REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI, MILIMANI LAW COURTS

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

CONSTITUTIONAL PETITION NO 572 OF 2014

IN THE MATTER OF ARTICLES 19, 20, 21, (1), 22 (1), 23 (1) & (3) AND 165 (3) (A), (B), (D), (I), (II), (6), (7) OF THE CONSTITUTION OF KENYA 2010

IN THE MATTER OF CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER SECTIONS 70 (A), 71 (1), 72 (3), 74 (1) & 77 OF THE FORMER CONSTITUTION (CORRESPONDING ARTICLES 26 (1), 27 (1), (2), 28, 29 (A), (D), (F), 31 (C), (D) & 49 (1), (F) OF THE CONSTITUTION OF KENYA, 2010

IN THE MATTER OF THE ARMED FORCES ACT (CAP 199, LAWS OF KENYA) (REPEALED)

BETWEEN

HUMPREY MUTEGI BURINI.....1ST PETITIONER

EVANS MIHESO ALUSIOLA.....2ND PETITIONER

FRANCIS CHIMSEN KAMARY.....3RD PETITIONER

COSNCIO KARUGU KAGOROMO.....5TH PETITIONER

CHARLES WANJOHI KAIRU.....6TH PETITIONER

BONIFACE EREMANI MSANGI.....7TH PETITIONER

DAVID SENGE MAMBEA.....8TH PETITIONER

EUSTACE MAINA MUKARA.....9TH PETITIONER

KENNETH MWENESI ANDEMBE.....10TH PETITIONERS

VERSUS

THE CHIEF OF THE KENYA DEFENCE FORCES.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2nd RESPONDENT

JUDGEMENT

1. This petition raises a fundamental issue, namely, the need for a party alleging violation of constitutional rights to plead with clarity, specificity and state the particulars of the acts or omissions complained of which give rise to the alleged threat or violation of the alleged constitutional rights.

2. Put simply, this petition is a global/joint averment by all the petitioners complaining collectively and jointly that their rights were violated, but as discussed later in this judgement, it falls short of disclosing how, when and where each of the individual petitioners rights were violated, if at all, and the loss or harm (if any) suffered by each petitioner whether physical or psychological. To me, this petition discloses absence of clarity, specificity and particulars necessary to prove claim of this nature.

3. A look at the petition shows that the ten petitioners aver that they were all serving officers of the defunct Kenya Air Force in various technical fields as at the time of the 1st August 1982 coup attempt. They claim that they were arrested at various bases/parts of the country by officers of the Kenya Army and police officers between 1st and 18th August 1982 on suspicion of participating in the attempted coup. No details have been offered as to when, where or how each one of them was arrested.

4. It is alleged that in the course of and immediately after the arrests and in a bid to extract confessions from the petitioners over planning and execution of the failed coup, the petitioners were subjected to untold torture, cruel, inhuman and degrading treatment by the Kenya Army officers and prison officers including being stripped naked in public, being made to walk on their knees on concrete floors, being whipped, kicked, bludgeoned all over their bodies, abuses, moved into custody in military trucks while naked in full view of the public which acts violated their constitutional rights to freedom from torture, cruel, inhuman and degrading treatment in violation of the constitution and international human rights instruments.

5. The petitioners further aver that they were, **(a)** placed in various military and prison custody where they were subjected to severe torture, inhuman and degrading treatment and brutalities, **(b)** they were locked up naked in permanently lit overcrowded cells punctuated by solitary confinement in tiny waterlogged cells, **(c)** they were beaten, deprived sleep, rest, food, water, medical attention and toilet facilities, **(d)** that they were moved from one place of detention to another under inhumane transportation, naked, blindfolded, handcuffed and forced to lie on the floor of army trucks, **(e)** that they were held incommunicado without access to lawyers and family members for periods ranging from **53** and **115** days between **1st** August 1982 and **23rd** December 1982 before being arraigned in courts martial, **(f)** that they were coerced to plead guilty, convicted , sentenced and dismissal from the armed forces.

6. From the foregoing, a blanket period of confinement has been pleaded without stating the period (if any) each petitioner was allegedly confined. Further, a blanket allegation of torture has been made without particulars of torture meted on each petitioner.

