



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT NAIROBI**  
**MILIMANI LAW COURTS**  
**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**  
**PETITION NO. 545 OF 2013**

**BETWEEN**

**GEOFFREY PETER MAINA NJOROGE ..... PETITIONER**

**AND**

**THE ATTORNEY GENERAL ..... RESPONDENT**

**JUDGMENT**

1. The petitioner moved the court by a petition dated 14<sup>th</sup> November 2013 seeking relief for the violation of his rights and fundamental freedoms. The facts giving rise to the petition are set out in the petition and affidavit supporting the petition sworn by the petitioner. The petitioner also gave oral testimony at the hearing.
2. The petitioner was a newspaper vendor along Moi Avenue at Ambassador Bus Stage from 1976 to 1993. In February 1990, he opened his business as usual by laying out the various newspapers, articles and journals in preparation for prospective customers. He saw a bus belonging to a well-known college coming towards the Ambassador bus stage. It was driven in a high speed that it screeched to a halt just in front of him. A group of about 20 men alighted from the bus and confiscated all the copies of the 'Newsweek' and 'Watchman'. He was immediately hauled into the bus. He later learnt the he was under arrest was due to his alleged selling of a prohibited publication.
3. The petitioner testified that he was harassed and subjected to inhuman and degrading treatment by police officers at various police cells, in the car and dark rooms. He stated that he was tortured. He was arraigned in court on charges of sedition in **Nairobi Chief Magistrates Court Criminal Case No. 998 of 1993 (*Republic vs. Geoffrey Peter Maina Njoroge*)**. The Attorney General later terminated the proceedings by entering a *nolle prosequi* on 17th May 1993.
4. As a result of his treatment, the petitioner states that he suffered emotional and psychological anguish. He testified that he continues to suffer ill health and has found it difficult to obtain proper treatment due to the high costs involved. His sons and daughters' were unable to complete primary school and advance to higher levels due to the fact that they were solely reliant on him for sustenance.
5. The petitioner claims that his rights and fundamental freedom under the Constitution were

violated. The petition cites **Article 27, 28, 29, 49, and 50** of the Constitution. Unfortunately, the events complained of took place in 1990 during the currency of the former Constitution. Since the Constitution is not retrospective, the matter must be determined in accordance with the former Constitution.

6. The respondent did not file any replying affidavit or call any witness to rebut the petitioner's case. It opposed the petition by of grounds of opposition dated 12<sup>th</sup> May 2013. It states that the petition is an abuse of the court process. It avers that the petition filed is omnibus, imprecise and lacks sufficient detail of the alleged violations. Counsel cited the case of **Anarita Karimi Njeru v R [1976-80] KLR 1272** in which the court stated that in cases concerning violation of the Constitution, the petitioner ought to plead his case with precision by identifying the specific rights violated and demonstrating how these rights are violated.
7. The petitioner's case is that he was arrested and subsequently charged. His case is that he was held in police custody longer than was permitted by the Constitution. Under **section 72(2)** of the former Constitution, a person arrested was required to be brought to court within 24 hours of arrest for a non-capital offence unless the state could explain why it could not comply with this requirement.
8. The date and time of arrest and the time of being brought to court is material for determination whether the provision has been complied with. The petition, whose contents I have set out above, does not state when the petitioner was arrested and thereafter taken to court. While it is not in doubt that he was charged and a *nolle prosequi* entered on 17<sup>th</sup> May 1993 the particulars necessary for the respondent to answer the petition were not pleaded.
9. A proper pleading would have enabled the respondent answer to the charge and more importantly, if the petitioner was held in custody longer than the stipulated regulation time, the State would take steps to be able to marshal exculpatory facts and evidence.
10. The petitioner's other claim is that he was harassed and subjected to inhuman and degrading treatments by police officers at various police stations. In his testimony he stated that he would not recall the police station where he was taken. He only recalled that he was finally taken to Nairobi Central Police Station from where he was charged with the offence.
11. **Section 74(1)** of the former Constitution prohibits torture, inhuman or degrading punishment or other treatment. In his supporting affidavit, the petitioner has narrated how he was treated by being beaten by police officers from the time of his arrest. This evidence was not contested. I therefore find that the petitioner was subjected to the inhuman and degrading treatment contrary to **section 74(1)** of the former Constitution.
12. The petitioner produced medical receipts and documents to show that he was undergoing treatment. I have studied the documents they do not show that his illness or infirmities stem from the treatment he was subjected to. He did not undergo a medical examination and given the amount of time that has elapsed since his ordeal, I am unable to assess the extent of his injuries directly flowing from his ordeal and his treatment.
13. In the circumstances and doing the best, I award the petitioner the sum of **Kshs. 300,000/=** as general damages.
14. The final orders are as follows;
  - a. **I declare that the petitioner's rights to be protected from inhuman or degrading treatment under section 74(1) of the former constitution was violated.**
  - b. **The petitioner is awarded Kshs. 300,000/= as general damages together with interest thereon at court rates from the date of judgment.**
  - c. **The respondents shall bear costs of the petition.**

**DATED and DELIVERED at NAIROBI this 19<sup>th</sup> May 2014.**

**D.S. MAJANJA**

**JUDGE**

Mr Omulama instructed by Mbichire and Company Advocates for the petitioner.

Mr Moimbo, Litigation Counsel, instructed by the State Law Office for the respondent.