



**Benjamin v Attorney General & 6 others; Maraga & 23 others
(Interested Parties) (Petition E048 of 2023) [2025] KEHC 4645 (KLR)
(Constitutional and Human Rights) (10 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4645 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
PETITION E048 OF 2023
LN MUGAMBI, J
APRIL 10, 2025**

BETWEEN

MAGARE GIKENYI J. BENJAMIN PETITIONER

AND

ATTORNEY GENERAL 1ST RESPONDENT

**NATIONAL TASK FORCE ON IMPROVEMENT OF THE TERMS
AND CONDITIONS OF SERVICE AND OTHER REFORMS FOR
MEMBERS OF NATIONAL POLICE SERVICE AND KENYA PRISONS
SERVICE 2ND RESPONDENT**

NATIONAL POLICE SERVICE COMMISSION 3RD RESPONDENT

KENYA PRISONS SERVICE 4TH RESPONDENT

PUBLIC SERVICE COMMISSION 5TH RESPONDENT

INDEPENDENT POLICING OVERSIGHT AUTHORITY 6TH RESPONDENT

KENYA NATIONAL COMMISSION ON HUMAN RIGHTS . 7TH RESPONDENT

AND

RTD CHIEF JUSTICE DAVID KENANI MARAGA INTERESTED PARTY

CAROLE KARIUKI INTERESTED PARTY

IBRAHIM JILLO GUYO INTERESTED PARTY

MOFFAT MURIITHI KANGI INTERESTED PARTY

JOHN OLE MOYAKI INTERESTED PARTY



IBRAHIM JILLO GUYO	INTERESTED PARTY
RICHARD KIRUNDI	INTERESTED PARTY
ELIZABETH MUENI	INTERESTED PARTY
ROSELINE ODEDE	INTERESTED PARTY
JOASH ODHIAMBO DACHE	INTERESTED PARTY
DOREEN MUTHAURA	INTERESTED PARTY
ALBERT MWENDA	INTERESTED PARTY
TERRY CHEBET MAINA	INTERESTED PARTY
HASSAN SHEIKH MOHAMED	INTERESTED PARTY
SIMIYU WERUNGA	INTERESTED PARTY
MUTUMA RUTEERE	INTERESTED PARTY
ANNE IRERI	INTERESTED PARTY
STEPHEN KAYONGO	INTERESTED PARTY
JAFAR MOHAMED	INTERESTED PARTY
SAMMY CHEPKWONY	INTERESTED PARTY
KHADIIJA MIRE	INTERESTED PARTY
OMWANZA OMBATI	INTERESTED PARTY
JOY MDIVO MASINDE	INTERESTED PARTY
ROSEMARY KAMAU	INTERESTED PARTY

JUDGMENT

Introduction

1. The petition dated 16th February 2023 is supported by the sworn affidavit of the petitioner of similar date.
2. The petition assails the decision of the President of Kenya, H.E. Dr. William Samoei Ruto to establish the National Task Force on Improvement of the terms and Conditions of Service and other Reforms for Members of National Police Service and Kenya Prisons Service on the ground that it encroaches on the independent mandate of the 3rd respondent as an independent constitutional commission because the Taskforce roles and those of the 3rd Respondent are duplicative.
3. The petitioner thus contends that the establishment of the said Task Force offends Articles 3, 10, 73, 75, 246, 247, 248 and 249 of the *Constitution*.
4. He seeks the following reliefs:
 - a. A declaration that task forces involving independent commissions and independent offices ought to be established by the institutions themselves and not by the executive or any other persons.



- b. A declaration that the establishment of the National Task Force On Improvement of The Terms and Conditions of Service and other Reforms For Members of National Police Service and Kenya Prisons Service through a gazette notice No-15792 Vol.CXXIV-No-281 dated 21st December 2022 to the extent that it was established by the executive instead of independent commissions(National Police Commission) violates inter alia Article 3, 10, 73, 75, 246, 247, 248 and 249 and other relevant laws is unconstitutional and therefore, invalid, null and void ab initio.
- c. The Court do issue an order of judicial review by way of certiorari, quashing the gazette notice No-15792 Vol.CXXIV-No-281 dated 21st December 2022 or/and any document that established the National Task Force On Improvement of The Terms and Conditions of Service and other Reforms for Members Of National Police Service and Kenya Prisons Service and any other consequential documents and/or policy born out of it.
- d. An order of judicial review by way of prohibition, prohibiting the respondent and interested parties or any other person from acting as members of the National Task Force On Improvement of The Terms and Conditions of Service and other Reforms For Members Of National Police Service and Kenya Prisons Service through a gazette notice No.15792 Vol.CXXIV-No-281 dated 21st December 2022 except as per the law.
- e. An order of judicial review by way of prohibition, barring the respondent and interested parties or any other person from presenting the findings and/or recommendations born out of the National Task Force On Improvement of the Terms and Conditions of Service and other Reforms For Members of National Police Service and Kenya Prisons Service through a gazette notice No-15792 Vol.CXXIV-No-281 dated 21st December 2022 to the president or to any other person.
- f. The Court do issue an order that the recommendations/action points of National Task Force On Improvement of The Terms and Conditions of Service and other Reforms For Members Of National Police Service and Kenya Prisons Service through a gazette notice No-15792 Vol.CXXIV-No-281 dated 21st December 2022 has no force in law, and therefore are null and void.
- g. An order do issue to the respondents and/or interested parties or any other person either by themselves, their agents and/or any other person(s) whatsoever from processing, accepting and/or acting and/or giving effect to the gazette notice No-15792 Vol.CXXIV-No-281 dated 21st December 2022 and/or any document born out of this task force.
- h. Any other order or/and modification of petitioner’s prayer(s) which this Court may deem fit so as to a achieve objects of justice for majority of Kenyans as a whole.
- i. Costs of this petition to be borne by respondents.