7. The petitioners further aver that while serving the sentences, they were subjected to cruel, inhuman and degrading treatment, again another generalized averment, not specific to any one of them nor have details been provided for each petitioner. Further, the first to fifth petitioners aver that they were denied their statutory right of remission of sentence and continued to be unlawfully imprisoned for periods ranging between 8 months and one year, four months and twelve days.

8. The Respondents response is that following the 1982 coup, the petitioners having being reasonably suspected of participating in the coup were taken into lawful custody in accordance with section **70** of the Armed Forces Act as read together with Rule **6** of the Armed Forces Rules to facilitate full and thorough investigations and that it was established that the petitioners were involved in the coup and were tried and convicted/sentenced as follows:-

i. Humprey Mutegi Burini *unlawfully armed himself with a G3 rifle and ammo, patrolled the streets of Nairobi. He was tried at the court martial and sentenced to* ***10*** *years imprisonment.*

ii. Kenneth Mwenesi Andembe *unlawfully armed himself with a self loading rile and ammo and patrolled the streets of Nairobi. He was tried and sentenced to* ***16*** *years imprisonment.*

iii. Evans Miheso Alusiola *patrolled the streets of Nairobi, was tried and sentenced to* ***7*** *years imprisonment which was reviewed to* ***3*** *years.*

iv. Francis Chemisen Kamary *unlawfully armed himself with a self loading riffle and ammo and was irregularly ordered to pre-flight a F5. He was tried, convicted and sentenced to* ***14*** *years which was reviewed to* ***8*** *years.*

v. Cosncio Karugu Kagoromo *unlawfully armed himself with a HK 21 Rifle, commandeered a civilian vehicle and patrolled the streets of Nairobi. He was tried, convicted and sentenced to* ***20*** *years imprisonment which was reviewed to* ***3*** *years.*

vi. Jacob Mugo Gichamba *unlawfully armed himself with a G3 Rifle and ammo while manning the gate, he was tried and sentenced to four years imprisonment which was reviewed to* ***2*** *years.*

vii. Charles Wanjohi Kairu *unlawfully armed himself with a self loading rifle and 20 rounds f ammo. He commandeered a civilian vehicle and patrolled the streets of Nairobi. He was sentenced to* ***16*** *years imprisonment, which was reviewed to* ***10*** *years.*

viii. Boniface Eremani Msangi *unlawfully armed himself with a self loading rifle and ammo and patrolled the streets of Nairobi, he was sentenced to* ***9*** *years imprisonment.*

ix. David Senge Mambea *unlawfully armed himself with a self loading rifle and ammo and patrolled the streets of Nairobi, he was sentenced to* ***9*** *years imprisonment.*

x. Eustace Maina Mukaria *unlawfully armed himself with a self loading rifle, stayed in the base and acted negligently by failing to suppress the mutiny. He was sentenced to five years imprisonment which was reduced to two years.*

9. The Respondent states that this petition was filed after a delay of 33 years, which period is prejudicial to the Respondent because it cannot trace relevant records and cited Rule 97 of the Armed Forces Rules of procedure which provide that records of proceedings of a court martial are to be kept for a period of six years.

10. On remission of sentences, it is averred that a review committee constituted pursuant to section 11 (2) (b) of the Armed Forces Act reviewed the sentences and that due process was followed. The Respondent denies that the confessions were extracted from the petitioners. The allegations of torture are denied. The Respondents argue that the detention was lawful.

11. Each of the petitioners filed a further affidavit on 1st December 2015, the contents of which are identical, the crux of which is to refute the contents of the Respondents Replying affidavit. It is noteworthy that in paragraph **xi** of the said affidavits, the petitioners admit the lawfulness of the arrest, but in paragraph **xii** insisted that the law prohibited torture.

12. Hearing proceeded before **Lenaola J** (as he then was) on 6th April 2016, 12th April 2016, 28th April 2016, and was concluded 5th July 2016. The petitioners evidence was essentially a repeat of the contents of their affidavits. The Respondents opted not to call witnesses, but they relied on their Relying Affidavit. Parties filed written submissions, and highlighting was by consent fixed for 25th July 2017 but on the said date there was no appearance for the petitioners, hence, I reserved the case for judgement.

