



Abdu & 3 others (Others as per the attached Schedule) v Insurance Regulatory Authority & 2 others (Petition E004 of 2024) [2025] KEHC 1443 (KLR) (20 February 2025) (Judgment)

Neutral citation: [2025] KEHC 1443 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
PETITION E004 OF 2024
WA OKWANY, J
FEBRUARY 20, 2025**

BETWEEN

**SHAFFI ABDALA ABDU 1ST PETITIONER
GILBERT KIPYEGON NGENO 2ND PETITIONER
BENSON OTIENO OUKO 3RD PETITIONER
LEONARD CHERUIYOT ROTICH 4TH PETITIONER
OTHERS AS PER THE ATTACHED SCHEDULE**

AND

**INSURANCE REGULATORY AUTHORITY 1ST RESPONDENT
ATTORNEY GENERAL 2ND RESPONDENT
INVESCO ASSURANCE COMPANY LIMITED 3RD RESPONDENT**

JUDGMENT

1. The Petitioners are adults of sound minds and are decree holders in respect to numerous cases arising from road accident claims, also known as running down cases, that were filed and concluded in various courts across the Republic of Kenya.
2. The 1st Respondent is a body corporate established under the *Insurance Act* Cap 487 charged with various functions, including; ensuring the effective administration, supervision, regulation and control of insurance business in Kenya; formulating and enforcing standards for the conduct of insurance; issue supervisory guidelines and prudential standards from time to time for better administration of the insurance business; conduct inquiries and share information with other regulatory authorities and carry out any other related activities in furtherance of its supervisory role; promoting the maintenance



of a fair, safe and stable insurance sector; protect the interest of the insurance policy holders and beneficiaries; and generally to promote the development of the Insurance Sector.

3. The 2nd Respondent is an office established under Article 156 of *the Constitution* whose powers include representing the National Government in proceedings. The 2nd Respondent also vested with power to promote, protect and uphold the rule of law and defend public interest.
4. The 3rd Respondent is a limited liability company engaged in the business of offering insurance services and, for the purposes of this Petition, was at all material times the Insurance Company which had insured the Motor Vehicles that caused accidents that were the subject of the Petitioners' claims.

The Petitioners' Case

5. Through the amended plaint dated 2nd August 2024, the Petitioners seek the following orders against the Respondents: -
 - a. A Declaration that Fundamental rights and freedoms of the Petitioners have been violated by all the Respondents.
 - b. A Declaration and Order that the Respondents, jointly and severally should meet and make payment of all Decretal sums awarded to the Petitioners in the cases arising from accidents involving motor vehicles insured by the 3rd Respondent under Section 4 of the *Insurance (Motor Vehicles Third Party Risks) Act*.
 - c. An Order directing the 1st & 2nd Respondents to take measures that the court may deem fit to ensure that the 3rd Respondent is operating in accordance with the prevailing legal framework.
 - d. Costs of the Petition.
 - e. Any other relief that this Honourable Court may deem just to grant.
6. The Petitioners' claim is that the Respondents violated their rights under Articles 40 (2) and (3), 46, 47 (1), 48 and 50 of *the Constitution*.
7. A summary of the Petitioners' case was that they were at all material times the victims of various road traffic accidents involving motor vehicles insured by the 3rd Respondent as contained in the schedule that was attached to the petition. They contended that the law obtaining in Kenya regarding 3rd Party insurance is compulsory and there should be corresponding protection in the event of an accident and a claim.
8. The Petitioners stated that they were successful in the multiple suits that they filed in various courts claiming compensation for the injuries that they sustained and/or death occasioned to their kin. They added that the 3rd Respondent was required to settle the claims within 30 days of the entry of judgment, but that no settlement was received thus precipitating the filing of Declaratory Suits and the delivery of judgments against the 3rd Respondent which judgments have not been satisfied.
9. It was the Petitioner's case that their constitutional rights have been violated as a result of the Respondents' respective actions. They faulted the 1st Respondent for failing to exercise its wide powers, under the *Insurance Act* and Insurance (Motor Vehicle Third Party Risks) Act, to supervise, monitor and regulate of the Insurance payers and in particular Insurance companies. They noted that the 1st Respondent is a public office that holds fiduciary duties and is legitimately expected to perform its role in order to forestall loss to the public at large, the policy holders of the company, the shareholders, the victims of injuries arising from actions of the policy holders or their agents, the lawyers, the employees of the insurance companies and the creditors.



