



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI

PETITION NO. 777 OF 2008

CONSOLIDATED WITH

PETITION NOS. 778/08, 779/08, 781/08, 782/08, 785/08, 786/08, 787/08, 788/08, 789/08, 790/08, 791/08, 793/08, 794/08, 795/08, 796/08, 797/08, 798/08, 799/08, 800 AND 801 OF 2008

IN THE MATTER OF SECTION 84 (1) OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER SECTIONS 72 (1) 72 (3) AND 72 (5, 74(1), 77(1) & 77(2) AND 79(1) OF THE CONSTITUTION OF KENYA

ODUOR ONG’WEN AND 20 OTHERS
..... PETITIONERS
VERSUS
THE ATTORNEY GENERAL
..... RESPONDENT

JUDGMENT

By an order made on 30th March, 2011, these 21 petitions were consolidated to be heard together. **Mr. Gitau Mwara** appeared for all the petitioners while **Mr. Onyiso, Senior Litigation Counsel**, appeared for the respondent. The petitioners are all victims of the infamous “**Nyayo House Torture Chambers**” and in their respective petitions sought declarations that their fundamental rights and freedom were violated by the State through the Special Branch Police officers and/or other Government servants, agents and/or employees. They also sought general damages including exemplary damages for the violations of their fundamental rights and freedom. They filed comprehensive petitions supported by detailed affidavits highlighting how each one of them was arrested and tortured.

Mr. Onyiso told the court that the respondent had no intention of filing any replying affidavit but would and did file submissions in response to the petitioner’s submissions. The respondent put in one page of consolidated submissions and stated, *inter alia*, that:

1. **The petitions lack clarity and precision in setting out the alleged violations.**
2. **The causes of action are stale and should not be entertained by the court.**
3. **The actions alleged by the petitioners have no proof.**

4. **The basis for attributing the alleged actions upon the Government have not been set out.**
5. **The petitions are premature, anticipatory and lack legal basis.**

I will dispose of the aforesaid issues as hereunder.

1. LACK OF CLARITY AND PRECISION

Each of the petitioners filed a well drawn petition setting out, *inter alia*, the description of the parties, the *locus standi* of each petitioner, the petitioners' case against the respondent, the constitutional rights and freedoms that were violated and the period when they were held incommunicado at various police stations and at the Nyayo House Torture Chambers or in various prisons. As earlier stated, the petitions were well supported by elaborate affidavits sworn by each of the petitioners. In my view therefore, the respondent cannot argue that the petitions lack clarity and precision. That kind of objection is unsustainable and is hereby rejected.

2. TIME LIMITATION OF THE CAUSES OF ACTION

The fact that the petitioners filed their claims in 2008 when their respective causes of action arose between 1986 and 1991 does not in any way render the claims time barred. It is now settled law that the equitable doctrine of laches does not operate to nullify human rights litigation based on violation of constitutional rights. See **HARUN THUNGU WAKABA vs ATTORNEY-GENERAL [2010] eKLR**. In a related decision, **WACHIRA WAHEIRE vs ATTORNEY GENERAL, High Court Misc. Case No. 1184 of 2003**, the plaintiff had brought his action about 16 years after alleged contravention of his constitutional rights. The court was emphatic that the provisions of the **Public Authorities Limitations Act** limiting the period for initiating actions against public authorities is inconsistent with the Constitution to the extent that it limits a party's right to seek redress for contravention of his fundamental rights.

3. LACK OF PROOF OF THE PETITIONERS' CLAIMS

The petitioners stated the police stations in which they were held and those who were eventually charged in court gave the particulars of the cases and the outcome thereof. If the Attorney-General wanted to verify the correctness of the petitioners' averments nothing would have prevented him from obtaining the desired information. The State has the power, machinery and ability to obtain information from each and every police station or court and in the absence of an appropriate affidavit supported by such documentary evidence as would be sufficient to counter the petitioners' averments, the respondent cannot simply argue that the petitioners' claims have no proof.

4. BASIS OF ATTRIBUTING THE ALLEGED VIOLATIONS OF THE PETITIONERS' RIGHTS UPON THE GOVERNMENT.

The respondent stated that the petitioners have no basis for attributing the alleged violations of their constitutional rights upon the Government. Again this kind of denial is too simplistic in the face of the petitions and affidavits. The basis of each of the petitioners' claim is well documented and if the respondent intended to challenge the claims he ought to have filed an appropriate affidavit in response thereto. That was not done.

All in all, each of the petitioners have properly demonstrated that their constitutional rights and freedoms were violated and what now remains is for this court to assess the quantum of damages payable to each one of them. It cannot be denied that **Section 74(1)** of the repealed **Constitution** of Kenya guaranteed protection from inhuman treatment. It provided that:

“No person shall be subject to torture or to inhuman or degrading punishment or other treatment.”

As will be shown hereunder, each of the petitioners herein was tortured and subjected to inhuman and

degrading treatment by overzealous police officers in an effort to extract confessions from them. The State must be held liable for acts of impunity committed by its servants and/or agents who falsely believe that they are at liberty to trample upon citizens' constitutional rights as long as they are safeguarding the government of the day. Governments change but the State and the country's Constitution and laws remain and must therefore be respected by all.

I will now proceed to summarize the constitutional violations that were visited upon each of the petitioners herein.