Petitioner’s Case

5. The petitioner avers that the President on 21st December 2022 established the impugned Taskforce, the 2nd respondent herein with an aim of identifying the challenges affecting the National Police Service and Kenya Prisons Service, their remuneration among other issues.
6. Particularly, the 2nd respondent’s objects were to: identify the legal, policy, administrative, institutional and operational constraints on effective service delivery by the National Police Service (hereafter, NPS) and the Kenya Prisons Service (hereafter, KPS); identify and recommend legal, policy, administrative,



institutional and operational reforms in the NPS and KPS for effective service delivery; review and recommend improvement of the terms and conditions of service; review and recommend improvement of matters relating to welfare of officers in all cadres of the NPS and KPS and all other matters incidental to the optimal service delivery by the NPS and KPS and review and recommend on any other matter incidental to improved terms and conditions of service and other reforms in the NPS and KPS.

7. The petitioner citing Article 246(3) of the Constitution and Section 10 of the National Police Service Commission Act takes issue with the formation of the 2nd respondent as is a replication of the role of the 3rd respondent which is an independent commission. He asserted that the function bestowed on the 2nd respondent is constitutionally and legally a mandate assigned to the 3rd respondent.
8. He faulted the President's action as calculated to direct the 3rd respondent which is an independent commission against the dictates of the Constitution thereby contravening Article 249(2) of the Constitution and thus left unchallenged it threatens to erode the independence of independent commissions and give way to abuse of public power.
9. The Petitioner embraces the need for collaboration among the arms of government but nonetheless asserts that it should be done without usurping the legal mandate of other bodies as is manifest from the 2nd respondents Terms of Reference (TOR).
10. The petitioner further avers that the establishment of the 2nd respondent does not align with the principle of prudent use of the scarce public resources in an already struggling economy. He avers that this fact was also reported by the World Bank in its report dubbed Kenya's GDP Contracts under Weight of COVID-19, Impacting Lives and Livelihoods. He states thus that this is direct contravention to Article 201(d) and 232 of the Constitution.
11. The Petitioner states that Kenyans legitimately expect that the respect for the law by the respondents by ensuring that decision made in establishment of Task Forces do not conflict with the constitutional responsibilities of independent offices or commissions.

Respondents' Case

12. The 2nd, 4th, 5th and 7th respondents' responses and submissions are not in the Court file or Court Online Platform (CTS).
13. In regard to 5th Respondent, it may be for the reason that on the 1st March, 2023; Hon. Lady Justice Mugure Thande discharged the 5th Respondent (Public Service Commission) from the proceedings.
14. As for the 2nd and 4th Respondent, the Hon. Attorney General was appearing on its behalf (1st Respondent) and also, 2nd and 4th Respondents.

1st Respondents' Case

15. In its response to the petition, the 1st respondent filed grounds of opposition dated 3rd March 2023; stating as follows:
 - i. The petitioners herein have not demonstrated before the Court how the 1st respondent has violated his constitutional rights.
 - ii. The present application fails to meet the threshold of a constitutional petition both in form as stipulated in Rule 10 of the Mutunga Rules and in substance as held in the locus classicus



Anarita Karimi Njeri v R (1976-1980) KLR 1272 which requires that a petitioner ought to identify and specify how constitutional provisions have been violated.

- iii. The petitioner herein has misinterpreted the *Constitution*, specifically with regard to the executive powers of the President.
- iv. The question of whether or not the President has the power to set up a Taskforce was considered in *Thirdway Alliance Kenya & another v Head of the Public Service-Joseph Kinyua & 2 others; Martin Kimani & 15 others (Interested Parties)* [2020] eKLR.
- v. The contention by the petitioner that the 2nd respondent's establishment by the President is a usurpation of the 3rd respondent's constitutional and statutory mandate is an incorrect interpretation of the law, specifically in relation to the 3rd respondent.
- vi. The petitioner does not take issue with the objectives of the 2nd respondent or the Terms of Reference, but he is rather concerned with the appointing authority of its member, a concern stemming from an erroneous interpretation of the law.
- vii. The 2nd respondent was set up with the purpose of identifying the challenges faced by the national police service, whether legal, policy, institutional, operational or otherwise and make recommendations for improvement. The role of the 2nd respondent is fact-finding for a limited term, as well as monitoring and evaluating the uptake of the recommendations in the previous Police Reforms Taskforces.
- viii. There is no mention or indication that the 2nd respondent will be usurping the 3rd respondent's constitutional or statutory mandate.
- ix. Judicial intervention should be limited to acts that are manifestly in breach of the law or where the Court is satisfied that the decision maker reached a wrong decision influenced by other considerations other than the law, evidence and the duty to serve the interest of justice. The petitioner has not adduced evidence of the same.
- x. The claims of unconstitutionality of the appointment of the 2nd respondent are based on a clear misunderstanding of the extent and exercise of the executive powers of the President.
- xi. The petition is defective both in form and in substance and is therefore unmerited and brought in bad faith.
- xii. It is in the public interest and in the interest of justice that the current petition be dismissed with costs as the same is an abuse of court process.