10. The Petitioners stated that the 1st and 2nd Respondents failed to take decisive action against the 3rd Respondent despite signs that all is not well thus imperilling the consumers such as the Petitioners.
11. The Petitioners contended that despite the fact that they had complied with the law, by issuing the requisite statutory notices, the Respondents have failed to ensure that the Petitioners' claims are paid which has resulted in violation of their right to property, i.e., the right to enjoying the fruits of their litigation.
12. The Petitioners averred that the 1st and 2nd Respondents' conduct regarding the 3rd Respondent is not in the public interest.
13. The Petitioners contended that as a result of the 1st – 3rd Respondent's acts and/or omissions, they have been unable to recover compensation for their injuries.
14. The petition is supported by the 1st Petitioner's affidavit dated 30th July 2024 wherein he reiterates the averments contained in the petition and states that the 3rd Respondent is under a duty to meet/settle the Petitioners' claims within 90 days of their being lodged. He adds that the 3rd Respondent has failed, refused and/or ignored to settle the judgments/decrees of the Honourable Courts thus leading to a violation of Petitioners' constitutional rights. He faults the 1st Respondent for failing to perform its duties of regulating the insurance industry thus leading to the 3rd Respondent's failure/refusal to settle the claims. He states that the 1st Respondent has, by its acts or omissions, allowed the 3rd Respondent to continue carrying out insurance business in Kenya despite being aware that all is not well in the said company. He also faults the 2nd Respondent for failing to give correct advice to the government to take action against the 3rd Respondent.

The Respondents' Case

15. The 1st and 2nd Respondents opposed the petition through the Grounds of Opposition dated 24th October 2024 wherein they listed the following grounds: -
 1. That the Amended Petition offends the doctrine of privity of contract as the crux of the issues therein arise from private insurance contracts executed between policyholders and the 3rd Respondent herein hence the 1st and 2nd Respondents cannot be held liable by virtue of being strangers to the said insurance contracts.
 2. That the orders sought against the 1st and 2nd Respondents demanding settlement of all decretal sums arising from accidents involving motor vehicles insured by the 3rd Respondent violate the principles of public finance management outlined under Article 201 of *the Constitution* of Kenya (2010) and the *Public Finance Management Act*.
 3. That the Amended Petition does not outline with precision and specificity how the 1st and 2nd Respondents have violated the Petitioners' Constitutional rights as was espoused under the locus classicus case of Anarita Karimi Njeru v Republic [1979] eKLR reiterated by the Court of Appeal in the case of Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] eKLR.
 4. That the Amended Petition is fatally defective since the same is filed in a representative capacity by the 1st Petitioner without the express written authority of the other Petitioners contrary to the provisions of Rule 10 and 11 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013.



5. That the Amended Petition does not disclose any acts of omission and/or commission of the 1st and 2nd Respondents in the performance of their Statutory, regulatory and/or advisory duties under the *Insurance Act* (Cap. 487, Laws of Kenya) and the *Office of the Attorney-General Act* respectively.
 6. That it is a matter of general notoriety that the 3rd Respondent was placed under Statutory Management by the 1st Respondent on 14th August, 2024 pursuant to the provisions of section 67C (2) of the *Insurance Act*.
 7. That it is also a matter of general notoriety that the appointed statutory manager has declared a moratorium pursuant to the provisions of section 67C (10) of the *Insurance Act* on payments by the 3rd Respondent to its policyholders and all other creditors for a period of six (6) months with effect from 14th August, 2024.
 8. That the reliefs sought by the Petitioner against the 1st and 2nd Respondents are misconceived, untenable and are not supported by factual evidence or the Law.
 9. That the Amended Petition has been overtaken by events, lacks merit and amounts to a complete abuse of the Court process.
16. The 3rd Respondent did not enter appearance or file any pleadings in this matter.
 17. The petition was canvassed by way of written submissions.