**1. PETITION NO. 777 OF 2008
ODUOR ONGWEN vs. ATTORNEY-GENERAL**

The petitioner was arrested on 14th April, 1986 at Kipsigis Girls' High School, Kericho, where he was a teacher. The arresting Special Branch Officers were led by one Mr. Chukri and Mr. Kimeto. The Special Branch Officers seized the petitioner's books, newspapers, magazines and personal correspondence. He was taken to Kericho Police Station where he was locked up overnight and on the following morning he was blind folded and transported to Muthangari Police Station where he was held in isolation. He was later taken to Nyayo House Torture Chambers and paraded before a panel of ten police officers, one of whom was identified as James Opiyo.

The petitioner was asked to tell all he knew about an unlawful organization known as "**Mwakenya Movement**". The petitioner was stripped naked and mercilessly beaten with rubber whips and broken chair pieces. He was viciously kicked and slapped all over his body. The torture continued for 14 days. That was in violation of **Section 74(1) of the Constitution**. The petitioner was held in a dark cell flooded with cold water. He was denied food and drinking water for a number of days. The petitioner was eventually taken to court on 29th April, 1986 at around 5.45 p.m. But before he was arraigned in court his tormentors told him that he would be killed if he did not plead guilty to whatever charges would be preferred against him.

That was violation of the petitioner's fundamental right under **Section 72(1) (Protection of rights to personal liberty), Section 72(3) and Section 72(5) (Delay in arraigning the petitioner before court)** of the repealed **Constitution**. The petitioner was charged with the offence of sedition to which he pleaded guilty out of fear of death. He was sentenced to 4 years' imprisonment. He was held at Kamiti Maximum Security Prison in solitary confinement where he was exposed to further acts of violation of his rights by the kind of treatment that he was exposed to.

**2. PETITION NO. 778 OF 2008
JAMES AGGREY AKUMU JOEL vs. ATTORNEY-GENERAL**

The petitioner was arrested on 28th April, 1987 at Kisumu Municipal Town Hall where he had worked as a Revenue Officer for 20 years. He was locked up at Kisumu Police Station for three days until 1st of May, 1987 when he was taken to Kisumu Railways Police Station, blindfolded and driven to Nairobi. He was placed at Jogoo Road Police Station where he was locked up together with a mad man who had been chained to a steel bar. On 2nd May, 1987 the petitioner was blindfolded again and taken to a dark cell at the Nyayo House basement where he remained for two days without any food and water. Thereafter he was taken before a panel of interrogators and was forced to strip naked.

The interrogators severely assaulted him. Among the false allegations that were levelled against him, were that he had acted as a go-between the late Bishop Henry Okullu of Maseno South Anglican Diocese and the late Jaramogi Oginga Odinga. He was also alleged to have been a member of the unlawful "**Mwakenya Movement**" and that he had taken an illegal oath and undergone military training overseas. The petitioner was locked up in a dark small cell for a total of 22 days.

On 23rd May, 1987 at about 5.30 p.m. the petitioner was taken to court and charged with the offence of taking oaths as a member of "**Mwakenya**" and being aware of "**Mwakenya**" and failing to inform the

Government of Kenya about that unlawful organization. He had been threatened that if he did not plead guilty to the said charges he would be killed by being thrown down from the top floor of Nyayo House. In view of that threat the petitioner pleaded guilty to the aforesaid charges and was sentenced to a total of 3½ years' imprisonment on each count but the sentences were to run concurrently. As a result of that imprisonment the petitioner lost his 20 years' service benefits as a Revenue Officer.

3. **PETITION NO. 779 OF 2008**
WILSON AWUOR ANG'ONG'A vs. ATTORNEY-GENERAL

The petitioner was a Prison Warder and was arrested on 22nd September, 1989 while on duty at Nakuru G.K. Prison. He was taken to his house where plain clothes police officers conducted a search for two hours. They confiscated some of his books and personal effects. He was taken to Nakuru Railway Police Station where he was detained for seven days. He was served with undercooked food, unclean water and denied access to warm clothing. He was also denied access to his lawyer and family members. Thereafter he was transported to Nairobi and locked up at Muthangari Police Station. On the 8th day he was blindfolded and taken to Nyayo House Torture Chambers. He was stripped naked and severely assaulted with rubber whips and broken chair parts. His tormentors wanted him to confess that he was a member of the so called "**Mwakenya Movement**", which he denied. As a result of the torture the petitioner lost one of his left lower jaw tooth and developed a fracture on the left mandible. Throughout his stay at Nyayo House he was kept in a dark cell which was waterlogged.

After 26 days at the Nyayo House, on 17th of October 1989 at around 6.00 p.m. the petitioner was arraigned before the Chief Magistrates Court, Nairobi. He was charged with the offence of being a member of an unlawful organization, "**Mwakenya Movement**" and was forced to plead guilty to the said charge. Consequently, he was sentenced to 4½ years' imprisonment. He was held at Kamiti Maximum Security Prison until 12th July, 1992 when he was released.

4. **PETITION NO. 781 OF 2008**
ALOGO RAILA vs. ATTORNEY-GENERAL

The petitioner was arrested on 2nd October, 1987 from his house in KTTC Estate, Muthaiga area at around 2.00 a.m. The Special Branch Police Officers who arrested him searched his house but did not find anything of significance. He was locked up at the Central Police Station and later transferred to Kileleshwa Police Station. Thereafter he was transported to Nyayo House where he was put in a dark waterlogged cell. On the following day he was taken before a panel of interrogators on the 24th floor who forced him to strip naked. The petitioner was questioned about his alleged involvement in "**Mwakenya Movement**". The interrogators assaulted him all over his body as a result of which he suffered physical and psychological injuries. The petitioner was held incommunicado at Nyayo House for 84 days. Thereafter he was released after he had been forced to sign a statement to the effect that he would not disclose what had transpired at Nyayo House.