Petitioners Advocates submissions

13. Petitioners counsel submitted that there is no limitation in cases relating to violation of fundamental rights, that the arrest was brutal and inhuman, that absence of medical evidence is not critical and cited the decision in *Harun Thungu Wakaba vs A.G.*[1]in support of this position. Counsel also cited international conventions on freedom from torture and reiterated that there was delay in producing the petitioners in court and cited the provisions of section **46** of the Prisons Act which provides for remission and argued that some of the petitioners were deprived remission. Counsel urged the court to award damages as per the amounts enumerated in the submissions.

Respondents counsels submissions

14. The Respondents counsel cited the 33 years delay if filing this petition, failure to discharge the burden of prove, absence of medical evidence, and lack of specificity.

Analysis of the law, issues and determination

15. It is not disputed that all the petitioners were charged, tried and convicted by courts of competent jurisdiction. This is not an appeal nor is it a petition under article **50** of the constitution. The said convictions cannot be challenged in this petition. The only issues for determination are **(a)** whether the petitioners suit is time barred; **(b)** whether the petitioners have pleaded with specificity and clarity the alleged violation of fundamental Rights and Freedoms; **(c)** Whether or not the petitioners have proved that their fundamental rights and freedoms were violated; and **(d)** and whether the petitioners are entitled the reliefs sought.

16. On the issue of limitation, the alleged cause of action took place in 1982. This petition was filed on 20th November 2014. Actions against the government ought to be filed within one year from the date of the cause of action as provided under the Government Proceedings Act.[2]

17. The question of limitation of time in regard to allegations of breach of fundamental rights and freedoms 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[3] 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 the respondent's defense[4] and further the state cannot shut its eyes on its past failings[5] nor can the court ignore the dictates of transitional justice discussed below.

18. 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 in cases of violation of constitutional rights unless there are obvious reasons to do so. Such reasons include inordinate unexplained delay and a clear possibility of prejudicing the defence. 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.

19. Whereas the petitioners may be excused for not filing this petition prior to the promulgation of the 2010 constitution owing to the prevailing environment, this petition was filed on 20th November 2014, **4** years after the promulgation of the 2010 constitution. Four years is a long period of time. The delay of four years has not been explained. The petitioners have a duty to satisfactorily account for the delay. I do not believe that this duty has been discharged. On the other hand, I note that the Respondents have comprehensively responded to the claim and even annexed documents in support of their defence, which to me shows that they have not been prejudiced by the delay in that they were able to respond to the claim and also exhibit documents in their defense.

20. Notwithstanding absence of a reasonable explanation the delay and 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.

21. 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. In other words, the era of having a constitution without constitutionalism was brought to an end by the 2010 constitution and every effort must be made to ensure that the rule of law which is one of the core values of constitutionalism reigns supreme.

22. 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 prior to the 2010 constitution. Was Kenya simply going to transit to the new constitutional dispensation and simply forget such atrocities. Andrea Bonime-Blanc[6] 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."

23. 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 and paper 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."

24. 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.[7]

25. 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,[8] the transition at issue is essentially a political one involving 'the move from less to more democratic regimes.'[9] 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.[10] Implicit in this understanding of transition is a sort of teleological or 'stage theory' view of history.[11] If barbarism, communism and authoritarianism lie at one end of the narrative, then western liberal democracy sits at the other 'end of history.'[12] 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.[13]

26. 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).[14]

27. On the issue whether the petitioners pleaded with specificity and clarity the alleged violations of Fundamental Rights and Freedoms; it is important to examine the petition and supporting affidavits. It is also important to bear in mind the provisions of Rule **10 (2)** of The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 which provides *inter alia* that the petition shall disclose the following—**(b)** the facts relied upon; **(c)** the constitutional provision violated;

(d) the nature of injury caused or likely to be caused to the petitioner or the person in whose name the petitioner has instituted the suit; or in a public interest case to the public, class of persons or community; **(e)** details regarding any civil or criminal case, involving the petitioner or any of the petitioners, which is related to the matters in issue in the petition;

28. There are numerous court decisions by the superior courts in this country stating that it is important for a person seeking redress from the High Court or an order which invokes a reference to the Constitution, to set out with reasonable degree of precision, what he complains of, the provisions of the Constitution infringed, and the manner in which they are alleged to be infringed. Thus an applicant in an application alleging violation of constitutional rights is obliged to state his complaint, the provisions of the Constitution he considers has been infringed in relation to him/her, and the manner in which he believes they have been infringed. Those allegations are the ones which if pleaded with particularity invoke the jurisdiction of the court under the provision. It is not enough to allege infringement without particularizing the details and manner of infringement.

