



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL & HUMAN RIGHTS DIVISION

PETITION NO. 374 OF 2012

LUCY MUTHONI.....PETITIONER

VERSUS

THE HON. ATTORNEY GENERAL.....1ST RESPONDENT

THE DIRECTOR OF PUBLIC PROSECUTIONS.....2ND RESPONDENT

JUDGMENT

Introduction

1. The petitioner filed the petition dated 26th July 2012 alleging violation of her rights under the Constitution by police officers. She was allowed to amend her petition a couple of times, and this judgment pertains to her amended petition dated 22nd January 2013.
2. In her petition, she alleges that her rights under sections 72(1), 72(3), 72(5), 74(1), 75(1), 76(1), 77(1) and (2) as well as 82 of the former constitution were violated following her arrest on 17th October 1996.
3. She relied on her Amended Petition and affidavit in support of the petition, and she also gave oral evidence at the hearing of the petition.
4. In her amended petition, the petitioner prays for the following orders:
 - a) *A declaration that the petitioner's right to freedom from torture and cruel, inhuman or degrading treatment or punishment under section 74 (1) of the repealed constitution has been violated.*
 - b) *A declaration that the petitioner's right to expeditious, efficient, lawful and procedurally fair hearing, investigations and determination of her complaint pursuant to section 77(1) as read together with 77(2) of the repealed constitution has been violated.*
 - c) *A declaration that the petitioner's right to administrative action that is expeditious, efficient, lawfully reasonable and procedurally fair under section 77(1) and 77(2) of the repealed constitution has been violated.*

d) A declaration that the petitioner's right to the security of her person and the protection of law guaranteed under section 70(a) of the repealed constitution has been violated.

e) A declaration that the petitioner's right guaranteed under section 77(1)(c) of the repealed constitution of Kenya to be given adequate time and facilities for the preparation of her defence was breached.

f) A declaration that the petitioner's right guaranteed under section 77(1) (d) of the repealed constitution to be defend herself before a court of law was breached.

g) A declaration that the petitioner's right guaranteed under section 82(2) of the repealed constitution of Kenya not to be afforded different treatment from that afforded to other remandees while at the Central Police Station was breached.

h) A declaration that the failure, refusal and neglect of the arresting officers to inform the applicant as soon as is reasonable practicable, in a language she understood, the reasons of her arrest amounted to or has contributed to breaches of the applicant's fundamental rights as guaranteed under sections 72(1), 72(2), 72(3), 72(5), 74(1), 75(1), 76(1) and 77(2) of the repealed constitution as duly particularized above.

i) A declaration that the petitioner is entitled to compensation for breaches of her fundamental rights as particularized above.

j) An order consequential to the above declaration quantifying the amount of damages in respect of each and every one of the declaration given.

k) Costs of this petition with interest.

l) Interest on (j) and (k) above.

m) Further or other orders as the Honourable court shall deem just.

5. The respondents oppose the petition. The office of the Attorney General did not file an affidavit in response but supported the case of the Director of Public Prosecutions which was set out in the affidavit in reply sworn by Sergeant (Sgt) Richard Kimeu, the officer in charge of records at the Central Police Station, on 7th May 2013. Sgt. Kimeu also gave oral evidence at the hearing of this matter.

The Petitioner's Case

6. In her affidavit in support of the petition, the petitioner avers that on or about 17th October 1996, she was going to see a friend in Cianda House, situated in Koinange Street, Nairobi when she was accosted by police officers who arrested her and her husband and later took them to the Central Police Station for interrogations. She alleges that she was pinpointed by a police reservist known as Paul Owora, and the police officers alleged that she had a gun in her handbag. None, however, was found after a thorough search.

7. She further alleges that she was accused of having participated in a bank robbery at the Consolidated Bank of Kenya Limited that had occurred earlier that morning, and was also accused by the police officers attached to the Central Police Station, Nairobi, of being a "most wanted criminal" suspected of having coordinated several violent robberies witnessed in the city of Nairobi.