5. **PETITION NO. 782 OF 2008**
BENJAMIN ANDAHI MUHEHE vs. ATTORNEY-GENERAL

The petitioner was arrested sometimes in April 1989 at Machakos on allegations that he had unlawfully left Kenya to join foreign military forces and that he was a member of "**Mwakenya**". He was transported to Nairobi and locked up at Kileleshwa Police Station for 59 days. Thereafter he was taken to Nyayo House basement cells where he was locked up for 9 days. During those 9 days' stay at Nyayo House Torture Chambers the petitioner was forced to strip naked and was assaulted all over his body. He was kept in a small waterlogged cell and went without food for several days. After the 9 days' stay at Nyayo House the petitioner was arraigned before the Chief Magistrate's Court, Nairobi, and charged with the offence of unlawfully joining a foreign military force and being a member of "**Mwakenya**". The petitioner denied the charges and was remanded at Industrial Area Prison for 3 months. Thereafter he was forced by circumstances to admit the said charges and was sentenced to 1 year imprisonment which he served at Kamiti Maximum Prison and Naivasha Prison.

6. PETITION NO.785 OF 2008

GABRIEL KARIUKI MUNG'URA vs. ATTORNEY-GENERAL

The petitioner was arrested on 3rd October, 1988 from his home at Kairi Market, Chania location, Thika. He was taken to Kiambu Police Station and thereafter transferred to Kileleshwa Police Station. On 5th October, 1988 the petitioner was taken to Nyayo House basement cells where he was placed in a small cell which was painted black. On the following day he was taken before a panel of interrogators who forced him to strip naked and began to assault him with a view to extracting a confession out of him that he was a member of the so called “**Mwakenya Movement**”. The police officers told him that he had to be a member of that unlawful movement since he was the father of one Edward Koigi, a young university graduate who had earlier been detained and an uncle of Koigi Wa Wamwere, who was also facing criminal charges. After 2 days of continued torture at Nyayo House the petitioner was driven to his home in the company of police officers who conducted a thorough search and carried with them several books, papers and his passport. He was taken back to Nyayo House where he remained for 5 more days. All that time he was locked up in a dark cell where pressurized water was sprayed on him for several hours.

The petitioner was released without any charges being preferred against him and warned not to tell anyone about his ordeal in the hands of the torturous police officers.

7. PETITION NO. 786 OF 2008

EDWARD KOIGI KARIUKI vs. ATTORNEY-GENERAL

The petitioner was arrested on 22nd August, 1988 at Nakuru. At the time of his arrest he was the Sales Manager of a company known as Holman Brothers Limited. The police officers who arrested him conducted a thorough search at his house and took away some files and personal documents. Thereafter he was taken to Rongai Police Station where he was held incommunicado. He was denied access to his lawyer and family members. On the following day, the petitioner was transported to Nyayo House Torture Chambers. He was taken to the 24th floor of the building where he was interrogated by several police officers. He was forced to strip naked and was beaten with broken chair parts and rubber whips. The interrogators wanted the petitioner to admit that he was involved in a plot to overthrow the Government of Kenya, which he denied. At the end of every interrogation session, the petitioner would be placed in a cell where pressurized water was sprayed on him for several hours while naked.

The petitioner was denied food and drinking water for several days. At one point the petitioner was driven to a forest where his tormentors forced him to kneel down at gun point and ordered him to say his last prayers before they killed him. He was told that his life would be spared if he cooperated with the police and pleaded guilty to the charges that the police intended to prefer against him.

On 2nd September, 1988 at about 7.00 p.m., the petitioner was charged before the Chief Magistrate's Court, Nairobi, where the prosecutor, one Mr. Bernard Chunga, told the court that the petitioner together with others were plotting to overthrow the Government of Kenya. For fear of death, the petitioner pleaded guilty and was sentenced to 7 years' imprisonment. He was taken to Kamiti Maximum Prison and put in an isolated block of the prison. His family members were not allowed to visit him. The petitioner served the full sentence. While at the said prison, the petitioner was subjected to further acts of cruelty by Prison Warders. He was forced to walk semi-naked in tattered prison uniform and was fed on badly cooked food.

8. PETITION NO. 787 OF 2008

GEOFFREY KURIA KARIUKI vs. ATTORNEY GENERAL

The petitioner was arrested on 8th October, 1990 at Nairobi by heavily armed plain clothes police officers who claimed that the petitioner was a trained guerrilla fighter belonging to an organization known as “**Kenya Patriotic Front**” controlled by his cousin, Koigi Wa Wamwere. He was blindfolded and moved to various police stations and at about 6.30 p.m. he was taken to Nyayo House basement where he was placed in a dark cell. On the following morning the petitioner was taken to the 24th floor of the building where he was forced to strip naked before several interrogators. He was thoroughly whipped and assaulted with kicks and blows. His interrogators questioned him about his alleged involvement in the anti-government organization which they claimed wanted to overthrow the government of the day. The petitioner was kept in a dark cell for 14 days where pressurized water, hot and cold air was sprayed on

him for hours.

On 23rd October, 1990 at about 6.45 a.m. the petitioner was taken to court and charged with the offence of treason to which he pleaded – “not guilty”. The petitioner was confined at Kamiti Maximum Security Prison for 2½ years where he was subjected to cruel and degrading treatment. He was segregated and held in solitary confinement in a section of the prison reserved for condemned prisoners. On 19th January, 1993 the Attorney-General entered a “*Nolle Prosequi*” and the petitioner was consequently released.