The Petitioners' Submissions

18. The Petitioners filed submissions dated 12th November 2024. They highlighted the genesis of the case as emanating from the injuries and death of their kin as a result of various road accidents that led to the filing of various suits for compensation and the entry of judgments by the respective courts where the suits were filed.
19. The Petitioners contended that they legitimately expected the 3rd Respondent to settle their claims as required by the law but that despite their spirited efforts, requests and demands for settlement, the 3rd Respondent adamantly refused to make good their claim. They averred that their quest to seek the 1st Respondent's intervention to ensure payment by the 3rd Respondent did not yield any fruits. They submitted that the Respondents have committed violations of their rights and the rights of the public in general.
20. The Petitioners cited the decisions in: -
 - a. Peter Mwau Muinde & Inter County Express Ltd v The Insurance Regulatory Authority, the Attorney General and Invesco Assurance Ltd, Machakos High Court, Petition No. 20 of 2018 where Odunga J. (as he then was) held as follows: -

“ 50. In my view, where it is alleged that as a result of the failure by a state organ to carry out its statutory mandate, a person's rights are violated, the matter transcends the contractual arena and enters the constitutional arena. In this case, it cannot be said that the matter is contractual since there is not contract between the Petitioners and the 1st and 2nd Respondents, yet they are being blamed for exposing the Petitioners to a risk of losing their rights to properties as a result of their inaction.”



Therefore, the issue of privacy of contract does not to the instant petition.

- b. “55. In my view, it serves no purpose to compel people to take out policy covers when at the end of the day, the state does not ensure that people benefit from the services that they are paying for. The people have delegated their authority to the state in expectation that the state will undertake its mandate as expected by the people. When the state or its organs fails to do so, then the state must compensate the people who suffer as a result of its failure to live to its expectation.”
21. Reference was made to Section 10 of the *Insurance (Motor Vehicles Third Party Risks) Act* Cap 405 Laws of Kenya which states that: -
 - (1) If, after a policy of insurance has been effected, judgment in respect of any such liability as is required to be covered by a policy under paragraph (b) of section 5 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy, the insurer shall, subject to the provisions of this section, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.
 22. Reliance was further made to the Peter Mwau case (supra) where it was held: -
 - “ 56. Therefore, where the state fails to protect the insured against unscrupulous insurers, yet ensure that the insured take out insurance covers at their costs, it is only just that the state takes responsibility for its failure to regulate the industry, otherwise it would be assisting those insurers to use statutes as instruments of fraud, insurance companies do not just collapse. Before they do so, there are usually tell-tale signs or indicators which can easily be discerned by hawk-eyed officers of the 1st Respondent if keen enough instead of waiting until the insurer cannot meet its statutory obligations before moving in to perform the last rights.”

1st & 2nd Respondents Submissions

23. The Respondents isolated the issues for determination to be: -
 - a. Whether the Amended Petition has satisfied the Constitutional test of precision and specificity.
 - b. Whether the Amended Petition offends the doctrine of privity of contract and
 - c. Whether the Petitioners are entitled to the reliefs sought.
24. On whether the petition meets the constitutional test of precision and specificity, the Respondents referred to the decision in *Anarita Karimi Njeru v Republic* [1979] eKLR quoted with authority by the Court of Appeal in *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* [2013] eKLR where it was held as follows: -
 - “...We would, however, again stress that if a person is seeking redress from the High Court on a matter which involves a reference to *the Constitution*, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision



that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed.” (“Emphasis added)