8. She was taken to Central Police Station with her husband and they were again subjected to a search but nothing incriminating was found on them. On 18th October 1996, she was taken to the DCIO's office where she was interrogated by a Mr. Langat. She alleges that during the interrogation, she was severely tortured by being slapped, kicked and the hair from her head plucked out until she was left unconscious. She also avers that the DCIO threatened that he could shoot her and nothing could ever be done against

him.

9. The petitioner contends that she suffered mental anguish and has since developed mental health problems resulting from the plucking of hair from her head and the senseless beatings that she received.

10. The petitioner further claims that she was incarcerated at the Central Police Station cells for a period of three months where she stayed with her new born child in inhabitable conditions. She further deposes that she was subjected to cruel, degrading and inhuman treatment in the cells, that she was denied food and locked in solitary confinement for several days so that she was unable to tell whether it was morning or night or how long she spent in solitary confinement. She also alleges that she was locked in a cell full of water for a period of seven days.

11. It is her deposition that she wrote to the then Commissioner of Police about her ordeal but no action has been taken to date.

12. In her oral evidence, the petitioner told the Court that she was now resident in the United States where she was working as a nurse assistant in a nursing home. She had moved to the US in November 1999, but had previously lived in Zimmerman Estate Nairobi. She adopted her petition dated 22nd January 2013 and the averments in her affidavit in support.

13. In cross-examination by Mr. Opondo for the AG, she testified that she was arrested by police officers with her husband. She did not know at the time of her arrest that they were police officers as they did not introduce themselves and she learnt of their identity at the Central Police Station. She stated that seven days after her release, she learnt that her husband had been charged with the offence of robbery with violence and taken to Kamiti Prison where he stayed for six months then was released.

14. With respect to her averment that she had stayed in police custody for three months, the petitioner asked the Court to disregard the averment as it was an error. She had stayed in custody for seven days.

15. It was also her testimony on cross-examination that she was not really having the mental problems that she had alleged, but that she had the problems when sleeping. She did not have any medical records with respect to the mental problems, and she conceded that the Court could disregard the allegations with respect thereto in the absence of medical records.

16. In cross-examination by Ms. Kithikii for the DPP, the petitioner stated that she came to know later at the Police Station that Paul Owora was a police reservist. She had been accosted by two officers whom she can identify but whose names she did not know in the street. She maintained that she was tortured, slapped and kicked by 7 police officers at Central Police Station whom she could identify then, but not now as the events took place seventeen years prior to the date of the hearing.

17. It was also her testimony in cross-examination that she was held in custody with many women; and that she was arrested on 17th of October and beaten on 18th of October together with her husband.

18. She explained the time that had elapsed before filing the suit by stating that it was because she had written to the Commissioner of Police but he did not respond, and she waited until the regime of (President) Moi changed to file the petition in 2012.

19. She further stated that she gave her baby to an officer when Mr. Langat and the other officers started kicking and beating her.

20. In re-examination by her Counsel, Ms. Kamar, the petitioner stated that when she was arrested with her husband, her baby, who was three months old, was at home. She also stated that the baby was with her in the cell, but also stated that when she was taken to Central Police Station, she asked one of the officers to call her house girl to bring the baby.

21. She maintained that she suffered mental anguish and trauma, and was treated in the USA but had been

treated at Westlands before she left. She also maintained that her hair had been plucked out.

The 2nd Respondent's Case

22. The DPP relied on the affidavit of No 38954 Sgt. Richard Kimeu. In his affidavit, Sgt. Kimeu states that he is attached to the Central Police Station doing general investigations, and is also in charge of records.

23. Sgt. Kimeu notes that the alleged violations occurred on 17th October 1996. He states that while the then Attorney General wrote to the then Commissioner of Police instructing him to conduct investigations into the allegations, the status of investigations has not been established as the Occurrence Book is destroyed after a period of ten years in accordance with Police Standing Orders. It could therefore not be ascertained whether a police file into the matter was ever opened as it has been well over 17 years after the said incident occurred.

24. It was his deposition therefore that the respondents were unable to respond effectively and appropriately to the petitioner's claim due to destruction of documents and records. There had been unreasonable delay on the part of the petitioner in lodging the petition, which delay had not been explained.