9. PETITION NO. 788 OF 2008
MILTON CHEGE KIMANI vs. ATTORNEY-GENERAL

The petitioner was arrested on 31st August, 1988 at about 9.00 a.m. He was blindfolded and taken to various police stations within Nairobi area. In the evening he was transported to Nyayo House basement and locked up in a dark cell. He was held incommunicado at Nyayo House for 21 days during which period he was routinely subjected to cruel and degrading treatment while being interrogated by a panel of police officers. The interrogators stripped him naked and physically assaulted him with tyre strips and broken furniture parts. The petitioner was also sprayed with cold water in his small dark cell. The police officers threatened to kill him and dump his body in a forest unless he admitted that he was a member of the “**Kenya Patriotic Front**”, an unlawful organization.

On 21st September, 1988 the petitioner was arraigned before the Chief Magistrate’s Court and charged with the offence of being a member of an illegal organization. His tormentors accompanied him to the court and looked at him in a hostile manner so as to intimidate him and ensure that he pleaded guilty to the said charge, which he did. The petitioner was sentenced to 7 years’ imprisonment and was held at Kamiti Maximum Prison where he was placed in a segregated block. He was held in a lone cell next to cells where mentally disturbed prisoners were confined.

10. PETITION NO. 789 OF 2008
GIBSON MAINA KIMANI vs. ATTORNEY-GENERAL

The petitioner was arrested on 31st August, 1988 at around noon by heavily armed plain clothes police officers. He was booked at Kilimani Police Station from where he was later collected, blindfolded and handcuffed by a different set of police officers who took him to Nyayo House. He was locked up in a cold dark cell. The blind folds and the handcuffs were not removed throughout the first night and were only removed on the following morning when the petitioner was taken before a panel of police officers who forced him to strip naked. The petitioner was interrogated about his connection with the “**Kenya Patriotic Front**”. The police officers also questioned the petitioner about his relationship with Koigi Wa Wamwere and Raila Odinga and his activities regarding recruitment of members into the aforesaid unlawful organization.

The petitioner stated that he was not physically assaulted but was threatened with death if he did not cooperate with the police. After a while, he was transported to Nakuru Provincial C.I.D. Headquarters and shortly thereafter returned to Nyayo House, Nairobi. The petitioner was given two options by his interrogators – either he confesses that he was a member of “**Kenya Patriotic Front**” or he be killed if he refused to so confess. Initially he refused to make the desired confession and as a result was held in the dark cell for 16 days. Eventually he signed a confession under duress that he was in possession of a seditious publication at the time of his arrest.

On 16th September, 1988 at 5.30 p.m. the petitioner was arraigned before the Chief Magistrate’s Court, Nairobi, and charged with possession of a seditious publication. For fear of death he pleaded guilty to the said charge and was sentenced to 7 years’ imprisonment. The sentence was later reduced to 5 years upon appeal.

11. PETITION NO. 790 OF 2008
NJUGUNA MUTONYA vs. ATTORNEY-GENERAL

The petitioner is a journalist by profession. On 28th April, 1986 while attending a District Development Committee meeting in Kwale District in his official capacity as an Information Officer, the

petitioner was arrested by heavily armed Special Branch Police officers. The police officers took him to his office at Kwale where they conducted a thorough search. They took him to his house at Bamburi where they conducted another search and confiscated several books and magazines which were alleged to be socialist/communist in nature.

The petitioner was locked up at Kilindini Port Police Station and on the next day he was transferred to Nairobi where he was booked at Kilimani Police station. In the evening he was taken to the Nyayo House Torture Chambers. On the morning of 30th April, 1986 the petitioner was taken by a lift to the 24th floor of Nyayo House and paraded before twelve police officers who started interrogating him about his involvement in “**Mwakenya Movement**”. The petitioner denied any knowledge of the said movement. He was ordered to strip naked and was beaten all over his body by the interrogators. The interrogation continued for 3 days and after each session the petitioner would be locked up in a dark solitary cell where pressurized water was sprayed on him for several hours. The petitioner went without food for several days while naked in an inch deep waterlogged cell. He was forced to relieve himself in the same water in the cell. In the middle of the night he was taken out of Nyayo House and threatened with death or detention without trial if he refused to admit that he was a member of “**Mwakenya**”.

On 9th May, 1986 at about 5.30 p.m. the petitioner was taken to the Chief Magistrate’s Court, Nairobi, and charged with being in possession of a seditious publication. The charges were read to him in the presence of four hostile Special Branch officers. For fear of being taken back to the Nyayo House Torture chambers the petitioner pleaded guilty to the said charge and was sentenced to 4 years’ imprisonment.

12. PETITION NO. 791 OF 2008

WANDERI MUTHIGANI vs. ATTORNEY-GENERAL

The petitioner is an advocate of the High Court of Kenya. On 7th May, 1986 at about 4.00 p.m. at the Kenya School of Law, the petitioner was arrested by heavily armed plain clothes Special Branch police officers. They took him to his hostel where they conducted a thorough search which yielded nothing. He was blindfolded and taken to the infamous Nyayo House Torture Chambers. On the following morning he was again blindfolded and taken before a panel of interrogators at the top floor of Nyayo House. He was forced to strip naked and was assaulted with slaps, rubber whips, broken chair parts, kicks and blows.

His interrogators required him to admit that he was involved in anti-government subversive activities. They also alleged that he was a member of the “**Mwakenya Movement**”. At the end of each interrogation session the petitioner would be put in a dark solitary cell where pressurized water was sprayed on him for several hours. He was locked up for six days without food or drinking water. There was neither a sleeping mat nor blankets in the cell.

