



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO.240 OF 2013
BETWEEN
MAURICE JUSTICE ADONGO.....PETITIONER
VERSUS
THE HON. ATTORNEY GENERAL.....RESPONDENT

JUDGMENT

Introduction

1.The Petitioner, Maurice Justice Adongo, joined the University of Nairobi in 1980 having been admitted as a student in the Faculty of Commerce. In late 1981, the University allowed its students to form a new students' body, the Students' Organization of Nairobi University (SONU) as well as a Student Representative Council (SRC) in which the Petitioner was elected as a member representing Hall 1 residents. Later on, the Petitioner was elected by the SRC as the acting Secretary General of SONU and in that capacity, he addressed student gatherings and made frequent media statements on various issues including the move by the then Moi Government to change Kenya to a *de jure* one party state. Subsequently, he was arrested on two occasions between 1982 and 1986 on allegations related to his anti-Government activities.

2. The Petitioner has therefore filed this Petition praying for declarations that his fundamental rights and freedoms were contravened and grossly violated by the police and other Kenyan government officials, agents and employees on diverse dates between 1982 and 1986 as a result of his incarceration at several police stations across Nairobi and finally at the infamous Nyayo House Torture Chambers.

The Petitioner's case

3. The Petitioner's case is contained in his Affidavit in support of the Petition sworn on 4th September 2012, his statement dated 4th September 2012, oral testimony in Court on 11th December 2013 and his written Submissions dated 20th January 2014.

4. The background leading to his complaints can be traced back to the attempted coup of 1st August 1982 following which, the University of Nairobi was closed indefinitely and a curfew declared which barred anybody from being in the streets of Nairobi after 6.00pm.

5. The Petitioner alleges that he was arrested on 3rd August 1982 by plain clothes Special Branch Police Officers near Serena Hotel in Nairobi at around 10.00 a.m. as he was trying to board a Kenya Bus Service (KBS) vehicle. He was coming from the University where he had gone to retrieve his property from the halls of residence to enable him travel to his village in Bondo that evening. Upon his arrest, he was pushed into a waiting light blue Volkswagen Combi van and was immediately taken to a place he later learnt was Special Branch (SB) headquarters located on top of Turkoman Carpet House.

6. On arrival at Turkoman Carpet House, he alleges that he was ordered to strip naked and was interrogated for hours while naked by a Mr. Noah Arap Too, the then Head of Criminal Investigation Department (CID) amongst other officers. Thereafter, he was taken to Kileleshwa Police Station where he was thoroughly beaten by police officers using whips, broken chair parts and who also used crude objects such as nails to comb his hair. He claims that he was then detained in several other police stations for the whole of August and September, 1982.

7. He adds that during his incarceration, he was denied food and water the whole day and was only offered food in the evenings. That while being held at Langata Police Station, he was forced to clean the corridors and on one occasion when he was too weak to do so, the police officers slapped and pushed him to the rails on the stair case and he landed on the floor head first and consequently injured his head and fell unconscious. He testified that he was continuously maltreated by state agents even when severely ill as a result of his injuries from the fall.

8. He was subsequently taken to Court on 30th September, 1982 and charged with sedition in relation to the coup attempt. He pleaded not guilty and was remanded without bail and was incarcerated at Nairobi Industrial Area Remand Prison for more than five months where he was held in horrific conditions at Block E which was preserved for those facing capital offences. Later on, he was transferred to the 'mwenda' block which was used for holding inmates with severe mental illness, where he alleges that he was forced to endure extreme degradation and unthinkable inhuman circumstances.

9. It is his further case that the State withdrew charges against him in February 1983 and he was released after being held incommunicado for more than six months and in the inhuman conditions detailed out above.

10. After his release, he went on to graduate from the University of Nairobi in 1984 and was employed as a lecturer at Mombasa Polytechnic.

11. According to him, he lived and worked peacefully until 19th April 1986, at about 3.00 a.m. when 9 Special Branch police officers descended into his apartment and ordered him to sit down and confiscated his nephew's essay titled, "**Alexander, The sick man from Europe**". He testified that at around 8.00 a.m., he was led into a waiting car outside the apartment and was driven to a police station and later that morning he was taken to his place of work, Mombasa Polytechnic, where the Special Branch police officers searched his desk at the staffroom. He was thereafter driven to Kilindini Port Police Station where he was locked up in an open cell that looked like a cage. Later in the day, he was taken to Central Police Station from where he was transported to Nairobi together with his colleague, a Mr. Ongai Okaka and on arrival in Nairobi in the morning of 10th April 1986, he was taken to Muthangari Police Station where he stayed all day.