25. The respondents had therefore been unable to trace the Mr. Langat whom the petitioner alleged had interrogated her, thereby being substantially prejudiced.

26. It was his position, however, that the arrest of the petitioner had been done in accordance with the Constitution and the Police Act which authorizes arrest on reasonable suspicion.

27. In his oral evidence, Sgt. Kimeu indicated that he was in charge of criminal investigations and was familiar with the present matter. He had been called by the DCIO Central Division and asked to go to the office of the DPP to record a statement with respect to the petitioner's allegations. Following his meeting with the DPP, he checked his records for the petitioner's complaint but due to the time that had elapsed, he was unable to get the Occurrence Book (OB) as it dated back 17 years to 1996 and certain documents are destroyed after 10 years in accordance with police regulations.

28. Sgt. Kimeu further testified that he had also considered the alleged P3 form dated 6th November 1996 which the petitioner was relying on. His evidence with respect thereto was that from his knowledge of P3 forms generally and the manner in which they are filled, he had noted that the form relied on by the petitioner had no reference or OB number, and his conclusion was that the contents of the P3 form were not reported at Central Police Station. This was because when a complaint is received, it must be recorded at the Police and an OB number issued. The P3 is then issued, and it must contain the OB number for the complaint.

29. Sgt. Kimeu further reiterated his averment that completed files are destroyed after 10 years in accordance with standing orders, as are OBs. However, matters undergoing investigations cannot be easily destroyed and the documents are kept in custody.

30. In response to questions from Ms. Wawira for the AG, Sgt. Kimeu stated that he was not able to confirm due to lapse of time that the petitioner was tortured. His testimony was that if the petitioner had reported in time, it would have been possible to get the records, but due to the lapse of time, he could also not confirm whether or not the petitioner had been informed why she had been arrested.

31. On cross-examination by Mr. Kounah for the petitioner, Sgt. Kimeu testified that he had been called early in the morning on 7th May 2013 by the DCIO Central, a Mr. Bitok, who had given him the letter from the then Commissioner of Police Shadrack Kiruki, dated 3rd December 1996 and advised to go to the DPP as the person in charge of records. He looked at the documents annexed to the petition and needed to look for the occurrence book for November 1996 to establish the veracity of the petition. He

did not look for documents from the AG's office, or from the clinic where the petitioner had allegedly been treated and a medical report prepared. He also maintained that the P3 form lacked the information that it should have. He however, confirmed that the DCIO Nairobi in 1996 was Sammy Langat, whom he stated was deceased.

32. He reiterated upon re-examination that a P3 form must have an OB number, and that files are traced by their OB numbers.

33. The parties also filed written submissions in support of their respective positions on the matter, which I shall consider in the course of determining the issues raised in this matter.

Issues for Determination

34. The petitioner has identified the issues for determination in the petition as being:

- i. Whether there were proper investigations;
- ii. Whether the petitioner was tortured;
- iii. Police Powers
- iv. Damages

35. However, having read the pleadings of the parties as well as their submissions, and having heard their oral testimony on the matter, I believe that two main issues arise for determination. The first is whether there has been a violation of the petitioner's rights demonstrated, and the second is whether the petitioner is guilty of inordinate delay in filing this petition.

Violation of Constitutional Rights

36. The petitioner's case is that she was accosted by police officers on the 17th of October 1996 while she was walking with her husband along Koinange Street in Nairobi. She was arrested and taken to Central Police Station. She stated in her petition that she was held and tortured at the police station for a period of three months, and that she was denied food and kept in a waterlogged cell for a period of 7 days. During the hearing, she testified that she had been held for a period of 7 days, and asked the court to disregard her averment that she had been kept in custody for three months. She also testified that she had been held with her new born baby, though she later testified that she asked for her child, who was three months old, to be brought to her cell by her house girl.