25. It was submitted that the Amended petition fails the crucial test as it does not particularize, with precision, the constitutional rights allegedly contravened by the 1st & 2nd Respondents respectively as well as the specific acts of omission and/or commission in the performance of their statutory regulatory and/or advisory duties under the Insurance Act and the office of the Attorney General Act which constitute a violation of the Petitioners rights.
26. The Respondents were of the view that the Petitioner merely stated the provisions of the constitution without providing a nexus between the alleged violations and the Respondents’ conduct or misconduct which they alleged were violated.
27. It was submitted that the Amended Petition is fatally defective as it is filed in a representative capacity, by the 1st Petitioner, without the express written authority of the other Petitioners contrary to Rule 4, 10 and 11 of the Constitution (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (hereinafter “the Mutunga Rules”). It was further submitted that the court cannot issue orders in favour of a party falling in the category of persons contemplated under Article 22 (2) of the Constitution in the absence of a detailed account, from each Petitioner, of the nature of his/her complaints and the provisions of the constitution that are allegedly infringed.
28. On the doctrine of priority of contract, it was submitted that the petition offends the said doctrine as the crux of the issues therein arise from private insurance contracts between the Petitioners and the 3rd Respondent for which the 1st and 2nd Respondents cannot be held liable. The Respondents emphasized that liability has already been apportioned against the 3rd Respondent by a court of competent jurisdiction and a lawful decree issued in each case.
29. The 1st and 2nd Respondents argued that the Amended Petition is a calculated attempt, by the Petitioners, to institute execution proceedings against them in respect to decrees issued against the 3rd Respondent by courts of competent jurisdiction. They noted that Part III of the Civil Procedure Act as read with Order 22 of the Civil Procedure Rules clearly sets out the procedure for execution of decrees and submitted that the Petitioners are, by filing the Petition, seeking to circumvent the known process of execution through forum shopping.
30. On whether the Petitioners are entitled to the reliefs sought, the Respondents urged this court to take judicial notice, on a matter of local notoriety, that the 1st Respondent placed the 3rd Respondent under statutory management on 4th August 2024 pursuant to the provisions of Section 67 C (2) of the Insurance Act.
31. It was submitted that in further exercise of its statutory duties, to regulate the 3rd Respondent’s operations, the 1st Respondent appointed a statutory manager who declared a moratorium pursuant to the provisions of Section 67 C (10) of the Insurance Act on payment, by the 3rd Respondent, to its policy holders and all other creditors including the Petitioners herein for a period of 6 months with effect from 14th August 2024.
32. According to the 1st & 2nd Respondents, the action taken by the 1st Respondent against the 3rd Respondent demonstrates the 1st Respondent’s acknowledgment that the 3rd Respondent has taken steps to ensure that the 3rd Respondent fulfils its obligations to the policy holders.
33. The Respondents also referred to the decision in Peter Mwau Muinde case (supra) where, under similar circumstances, it was held as follows regarding the 1st Respondent’s liability: -



58. “I am not holding that in every case where an insurance company collapses, the 1st Respondent should be held liable. Where the 1st Respondent takes the necessary steps to ensure that an insurance company operates within the law but due to matters that the 1st Respondent was unable to unearth despite exercise of reasonable diligence, the 1st Respondent would not be liable.”

Analysis & Determination

34. I have carefully considered the pleadings filed herein, the law and the parties’ respective submissions. I find that the main issues for determination are as follows: -
- a. Whether the Petition offends the doctrine of privity of contract and Rules 4, 10 and 11 of *the Constitution* (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (hereinafter “the Mutunga Rules”).
 - b. Whether the Petition meets the constitutional test of precision and specificity.
 - c. Whether the Petitioners have made out a case for the granting of the reliefs sought in the Amended Petition.

a. Privity of Contract

35. The 1st & 2nd Respondents submitted that the Petition offends the doctrine of privity of contract since the petition arises from private insurance contracts between the Petitioners and the 3rd Respondent.
36. The doctrine of privity of contract posits that, a contract cannot confer rights or impose obligations upon any person who is not a party to the contract. The premise is that, only parties to contracts should be able to sue to enforce their rights or claim damages as such. It therefore follows that, only the parties to the contract of provisions of the subject services, can sue and be sued on it.
37. In *Midlands Gem Limited & Another vs. Airspace Forwarders Limited & Another* [2016] eKLR the court considered other decisions including *Agricultural Finance Corporation v Lengetia Ltd* [1985] KLR 765 where the court held that a third party has no locus standi to sue on a contract and on the basis of an older decision in *Kenindia Assurance Company Ltd v Otiende* [1991] KLR 38 it was stated that where a party purports to enforce a contract by way of a suit, as the Petitioners did in the instant case, the court is divested of jurisdiction to deal with the matter.
38. It is therefore clear that proper parties before a court of law are those to whom rights and obligations, under a contract, accrue.
39. In *Chidhya (Kenya) Limited v Africa Equipment & Engineering Power S.A (AEE Power S.A)* [2020] eKLR the court cited the Principles of the Law of Contract pg. 61 as defined by Kibaya Imaana Laibuta where the author defines privity as:

“A relationship that exists between people as a result of their participation in some transaction or event. The obligations imposed by, rights or benefits accruing from, their relationships do not affect 3rd parties not privy to the contract. Only parties to a contract can sue or be sued on it; it can neither confer rights not impose liabilities on others not privy thereto. No one may be entitled to or bound by the terms of a contract to which he is not an original party.



