



**THE REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**  
**PETITION NO. 474 OF 2014**

**BETWEEN**

**CATHERINE KANANA RINGERA.....1<sup>ST</sup> PETITIONER**  
**RHODA GATWIRI NANAH.....2<sup>ND</sup> PETITIONER**

**VERSUS**

**FREDRICK KONYA.....1<sup>ST</sup> RESPONDENT**  
**THE INTERNAL AFFAIRS UNIT**  
**THE NATIONAL POLICE SERVICE.....2<sup>ND</sup> RESPONDENT**  
**THE INSPECTOR GENERAL OF POLICE.....3<sup>RD</sup> RESPONDENT**  
**THE NATIONAL POLICE SERVICE COMMISSION.....4<sup>TH</sup> RESPONDENT**  
**ATTORNEY GENERAL.....5<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. **Catherine Kanana Rugera** and **Rhodha Gatwiri Nanah**, petitioners, filed a Petition dated 22<sup>nd</sup> September 2014 and filed in Court on the same day, against **Fredrick Konya, the National Police Service, Inspector General of Police, The National Police Service Commission** and **The Honourable Attorney General**, respondent, brought under **Articles 27, 28, 29(c) and (f), 40, 47 and 48** of the **Constitution**.

2. The facts giving rise to this petition are that, on 4<sup>th</sup> April 2014, the 1<sup>st</sup> petitioner a police officer was driving her motor vehicle registration No. KBQ 543Q to Kiganjo Police Training College in the company of the 2<sup>nd</sup> petitioner an administration police officer, to attend a relative’s graduation ceremony at Kiganjo Training College. On arrival the 1<sup>st</sup> petitioner parked the car besides the road as she tried to trace her relatives. A lady traffic officer informed her that she could not park the car at that sport and asked her to drive away. Before she could do it so, the lady traffic officer hit her car with a baton and left claiming the 1<sup>st</sup> petitioner was undermining her even after the 1<sup>st</sup> petitioner informed her that she was a colleague.

3. Shortly after, the first respondent approached the vehicle, slapped and grabbed the 1<sup>st</sup> petitioner by the collar and pulled her out of the vehicle. Although the 1<sup>st</sup> petitioner introduced herself to her as a colleague, the 1<sup>st</sup> respondent insulted her using unprintable words. The 1<sup>st</sup> respondent forcefully took away the ignition key and in the process forced the 1<sup>st</sup> petitioner's dress to unbutton causing her embarrassment in front of members of the public.

4. The 2<sup>nd</sup> petitioner got out of the vehicle in an attempt to assist the 1<sup>st</sup> petitioner but was equally slapped and pushed back into the vehicle. The 1<sup>st</sup> respondent then caused the vehicle to be towed to Kiganjo Police Station damaging it in the process, despite the request by the 1<sup>st</sup> petitioner to drive the vehicle herself to the station. The vehicle was later released but only after paying breakdown charges of 3000/-. The petitioners lodged a complaint with their superiors and recorded statements together with their witnesses and forwarded them for investigations. After two months of inactivity, the 1<sup>st</sup> petitioner requested the Inspector General of Police to intervene and have the matter investigated by the 2<sup>nd</sup> respondent.

5. Two separate investigations took place, one at Nyeri to establish whether a criminal offence had been committed by the 1<sup>st</sup> respondent, and another by the 2<sup>nd</sup> respondent to establish whether an offence against discipline had also been committed which could lead to a disciplinary action being taken.

6. The petitioner stated that the 2<sup>nd</sup> respondent conducted shoddy investigations and relied on flawed investigations by one **Sherriff Abdulla**, instead of doing their impartial investigations. According to the petitioners, the investigations by **Sherriff Abdulla** were biased and were manipulated in favour of the 1<sup>st</sup> respondent. The petitioners stated that their witness' statements were altered and forged to favour the 1<sup>st</sup> respondent.