37. In her written submissions, the petitioner maintained that she had been tortured in police custody though she had recently given birth. She argues that the respondents have not controverted her averments in her affidavit in support of the petition. Further, with regard to the affidavit sworn by Sgt. Kimeu on behalf of the respondents, it is her contention with respect to the destruction of the police occurrence book after a period of ten years that as the matter was still under investigations, such books and records should have been kept open. She submits that as the respondents did not deny her claim, the Court should accept it. She relied on the decision in **Jaoko Noo Ooro and 5 Others vs The Attorney General (2013)eKLR** in support. She has also made various submissions with respect to the law on torture and the prohibition in law against it, which I believe are not in dispute.

38. In their submissions in response, the respondents note the discrepancies in the petitioner's claim. They draw attention to her testimony on oath that she was in police custody for 7 days, and contrast this with her claim in the petition and her sworn affidavit that she was held in police custody for three months. The 1st respondent also submits that her documents contradict her averments and are unreliable. The AG notes that she alleges that she was released on 29th October 1996, which suggests that she was held for 12 days, while her testimony was that she was held for 7 days. Her documents also show that she sought medical

treatment on 7th November 1996, nine days after her release. Further, the AG observes that the document she relies on is the petitioner's narrative and does not indicate what she was treated for or whether medicine was prescribed.

39. The 2nd respondent also makes similar observations with respect to the petitioner's evidence. The DPP notes that the petitioner alleged in her affidavit that she was tortured the day after her arrest, on 18th October 1996, while in her testimony, she alleged that she was tortured for the entire period that she was in police custody. Ms. Kithikii for the DPP also observed the discrepancy in the period for which she was allegedly held, between 7 days and three months, as well as her claim on the one hand that she was held with other female prisoners, while on the other alleging that she was held in solitary confinement for seven days, to the extent that she could not tell for how long she was held, and whether it was day or night.

40. The petitioner has alleged violation of her constitutional rights under various provisions of the former constitutions, including sections 72 and 74 thereof. She has an obligation, as stated in the case of **Anarita Karimi Njeru vs Republic [1979]1KLR 154** and **Trusted Society of Human Rights Alliance vs Attorney General and 2 Others [2012]eKLR**, to demonstrate how these provisions of the constitution were violated with respect to her. Such demonstration, in my view, must accord with the requirements of the Evidence Act, sections 107 and 109 of which provide as follows:

107.” (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

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

41. I have noted the discrepancies referred to by the respondents in their submissions. Indeed, it was apparent during the oral hearing of the matter that the testimony of the petitioner, measured against her averments and her claims in the petition and the affidavit in support, raised serious questions about her credibility. When considered against her documents, one is left in serious doubts about her claim.

42. To illustrate, she alleged on oath that she was arrested and detained for three months, but she testified in court that it was only for 7 days. She was held in isolation, but in court she testified that she was held with other female prisoners. She was assaulted with her new born child, but her oral testimony was that she asked a police officer to call her house girl to bring the child to her. She suffered a mental illness as a result of the torture, but she only had the problem when she was asleep, and had no medical evidence of treatment for such illness.

43. As observed by the respondents, the documents that she relies on raise the same questions about her credibility. She produced a letter that she had written to the Commissioner of Police, a letter written on her behalf by the Federation of Women Lawyers, letters from the Attorney General in response to her demand, and a medical report from Cactus Villa Health Clinic.

44. The medical report, which was obtained approximately nine days after the petitioner was released, indicates that the petitioner had stated that she was beaten with a Kiboko. It further states that she appeared normal, with no scars, bruises or broken bones. It does not mention any mental or psychological condition manifesting itself. It does state that the petitioner had patches of hair missing, but this appears to have been arrived at on the basis of photographs provided by the petitioner to the doctor.

45. The P3 form is also a matter of concern. It states that the petitioner was beaten and hair pulled out by people she can identify. Given the contents of her letter dated 4th November 1996, it is surprising that she

does not state that the assault was by police officers. As submitted by the 2nd respondent, how is the Court to conclude that the alleged beating and plucking of her hair was as a result of an assault by police officers, especially in light of her other clearly contradictory statements about the events of those 7 or 9 days in October/November 1996? In my view, the petitioner's evidence is so unreliable that it cannot be trusted to establish violation of her constitutional rights. Which takes me to the second issue that this petition raises.