12. Thereafter he alleges that he was put into a waiting Land Rover, blindfolded and ordered to lie down and driven for long and he finally found himself in a room where the blindfolds were removed for sometime before he was blindfolded again and ushered into a lift that went up and upon arrival, the blindfolds were removed and the officers started grilling him on his alleged connection to the outlawed 'Mwakenya' Movement. When he denied any connection to that Movement, he was beaten with all sorts of objects like wooden sticks, broken chair pieces and rubber whips. He was also ordered to strip naked and taken through military drills and it is his case that all the above acts took away his dignity as a human being and that he was treated like an animal instead.

13. He testified further that he had no sense of night or day as he was held in the dungeons of Nyayo

House with 24 hour lighting and after a while he was moved and placed in a cell with the entire floor covered with cold water and human waste floating on it. He claimed that the stay in that cell was traumatising as he was unable to sit naked in the freezing water which also froze his testicles giving him unbearable pain. He was also denied food and drinking water during his ordeal and he added that after every 24 hours, the door to the cell would be opened only for him to be hosed with a water burst that was directed at his face and this was done unto him every morning after which he would be left in the water logged cell. He claimed that he was forced to use the same water to drink and yet he also had to relieve himself in it.

14. He testified that after five days, he was moved into a dry cell and by that time he had become weak; and he could not talk; his body was smelling; his toes were falling off; fungus was growing all over his feet, his body was aching all over and he was having severe tooth ache.

15. He also claimed that he was taken to the CID headquarters in Milimani on 8th May 1986 where he refused to sign a fabricated statement and after being returned to Nyayo house and for fear of more torture, he signed a prepared statement in confession out of duress and he was subsequently taken to the Nairobi Law Courts the next morning when he was charged with possession of a seditious publication, 'Mwakenya'. He promptly pleaded guilty and was sentenced to 15 months' imprisonment.

16. That he was taken to Kamiti Medium Prison where he was again beaten with rungs on his legs, ankles, knee caps and elbows and he claimed that he suffered to a point where he could not walk, and even suffered tetanus after a rusty nail pierced him. After sometime while in Kamiti, he was relocated to the isolation block where he was held for 23 hours a day until he was released in February 1987.

17. He further claimed that after he was released, he tried getting back his job at Mombasa Polytechnic but he had already been dismissed by the Teachers Service Commission and so he obtained admission for a post-graduate course in Computer Science at the Chiromo Campus of the University of Nairobi and while he pursued his studies, he taught at the School of Professional Studies.

18. It was his evidence that while pursuing the above activities, there was crackdown by the government on alleged dissidents and then when he got wind that Special Branch Police Officers were looking for him, he fled to his rural home in Bondo from where he travelled to Migori and crossed the border to Musoma in Tanzania where he sought refuge and the United Nations High Commission for Refugees (UNHCR) later helped him relocate to Canada where he lives to date.

19. He claimed that as a result of the alleged torture and inhuman treatment in the hands of the Kenya Government officials, he now suffers from post-traumatic stress disorder, which has led him to having frequent nightmares, bouts of clinical depression, amnesia and high blood pressure and he still undergoes treatment to date for clinical depression and high blood pressure. He therefore seeks the following orders;

"a) A declaration that his fundamental rights and freedoms were contravened and grossly violated by the police and or other Kenyan government servants, agents and/or employees.

b) A declaration that he is entitled to payment of general and exemplary damages.

c) General and exemplary damages for violation of his fundamental rights and freedoms.

d) General and exemplary damages for loss of employment.

e) Costs of the Petition.

f) Interest on (c) and (d) above.

g) Any other relief that this Court may deem fit and just do grant to the

Petitioner”.

20. The Respondent, the Attorney General opposes the Petition and filed the following Grounds of Opposition dated 11th July 2013;

“1) That the Petition is grossly and incurably defective in substance and should be struck out at the earliest.

2) That the Petition offends the trite principle that the law ought not to be applied in retrospect.

3) That the Petitioner was arrested and charged with a capital offence at the time, of sedition, and as such his detention was bound to be longer pending investigations.