3rd Respondent's Case

16. In reaction to the petition, the 3rd respondent filed its Replying Affidavit by its Chief Executive Officer, Peter Kiptanui Leley sworn on 3rd October 2023.
17. He swore that the President as the Head of the Executive is conferred with power under the *Constitution* and the Laws to establish a Taskforce to inquire into, review and recommend any improvements on any matters within the executive arm.
18. He stated that the petitioner has misconstrued the mandate of the 3rd respondent by alleging that the 2nd respondent is carrying out its functions particularly because the 3rd respondent does not exercise authority over the 4th respondent. Equally, he asserts that the petitioner's claim that the 2nd respondent's Terms of Reference duplicates the 3rd respondent's role is flawed.



19. He averred that Section 10 of the National Police Service Act provides that it is the function of the Inspector General of Police to co-ordinate and audit police operations while the 3rd respondent responsible for their welfare, which is human capital management. As such, he argues that the 3rd respondent cannot purport to establish a Taskforce for the National Police Service as it is not within its mandate to do so.
20. He further avers that Article 239(5) and 245 (4) of the Constitution allows policy direction and supervision over the National Police Service by other authorities including the Cabinet Secretary for Police Services (Interior and National Administration) and the President. He informs that the 3rd respondent is represented in the Taskforce by the 5th interested party.
21. It is further asserted that the policy recommendations that will arise as a result of the 2nd respondent's function will also be subjected to public participation. This is since public bodies are bound to comply with the dictates of the Article 10 of the Constitution. As such, he contends that the petitioner can present his views on this platform.
22. He further contends that the petitioner is obliged to prove his claims that insinuate that the 3rd respondent has ceded its mandate to the 2nd respondent or failed its constitutional duties. In his opinion, these claims are unfounded and an abuse of the Court process.
23. In addition, he claims that the 3rd respondent in its actions has neither acted illegally, irregularly or irrationally as claimed. Consequently, he contends that the petitioner's case is a gross misrepresentation of facts before this Court and is thus unmerited and brought in bad faith.

6th Respondent's Case

24. The 6th respondent in response filed grounds of opposition dated 6th March 2023. This on the premise that:
 - i. The 6th respondent has been wrongly enjoined in the notice of motion application and petition.
 - ii. The 6th respondent is not a member of the National Task Force on improvement of the terms and conditions and other reforms for members of the National Police Service and the Kenya Prisons Service. (See page 64 of the petitioner's bundle of documents of the Gazette notice on membership of the task force).
 - iii. The petitioner has not demonstrated the violation or threatened violation of his fundamental rights and freedoms and the manner in which his rights have been violated or threatened by the 6th respondent.
 - iv. The notice of motion and petition do not disclose any reasonable cause of action against the 6th respondent as no orders are sought against the 6th respondent.
 - v. The petition is misconceived, mischievous and an abuse of the due process of this Court and should therefore be dismissed against the 6th respondent.

Interested Parties Case

25. The interested parties' responses and submissions are not in the Court file or Court Online Platform (CTS).



Petitioner's Submissions

26. The petitioner on 10th May 2023, filed submissions and highlighted the issues for discussion as: whether the President's actions of purporting to create a task force on behalf and /or whose functions/roles is to be performed by an independent body like the 3rd respondent is legal and does the Constitution envisage control and direction of independent offices by the executive and second, whether the executive (presidential) powers extend to formation of taskforces for independent commissions.

27. On the onset, the petitioner submitted that rule of law should be maintained while interpreting the Constitution. Reliance was placed in Institute of Social Accountability & Another v National Assembly & 4 Others High Court, (2015)eKLR where it was held that:

“ [T]his Court is enjoined under Article 259 of the *Constitution* to interpret the *Constitution* in a manner that promotes its purposes, values and principles, advances the rule of law, human rights and fundamental freedoms in the Bill of Rights and that contributes to good governance. In exercising its judicial authority, this Court is obliged under Article 159(2)(e) of the *Constitution* to protect and promote the purpose and principles of the *Constitution*.”

28. Like dependence was placed in Entick v Carrington (1965) 2 Wils, Hardware & Ironmongery v Attorney General (E.A) 1972, Salaries and Remuneration Commission & another v Parliamentary Service Commission & 15 others; Parliament & 4 others (Interested Parties) [2020] eKLR.

29. The petitioner relying on his averments in the first issue submitted that the independent commissions mandate ought not to be interfered with as is made manifest in this case. Reliance was placed in In the Matter of Interim Independent Electoral Commission [2011] eKLR where it was held that:

“ It is a matter of which we take judicial notice, that the real purpose of the “independence clause”, with regard to Commissions and independent offices established under the *Constitution*, was to provide a safeguard against undue interference with such Commissions or offices, by other persons, or other institutions of government.”

30. On this premise, the petitioner asserted that the President's and respondents' actions of purporting to create a task force whose functions and role is meant to be performed by an independent body is illegal and also not envisaged in the Constitution.

31. Equally, the petitioner submitted that while the respondents relied on Article 132 of the Constitution to argue that the President has power to establish a Taskforce, Articles 246, 248(2)(j) and 249 of the Constitution in view of the 3rd respondent, does not give power to the President to establish a Taskforce on its behalf. Reliance was placed in Republic v Vice Chancellor Moi University & 2 others Ex parte Benjamin J. Gikenyi Magare [2019] eKLR where it was held that:

“ illegality is when the decision – making authority commits an error of law in the process of taking or making the act, the subject of the complaint acting without jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances of illegality.....irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards....Procedural impropriety is when there is a failure to act fairly on the part of the decision – making authority in the process of taking a decision. The unfairness may be its none observance of the Rules of natural justice or to act with



procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative instrument by which such authority exercises jurisdiction to make a decision.”