7. On 16<sup>th</sup> September the 1<sup>st</sup> petitioner, through her advocate requested Independent Police Oversight Authority, the interested party, to Investigate and review or Audit investigations by the 2<sup>nd</sup> respondent to forestall the alleged flawed investigations by the 2<sup>nd</sup> respondent. The petitioners stated, therefore, that their rights under Articles 27, 29 (c) and (f), 40 and 47 of the Constitution were violated and sought the following reliefs-

a) Spent

***b) A declaration that the entire investigations by the 2<sup>nd</sup> respondent and subsequent recommendations are flawed, manifestly unreasonable and violates the petitioners rights to inter alia their right to a fair administrative action and therefore null and void ab initio.***

***c) A declaration that a right to property as set out in Article 40 of the Constitution includes the right to use and quiet enjoyment of the property and that 1<sup>st</sup> respondent has violated the petitioner's right to property under Article 40 of the Constitution.***

***d) Declaration that the 1<sup>st</sup> respondent has violated the petitioners right to human dignity under Article 28 of the Constitution and the right not to be subjected to any form of violence or be treated in a cruel, inhuman or degrading manner under Article 29 (c) and (f) of the Constitution.***

***e) A declaration that the 2<sup>nd</sup> and 5<sup>th</sup> respondents have violated the petitioners right to equal benefit of law under Article 27 of the Constitution and the right to a fair administrative action under Article 47 of the Constitution and the right to access justice under Article 48 of the Constitution.***

***d) An order of Judicial Review to quash any decision of the 3<sup>rd</sup> and 4<sup>th</sup> respondents made***

*pursuant to flawed, biased and unreasonable investigations and or recommendations of the 2<sup>nd</sup> respondent.*

*e) An award of damages for pain and suffering, humiliation and distress.*

*f) An award of special damages totaling Ksh 62,084.*

8. The petitioners also sought costs of the petition and any other or further reliefs the Honourable Court may consider appropriate.

9. The 4<sup>th</sup> and 5<sup>th</sup> respondents filed a replying affidavit to the petition sworn by chairperson of the 4<sup>th</sup> respondent, **Johnstone Kavuludi** on 13<sup>th</sup> April 2017 and filed in Court on 25<sup>th</sup> of the same month. **Mr. Kavuludi**, deposed that the 4<sup>th</sup> respondent is mandated by **Article 46** of the **Constitution** to exercise disciplinary control over persons serving in the service. The deponent stated that the 1<sup>st</sup> petitioner was procedurally invited and the vetting exercise was properly done and a decision was reached that the 1<sup>st</sup> petitioner should leave the service. The 1<sup>st</sup> petitioner filed a case before the Employment and Relations Court at Nakuru and later the current petition.

10. According to **Mr. Kavuludi**, the 1<sup>st</sup> petitioner was invited again and vetted and due to the fact that there was a matter in Court, the decision to remove the 1<sup>st</sup> petitioner from the service was done away with and the petitioner was later issued with a decision dated 6<sup>th</sup> December 2016 which was communicated to her as required. However, this was again revoked because the matter is in Court and the Commission will start the process of re vetting once the matter in Court is concluded. This response though not answering the allegations in this petition, highlights a number of litigations that may be going on between some of the parties.

11. The interested party also filed grounds of opposition dated 14<sup>th</sup> October 2014 and filed in Court on the same day. The interested party contended that it was not allowed time to conduct investigations on the complaint lodged by the 1<sup>st</sup> petitioner. The interested party argued that the complaint was only lodged on 16<sup>th</sup> September 2014, yet this petition was filed on 22<sup>nd</sup> September 2014. The interested party contended that it could not proceed with investigations now that the petitioners had taken the matter to Court since it is barred by section 26 of the IPOA Act from dealing with a matter pending in court.

### **Petitioners' submissions**

12. Parties filed writing and addressed the Court orally. It was submitted on behalf of the petitioner, that the 1<sup>st</sup> respondent's act of insulting and assaulting the petitioners in public violated the petitioners' rights provided for under **Article 28** and **29 (c)** and **(f)** of the Constitution, the right to dignity, not to be subjected to any form of violence degraded treatment and the right to protection of property under Article 40 of the protection of the Constitution. This right was violated when the 1<sup>st</sup> respondent towed the 1<sup>st</sup> petitioner's motor vehicle. According to Counsel, Article 40 of the Constitution prohibits the state or state officers from arbitrarily interfering with one's interest to property or quiet enjoyment to property.

13. Counsel further submitted that the 1<sup>st</sup> respondent committed both a disciplinary offence as well as a criminal offence by slapping the petitioners, a matter that was reported to their superiors for appropriate administrative action. However, despite this,, the petitioner's Counsel submitted, the 2<sup>nd</sup> respondent violated the petitioners' rights by conducting flawed and biased investigations thereby violating the petitioners' right to fair administrative action under **Article 47** of the Constitution and right to access to justice under **Article 48** of the Constitution. According to Counsel, the 2<sup>nd</sup> respondent's officers failed to interview witnesses and conduct fair and independent investigations, but only adopted investigations by Mr. Sherriff Abdulla which was manipulated to favour the 1<sup>st</sup> respondent.

