constitutional right and its violation. But ordinarily, and certainly in cases such as the present (and those of Ramanoop, and Merson, and other cases cited), constitutional redress will include an award of damages to compensate the victim. Such compensation will be assessed on ordinary principles as settled in the local jurisdiction, taking account of all the relevant facts and circumstances of the particular case and the particular victim. Thus the sum assessed as compensation will take account of whatever aggravating features there may be in the case, although it is not necessary and not usually desirable (contrary to the practice commended by the Court of Appeal of England and Wales for directing juries in *Thompson v Commissioner of Police of the Metropolis* [1998] QB 498, 516 D-E) for the allowance for aggravated damages to be separately identified. Having identified an appropriate sum (if any) to be awarded as compensation, the court must then ask itself whether an award of that sum affords the victim adequate redress or whether an additional award should be made to vindicate the victim’s constitutional right. The answer is likely to be influenced by the quantum of the compensatory award, as also by the gravity of the constitutional violation in question to the extent that this is not already reflected in the compensatory award. As emphasised in *Merson*, however, the purpose of such additional award is not to punish but to vindicate the right of the victim to carry on his or her life free from unjustified executive interference, mistreatment or oppression.”*

38. The position of the Privy Council is in no way altered by the South African Case of Dendy v University of Witwatersrand, Johannesburg & Others - [2006] 1 LRC 291 where the Constitutional Court of South Africa held that:

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

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

39. In Peters v. Marksman & Another [2001] 1 LRC the Eastern Caribbean Supreme Court quoted with approval the words of Patterson JA in Fuller v A-G of Jamaica (Civil Appeal 91/1995, unreported), where the Court held that:

*“It is incumbent on the courts to develop appropriate principles and guidelines as to the quantum of awards of compensation where applicable... Where an award of monetary compensation is appropriate the crucial question must be what is a reasonable amount in the circumstances of the particular case. The infringement should be viewed in its true perspective as an infringement*

*of the sacrosanct fundamental rights and freedoms of the individual and a breach of the supreme law of the land by the state itself. But that does not mean that the infringement should be blown out of all proportion to reality nor does it mean that it should be trivialized. In like manner the award should not be so large as to be a windfall nor should it be so small as to be nugatory.”*

40. The Supreme Court of Canada established a consideration on when a remedy in a Constitutional violation case is “just and appropriate” in **Doucet-Boudreau v. Nova Scotia (Minister of Education)**, 2003 SCC 62 to include, a remedy that will :

*(1) meaningfully vindicate the rights and freedoms of the claimants;*

*(2) employ means that are legitimate within the framework of our constitutional democracy;*

*(3) be a judicial remedy which vindicates the right while invoking the function and powers of a court; and*

*(4) be fair to the party against whom the order is made.*

41. Having regard to the above judicial experience and philosophy, it is clear that the award of damages for constitutional violations of an individual's right by state or the government are reliefs under public law remedies within the discretion of a trial court but that such discretion is limited by what is “*appropriate and just*” according to the facts and circumstances of a particular case in view of the fact that the primary purpose of a constitutional remedy is not compensatory or punitive but is to vindicate the rights violated and to prevent or deter any future infringements.

42. In the instant case I find that the appropriate determination is to award reasonable damages in addition to the declaration of violation of constitutional rights. As I have already noted in this judgment, the petitioner prayed for an award of Kshs. 10 million for damages, I am however of the view that an award of Kshs. 2 million will be appropriate in the circumstances of this case. I am guided by the decision in the case of **Lucas Omoto Wamari v Attorney General & another [2017] eKLR** wherein the Court of Appeal upheld an award of Kshs. 2 million for violation of constitutional rights under circumstances that were similar to the instant case.

43. In view of my findings and conclusion in this matter, I enter judgment for the petitioner against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> respondents jointly and severally as follows:

- a) I declare that the actions of the police officers contravened the petitioner's rights and freedoms under Articles 28, 29, 32, 33, 35, 47 and 49 of the Constitution.
- b) The petitioner is awarded kshs 2 million general damages with interest at court rates from the date of this judgment.
- c) Costs of the suit.

**Dated, signed and delivered in open court at Nairobi this 29<sup>th</sup> day of October 2018.**

**W. A. OKWANY**

**JUDGE**

**In the presence of:**

Mr. Akusala for the petitioner

Mr Sekwe for Irari for the respondents

Miss Thanji for Nyaguthi for Law Society of Kenya

Court Assistant - Kombo