On the 7th day, 14th May, 1986 the petitioner was taken to the Chief Magistrate’s Court, Nairobi. He had been warned by his interrogators that he would be tortured to death if he denied whatever charges that would be preferred against him. The petitioner was charged with the offence of failing to report about the publication of a seditious document known as “**Pambana**” to which he pleaded guilty for fear of being taken back to Nyayo House Torture Chambers. The petitioner was sentenced to 15 months’ imprisonment. Thereafter he was taken to Industrial Area Prison and later transferred to Kamiti Maximum Security Prison where Prison Warders committed further acts of cruelty and degrading treatment upon him.

13. PETITION NO. 793 OF 2008

PETER NJUGUNA NDINGO vs. ATTORNEY-GENERAL

The petitioner was arrested on 22nd March, 1986 at his house in Dagoretti. He was locked up at Kilimani Police Station and later transferred to Nyayo House for interrogation. He was placed in a waterlogged cell and on the following day the petitioner was taken to the 24th floor before a panel of interrogators who forced him to strip naked. He was assaulted all over his body in a bid to extract a confession from him that he was a member of the so called “**Mwakenya Movement**”. At the end of each interrogation session, the petitioner would be taken back to the dark solitary cell where pressurized water was sprayed on him for several hours. He was denied food and drinking water for several days. He remained in the cells for 15 days.

On 4th April, 1986 at around 5.30 p.m. the petitioner was taken to court and charged with possession of a seditious publication. He pleaded guilty to the said charge for fear of being taken back to the torture chambers as he had been warned that he would be tortured to death if he denied the charge. The petitioner was sentenced to 4 years' imprisonment and was held at Kamiti Maximum Prison, Industrial Area Prison and Nakuru G.K. Prison where Prison Warders continued to mistreat him.

14. PETITION NO. 794 of 2008

GEORGE JOHN NJENGA WAINAINA vs. ATTORNEY-GENERAL

Prior to his arrest on 29th April, 1987 the petitioner was employed as a clerk by the Kenya Railways and was based at Nakuru. Upon his arrest the petitioner was taken to the Menengai Police Station where he was detained for 3 days. Thereafter he was taken to his house and Special Branch police officers conducted a thorough search but recovered nothing of significance. Thereafter he was taken to Shauri Moyo Police Station, Nairobi, and booked on framed up charges of robbery with violence. After a short while the petitioner was moved to Nyayo House where he was placed in a dark cell. He was severally interrogated by police officers about his involvement in anti-government activities. He was stripped naked, whipped, kicked and slapped all over his body. He was sprayed with pressurized water while in his dark cell. He remained there for 54 days.

15. PETITION NO. 795 of 2008

JAMES MWANGI KAHIRI vs. ATTORNEY-GENERAL

The petitioner was arrested on 25th November, 1986 and taken to his house at Umoja estate, Nairobi. Special Branch police officers searched his house but did not find anything of significance. He was locked up at Kikuyu police station and thereafter transferred to Kileleshwa Police Station. At around 11.00 p.m. he was taken to Nyayo House Torture Chambers while blindfolded. He was severely assaulted by his interrogators who had forced him to strip naked. The police officers wanted the petitioner to admit that he had failed to prevent publication and distribution of a seditious magazine known as "**Mpatanishi**". The petitioner was held in a dark water logged cell for 14 days.

On 9th December, 1986 the petitioner was charged with failure to prevent a felony, that is, failing to prevent publication and distribution of "**Mpatanishi**". He pleaded guilty to the said charge purely because he had been threatened with death if he denied the same. The petitioner was sentenced to 15 months' imprisonment and taken to Industrial Area Prison and later transferred to Kamiti Maximum security Prison.

16. PETITION NO. 796 of 2008

BERNARD WANJOHI KINGA vs. ATTORNEY-GENERAL

The petitioner was arrested on 28th June, 1986 at around 11.30 a.m. by four plain clothes Special Branch police officers at his place of work, Embu District Commissioner's Office. The police officers took him to his house where they conducted a search for about two hours but did not find anything unlawful thereat. He was locked up at Embu Police Station at about 3.00 p.m. and was later transferred to Kileleshwa Police Station, Nairobi. At about midnight the petitioner was blindfolded and taken to Nyayo House. He was paraded before a panel of interrogators who forced him to strip naked and was assaulted with slaps, rubber whips, broken chair parts, kicks and blows. He was required to admit that he was a member of "**Mwakenya Movement**" and was also ordered to disclose the whereabouts of one Kinyua Rungurua. The petitioner was locked in a dark cell and kept without food or drinking water for a number of days. He was held incommunicado for a total of 17 days.

On 5th July, 1986 the petitioner was released without any charges being preferred against him.

17. PETITION NO. 797 OF 2008

FRANCIS CHEGE KAHIGA vs. ATTORNEY-GENERAL

The petitioner was arrested on 6th December, 1986 at Gate House, Nakuru Town at around 10.00 a.m. The police officers who arrested him proceeded to search his house for two hours. They took away his photo albums, newspapers and some letters from a friend of his in Britain. The petitioner was

transported to Kileleshwa Police Station where he was held overnight. On the following day, he was blindfolded and taken to Nyayo House Torture Chambers where he was kept in a dark cell.

On 8th December, 1986 the petitioner was taken in a lift to the 24th floor where he appeared before several interrogators. They asked him to tell them what he knew about “**Mwakenya Movement**”. The petitioner denied any knowledge of the said unlawful organization. His interrogators forced him to strip naked and started assaulting him all over his body until he was full of blood all over. This ordeal went on for 18 days. After every torture session the petitioner would be returned to his dark cell and pressurized cold water sprayed on him for several hours while naked. His tormentors threatened to kill him if he refused to plead guilty to whatever charges that were going to be preferred against him.