40. In *City Council of Nairobi & Wilfred Kamau Githua T/A Githua Associates v Nairobi City Water & Sewerage Co Ltd* Civil Appeal 206 of 2008 it was stated:

“The doctrine of privity of contract is that, as a general rule, at Common Law, a contract cannot confer rights or impose obligations on strangers to it that is persons who are not parties to it. The parties to a contract are those persons who reach an agreement and, whilst it may be clear in a simple case who these parties are, it may not be so obvious where there are several contracts, or several parties or both. For example in the case of multilateral contracts; collateral contracts, irrevocable credits, contracts made on the basis of memorandum & articles of a Company; collective agreements, contracts with unincorporated association and mortgages, surveys and valuations.....”[emphasis added]

41. Guided by the principles espoused in the above cited cases. I find that, strictly speaking, the instant petition is not founded on the existence of a contract between the Petitioners and the 3rd Respondent as the Petitioners herein were neither the owners of the motor vehicles that were involved in the accidents that gave rise to the suits nor the 3rd Respondent’s insured. It is clear that the Petitioners were victims of the accidents in the question.

42. In my considered view, as opposed to the facts of the case in the Peter Mwau Muinde case (*supra*) the doctrine of privity of contract does not arise in this petition as the motor vehicle owners are not parties to the petition.

Representative Suit

43. The 1st and 2nd Respondents argued that the petition is fatally defective having been filed by the 1st Petitioner in a representative capacity without the express written authority of all the other 59 Petitioners. The Petitioners did not respond to this ground of objection.

44. Rules 4, 10 and 11 of the Mutunga Rules stipulate as follows: -

4. Contravention of rights or fundamental freedoms

1. Where any right or fundamental freedom provided for in *the Constitution* is allegedly denied, violated or infringed or threatened, a person so affected or likely to be affected, may make an application to the High Court in accordance to these rules.
2. In addition to a person acting in their own interest, court proceedings under sub rule (1) may be instituted by—
3. a person acting on behalf of another person who cannot act in their own name;
4. a person acting as a member of, or in the interest of, a group or class of persons;
5. a person acting in the public interest; or
6. an association acting in the interest of one or more of its members.

10. Form of petition

1. An application under rule 4 shall be made by way of a petition as set out in Form A in the Schedule with such alterations as may be necessary.
2. The petition shall disclose the following—
 - a. the petitioner’s name and address;



- b. the facts relied upon;
 - c. the constitutional provision violated;
 - d. the nature of injury caused or likely to be caused to the petitioner or the person in whose name the petitioner has instituted the suit; or in a public interest case to the public, class of persons or community;
 - e. details regarding any civil or criminal case, involving the petitioner or any of the petitioners, which is related to the matters in issue in the petition;
 - f. the petition shall be signed by the petitioner or the advocate of the petitioner; and
 - g. the relief sought by the petitioner.
3. Subject to rules 9 and 10, the Court may accept an oral application, a letter or any other informal documentation which discloses denial, violation, infringement or threat to a right or fundamental freedom.
 4. An oral application entertained under sub rule (3) shall be reduced into writing by the Court.
11. Documents to be annexed to affidavit or petition
1. The petition filed under these rules may be supported by an affidavit.
 2. If a party wishes to rely on any document, the document shall be annexed to the supporting affidavit or the petition where there is no supporting affidavit.
45. In the instant case, the 1st Petitioner averred that he filed the petition on his own behalf and on behalf of the other 59 Petitioners and the public at large. My take is that, as concerns the rest of the Petitioners, the 1st Petitioner filed a representative suit, as he did not state that his co-Petitioners are persons who cannot act in their own name as envisaged under Article 22 (2) (a) of *the Constitution* and Rule 4 (3) of the Mutunga Rules.
46. It is trite that a party claiming to be filing a suit on behalf of another person must obtain the written authority of that person before instituting the suit.
47. Article 22 of *the Constitution* provides that: -
- (1) Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened. (2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by—
 - (a) a person acting on behalf of another person who cannot act in their own name;
 - (b) a person acting as a member of, or in the interest of, a group or class of persons;
 - (c) a person acting in the public interest; or
 - (d) an association acting in the interest of one or more of its members.
 - (3) The Chief Justice shall make rules providing for the court proceedings referred to in this Article, which shall satisfy the criteria that—