32. Like dependence was placed in *Republic v Public Procurement Administrative Review Board & 2 others Ex parte Rongo University* [2018] eKLR and *Pastoli v kabala District Local Government Council & others* (2008) 2 EA 300.

33. According to the petitioner, the respondents’ actions also violated his and the Kenyans legitimate expectations since it was expected that they would honour and uphold the mandate of the independent offices by not interfering with it. In support reliance was placed in *Oindi Zaippeline & 39 others v Karatina University & another* [2015] eKLR where it was held that:

“Legitimate expectation applies the principles of fairness and reasonableness, to the situation in which a person has an expectation, or interest in a public body retaining a long-standing practice, or keeping a promise. An instance of legitimate expectation would arise when a body, by representation or by past practice, has aroused an expectation that is within its power to fulfill a promise.”

34. The petitioner further submitted that there was no justifiable reason in law why the President would utilize the scarce financial resources to form a Taskforce that essentially is duplicating the 3rd respondent’s mandate. Reliance was placed in *Republic v Chief Licensing Officer & another Ex Parte Tom Mboya Onyango* (2017)eKLR where it was held that:

“The law is that in the ordinary way and particularly in cases which affect life, liberty or property, the executive should give reasons and if he gives none the court may infer that he had no good reasons, similarly where the reason given by the executive is not one of the reasons upon which it is legally entitled to act, the court is entitled to intervene since the action by the executive would then be based an irrelevant matter....”

35. Additional dependence was placed in *Wanjala v Cleopa Mailu & 4 others* [2016] eKLR.

36. In view of the foregoing, the petitioner submitted that the petition is merited and worthy of the reliefs sought.

1st Respondent

37. State Counsel, Jackline Kiramana for the 1st respondent filed submissions dated 2nd July 2023 and set out the issues for consideration as: whether the establishment of the Taskforce is unconstitutional and whether the terms of reference for the Taskforce are a duplication of the 3rd respondent’s constitutional and statutory mandate.

38. On the first issue, Counsel submitted that Article 129 of the *Constitution* is the legal foundation upon which the President may establish a Taskforce while the authority to do so envisaged under Article 131 of the *Constitution*. To support this, Counsel relied in *Thirdway Alliance Kenya (Supra)* where it was held that:

“93. In determining the nature of a power, it is helpful to have regard to how closely the decision is related to the formulation of policy, on the one hand, or its application, on the other. A power that is more closely related to the formulation of policy is likely to be executive in nature and, conversely, one



closely related to its application is likely to be administrative. The President’s power to appoint a Taskforce is closely related to his broad, policy-formulating function, hence it is an executive power. It is a mechanism whereby the President can obtain information and advice so as to achieve his desired goal, in this case of promoting and ensuring national unity among the other terms of reference for the Taskforce.”

39. Counsel also relied in *Masetlha v President of the Republic of South Africa and Another* (CCT 01/07) [2007] ZACC 20 where a similar position was upheld.

40. Counsel submitted that the plight of the National Police Service and Kenya Prison Service warranted urgent intervention which the President has power to provide under his constitutionally mandated executive power. Counsel additionally asserted that Article 132 (1) (c) of the *Constitution* provides that the President is to once every year, report in an address to the nation, on all measures taken and the progress achieved in the realization of the national values, referred to in Article 10. Accordingly, Counsel submitted that the 2nd respondent’s purpose is for the good of the National Police Service and the Kenya Prisons Service pursuant to Article 43 of the *Constitution*.

41. Reliance was placed in *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* [2013]eKLR where the Court in paragraph observed as follows:

“A body or organ performing statutory duties has discretion when handling matters falling within its mandate. There is a margin of discretion conferred by the *Constitution* and the law upon those who make decisions and the test of rationality ensures that any legislation or official act is confined within the purposes set by the law. It is the insistence that decisions must be rational that limits arbitrariness and not discretion by itself. Where a body like IEBC applied its mind to constitutional requirements, regarding delimitation, reaching a rational conclusion, the courts should not review that decision.”

42. Equal reliance was placed in *Democratic Alliance v The President of the Republic of South Africa & 3 others*: CCT 122/11 [2012] ZACC 24.

43. On the second issue, Counsel submitted that the petitioner had misinterpreted the law in asserting that there is a duplication of roles as between the 2nd and 3rd respondent’s. Counsel submitted that the Terms of Reference of the 2nd respondent are distinct from the mandate of the 3rd respondent. This is because the 2nd respondent’s role is fact finding on the objectives set, so as to assist both the Executive and the 3rd respondent to improve the working conditions of the National Police Service and the Kenya Prisons Service. Considering this, Counsel submitted that the 2nd respondent’s report will assist the 3rd respondent in the implementation of its constitutional and statutory Mandate.

3rd Respondent

44. Senior Litigation Counsel, Valerie Kasaiyan for the 3rd respondent filed submissions dated 6th November 2023. The issues for determination were identified as: whether the establishment of the National Taskforce on Improvement of the Terms and Conditions of Service and other Reforms for Members of the National Police Service and Kenya Prisons Service by the President as Head of Executive is constitutional and whether the National Taskforce on Improvement of the Terms and Conditions of Service and other Reforms for Members of the National Police Service and Kenya Prisons Service is usurping the role of the National Police Service Commission.