On 24th December, 1986 at about 7.00 p.m. the petitioner was arraigned before the Chief Magistrate’s Court, Nairobi. Obviously this was outside the lawful working hours of the court. The petitioner was charged with the offence of taking an unlawful oath and failing to prevent a felony. In view of the threats that had been made by the police, the petitioner pleaded guilty to the said charges and was sentenced to 5½ years’ imprisonment. He was taken to industrial area prison and later transferred to Kamiti Maximum Security Prison where prison warders continued to commit acts of torture and cruelty upon him.

18. PETITION NO. 798 OF 2008
GEORGE KWANYAH ODIDI vs. ATTORNEY-GENERAL

The petitioner was arrested on 29th February, 1987. At the time of his arrest he was the Acting Provincial Water Engineer, Nyanza. He was locked up at Kisumu Railway Police Station for one week. Thereafter together with one Dr. Odhiambo Olel were driven to Nyayo House Torture Chambers. He was thrown into a dark cold cell where he remained for 7 days. Over that time various acts of torture were committed against him.

On the 8th day the petitioner was taken to the 26th floor of the building and presented before 13 interrogators. He was forced to take 50 press-ups but in the middle of the exercise broke down. The interrogators descended upon him and assaulted him severely. The interrogators alleged that the petitioner was in touch with one Osumba who was in London where the petitioner had undertaken his studies. He denied any knowledge of the said person. On one night the petitioner was called by four Special Branch officers and ordered to accompany them to another cell where he was ordered to remove a dead body into a Landover. The petitioner offloaded the body and packed it in a mortuary cabinet as ordered. On the following day he was taken back to the interrogators and was repeatedly beaten up and told that he would be killed just like the dead person he had put into a mortuary cabinet the previous night.

This interrogation and torture went on for 54 days until 30th April, 1987 when the petitioner was released and warned not to tell anyone what had transpired.

19. PETITION NO. 799 OF 2008
ANDREW MUINDI NAULIKHA vs. ATTORNEY-GENERAL

The petitioner was arrested on 11th February, 1991 at around 2.00 p.m. He was taken to Kapchonge Police Station where on arrival one police officer slapped him hard on his left ear, alleging that the petitioner had been taken to Libya for military training so that he could involve himself with subversive activities of an unlawful organization known as “**February Eighteen Movement**” (FERA). The petitioner denied any knowledge of the said movement.

On the following day, the petitioner was handcuffed and chained around his waist and taken to Bungoma before the District Intelligence Officer, one Mr. Kasero, who grilled him for three days. Thereafter he was taken to Nairobi in a saloon car registration number KYM 070, Nissan by make. He spent the night at the Central Police Station and on the following day was blindfolded and taken to Nyayo House Torture Chambers. He was questioned by three Special Branch Police Officers about his alleged involvement in the aforesaid unlawful organization.

Later he was taken before a panel of interrogators led by one Mr. Opiyo and one Mr. Miriti who forced him to strip naked. They assaulted him with slaps, rubber whips, broken chair parts, kicks, blows and tyre strips. They demanded that he admits his involvement in anti-government activities, which he denied. His tormentors applied electric shock to the petitioner’s private parts and threatened to castrate

him. They even introduced safari ants into the petitioner's small dark cell.

At the end of every interrogation session the interrogators sprayed the petitioner with pressurized water for several hours. The petitioner was held incommunicado and in such circumstances for 19 days. The petitioner decided to go on hunger strike to protest his mistreatment and lack of medical attention since he was ailing. On the tenth day he was seen by a doctor and on the following day he was taken before the Director of Special Branch who asked him about his health. The Director of special branch told the petitioner that he was aware that the petitioner had committed subversive activities that amounted to treason and that he was at liberty to either take him to court or have him detained without trial or even kill him.

The petitioner continued to deny the allegations that were being leveled against him.

On 1st march, 1991 the petitioner was taken to Kamiti Maximum Prison where he was photographed and fingerprints taken and thereafter released on condition that he reports to his local police station twice a week and also to the local special branch office once every two weeks for a period of three years. As a result of the aforesaid acts of torture, the petitioner suffered physically and psychologically. His marital life was also put in jeopardy as his manhood was rendered dysfunctional. Even after his release Special Branch Police Officers occasionally trailed and monitored the petitioner's movements and harassed his friends and relatives.

20. PETITION NO. 800 OF 2008

ROBERT BUKE WAFULA vs. ATTORNEY-GENERAL

At the date of his arrest, 14th November, 1987, the petitioner was a student leader at the University of Nairobi. After his arrest he was taken to Central Police Station and later transferred to Kasarani Police Station at 3.00 p.m where he was welcomed with four slaps and thereafter locked up in a cell, alone. On the following morning the petitioner was blindfolded and taken to Nyayo House basement where he was placed in a dark cell.

After 15 days he was taken before a panel of interrogators who forced him to strip naked and was assaulted with slaps, rubber whips, broken chair parts, kicks, blows and tyre strips. His interrogators wanted him to admit that he was involved in anti-government subversive activities and espionage, which he denied. At the end of each interrogation session, the petitioner would be taken back to the dark solitary cell where pressurized water was sprayed on him for several hours. He was denied food and water for several days. There was neither a sleeping mat nor blankets in the cell.

On 30th November, 1987 at about 5.30 p.m. the petitioner was taken to court and charged with the offence of espionage against the Government of Kenya and acts prejudicial to the interests of the Republic of Kenya. The petitioner stated in his affidavit that the prosecutor, Bernard Chunga, and Special Branch officers who were in court had warned him that he would be returned to The Nyayo House Torture Chambers where he would either be killed or tortured to death if he denied the charges. Consequently, the petitioner pleaded guilty to the said charges and was sentenced to 5 years' imprisonment.