4) That the detention was done pursuant to an existing law then, the Public Security (Detained and Restricted Persons) Regulations 1966.(sic)

5) That the Petitioner has failed to attach a copy of the Charge Sheet Certified proceedings and/or judgment that led to his alleged conviction and subsequent incarceration during the entire period.

6) That while the former Constitution Section 72 preserved the right to personal liberty, the same withdrew that right as may be authorised by law upon reasonable suspicion of a person having, committed, or being about to commit, a criminal offence under the law of Kenya.(sic)

7) That the petitioner has failed to attach any documentary evidence, medical or otherwise, to prove that he was ever tortured, if at all.”

21. He also filed written Submissions. It is his case that the Petitioner's case is baseless and vexatious as it was borne out of malice, opportunism and “herd mentality”. He disputed the claims that the Petitioner was arrested by plain clothes police officers; that he was never blindfolded and taken to a cell in Nyayo house and locked in a dungeon in Nyayo House. He further denied that the Petitioner was beaten as he failed to produce any medical report in that regard. In essence, the Respondent denied the Petitioner's allegations that he was tortured and submitted that he must prove his allegations that his rights were violated beyond reasonable doubt as required under **Sections 107 and 109 of the Evidence Act**, (Cap 80 Laws of Kenya). He also relied on the case of ***Col Peter Ngari Karume & Others v Attorney General Constitutional Application No. 128 of 2006*** where it was held that in scenarios where one side alleges and the rival side disputes, the one alleging must assume the burden of proving the allegation made.

22. The Respondent also took issue with the delay by the Petitioner in enforcing his right and he relied on the case of ***Peter Ngari Kagume (supra)*** where it was held that a person whose fundamental rights and freedoms have been violated must have some zeal and motivation to enforce his rights and must do so within a reasonable time. In that case, the Court found that the filing of a Petition after 24 years was unreasonable and the delay was unexplained.

23. On the issue of damages, the Respondent submitted that the Court should follow the principle that damages in constitutional law are not meant to restore a person to the state he was in before the alleged violations as is the principle in tortuous claims but give satisfaction as was held in the case of ***Maharaj v Attorney General of Trinidad and Tobago (No.2) (1979) AC 385*** as approved in ***Chokolingo v AG (1989) AC 108***.

24. Lastly, the Respondent urged the Court to dismiss the Petition with costs as the Petitioner had failed to prove his case beyond reasonable doubt and the entire Petition lacks merits.

Determination

25. Before I turn to examine whether the Petitioner has established that his alleged rights and freedoms had been violated by the Respondent, I will first deal with what I would deem as a preliminary issue raised by the Respondent; that the Petitioner has filed this Petition far too late from the date of the alleged violations.

26. To answer that issue, I will do no better than reiterate the earlier reasoning of this Court in **David Gitau Njau & 9 Others v Attorney General Petition No. 340 of 2012** where the Court stated as follows;

“To my mind, I do not know any law or a particular provision of the Repealed Constitution that provides that a claim based on fundamental rights and freedoms has a limitation period A claim made under the Constitution is neither a claim in tort nor contract that would necessitate the application of the Limitation of Actions Act, Cap 22 Laws of Kenya. Further, a casual reading of the rules contained under Legal Notice No. 133 of 2001 (Constitution of Kenya (Protection of Fundamental rights and Freedoms of the individual) Practice and Procedure Rules, 2001) do not place any limitations on the citizen's rights to institute a suit for the redress of violation of fundamental rights and freedoms under section 84 of the Repealed Constitution.”

27. I must also agree with the sentiments of Hayanga J in **Dominic Arony Amolo v AG Misc. Application No.494 of 2003** where he expressed himself as follows;

“I therefore, think and I so hold that section 3 of the Constitution excludes the operation of Cap 22 with regards to claims under fundamental rights and further that fundamental rights provisions cannot be interpreted to be subject to the legal heads of legal wrongs or causes of action enunciated under the Limitation Act, Cap 22.”

28. I have heard nothing in the present case to dissuade me from the above reasoning and I am not persuaded by the authority of **Peter Ngari Kagume & Others v Attorney General (supra)** cited by the Respondent where the Applicant had filed his Petition 24 years later. In that case, I note that the judge did not expressly hold that there were limitations imposed for filing of proceedings to enforce constitutional rights as enshrined under the Bill of Rights. The judge simply, in my view, did not find a justification as to why the suit had been commenced 24 years later after the alleged violations.