45. Counsel in the first issue submitted that the President’s power to establish a Taskforce is provided for under Section 131 and 132 of the Constitution. It was further submitted that the National Police Service and the 4th respondent fall within the ambit of the Executive arm. This point was also buttressed by the opine in the case of Thirdway Alliance Kenya (supra) which was cited in support.
46. In view of this, Counsel submitted that the petitioner is asking the Court to interfere with the Executive mandate which in turn invokes the doctrine of separation of powers. This is because as pointed out in Third way Alliance Kenya (supra), the President has latitude to make executive decisions in a manner that facilitates the discharge of his constitutional functions.
47. On the second point, Counsel submitted that the functions of the 3rd respondent are stipulated under Article 246 of the Constitution and recapped under Section 10(1) of the National Police Service Commission Act. In a nutshell, the 3rd respondent is responsible for the welfare and human resource management of the National Police Service.
48. In addition, Counsel submitted that the 3rd respondent is required to co-operate with other state organs on any matter that the Commission considers necessary and to promote the values and principles referred to in Articles 10 and 232 of the Constitution throughout the Service.
49. Furthermore, Counsel added that the operations of the National Police Service are the constitutional mandate of the Inspector General who exercises independent command of the Service however may receive policy directions from the Cabinet Secretary for Interior and Administration of National Government. On the other hand, the administration and operations of the Kenya Prisons Service is under the Commissioner - General of Prisons subject to the directions of the Cabinet Secretary for Interior and Administration of National Government.
50. Counsel submitted that the 3rd respondent contrary to the petitioner’s assertions does not have any mandate over the affairs of the 4th respondent. Counsel argued that the assertion by the petitioner that it is the responsibility of the 3rd respondent to establish a taskforce to perform the Commission’s functions is also an absurd interpretation of the Constitution and the Law. To buttress this point reliance was placed in Okoti v Attorney General & 5 others [2021]eKLR where it was held that:

“The principles of interpretation also applied to the construction of statutes. There were other important principles which applied to the construction of statues as well as to the construction of a constitution such as:

- a. Presumption against absurdity – a court was to avoid a construction that produced an absurd result;
- b. The presumption against unworkable or impracticable result - a court was to find against a construction which produced unworkable or impracticable result;
- c. Presumption against anomalous or illogical result - a court was to find against a construction that created an anomaly or otherwise produced an irrational or illogical result;
- d. The presumption against artificial result – a court was to find against a construction that produced artificial result and,



- e. The principle that the law should serve public interest – the court was to strive to avoid adopting a construction which was in any way adverse to public interest, economic, social and political or otherwise.”

51. Counsel thus contended that the petitioner is urging the Court to interpret the law in an absurd manner that will produce an unworkable and illogical result. Counsel further emphasized that government policies emanate from cabinet not constitutional commissions as they do not have the mandate to do so. Reliance was placed *in the Matter of Interim Independent Electoral Commission* [2011] eKLR where it was held that:

“[60] While bearing in mind that the various Commissions and independent offices are required to function free of subjection to “direction or control by any person or authority”, we hold that this expression is to be accorded its ordinary and natural meaning; and it means that the Commissions and independent offices, in carrying out their functions, are not to take orders or instructions from organs or persons outside their ambit. These Commissions or independent offices must, however, operate within the terms of the *Constitution* and the law: the “independence clause” does not accord them *carte blanche* to act or conduct themselves on whim; their independence is, by design, configured to the execution of their mandate, and performance of their functions as prescribed in the *Constitution* and the law. For due operation in the matrix, “independence” does not mean “detachment”, “isolation” or “disengagement” from other players in public governance. Indeed, for practical purposes, an independent Commission will often find it necessary to co-ordinate and harmonize its activities with those of other institutions of government, or other Commissions, so as to maximize results, in the public interest. Constant consultation and co-ordination with other organs of government, and with civil society as may be necessary, will ensure a seamless, and an efficient and effective rendering of service to the people in whose name the *Constitution* has instituted the safeguards in question. The moral of this recognition is that Commissions and independent offices are not to plead “independence” as an end in itself; for public-governance tasks are apt to be severely strained by possible “clashes of independences”.

52. To this end, Counsel submitted that the establishment of the 2nd respondent by the President was constitutional as was done in exercise of his executive authority. Correspondingly, Counsel argued that the allegation of usurpation of power was misplaced, as the 2nd respondent’s Terms of Reference are broad and touch on various mandates that do not fall under the ambit of the 3rd respondent.

6th Respondent

53. The 6th Respondent’s Counsel, Mercy Waitherero filed submissions dated 6th November 2023 and outlined the key issues as: whether the petitioner has raised a reasonable cause of action against the 6th respondent and whether the 6th respondent should remain as a respondent in the petition.

54. According to Counsel, the petitioner in his petition failed to establish a reasonable cause of action against the 6th respondent. Counsel also pointed out that the 6th respondent is not a member of the 2nd respondent. This was evident from the attendant Gazette Notice which outlined the persons and bodies who would be in the Taskforce. Counsel relying in *Emmanuel Musiime v Uganda Electrical*



Transmission Company Ltd (High Court Civil Suit No 581 of 2012) noted that the Court observed that ‘a cause of action can only be disclosed where it is established that the plaintiff has a right; the said right has been violated and the defendant is responsible or liable for the breach’.

55. Like dependence was placed in Investment and Mortgages Bank Limited v Nancy Thumari & 3 others (2015)eKLR.
56. In view of this, Counsel stressed that the petitioner had failed to specifically identify the right that had been infringed by the 6th respondent and the manner in which the infringement had occurred. Likewise, that the petitioner had not sought any relief against it. Reliance was placed in S W M v G M K [2012] eKLR where it was held that:

“It is an established principle that where a party alleges a breach of fundamental rights and freedoms, he or she must state and identify the right infringed and how it is infringed in respect to him. (See the case of *Anarita K Njeru v Republic* (No. 1) KLR 154 [1979]). This principle is well founded and was explained in *John Kimani Mwangi v Town Clerk Kangema* Nairobi Petition 1039 of 2007 (Unreported) the court said this about the requirement of specificity, “Our courts have over the years enforced specific rights which are defined by each section of the bill of rights. It is not a general jurisdiction to enforce all rights known to man but specific rights defined and protected by the *Constitution*. It is not sufficient to rely on a broad notion of unconstitutionality but rather point to a specific provision of the *Constitution* that has been abridged”.