- (a) the rights of standing provided for in clause (2) are fully facilitated;
 - (b) formalities relating to the proceedings, including commencement of the proceedings, are kept to the minimum, and in particular that the court shall, if necessary, entertain proceedings on the basis of informal documentation;
 - (c) no fee may be charged for commencing the proceedings;
 - (d) the court, while observing the rules of natural justice, shall not be unreasonably restricted by procedural technicalities; and
 - (e) an organisation or individual with particular expertise may, with the leave of the court, appear as a friend of the court.
- (4) The absence of rules contemplated in clause (3) does not limit the right of any person to commence court proceedings under this Article, and to have the matter heard and determined by a court.

48. Article 258 of *the Constitution* provides that: -

258. Enforcement of this Constitution

- (1) Every person has the right to institute court proceedings, claiming that this Constitution has been contravened, or is threatened with contravention.
- (2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by—
 - (a) a person acting on behalf of another person who cannot act in their own name;
 - (b) a person acting as a member of, or in the interest of, a group or class of persons;
 - (c) a person acting in the public interest; or
 - (d) an association acting in the interest of one or more of its members.

49. Order 1 Rule 8 of the Civil Procedure Rules states that: -

8. [Order 1, rule 8.] One person may sue or defend on behalf of all in same interest.

- (1) Where numerous persons have the same interest in any proceedings, the proceedings may be commenced, and unless the Court otherwise orders, continued, by or against any one or more of them as of all in same representing all or as representing all except one or more of them.
- (2) The parties shall in such case give notice of the suit to all such persons either by personal service or, where from the number of persons or any other cause such service is not reasonably practicable, by public advertisement, as the court in each case may direct.
- (3) Any person on whose behalf or for whose benefit a suit is instituted or defended under subrule (1) may apply to the court to be made a party to such suit.

50. A perusal of the pleadings reveals that no notice has been filed by the 1st Petitioner to prove that he acts in a representative capacity. I find that while the 1st Petitioner may have a right and locus standi to file the petition on his own behalf and in public interest as envisaged under Article 258 (2) (c), he cannot purport to act on behalf of the rest of the other petitioners who have not expressly given him the authority to file the petition on their behalf.



Precision and Specificity in the Petition

51. It was submitted, by the 1st & 2nd Respondent, that the Petition lacks precision in the manner in which it has been presented thus offending the principles set in the Anarita Karimi Njeru case (supra) and Rule 10 of the Mutunga Rules.
52. The Petitioners, on the other hand, submitted that they had demonstrated that the Respondents violated their rights and the rights of the public in general by refusing to ensure settlement of the awards contained in the decrees.
53. The requirement for precision and specificity in constitutional petitions has been the subject of several court decisions. Recent court pronouncements have however shifted from the position adopted in the Anarita Karimi Njeru case (supra) and taken the position that the said decision must be read alongside the provisions of Article 22 (3) (b) and (d) of *the Constitution*. The said Article enjoins the Chief Justice to make rules governing proceedings that minimize formalities relating to proceedings including commencement of proceedings so as to allow the court to entertain proceedings filed even on the basis of informal documentation in the interest of natural justice. The current trend taken by our courts is to free the process of filing constitutional petitions from the shackles of procedural technicalities.
54. This does not however mean that courts will accept petitions that are drawn in a lacklustre manner, suffice is to say that petitions will not be dismissed merely because the specificity requirement is not complied with.
55. In *Deepak Chamanlal Kamani & Another v Kenya Anti-Corruption Commission & 2 others Civil Appeal (Application) No. 152 of 2009* it was held: -