Thereafter he was held at Kamiti Maximum Prison, Naivasha and Bungoma Prisons. The prison warders continued to treat him in a cruel and degrading manner. He was intellectually deprived because he was denied access to any reading material. As a result of the incarceration the petitioner's social life was totally shattered and was unable to complete his degree course at the University of Nairobi. His wife also deserted him.

21. PETITION NO. 801 OF 2008

PHILIP WANJAU KAHU vs. ATTORNEY-GENERAL

The petitioner was first arrested sometimes in 1989 at his home in Kirunyo village, Gatanga Division, Thika District.

The police officers who arrested him searched his house and thereafter took him to Murang'a District Police Headquarters where he was locked up and interrogated for four days on allegation that he had helped the late Mukaru Ng'ang'a to flee the country through Busia Border Post to Uganda. After the four days he was released without any charges being preferred against him.

The petitioner was again arrested on 26th September, 1990 in Thika Town on claims that he was a member of an unlawful organization known as "**Kenya Patriotic Front**". He was taken to Murang'a

Police Station where he was locked up. The special branch officers also alleged that the petitioner harboured guerrillas and had also transported arms from Malaba to Busia Border Post, which he denied. The petitioner was slapped severally and beaten while at Murang'a Police Station for denying the aforesaid allegations. He was tortured and submerged in the cold Tana River waters at night for five days. He was also denied food and clean drinking water.

Thereafter he was transferred to Muthangari Police Station where he met a former Member of Parliament, one Gidraph Kamau Mweru. After about six hours at Muthangari Police Station the petitioner was moved to Nyayo House Torture Chambers. He was paraded before a panel of interrogators who stripped him naked and started beating him with rubber whips, broken chair parts, kicks and blows. He was asked to tell the interrogators whether he had any relationship with Koigi Wa Wamwere, Mirugi Kariuki and Rumba Kinuthia. The interrogators claimed that he and others were planning to overthrow the Government of Kenya.

Throughout his stay at Nyayo House, the petitioner was locked up in a dark cell without a sleeping mat or blankets and was persistently sprayed with pressurized water.

One day the interrogators told the petitioner that they would release him on condition that he agrees to become prosecution witness against Koigi Wa Wamwere and others who were facing treason charges. He rejected that offer but later agreed due to the overwhelming torture that was inflicted on him. On 29th October 1990 the petitioner was blindfolded, put into a Landover and driven around the city centre for many hours and finally dropped near River Road and told go to the nearest bus station and find his way home. However, Special Branch Police Officers continued harassing the petitioner even after his release. On 11th October, 1991 the petitioner fled the country to Tanzania when he sensed that his life was in danger. He returned to the country in 1993 after the government dropped treason charges against Koigi Wa Wamwere and his co-accused.

As a result of the torture he underwent the petitioner suffers from ulcers and recurrent lumbar vertebrae problems.

ASSESSMENT OF DAMAGES

There can be no dispute that all the petitioners suffered physical and psychological injuries as a result of the torturous acts that were visited upon them. **Section 74(1)** of the repealed **Constitution** guaranteed freedom from torture or inhuman/degrading punishment or such like treatment. **Section 72** of the repealed **Constitution** guaranteed protection of right to personal liberty and provided that no person shall be deprived of his liberty save as may be authorized by the law. Each of the above petitioners were deprived of their personal liberty, tortured and subjected to inhuman and degrading treatment.

Article 1 of the **United Nations Convention against Torture and Other Cruel Inhuman and Degrading Treatment or Punishment** adopted by the United Nations General Assembly in 1984 defines torture as follows:

“Torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person, information or confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

Articles 2(5) and (6) of the Constitution of Kenya, 2010 state as follows:

“(5) The general rules of international law shall form part of the law of Kenya.

(6) Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.”

Kenya has ratified the above United Nations Convention against torture and therefore the aforesaid

definition of torture is applicable in our laws.

The petitioners' counsel asked the court to award general damages to each of the petitioners for sums ranging from Kshs.6 million to Kshs.10 million. He cited various similar cases including, **RUMBA KINUTHIA VS. ATTORNEY GENERAL (Supra), WACHIRA WEHERIE vs ATTORNEY-GENERAL MISC. CIVIL CASE NO. 1184 OF 2003** and **HARUN THUNGU WAKABA & OTHERS vs THE ATTORNEY-GENERAL MISC. CIVIL APPLICATION NO. 1411 OF 2004.**

In **RUMBA KINUTHIA VS ATTORNEY-GENERAL** the plaintiff was held at Nyayo House Torture Chambers for 14 Days. After undergoing severe torture he was arraigned in court on trumped up charges which he denied. He was detained at Kamiti Maximum Security Prison in solitary confinement. Subsequently the Attorney-General entered a *Nolle Prosequi* as a result of which he was released. The plaintiff filed a case against the Attorney-General seeking special and general damages. The court made a global award of **Kshs.1.5 million**.

In **HARUN THUNGU WAKABA & OTHERS vs THE ATTORNEY GENERAL (Supra)**, 21 people who were also arrested and tortured at Nyayo House Torture Chambers in similar circumstances as the petitioners herein were awarded general damages ranging from **Kshs.1 million to Kshs.3 million**. The judgment in the said cases was delivered on 21st July, 2010.