14. It was contended that statements from the 2<sup>nd</sup> petitioner and another witness Mary Gakii, were

removed from the file and replaced with statements signed by different people. It was therefore submitted that investigations and recommendations violated Article 27(i) of the Constitution in that the petitioners did not get equal treatment before the law, and that sections 88(3) and 251 of the Police Service Act were also not observed. Section 88 (3) provides that a police officer who commits a criminal offence is liable to criminal proceedings while Section 251 provides that any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanor. Counsel further relied on section 88 (2) which provides that it is an offence against discipline for a police officer to unlawfully strike or use threatening violence against another police officer or use obscene language or insulting language in any form to any police officer.

15. Counsel argued that the petitioners had the right to equal protection of the law. He therefore submitted that the 2<sup>nd</sup> respondent's investigations and recommendations were inefficient, flawed, unfair and unreasonable. It was also contended that the 2<sup>nd</sup> respondent failed to ensure that there was access to justice for the petitioners. Counsel relied on the Case of **CK (a child) through Ripples International as her Guardian and Next "friend" & 11 others v commissioner of Public Inspector General & the National Police Service & 3 others [2013] eKLR** to support the submission that the respondent violated the petitioners' rights by failing to conduct proper and professional investigations.

### **Respondents' submissions**

16. On behalf of the respondents, it was submitted that the 3<sup>rd</sup> respondent received a complaint from the 1<sup>st</sup> petitioner and delegated the 2<sup>nd</sup> respondent to investigate and indeed investigations were conducted and it was established that the petitioner was on the wrong for parking a vehicle at a prohibited area. It was also established that all officers involved in the squabble were at fault and it was decided that the 1<sup>st</sup> petitioner be reprimanded, the 2<sup>nd</sup> respondent be charged with striking a police officer, the 1<sup>st</sup> respondent face disciplinary action for using threatening and disrespectful language.

17. The respondents attacked the petition on four fronts, namely; whether the court has jurisdiction over this matter; whether a petition can be lodged between two private persons; whether the petitioners' rights were violated and whether the petitioners are entitled to the reliefs sought.

18. On the jurisdiction, it was submitted that where there exists sufficient and adequate legal avenue, a party ought to exhaust that remedy rather than move the Court by way of a constitutional petition. Reference was made to the case of **Peter Onchare & 3 others v Constituencies Development Board & 4 others [2011] eKLR** for the proposition that the constitution cannot replace the statutes that provide for remedies otherwise constitutional petitions would be a panacea for all legal problems.

19. In this regard, it was submitted that the present petition involves a dispute between police officers who are subject to the National Police Service Act with its own dispute resolution mechanisms hence the petition was filed in the wrong forum and the Court should not entertain it.

20. On whether a constitutional petition can be lodged between two private persons, reliance was placed on **Article 21** of the Constitution to submit that it is the fundamental duty of the state and every state organ to observe, respect, protect, promote and fulfil rights and fundamental freedoms in the Bill of Rights. Respondents' counsel referred to the decision in the case of **Hon. Uhuru Muigai Kenyatta v Nairobi Star Publication Ltd [2013] eKLR** for the proposition that fundamental freedoms set out in the Bill of Rights are enforceable by a private individual against the state and state organs and not by private individuals against another private individual in which case individual parties should pursue action under private law. It was therefore submitted that the petition as filed cannot succeed.

21. It was submitted that **Article 27** guarantees equality before the law and prohibits discrimination, and that the party alleging discrimination must show that indeed there was such discrimination committed against him/her. Reference was made to the case of **John Harun Mwau v IEBC & another [2013] eKLR**, for the proposition that a person alleging violation of Article 27 of the Constitution must establish that the claimant was denied equal protection or benefit of the law.

22. The respondents submitted that in respect to the petition herein, investigations were conducted pursuant to the relevant Act and recommendation made that the petitioner and 1<sup>st</sup> respondent be subjected to disciplinary proceedings in accordance with the law, hence the petitioners have not demonstrated the determination the 2<sup>nd</sup> and 3<sup>rd</sup> respondents made regarding the petitioners and the 1<sup>st</sup> respondent amounted to discrimination.