57. Additional dependence was placed in Skair Associates Architects v Evangelical Lutheran Church of Kenya and 4 others (2015) eKLR.
58. Given the circumstances, Counsel urged that the 6th respondent ought to be struck out from the petition. Reliance was placed in Investment and Mortgages Bank Limited (supra) where it was held that:

“a court can strike out from the proceeding a party who is wrongly enjoined where there is clear evidence that that party ought not to have been sued in the first instance or where it is apparently clear that there are other parties to the suit who are properly sued and the liability attributed to them is not to be shared with the party who is complaining to have been wrongly enjoined.....The summary procedure of striking out suits can only be adopted when it can be clearly seen that a claim or answer on the face of it is obviously unsustainable and further, that there is no triable issue. Triable issue is not necessary one that the defendant would ultimately succeed on. It need only be bona fide.”

59. Similar dependence was placed in Diamond Trust Bank Kenya Limited v Richard Mwangi Kamotho & 2 others [2017] eKLR.

Analysis and Determination

60. Taking into consideration the parties’ case, it is my opinion that the issues that arise for determination are as follows:
- i. Whether the President’s decision of establishing the National Task Force on Improvement of The Terms and Conditions of Service and Other Reforms for Members of National Police Service and Kenya Prisons Service was unconstitutional.
 - ii. Whether the petition raises any cause of action against the 6th Respondent.



- iii. Whether the petitioner is entitled to the relief sought.

Whether the President's impugned decision was unconstitutional

61. The High Court under Article 165 (3) (d) (ii) has the jurisdiction to hear any question respecting the interpretation of the Constitution including the determination of whether anything said to be done under the authority of the Constitution or any law is inconsistent with, or is in contravention of the Constitution. Article 2 (4) expressly declares that any law, act or omission in contravention of the Constitution is invalid. The determination of constitutionality is a responsibility vested on the High Court by the Constitution itself. This Court thus has authority to determine the constitutionality and validity of any laws, decisions, policies, actions every organ of the State inclusive of executive decisions made by the President as under Article 2(1) of the Constitution, all persons and all State organs at both levels of government are bound by the Constitution while Article 2 (2) emphasizes that no person may claim or exercise State authority except as authorized by the Constitution. Indeed, Article 131 (2) obliges the President to respect, uphold and safeguard the Constitution.
62. In this Petition, it was alleged that the President overstepped his constitutional mandate by establishing the National Taskforce on Improvement of Terms and Conditions of Service and other reforms for Members of the National Police Service and Kenya Prisons Service which he assigned the responsibilities of an Independent Commission, namely, the National Police Service Commission. The 1st respondent vehemently opposed this position taken by the Petitioner contending that the President's action fell within the broad executive authority vested on him by the Constitution.
63. An examination of the President's executive mandate vis-vis his decision as well as a review of the relevant constitutional and statutory provisions in relation to the functions of the National Police Service Commission is thus necessary in determining the issues raised in this Petition.
64. Article 131 defines the authority of the President. It provides:
Article 131 (1) The President-
- a. is the Head of State and Government.
 - b. exercises the executive authority of the Republic, with the assistance of the Deputy President and Cabinet Secretaries
 - c.
 - a. declare war.
65. Article 129 of the Constitution acknowledges that executive authority springs from the peoples and lays out guideline on how the same manner is to be exercised. It states:
1. Executive authority derives from the people of Kenya and shall be exercised in accordance with this Constitution.
 2. Executive authority shall be exercised in a manner compatible with the principle of service to the people of Kenya, and for their well-being and benefit.
66. In determining matters relating to discharge of functions by various organs of State, Courts must take cognisance of the doctrine of doctrine of separation of powers and avoid any unjustified incursions into affairs that properly fall within the realm of another arm or organ of government. This was the



holding of the Court in *Doctors for Life International v Speaker of the National Assembly and Others* (CCT12/05) [2006] ZACC 11 where the Court observed as follows:

“Courts have traditionally resisted intrusions into the internal procedures of other branches of government. They have done this out of comity and, in particular, out of respect for the principle of separation of powers. But at the same time they have claimed the right as well as the duty to intervene in order to prevent the violation of the *Constitution*.”

67. Where it is clear that the President’s has exceeded the authority vested by the *Constitution* or makes a decision that is in violation of the constitutional principles, the Court is obligated by the *Constitution* to uphold it and declare any action that is inconsistent with the *Constitution* or the law invalid. That is also the essence of the rule of law principle which is part of the values and principles of governance that are binding on all persons and state organs under Article 10 of the *Constitution*. The principle was discussed by the constitutional Court of South Africa in *Masetbla v President of the Republic of South Africa* 2008 1 BCLR 1 (CC) where the Court stated:

“Legality is an implicit principle in our constitutional ordering, requires the President, to act “in accordance with the law and in a manner consistent with the *Constitution*.” This means that the power conferred “must not be misconstrued”

68. In *Coalition for Reforms and Democracy (CORD) v Attorney General; International Institute for Legislative Affairs & Katiba Institute (Interested Parties)* [2019] KEHC 10892 (KLR) it was held as follows:

“The executive powers, authority and functions of the President are also specifically provided for in the *Constitution* under Articles 129 to 133. The primary duty of the court in this regard is to uphold the *Constitution* and the law, which we must apply impartially and without fear, favour or prejudice...”