29. Having said so, I must also state that I agree with the Respondent that it is ideally prudent to institute proceedings as early as possible from the time the alleged breach of the Constitution occurs and for good reason but even then each case must turn on its own facts and from the facts placed before me, I am not prepared to shut out the Petitioner for the sole reason that he filed his Petition late. His circumstances and present and past medical conditions are a huge determining factor in that regard.

30. Turning to the question whether the Petitioner has established any violation of his fundamental rights and freedoms as alleged, I note that the Respondent has argued in his Submissions that the Petitioner had failed to lead evidence to prove the allegations that he was arrested, his house searched and that he was tortured at Nyayo House and other places in circumstances that I have outlined above.

31. Serious as the issue may be, the Respondent did not file a Replying Affidavit to rebut the facts as set out by the Petitioner. He opposed the Petition through Grounds of Opposition which ideally should be on points of law only. At the hearing, the Petitioner gave specific details under oath of how he was arrested on various occasions, moved from one police station to another and the acts of torture meted out to him at various police stations and eventually at the infamous Nyayo Torture Chambers. To my mind, the fact that the Respondent did not deny these allegations made under oath indicate that the allegations are true. Indeed, during cross-examination of the Petitioner he remained unshaken and I believe his evidence. For these reasons I have no reason to doubt the veracity of the Petitioner's testimony.

32. In making the above finding, I am well aware that the Petitioner failed to produce any documents or medical evidence in support of the allegation of torture and resultant injuries in the hands of the agents of the Government of Kenya. I am also aware that treatment notes and medical reports relating to the material period would have corroborated the Petitioner's evidence and would have been enough to

establish the Petitioner's allegations, However, I do not think that the absence of such evidence is fatal to his case because of what I have said above; that his averments of fact were not contradicted by the Respondent. In any event, I have seen newspaper reports of diverse dates in 1982 and 1986 revealing that the Petitioner had been arrested on suspicion that he had been involved in seditious activities. I have also seen the medical report by Dr. Gary T. Burrows, a psychiatrist, who has been treating him of Post-Traumatic Stress Disorder. While newspaper reports *per se* cannot be evidence, in the totality of the evidence before me, I am inclined to believe the Petitioner. In so holding, I reiterate the sentiments of this Court in *Kariuki Gathitu v Attorney General Petition No. 1188 of 2003*, where I stated as follows;

“It is now trite that although a party alleging a fact has the onus of proof of that fact, the opposing party is at the very least expected to file a response to those allegations of facts. Where such a party actually appears in the proceedings but neither in pleadings nor in oral evidence does he answer to those facts, then the court can only but take it that those facts are actually uncontested, In the cross-examination of the Plaintiff nothing substantial came out that would sway this Court's mind to disbelieve the Plaintiff and I therefore accept all the facts as set out above to be true.”

33. The same sentiments apply to the present case, *mutatis mutandis*. The other issue before me now is whether the various actions of the Government as set out above disclose a violation of the Petitioner's fundamental rights as alleged.

Right to Personal Liberty

34. The Petitioner was arrested for the first time on 3rd August 1982 but was not charged in Court until 30th September 1982. He was therefore held in custody for a period of 58 days. The applicable law at the time, **Section 72(1)** read together with **Section 72(3)** and **72 (5)** of the Repealed Constitution, obligated the arresting authority to present any suspect to a Court of law within 24 hours for misdemeanors and within 14 days for capital offences. In this case the Petitioner was presented to Court 58 days later for what was obviously a misdemeanor. That was in clear violation of **Section 72** of the repealed Constitution which provided as follows:

(1) No person shall be deprived of his personal liberty save as may be authorized by law....

(2) A person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) A person who is arrested or detained-

(a) for the purpose of bringing him before a court in execution of the order of a court; or

(b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence, and who is not released, shall be brought before a court as soon as is reasonably practicable, and where he is not brought before a court within twenty- four hours of his arrest or from the commencement of his detention, or within fourteen days of his arrest or detention where he is arrested or detained upon reasonable suspicion of his having committed or about to commit an offense punishable by death, the burden of proving that the person arrested or detained has been brought before a court as soon as is reasonably practicable shall rest upon any person alleging that the provisions of this subsection have been complied with.”