23. Regarding alleged violation of the petitioners' right to dignity under Article 28 of the Constitution, the respondents' counsel submitted that the petitioners did not come to Court with clean hands. It was submitted that the petitioners committed a traffic offence by parking their vehicle at a place not designated for parking, and the traffic officers were merely doing their work, and contended that Article 29(c) and (f) did not apply to this petition.

24. On Article 40 of the constitution, the right to property, it was submitted that there was no violation of this Article. According to the respondents, the motor vehicle was towed after a traffic offence had been committed but was later released to the petitioners at the earliest opportunity. The respondents' counsel further submitted there was no violation of Articles 47 and 48 of the constitution. In counsel's view, once a complaint was received from the petitioners, the 3<sup>rd</sup> respondent instructed the 2<sup>nd</sup> respondent to conduct investigations and the findings recommended some actions. According to counsel, the petitioners did not show how the investigations were flawed and have therefore not proved their petition. The respondents further submitted that special damages were not been proved either and are not awardable. They urged that the petition be dismissed.

### **Interested party's submissions**

25. The interested party submitted that prayers in the petition were not directed to at her. In its submission dated November 2014 and filed in Court on the same day, it was submitted that section 26 of IPOA Act bars the interested party from investigating matters pending in Court. It was contended that although the petitioners lodged a complaint with the interested party on 16<sup>th</sup> September 2014, they again moved to Court and filed the present petition on 22<sup>nd</sup> September 2014, raising the same issues that the interested party was required to investigate in the complaint lodged with it, thus denying the interested party a chance to carry out investigations.

26. It was the interested party's submission, therefore, that although it has jurisdiction to investigate complaints lodged with it, it could not proceed with investigations the moment the petitioners moved to Court since it is barred by its own statute in that regard.

### **Determination**

27. I have considered the petition, responses, submission by Counsel for the parties and authorities cited. From the pleadings and submissions, the main issue for determination is whether the respondents violated the petitioners' rights, and depending on the answer to the above issue, whether the petitioners are entitled to the reliefs sought.

28. The petitioners and the 1<sup>st</sup> respondent are police officers in the employment of the 3<sup>rd</sup> respondent. From the facts of this case, there was a misunderstanding between the petitioners and the 1<sup>st</sup> respondent after the 1<sup>st</sup> petitioner committed a traffic offence by parking her car at a wrong place forcing the 1<sup>st</sup> respondent to exchange harsh and unpleasant words with her and the 1<sup>st</sup> respondent is said to have also assaulted both petitioners. The petitioners' motor vehicle was towed to Kiganjo Police Station, but was later released the same day. The petitioners reported the matter to their superiors, and although investigations were carried out, they felt their rights were violated and filed this petition claiming violations of their Constitutional rights.

29. The 2<sup>nd</sup> to 4<sup>th</sup> respondents contended on their part that there was no violation, and according to them, investigations revealed that both the petitioners and the 1<sup>st</sup> respondent were culpable and should face

disciplinary action in accordance with internal regulations. The petitioner cited various Articles of the Constitution namely; 27, 28, 29 (c) and (f) and 48 to buttress their case that their rights were violated.

30. Article 27(i) provides that ***every person is equal before the law and has the right to equal protection and equal benefit of the law.*** Sub-Article 2 provides that ***equality includes the full and equal enjoyment of all rights and fundamental freedoms.*** Article 27(1) and (2) are clear that in the enforcement of the law, people must be treated equally and must benefit from the law equally. The Constitution is therefore clear that people cannot be treated differently depending on such variations as sex, religion, race, ethnicity or station of life in society. Human beings are made equal and must therefore be treated equally in the application of the law.

31. Since the petitioners relied on this Article they were under duty to show that the law was not applied equally to their case and that they were, therefore, discriminated against. Discrimination is an act that tends to portray one to be different from the other in the manner of treatment. Either that he or she was subjected to different or inferior treatment as opposed to other person or class of people. In the case of ***Nyarangi & 3 Others v Attorney General [2008] KLR 688***, the Court, referring to Black's Law Dictionary, defined discrimination as-

***“The effect of law or established practice that confers privilege on a class or that denies privileges to a certain class because of race, age, sex, nationality, religion or handicap or differential treatment especially a failure to treat all persons equally when reasonable distinction can be found between those favoured and those not favoured.”***

32. In the case of ***John Harun Mwau v Independent Electoral and Boundaries Commission & Another [2013] eKLR***, the Court stated with regard to Article 27 of the Constitution thus;