Whether the Petitioner has been Guilty of Inordinate Delay

46. The petitioner argues that the respondents should not have destroyed documents as the matter at issue was still under investigations. The respondents reply that she has been guilty of inordinate delay, the events in question having taken place some seventeen years ago.

47. The respondent's witness, Sgt. Kimeu, testified on oath on the efforts he had made to establish the facts concerning this case. He noted that under the Police Force Standing Orders, where there are no pending investigations or open inquiries after 10 years, such records are destroyed. The only documents exempted from destruction are, among others, open inquiries, complaints which are under investigations and cases which lead to institution of proceedings in court. They also confirmed that the previous DCIO of Central Police Station, whom the petitioner had alleged had committed the acts of torture against her, had died in February 2002.

48. In these circumstances, should the Court accept the petitioner's claim, delay in filing which she explained by stating that she was waiting for the end of the Moi regime? Should the Court accept the often cited argument that there is no limitation in claims regarding violation of fundamental rights?

49. I observe that the petitioner was not arrested for political reasons, as many persons whose cases she relies on were. In any event, as decided cases on this issue of delay illustrate, even the fact that a person alleges violation of rights for political reasons does not always excuse delay in filing proceedings to vindicate his or her rights.

50. In **High Court Petition No. 306 of 2012 Ochieng' Kenneth K'Ogutu vs Kenyatta University and 2 Others**, it was observed that:

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

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

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

51. In **Joseph Migere Onoo vs Attorney General, Petition No. 424 of 2013** this Court held that the petition was barred owing to the fact that it had been filed 27 years later. Here the petitioner had filed the suit against the Government of Kenya alleging violations of his various constitutional rights, violations which he averred occurred following his alleged arrest and torture in various places in 1986, when he was a student at Egerton University. In this case, this Court, while dismissing the petition made the following observation:

[39] “The principle that emerges from the cases cited above is that a court must always consider whether the delay in filing a petition alleging violation of constitutional rights is unreasonable and prejudicial to a respondent’s defence.

[40] In the present case, the acts complained of took place some 29 years ago, and the petition was filed 27 years after the alleged events. No explanation has been proffered for the delay, or to explain or justify the institution of proceedings at this point in time. The petitioner contented himself with maintaining that there is no limitation in petitions such as this.”

52. In the case of **James Kanyiita Nderitu vs Attorney General and Another, Petition No. 180 of 2011**, Majanja J held as follows:

*[45.]” Before I consider the facts as presented, I must state that it is well established the law concerning limitation of actions cannot be used to shield the State or any person from claims of enforcement of fundamental rights and freedoms protected under the Bill of Rights (See *Dominic Arony Amolo v Attorney General Nairobi HC Misc. 494 of 2003 (Unreported)*, *Wachira Waheire v Attorney General Nairobi HC Misc. Civil Case no. 1184 of 2003 (OS) [2010]eKLR*, *Otieno Mak’onyango v Attorney General and Another Nairobi HCCC No. 845 of 2003 (Unreported)*). Although there is no limitation period for filing proceedings to enforce fundamental rights and freedoms, the court in considering whether or not to grant relief under section 84 of the Constitution, is entitled to consider whether there has been inordinate delay in lodging the claim. The Court is obliged to consider whether justice will be served by permitting a respondent, whether an individual or the State in any of its manifestations, should be vexed by an otherwise stale claim. Just as a petitioner is entitled to enforce its fundamental rights and freedoms, a respondent must have a reasonable expectation that such claims are prosecuted within a reasonable time. The words of *Didcott J. in Mohlomi v Minister of Defence [1996] ZACC 20, 1997 (1) SA 124, 129* are apposite in this regard, “Inordinate delays in litigating damage the interests of justice. They protract the disputes over rights and obligations sought to be enforced, prolong the uncertainty of all concerned about their affairs. Nor in the end is it always possible to adjudicate satisfactorily on cases that have gone stale. By then witnesses may no longer be available to testify. The memories of those whose testimony can still be obtained may have faded and become unreliable. Documentary evidence may have disappeared. Such rules prevent consequences of it. They thus serve a purpose to which no exception in principle can cogently be taken.” (See also *Kenya Bus Service Limited and Another v Minister for Transport and Others HCCC No. 504 of 2008 [2012]eKLR*)”.*