“The initial approach of the courts must now not be to automatically strike out a pleading but to first examine whether the striking out will be in conformity with the overriding objectives set out in the legislation. If a way or ways alternative to striking out are available, the courts must consider those alternatives and see if they are more consonant with the overriding objective than a striking out. But the new approach is not to say that they new thinking totally uproots all well-established principles or precedent in the exercise of the discretion of the court which is a judicial process devoid of whim and caprice.”
56. Similarly, in *Nation Media Group Ltd v Attorney General [2017] 1 EA 261* it was held: -

“A Constitutional Court should be liberal in the manner it goes round dispensing justice. It should look at the substance rather than technicality. It should not be seen to slavishly follow technicalities as to impede the cause of justice...As long as a party is aware of the case he is to meet and no prejudice is to be caused to him by failure to cite the appropriate section of the law underpinning the application, the application ought to proceed to substantive hearing...Although the application may be vague for citing the whole of Chapter 5 of *the Constitution*, however the prayers sought are specific and they refer to freedom of expression guaranteed under *the Constitution*.”
57. The 1st & 2nd Respondents’ case was that the issues raised in this petition are purely matters of execution of decrees against the 3rd Respondent from various courts that cannot be construed or elevated to constitutional issues. According to the Respondents, the Petitioners are by filing this petition merely seeking to circumvent the known process of execution of decrees.



58. I have carefully scrutinized the copies of judgments and/or decrees that the Petitioners attached to the 1st Petitioner's affidavit in support of the Amended Petition as annexure marked "S.A.A. 2" and I note that out of a total of 60 decrees, only 9 thereof are in respect to decrees against the 3rd Respondent. I further note that the rest of the decrees including the one attached in respect to the 1st Petitioner are against individuals who are not parties to this petition and whose nexus to the 3rd Respondent or any of the Respondents, for that matter, has not been established or disclosed. It would then appear that the Petitioners merely expected this court to arrive at the conclusion that all the attached decrees are against the 3rd Respondent or its insureds without furnishing any proof of such a claim.
59. Having found that the 1st Petitioner did not demonstrate that he was authorized, by the rest of the Petitioners, to file the instant petition on their behalf and having found that the decree attached in respect to the 1st Petitioner is not a decree against any of the Respondents and further, having noted that the nexus between the judgment debtors and the 3rd Respondent has not been shown in at least 51 out of the 60 decrees, I am unable to find that the petition meets the threshold of proof and the precision and specificity criteria expected in a constitutional petition.
60. My further finding is that even assuming, for arguments sake, that the Petitioners established a link between the attached decrees and the 3rd Respondents, I find that the claims in question purely fall under the purview of execution of decrees obtained from courts of competent jurisdiction.
61. The procedure governing the execution of decrees is provided under Order 22 Rule 13 of the Civil Procedure Rules which stipulates as follows: -
- Procedure on receiving an application for execution of decree [Order 22, rule 13]
- (1) On receiving an application for the execution of a decree as provided by rule 7(2), the court shall ascertain whether such of the requirements of rules 7 to 9 as may be applicable to the case have been complied with; and, if they have not been complied with, the court may reject the application, or may allow the defect to be remedied there and then or within a time to be fixed by it.
 - (2) Where an application is amended under subrule (1), it shall be deemed to have been an application in accordance with law and presented on the date when it was first presented.
 - (3) Every amendment made under this rule shall be signed and dated by a judge or registrar.
 - (4) When the application is admitted, the court shall, subject to the provisions hereinafter contained, order execution of the decree according to the nature of the application: Provided that in the case of a decree for the payment of money the value of the property attached shall, as nearly as may be, correspond with the amount due under the decree.
62. In the instant case, apart from claiming that the 1st & 2nd Respondents had failed in the performance of their statutory mandates to ensure that the 3rd Respondent settle the decrees, the Petitioners did not demonstrate, through tangible evidence, that they had taken any steps, whatsoever, to execute the decrees as stated under the provisions of Order 22 of the Civil Procedure Rules so as to justify the claim that the Respondents had failed in their statutory duties.
63. For the reasons that I have stated in this judgment, I find that the instant petition is not merited and I therefore dismiss it with no orders as to costs.
64. Orders accordingly.



JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT NYAMIRA VIA MICROSOFT TEAMS THIS 20TH DAY OF FEBRUARY 2025.

W. A. OKWANY

JUDGE