***“[i]t must be clear that a person alleging a violation of Article 27 of the Constitution must establish that because of the distinction made between the claimant and others the claimant has been denied equal protection or benefit of the law. It does not necessarily mean that different treatment or inequality will per se amount to discrimination and a violation of the constitution.”***

33. The petitioners' complaint is that they were mistreated by the 1<sup>st</sup> respondent and that their rights were violated due to that discriminatory treatment. The petitioners were therefore under duty to show to the satisfaction of the court how they were indeed discriminated against. A reading of Article 27(1) and the decision above, discrimination is a fact and must be shown to have existed in a given situation if the Court is to uphold the petitioners' claim. The petitioners did not however, in my view, show how discrimination applied to their case to enable the Court find in their favour.

34. In the petitioners' case, once the complaint was reported, an officer was instructed to investigate that complaint. The investigations revealed that both petitioners and the 1<sup>st</sup> respondent were culpable, and disciplinary action was recommended against both of them. The petitioners have not shown how the recommendation for action was discriminatory, taking into account that all those involved including the 1<sup>st</sup> respondent were found at fault.

35. The petitioners also relied on Article 28 of the constitution on human dignity. The Article provides that ***every person has inherent dignity and the right to have that dignity respected and protected.*** That the right to dignity is a human right cannot be over emphasized, and every human being has the right to have his/her dignity respected and respected. My understanding of the petitioners' complaint in this regard, is that they were humiliated when they were insulted and slapped in public by the 1<sup>st</sup> respondent. However, that alone could not amount to a violation of their dignity until all the circumstances of the case are clear following investigations that were launched following the petitioners' complaint.

36. The petitioners also cited Article 29(c) and (f) of the Constitution which provide that ***every person has the right to freedom and security of the person, which includes the right not to be (c) subjected to any form of violence from either public or private sources; and (f) treated or punished in a cruel, inhuman or degrading manner.***

37. From a constitutional stand point, it is a violation of one's fundamental human rights to treat him or her in a cruel and inhuman manner or subject one to violent treatment, and one would be perfectly in order to institute a constitutional petition claiming that his/her rights were violated. However, the petitioners' case must be distinguished from what would be an ordinary situation for filing a constitutional petition. And in this regard, the respondents contended that the petition is not sustainable because it does not meet the constitutional test. In their view, there is an internal mechanism under the **National Police Service Act** under which the petitioners and the 1<sup>st</sup> respondent are subjected, and which is the proper legal regime under which this matter should have been dealt with.

38. The petitioners and 1<sup>st</sup> respondent are police officers serving under the 3<sup>rd</sup> respondent, and are, therefore, subject to this Act. **Section 87** of the Act establishes an **Internal Affairs Unit**, whose functions are, among others, to receive and investigate complaints against the police made to it, promote uniform standard of discipline and keep a record of facts of any complaint or investigations made to it. Under **Section 87(4)** the unit has the mandate to investigate misconduct and hear complaints from members of the Service itself or members of the public, either at the direction of a senior officer, or on its own initiative, on the direction of the Inspector General of Police, or at the request of **IPOA**. The Unit can even take over investigations where it has reasons to believe that there is inordinate or unreasonable delay, after which it can make various recommendations including; interdiction, suspension, severe reprimand, and any other lawful action. It then submits its recommendations to the 3<sup>rd</sup> respondent.

39. **Section 88** of the **Act**, with regard to disciplinary Offences, is clear that officers in the Service are subject to law and regulations relating to the Service and a police officer who commits a criminal offence shall be liable to criminal proceedings in a court of law. It is clear, therefore, that there is an internal mechanism for resolving internal issues within the Police Service. In that regard, the respondents contended that the petitioners could not succeed. Although a party has a right to file a constitutional petition seeking remedies arising from violation of fundamental rights and freedoms, and the court has jurisdiction to deal with those issues under Articles 22 and 23 of the Constitution, given its wide jurisdiction/mandate under Article 165(3) of the constitution. There are instances however, when the court may exercise jurisdictional restraint where there is recourse available to a party because it is not in every alleged violation that a party should file a constitutional petition but should pursue the available remedy.