35. There was obvious breach of the above **Section** and I so find. The Petitioner was arrested for the second time on 19th April 1986 but was not charged in Court until 9th May 1986. He was held in custody for 20 days in clear violation of the provisions of **Section 72** of the **Repealed Constitution** above. He was later charged with a misdemeanor and he was entitled to be produced in Court within 24 hours and since he was not, I find that his right to personal liberty was violated for the second time.

Protection from Torture and other Cruel and Degrading Treatment

36. The Petitioner alleges that while being held at the various police stations and at Nyayo House on the two occasions he was arrested, his right not to be subjected to torture and other cruel and degrading treatment protected under **Section 74(1)** of the **Repealed Constitution** was violated. **Section 74 (1)** provided that;

‘No person shall be subject to torture or to inhuman or degrading punishment or other treatment.’

37. The issue of what amounts to torture and cruel, degrading treatment has been the subject of judicial adjudication before this court in several cases. The High Court has previously held that the beatings, interrogation and confinement in dark cells of those arrested and held in the now infamous Nyayo House Torture Chamber amounted to torture and cruel degrading treatment. In that regard, I need not repeat the findings of the Court in such cases as ***Harun Thungu Wakaba & Others –v- The Attorney General Nairobi HC Misc. Appl. 1411 of 2009(OS); Wachira Waheire -v- The Attorney General Nairobi HC Misc. 1184 of 2003(OS), Rumba Kinuthia & Others –v- The Attorney General, Nairobi HC Misc. Appl. No. 1408 of 2004 and Cornelius Akelo Onyango & Others -v- The Attorney General Nairobi HC Misc. 233 of 2009.*** In the circumstances, I find and hold that the Petitioner was subjected to torture, cruel and degrading treatment contrary to **Section 74(1)** of the **Repealed Constitution**.

Protection Against Arbitrary search or entry

38. The Petitioner claimed that at 3.00 am on 19th April 19866, he heard loud knocks on the door of his apartment and upon opening, he found plain clothed police officers who searched his apartment for several hours until 8.00 a.m without a search warrant and ended up confiscating his nephew's essay titled, ***“Alexander: The Man from Europe”***.

39. The **Repealed Constitution** at **Article 76** protected against arbitrary search or entry. This Section provided as follows;

“(1) Except with his own consent, no person shall be subjected Protection against to the search of his person or his property or the entry by others on his arbitrary search or premises. entry.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

(a) that is reasonably required in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development and utilization of mineral resources, or the development or utilization of any other property in such a manner as to promote the public benefit;

(b) that is reasonably required for the purpose of promoting the rights or freedoms of other persons;

(c) that authorizes an officer or agent of the Government of Kenya, or of a local government authority, or of a body corporate established by law for public purposes, to enter on the premises of a person in order to inspect those premises or anything thereon for the purpose of a tax, rate or due or in order to carry out work connected with property that is lawfully on those premises and that belongs to that Government, authority or body corporate, as the case may be; or

(d) that authorizes, for the purpose of enforcing the judgment or order of a court in civil proceedings, the entry upon premises by order of a court, and except so far as that provision or, as the case may be, anything done under the authority thereof is shown not to be reasonably justifiable in a democratic society.”

40. A casual reading of that section reveals that any search on any person's property must be authorized by law. The police searched the Petitioner's property without a search warrant and at the wee hours of the morning. In my view, nothing can justify that search and since the Respondent did not even defend the claim, I find that his rights as protected by **Section 76** of the **Repealed Constitution** were thereby violated.

Right to fair trial

41. The Petitioner claimed that his rights for fair trial and secure protection of the law as provided for under **Section 77** of the **Repealed Constitution** was violated. The Petitioner claimed that his rights were violated as he was made to incriminate himself by signing a prepared statement and was forced to plead guilty to the offence of being a member of the "Mwakenya" Movement. And also that he was denied facilities to prepare his defence and denied the right to be represented by an advocate of his choice.

42. **Section 77(1)** provided as follows;

"If a person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law. "

43. As can be seen, this section required that when a person is charged with a criminal offence, he shall be afforded a fair hearing within a reasonable time by an independent and impartial Court. The Court of Appeal in the case of ***Julius Kamau Mbugua -v-Republic Criminal Appeal No 50 of 2008*** held that **Section 77(1)** of the **Repealed Constitution** protected rights in the course of the trial.