29. A glance at the petition shows that it makes "global allegations" which to me lack specificity and clarity. For example, in paragraph **5** it is alleged that "all the petitioners were arrested from various bases of the Kenya Air Force and other parts of the country."Paragraph **6** alleges that "the petitioners were subjected to untold torture, cruel, inhuman and degrading treatment…." It is also stated that "….the petitioners were placed in various military and prison custody where they were subjected to severe torture."Paragraph **8** states that the petitioners were frequently moved from one place of detention to another in cruel, inhuman conditions"

30. In my view, the above are generalized allegations. There are ten petitioners in this petition. It would have been prudent for the petition to contain particulars of the alleged violations subjected upon each petitioner, the loss or damage if any suffered and specify the injuries suffered whether physical or physiological. The petition ought to contain details of the alleged place of arrest for each petitioner, detention, conditions at the place of detention and a chronology of the torture inflicted and if possible the culprits. That way, the Respondents would have been confronted with a specific claim to respond to. To, me, this petition lacks clarity and with tremendous respect discloses extremely poor pleadings and does not conform to the rule **10 (2)** cited above. It is difficult for the court to determine the nature and extent of torture meted on each petitioner and arrive at a fair and resonable compensation in absence of such clarity and specificty.

31. The core issue here is to understand the function of and purpose of good pleadings. In this regard, I recall the words of the Australian Court***[15]***where Vickery J said this of the principles of good pleading:-

> *"In a mathematical proof, elegance is the minimum number of steps to achieve the solution with greatest clarity. In dance or the martial arts, elegance is minimum motion with maximum effect. In filmmaking, elegance is a simple message with complex meaning. The most challenging games have the fewest rules, as do the most dynamic societies and organizations. An elegant solution is quite often a single tiny idea that changes everything.*
>
> *… Elegance is the simplicity found on the far side of complexity.*
>
> *While elegance in a pleading is not a precondition to its legitimacy, it is an aspiration which, if achieved, can only but advance the interests of justice. A poorly drawn pleading, on the other hand, which does not tell a coherent story in a well ordered structure, will fail to achieve the central purpose of the exercise, namely communication of the essence of case which is sought to be advanced.*
>
> *Pleading should not be dismissed as a lost art. It has an important part to play in civil litigation conducted within the adversarial system. Crafting a good pleading calls for precision in drafting, diligence in the identification of the material facts marshalled in support of each allegation, an*

understanding of the legal principles which are necessary to formulate complete causes of action and the judgment and courage to shed what is unnecessary.

*Although a primary function of a pleading is to tell the defending party what claim it has to meet, an equally important function is to inform the court or tribunal of fact precisely what issues are before it for determination.**[16]** (Emphasis supplied)*

32. The function of a pleading in civil proceedings is to alert the other party to the case they need to meet (and hence satisfy basic requirements of procedural fairness) and further, to define the precise issues for determination so that the court may conduct a fair trial; The cardinal rule is that a pleading must state all the material facts to establish a reasonable cause of action (or defence). The expression "material facts" is not synonymous with providing all the circumstances. Material facts are only those relied on to establish the essential elements of the cause of action; a pleading should not be so prolix that the opposite party is unable to ascertain with precision the causes of action and the material facts that are alleged against it.

33. In their submissions, counsel for the petitioner addressed each of the petitioners case separately, but to me, this does not cure the defect because the petition is the primary document disclosing the petitioners case and the omission cannot be cured by way of submissions. Submissions are essentially closing legal arguments and not evidence nor can they replace pleadings.

34. I note that the petitioners counsel cited the case of *Harun Thungu Wakaba vs Attorney General*[17] but the said case was a determination of **20** consolidated petitions. In the individual petitions, each petitioner had clearly pleaded his case as opposed to the present case whereby the petition contains "global allegations" which lack specificity and clarity. I reiterate that if the petitioners opted to file one petition, then, it was necessary for the petition to contain specific averments setting out particulars of the alleged violations for each petitioner.