53. In determining that the petition before him was not merited, the Honourable Judge concluded as follows:

*[46.] “Whether such a claim should be permitted is a question of fact dependent on the circumstances of each case. In the matter of *Lt. Col. Peter Ngari Kagume & Others v Attorney General, Nairobi Constitutional Application No. 128 of 2006 [2009] eKLR* where *Nyamu J.**

considering the issue of delay in filing a suit for the enforcement of fundamental rights and freedoms stated observed that, “The petitioner had all the time to file their claim under the ordinary law and the jurisdiction of the court but they never did and are now counting on the constitution. None of the petitioners has given any explanation as to the delay for 24 years. In my view the petitioners are guilty of inordinate delay and in the absence of any explanation on the delay; this instant petition is a gross abuse of the court process In view of the specified time limitation in other jurisdictions the court is in a position to determine what a reasonable period would be for an applicant to file a constitutional application to enforce his or her violated fundamental rights. I do not wish to give a specific time frame but in my mind, there can be no justification for the petitioners delay for 24 years. A person whose constitutional rights have been infringed should have some zeal and motivation to enforce his or her rights. In litigation of any kind, time is essential as evidence may be lost or destroyed and that is possibly the wisdom of time limitation in filing cases.

[47.] The petitioner has held his grievance about his arrest and detention since 1985. These facts were known to him throughout the trial and appeal from the conviction. I also note that during the time the petitioner was fighting criminal proceedings, he was also pursuing litigation through his companies in Intercom Services Ltd, Interstate Communications and Services Ltd, Swiftair (K) Ltd, Kenya Continental Hotel Ltd and James Kanyita Nderitu v Standard Chartered Bank Kenya Limited Nairobi HCCC No. 761 of 1985 (See Standard Chartered Bank Ltd v Intercom Limited and Others CA Civil Appeal No. 37 of 2003 [2004] eKLR which determined the matter). I have perused the pleadings in that case which have been amended several times. In the further re-amended plaint 26th September 2000, the plaintiffs aver at paragraph 14, “As a result of the said breach, the 5th plaintiff in his official capacity as the managing director of the 1st, 2nd, 3rd and 4th Plaintiffs was arrested, charged and prosecuted in the Chief Magistrate’s Court at Nairobi Criminal Case No. 1716 of 1985. The accused (5th plaintiff) was subsequently acquitted on appeal.

[48.] The reason I have cited a part of the plaint in HCCC No. 761 of 1985 is that even at the time the suit was filed, the petitioner as the 5th plaintiff was clearly aware of the facts relating to his complaint. I do not think the petitioner has justified why he waited to lodge this claim after 26 years. In other cases where the period has been excused, the parties have justified the reasons why the case could not be filed for a long period of time.”

54. I take the view that in this case, the delay by the petitioner in lodging her petition is inexcusable. She had given notice of her intention to lodge a claim against the state less than two weeks after her alleged arrest and violation of her constitutional rights. She did not, however, lodge the claim until some 16 years later. Aside from the fact that I have not been able to find any violation of her constitutional rights in view of the very contradictory nature of her evidence, I am also constrained to find that in this case, even had she been able to establish violation, her claim would have been defeated by delay.

55. In the circumstances, it is my finding that this petition should fail. It is hereby dismissed but with no order as to costs.

Dated, and Signed at Nairobi this 16th Day of March 2016.

MUMBI NGUGI

JUDGE

Dated, delivered and signed at Nairobi this 17th day of March 2016

J. L. ONGUTO

JUDGE

Ms. Warira instructed by the State Law Office for the 1st respondent.

Ms. Kithikii instructed by the office of Director of Public Prosecution for the 2nd respondent.

No appearance for the petitioner.