69. Further, in applying the principle of legality, the Court in *Republic v Fazul Mahamed & 3 others Ex-Parte Okiya Omtatab Okoiti* [2018] KEHC 9435 (KLR) stated:

“7. Public bodies, no matter how well-intentioned, may only do what the law empowers them to do. That is the essence of the principle of legality, the bedrock of our constitutional dispensation, which is enshrined in our constitution. It follows that for the impugned decision to be allowed to stand, it must be demonstrated that the decision is grounded on law. As such, the Respondents' actions must conform to the doctrine of legality. Put differently, a failure to exercise power where the exigencies of a particular case require it, would amount to undermining the legality principle which, is inextricably linked to the Rule of Law. Guidance can be obtained from the South African case of *AAA Investments (Pty) Ltd v Micro Finance Regulatory Council and another* where the court held as follows:-

“(t)he doctrine of legality which requires that power should have a source in law, is applicable whenever public power is exercised . . . Public power . . . can be validly exercised only if it is clearly sourced in law”



8. Courts are similarly constrained by the doctrine of legality, i.e. to exercise only those powers bestowed upon them by the law.[21] The concomitant obligation to uphold the Rule of Law and, with it, the doctrine of legality, is self-evident. In this regard, the Respondent's are constrained by that doctrine to enforce the law by ensuring that its decisions conform to the relevant provisions of the law governing its exercise of power. The Respondent's have a statutory and a moral duty to uphold the law and to comply with the law governing their operations.”
70. the Constitution has created independent constitutional commissions and offices and assigned them specific mandates to secure adherence to constitutional principles and values. It deliberately guarded those mandates by providing in Article 249 (2) (a) of the Constitution that the Commissions and holders of Independent Offices are subject only to the Constitution and the law. Underscoring the significance of this protection, the Supreme Court in Advisory Opinion Reference no. 2 of 2014, in the Matter of the National Land Commission (2015) eKLR explained:
- “It is a matter of which we take judicial notice, that the real purpose of the “independent clause,” with regard to the Commissions and Independent offices established under the Constitution, was to provide a safeguard against undue interference with such Commissions or Offices, by other persons, or institutions of government. Such a provision was incorporated in the Constitution as an antidote, in the light of regrettable memories of an all-powerful Presidency, since independence in 1963, had emasculated other arms of government, even as it irreparably trespassed upon the fundamental rights and freedoms of individual. the Constitution established the several independent Commissions alongside the judicial branch, entrusting to them special governance mandates of critical importance in the new dispensation: they are the custodians of fundamental ingredients of democracy, such as rule of law, integrity, transparency, human rights and public participation. The several independent Commissions and offices are intended to serve as ‘people’s watchdogs’ and, to perform this role effectively, they must operate without improper influences, fear, favour: this indeed, is the purpose of the independence clause.”
71. It is against the above constitutional principles; I now turn to consider the Petitioner’s case vis-à-vis the respondents’ responses to the Petition.
72. The Petitioner argued that the terms of reference assigned by President to the Task Force is a duplication of roles that are Constitutionally and statutorily vested on the National Police Service Commission (3rd Respondent).
73. The National Police Service Commission is established under Article 246 (1). Article 246 (3) specifies its roles as follows:
- a. recruit and appoint persons to hold or act in offices in the service, confirm appointments, and determine promotions and transfers within the National Police Service
 - b. observing the due process, exercise disciplinary control over and remove persons holding or acting in offices within the Service; and
 - c. perform any other functions prescribed by national legislation.
74. In view of paragraph (c) above, I now proceed to consider the relevant provisions of the National Police Service Commission Act Cap. 85 where the additional functions are provided.



75. The preamble states that it is ‘An Act of Parliament to make further provisions for the functions and powers of the National Police Service Commission; the qualifications and procedures for appointment, and for connected purposes.’
76. It is also important to point out that under the Act, the following definitions under Section 2: "Commission" means the National Police Service Commission established under Article 246 of the [Constitution](#).
77. Section 10 enumerates further functions of the Commission as follows:
- (1) In addition to the functions of the Commission under Article 246(3) of the [Constitution](#), the Commission shall—
 - (a) on the recommendation of the Inspector-General develop and keep under review all matters relating to human resources policies of members of the Service;
 - (b) with the advice of the Salaries and Remuneration Commission, determine the appropriate remuneration and benefits for the Service and staff of the Commission;
 - (c) approve applications for engagement by police officers in trade and other businesses, in accordance with the law relating to matters of leadership and integrity under Article 80 of the [Constitution](#);
 - (d) co-operate with other State agencies, departments or commissions on any matter that the Commission considers necessary;
 - (e) provide for the terms and conditions of service and the procedure for recruitment and disciplinary measures for civilian members of the Service;
 - (f) develop fair and clear disciplinary procedures in accordance with Article 47 of the [Constitution](#);
 - (g) investigate and summon witnesses to assist for the purposes of its investigations; Provided that-
 - i. the Commission shall not undertake investigations on criminal matters;
 - ii. where, in the course of disciplinary investigations the Commission identifies violation of any written law, whether civil liability or criminal offence, the Commission shall recommend the prosecution of the offender in accordance with the law: Provided that disciplinary proceedings by the Commission or the Inspector-General shall not be affected by any criminal or civil action commenced under paragraph (ii).
 - (h) exercise disciplinary control over persons holding or acting in office in the Service;
 - (i) promote the values and principles referred to in Articles 10 and 232 of the [Constitution](#) throughout the Service;(j)deleted by *Act No. 3 of 2014*, s. 3(b);
 - (k) hear and determine appeals from members of the Service on disciplinary matters relating to transfers, promotions and appointments;
 - (l) develop policies and provide oversight over training in the Service;
 - (m) approve training curricula and oversee their implementation;