35. Secondly, the petitioners cited the above case[18] in support of the argument that absence of medical reports was not sufficient to defeat the petitioners claim. However, counsel did not address himself to the clear contents of paragraph **37** of the said judgment in which the court addressing its mind to the question of absence of medical reports stated:-

"It will be noted that none of the plaintiffs provided any medical evidence in support of the allegation that they were tortured or injured. While the medical evidence would have provided appropriate corroboration to the plaintiffs allegations, the absence of medical evidence is not critical, particularly because the plaintiffs affidavits were not controverted. Therefore, the question is whether the various acts to which each of the plaintiff was subjected to, as deponed to in the respective affidavits qualify to be torture or inhuman or degrading treatment within the meaning of the definition provided in Article 1 of the Convention against Torture and other cruel, Inhuman or Degrading Treatment or Punishment."

36. From the above passage, it is clear that the court ruled that even though there was no medical evidence, the plaintiffs claim was not contested. In the present case, there is a replying affidavit disputing the petitioners claim, hence, the petitioners claim is contested. It was incumbent upon the petitioners to prove their case to the required standard, thus, the said authority is of no relevance to the present case.

37. Perhaps, I should add that a case is only an authority for what it decides as was correctly observed in *State of Orissa v. Sudhansu Sekhar Misra* where it was held that:-[19]

*"A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. On this topic this is what Earl of Halsbury, LC said in Quinn vs. Leathem, **[20]**that "Now before discussing the case of Allen vs. Flood**[21]** and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there*

are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides...." (Emphasis added)

38. The ratio of any decision must be understood in the background of the facts of that case.[22] It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it.[23] It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.[24]

39. Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect.[25] In deciding such cases, one should avoid the temptation to decide cases by matching the colour of one case against the colour of another.[26] To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive. Precedent should be followed only so far as it marks the path of justice, but one must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches.[27] My plea is to keep the path of justice clear of obstructions which could impede it.

40. Thus, it was necessary for the petitioners to not only plead each petitioners case with specificity and clarity, and also adduce evidence on the alleged violations, including the alleged torture to each one of them and lead evidence to prove the injury suffered by each whether physical or physiological and support it with medical evidence where appropriate for each one of them.

41. Further, in absence of particulars of violations, torture, inhuman and degrading treatment allegedly subjected to each petitioner and in absence of details of loss, injury whether physical or psychological suffered by each one of them, there is no material or basis upon which the court can assess an award of damages for each petitioner.

42. I am persuaded that each of the petitioners has not proved his case to the required standard. In view of my findings, I find that the petitioners are not entitled to reliefs sought in the petition.

43. The upshot is that this petition is dismissed with no orders as to costs.

Orders accordingly.

Signed, Dated, Delivered at Nairobi this 21st day of September 2017

John M. Mativo

Judge

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[1]{2010} eKLR

[2] Cap 40, Laws of Kenya

[3]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

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

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

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

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

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

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

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

[11] 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).

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

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

[14]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.

[15] In SMEC Australia Pty Ltd v McConnell Dowell Constructors (Aust) Pty Ltd {2011} VSC 492 at [3]-[6]

[16]See also Downer Connect Pty Ltd v McConnell Dowell Constructors (Aust) Pty Ltd [2008] VSC 77 [1-4]; Hoh v Frosthollow Pty Ltd and Ors [2014] VSC 77 at [13] – [20].

[17] {2010} eKLR

[18] Ibid

[19] MANU/SC/0047/1967

[20] {1901} AC 495

[21] {1898} AC 1

[22]Ambica Quarry Works vs. State of Gujarat and Ors. MANU/SC/0049/1986

[23] Ibid

[24] Bhavnagar University vs. Palitana Sugar Mills Pvt Ltd (2003) 2 SC 111 (vide para 59)

[25] In the High Court of Delhi at New Delhi February 26, 2007 W.P.(C).No.6254/2006, Prashant Vats Versus University of Delhi & Anr. (Citing Lord Denning).

[26] Ibid

[27] Ibid