In **GITARI CYRUS MURAGURI vs THE ATTORNEY-GENERAL, MISC. CASE NO. 1185 OF 2003 (OS)**, the plaintiff was held at the Nyayo House Torture Chambers for 14 days where he was severely tortured. Thereafter he was released without any charges being preferred against him. After a short while he was again arrested and taken back to the same place where he was held for five weeks in a bid to have him confess that he was a member of "**Mwakenya Movement**", which he denied. He was subsequently arraigned before the **Chief Magistrate's Court, Nairobi in Criminal Case No. 1399 of 1989** on a charge of being a member of an unlawful society. He denied the charge and was remanded at the Kamiti Maximum Security Prison until 8th August 1989 when the Attorney-General entered a *Nolle Prosequi*, thus terminating the proceedings. The court awarded him general damages for malicious prosecution in the sum of **Kshs.3,500,000/=** and exemplary damages of **Kshs.3 million**.

Each of the petitioners sought judgment against the respondent as follows:

1. **A declaration that their fundamental rights and freedom were contravened and grossly violated by the police and/or other Kenyan government servants, agents and or employees.**
2. **A declaration that they are entitled to payment of general and exemplary damages.**
3. **General and exemplary damages.**
4. **Costs of the petition.**

In **OBONGO VS KISUMU MUNICIPAL COUNCIL [1971] EA 91**, the Court of Appeal referred to the English case of **ROOKES VS BARNARD & OTHERS [1964] AC 1129**, where it was held that exemplary damages for tort may be awarded in two classes of cases. These are:

1. **Where there is oppressive, arbitrary or unconstitutional action by the servants of the government, and**
2. **Where the defendant's conduct was calculated to procure him some benefit, not necessarily financial, at the expense of the plaintiff.**

Considering the kind of suffering that was visited upon the petitioners by Special Branch Police Officers, I have no hesitation in making a declaration that their fundamental rights and freedoms were grossly violated. Each petitioner is therefore entitled to compensation by way of general damages. The petitioners are also entitled to exemplary damages because of the excessive unconstitutional actions on the part of the police.

In other related cases, **HIGH COURT PETITION NO. 233 OF 2009 CONSOLIDATED WITH 8 OTHERS**, where 9 Nyayo House Torture Chamber victims had sued the Government for general and

exemplary damages, this court awarded damages ranging from Kshs.1.5 Million to Kshs.6.5 Million.

Guided by the aforesaid decisions, I assess the damages payable to each of the petitioners as hereunder.

1. ODUOR ONGWEN

General damages – Kshs.2,500,000/=
Exemplary damages – Kshs.2,000,000/=

2. JAMES AGGREY AKUMU JOEL

General damages – Kshs.2,500,000/=
Exemplary damages – Kshs.2,000,000/=

3. WILSON AWUOR ANG'ONG'A

General damages – Kshs.2,500,000/=
Exemplary damages – Kshs.2,000,000/=

4. ALOGO RAILA

General damages – Kshs.2,000,000/=
Exemplary damages – Kshs.1,500,000/=

5. BENJAMIN ANDAHI MUHEHE

General damages – Kshs.1,500,000/=
Exemplary damages – Kshs.1,000,000/=

6. GABRIEL KARIUKI MUNG'URA

General damages – Kshs.2,500,000/=
Exemplary damages – Kshs.2,000,000/=

7. EDWARD KOIGI KARIUKI

General damages – Kshs.2,500,000/=
Exemplary damage – Kshs.2,500,000/=

8. GEOFFREY KURIA KARIUKI

General damages – Kshs.3,500,000/=
Exemplary damages – Kshs.3,000,000/=

9. MILTON CHEGE KIMANI

General damages – Kshs.3,500,000/=
Exemplary damage – Kshs.3,000,000/=

10. GIBSON MAINA KIMANI

General damages – Kshs.3,500,000/=
Exemplary damage – Kshs.3,000,000/=

11. NJUGUNA MUTONYA

General damages – Kshs.2,500,000/=
Exemplary damage – Kshs.2,000,000/=

12. WANDERI MUTHIGANI

General damages – Kshs.2,000,000/=
Exemplary damage – Kshs.1,500,000/=

13. PETER NJUGUNA NDINGO

General damages – Kshs.2,500,000/=
Exemplary damage – Kshs.2,000,000/=

14. GEORGE JOHN NJENGA WAINAINA

General damages – Kshs.1,500,000/=
Exemplary damages – Kshs.1,000,000/=

15. JAMES MWANGI KAHIRI

General damages – Kshs.2,000,000/=
Exemplary damage – Kshs.1,500,000/=

16. BERNARD WANJOHI KINGA

General damages – Kshs.1,500,000/=
Exemplary damage – Kshs.1,000,000/=

17. **FRANCIS CHEGE KAHIGA**
General damages – Kshs.3,000,000/=
Exemplary damages – Kshs.3,000,000/=
18. **GEORGE KWANYAH ODIDI**
General damages – Kshs.2,000,000/=
Exemplary damages – Kshs.1,000,000/=
19. **ANDREW MUINDI NAULIKHA**
General damages – Kshs.3,500,000/=
Exemplary damages – Kshs.3,000,000/=
20. **ROBERT BUKE WAFULA**
General damages – Kshs.3,500,000/=
Exemplary damage – Kshs.3,000,000/=
21. **PHILLIP WANJAU KAHIU**
General damages – Kshs.2,500,000/=
Exemplary damages – Kshs.2,000,000/=

Each petitioner will also have costs of his petition as well as interest on the judgment sums at court rates from the date of judgment until payment in full.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 11TH DAY OF OCTOBER, 2011.

D. MUSINGA
JUDGE

In the presence of:
Mr. Kirui – Court Clerk
Mr. Gitau Mwara for the Petitioners
No appearance for the Respondent