40. This position was stated by the Court in the case of **Benard Murage v Fine serve Africa Limited & 3 others [2015] eKLR** thus;-

***“Not each and every violation of the law must be raised before the High Court as a constitutional issue. Where there exists an alternative remedy through statutory law, then it is desirable that such a statutory remedy should be pursued first.***

41. The Court went on to quote the decision in the case of **Harrikinson v Attorney General of Trinidad and Tobago [1980] AC 265**, where it was stated-;

***“The notion that wherever there is a failure by an organ of government or a public officer to comply with the law this necessarily entails the contravention of some human rights or fundamental freedoms guaranteed for individuals by chapter 1 of the constitution is fallacious. The right to apply to the High Court under section 6 of the Constitution for redress when any human right or fundamental freedom is or is likely to be contravened, is an important safeguard of those rights and freedoms; but its value will be diminished if it is allowed to be misused as a general substitute for the normal procedures for invoking judicial control of administrative action... The mere allegation that a human right has been or is likely to be contravened is not itself sufficient to entitle the applicant to invoke the jurisdiction of the Court under the section if it is apparent that the allegation is frivolous, vexatious or abuse of the process of Court as being made solely for the purpose of avoiding the necessity of applying the normal way for appropriate judicial remedy for unlawful administrative action which involves no contravention of any human right or fundamental freedom.”***

42. I entirely agree with the above proposition of the law. The petitioners as a police officers are subject to the Police Service Act which has elaborate provisions for dealing with complaints against fellow officers. Indeed the petitioners lodged a complaint pursuant to the internal procedures and investigations were duly undertaken. And in the petitioners' own admission, the investigator concluded investigations and made recommendations. This confirms that there was no failure of the internal mechanism in addressing the petitioners' concerns.

43. The petitioners' also lodged a complaint with the interested party on 16<sup>th</sup> September 2014, asking it to review the investigations and recommendations. This was also a confirmation that there was an internal mechanism for resolving disputes. However, three days later, even before the interested party could do anything, the petitioners filed this Constitutional petition and obtained interim conservatory orders. The interested party has contended that even though it had jurisdiction to deal with the complaint, it was denied the opportunity once the petitioners filed a petition before this Court, since Section 26 of the IPOA Act bars it from taking up a matter that is the subject of judicial proceedings.

44. In my respectful view, the petitioners could not commence and maintain multiple actions over the same subject matter. Having complained through the internal mechanism, they had to wait for the process to run to completion and if not happy with the outcome, challenge that outcome or process as they appear to have done with IPOA. They were bound to wait for the interested party to complete its review on the investigations rather than file this petition thereby stalling investigations of their own case pending before the interested party.

45. For the Court to assume jurisdiction where there is an internal mechanism, the petitioners were bound to show that the available internal mechanism is insufficient. That is what was stated by the Court of Appeal of Trinidad and Tobago in the case of **Damian Delfonte v The Attorney General of Trinidad and Tobago CA 84 of 2004**; that,

***“Where there is a parallel remedy, constitutional relief should not be sought unless the circumstances of which the complaint is made include some feature which makes it appropriate to take that course. As a general rule, there must be some feature, which at least arguably, indicates the means of legal redress otherwise available would not be adequate. To seek constitutional reliefs in the absence of such a feature would be a misuse or abuse of the Court's process. A typical but by no means exclusive example of such a feature would be a case where there has been arbitrary use of state power. Another example of a special feature would be a case where several rights are infringed. Some of which are common rights and some of which protection is available only under the Constitution it would not be fair, convenient or conducive to the proper administration of justice to require an applicant to abandon his constitutional remedy or to file separate actions for the vindication of his rights.”***

46. I once again agree with the exposition of the law above. Looking at the petition before this Court, I don't think there was any special feature that would make it special that the petitioners could not follow the internal process they had subjected themselves to the end. The petitioners have also not shown that the process was not efficacious to their cause to warrant this Court's intervention.

47. The petitioner also claimed both special and general damages in their petition. Again these are normal civil claims grantable in a civil Court. However, even if this Court was to address its mind on these prayers, the general principle of law is that special damages must not only be pleaded but must be specifically proved. The petitioners did not discharge this obligation. General damages on the other hand are grantable only where a party has succeeded to lay a basis for the same. In this case there was no basis laid before Court for their grant. Article 40 of the Constitution could not aid them either.

48. Taking into account the totality of the petitioners' case *visa vis* that of the respondents, the conclusion I come to is that this petition is not merited and must be declined. Consequently, the petition dated 22<sup>nd</sup> September 2014 is dismissed. Each party do bear their own costs.

Dated, signed and delivered at Nairobi this 29<sup>th</sup> day of September 2017

**E C MWITA**

**JUDGE**