44. In the instant case, the Petitioner as already stated was arraigned in Court for the first time on 30th September 1982 and pleaded not guilty upon which he was remanded until 22nd February 1983 when he was released after the state dropped the charges against him. On the second occasion of arrest, he was arraigned in Court on 9th May 1986 and he pleaded guilty to the charges read to him and he was subsequently sentenced on a plea of guilty.

45. He testified that upon his arrest in both instances, he was not informed of the charges facing him; he was not allowed an advocate to defend him in Court and was not given adequate facilities to prepare for his defence. **Section 77(2)** of the **Repealed Constitution** provided as follows;

"(1) ...

(2) Every person who is charged with a criminal offence -

(a) shall be presumed to be innocent until he is proved or has pleaded guilty;

(b) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence with which he is charged;

(c) shall be given adequate time and facilities for the preparation of his defence;

(d) shall be permitted to defend himself before the Court in person or by a legal representative of his own choice;

(e) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

(f) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge, and except with his

own consent the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence”.

46. In light of the interpretation given by the Court of Appeal to the provisions of **Section 77(2)** of the **Repealed Constitution** in the **Albanus Mutua v Republic, Appeal No.112 of 2003**, I do find a violation of the Petitioner’s right to a fair trial and to the protection of the law as provided by **Section 77** of the **Repealed Constitution**.

Violation of Other rights

47. The Petitioner also claimed that his rights under **Articles 28, 29, 31, 33** and **37** of the **Constitution** were violated. **Article 28 protects the right to human dignity, Article 29; right to privacy, Article 31; freedom of expression, Article 33; freedom of Assembly and demonstration and Article 37; access to justice.** I do not see how these rights were violated and the Petitioner failed to demonstrate how they were specifically violated. That being the case and having found in his favour on allegations of violations of rights which he focussed his case on, I am unwilling to delve into other issues and for obvious reasons - See **Anarita Karimi v Republic (1976) KLR 1** for an exposition of the law in that regard.

Damages

48. Having found a violation of the Petitioner's rights under **Sections 72, 74, 76 and 77** of the **Repealed Constitution**, this Court must award him an appropriate remedy. The Petitioner was incarcerated in various police stations and in Nyayo House for a total of 78 days on both occasions, during which time he was subjected to acts of torture. The level of damages awarded in similar circumstances has varied, with awards of Kenya shillings 1,000,000-3,000,000 being made by Okwengu, J to the Petitioners in the case of **Harun Thungu Wakaba -v- The Attorney General, Misc Appl. No. 1411 of 2004**; Wendoh, J making an award of Kshs 1,500,000.00 in the case of **Rumba Kinuthia -v- Attorney General (supra)** while Majanja, J awarded damages of Kshs.2,000,000.00 as general damages to the Petitioners in **Benedict Munene Kariuki and 14 Others -v- the Attorney General High Court Petition No. 722 of 2009**.

49. In all the above cases, the High Court has been reluctant in awarding exemplary damages for reasons that they are not awardable in changed political circumstances and in a petition such as the one before me. I do not see any good reason to warrant departure from that reasoning. In the event, I award the Petitioner **Kshs.4,000,000.00** for violation of his rights under **Sections 72, 74, 76 and 77** of the **Repealed Constitution**. I do so taking into account the period of 78 days in which he was in unlawful incarceration, the torture he was subjected and the suffering he continues to undergo as a result of that torture, especially his post-traumatic stress disorder.

50. The final orders to be made therefore are that Judgment is entered in favour of the Petitioner against the Respondent in the following terms;

(a) A declaration is hereby issued that the Petitioner's fundamental rights and freedoms were violated by the police and/or other agents, servants and employees of the Government of Kenya on various dates in 1982 and in 1986.

(b) The Petitioner shall be paid general damages of Kenya Shillings Four Million (Kshs.4,000,000.00) by the Respondent as compensation for violation of the Petitioner's fundamental rights and freedoms by agents of the Government of Kenya.

(c) The Petitioner shall have the costs of this Petition together with interest on damages from the date of Judgment until payment in full.

51. Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 28TH DAY OF MARCH, 2014

ISAAC LENAOLA

JUDGE

In the presence of:

Irene – Court clerk

Mr. Sekwe holding brief for Mr. Awino for Respondent

No appearance for Petitioner

Order

Judgment duly read.

ISAAC LENAOLA

JUDGE