- (n) investigate, monitor and evaluate personnel practices of the Service;
 - (o) receive and refer civilian complaints to the Independent Policing Oversight Authority, the Kenya National Human Commission on Human Rights, the Director of Public Prosecutions or the Ethics and Anti-Corruption Commission, as the case may be, where necessary;
 - (p) review and make recommendations to the national government in respect of conditions of service, code of conduct and qualifications of officers in the Service;
 - (q) evaluate and report to the President and the National Assembly on the extent to which the values and principles referred to in Articles 10 and 232 are complied with in the Service;(r)deleted by *Act No. 3 of 2014*, s. 3(b);
 - (s) receive complaints and recommendations from police associations registered in accordance with the applicable law;
 - (t) perform such other functions as are provided for by the Constitution, this Act or any written law.
- (2) Subject to the provisions of the Constitution or any written law, the Commission may delegate to the Inspector-General the recruitment, appointment and promotion of police officers under the rank of superintendent: Provided that the Inspector-General shall, during such recruitment, appointment or promotion, take into account gender, county and ethnic balancing.
- (3) Notwithstanding subsection (2), the Commission shall not delegate any of the following functions-
- (a) the making of any regulations, rules, code of conduct or subsidiary legislation under this Act or any other written law;
 - (b) the making and submitting of any report to the President and the National Assembly; and
 - (c) the performance of any function the delegation of which would amount to unjustified delegation of the Commission's discretion.
- (4) The disciplinary control envisaged under Article 246(3)(a) of the Constitution shall mean-
- a. the development and prescription of fair and clear disciplinary procedures in accordance with Article 47 of the Constitution;
 - b. development, and prescription of disciplinary procedures and mechanisms;
 - c. monitoring compliance by the Inspector-General with the prescribed disciplinary procedures and guidelines issued by the Commission;
 - d. monitoring compliance with the due process in disciplining members of the Service;
 - e. receiving regular reports from the Inspector-General on disciplinary matters handled by the National Police Service;
 - f. reviewing or ratification of disciplinary actions taken by the Inspector-General;
 - g. hearing and determining appeals on disciplinary matters from members of the Service.



- (5) A delegation under this Act shall—
- h. be in writing;
 - i. be subject to any conditions the Commission may impose; and
 - j. not divest the Commission of the responsibility concerning the exercise of its powers or the performance of the duty delegated.
78. I now move to examine in great detail the terms of reference of the Task Force. The broad objectives that the appointing authority defined for The National Task Force on Improvement of the Terms and Conditions of Service and Other Reforms for Members of National Police Service and Kenya Prisons Service appointed vide gazette notice number 157792 Vol. CXXXIV of 21st December, 2022 were five in number, namely:
- a. identify the legal, policy, administrative, institutional and operational constraints on effective service delivery by the National Police Service (hereafter, NPS) and the Kenya Prisons Service (hereafter, KPS);
 - b. identify and recommend legal, policy, administrative, institutional and operational reforms in the NPS and KPS for effective service delivery; review and recommend improvement of the terms and conditions of service;
 - c. review and recommend improvement of terms and conditions of service
 - d. review and recommend improvement of matters relating to welfare of officers in all cadres of the NPS and KPS and all other matters incidental to the optimal service delivery by the NPS and KPS
 - e. review and recommend on any other matter incidental to improved terms and conditions of service and other reforms in the NPS and KPS
79. As I embark on evaluation this Petition, I must remind myself that the Constitution in Article 259 (1) guides on how it should be interpreted, which is: in a manner that promote its purposes, values and principles; advances the rule of law, permits the development of the law and contributes to good governance.
80. This is what should guide this Court in considering the effect of the President’s action.
81. Looking at the stated objectives for the Task Force vis-à-vis the provisions of Article 246 (3) as read with Section 10 of the National Police Service Commission Act that have set out detail; what captures by attention are the objectives the appointing authority set out for the Task Force in paragraphs (c), (d) and (e); namely:
- d. review and recommend improvement of the terms and conditions of service;
 - e. review and recommend improvement of matters relating to welfare of officers in all cadres of NPS and KPS and all other matters incidental to optimal service delivery by NPS and KPS;
 - f. review and recommend on any other matter incidental to improved terms and conditions of service in the NPS and KPS.
82. The effect of the above three objectives is simple, the President direction to the Task Force to go out there, inquire into the stated subject matter and make specific recommendations in reference to the same.



83. Article 246 (1) of the *Constitution* creates the National Police Service Commission and assigns it functions. For purposes of this analysis, I will focus on Article 246 (3) (c) which provides that the National Police Service Commission shall perform any other functions prescribed by national legislation thereby giving these Statutory provisions constitutional backing. Reading Section 10 of the *National Police Service Act* that gives additional functions to the National Police Service Commission, one finds expanded mandate that includes the following provisions that I have singled out as I find them germane in this case:

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(1)(a) on the recommendation of the Inspector-General develop and keep under review all matters relating to human resources policies of members of the Service;

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(1)(b) with the advice of the Salaries and Remuneration Commission, determine the appropriate remuneration and benefits for the Service and staff of the Commission;

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(1)(e) provide for the terms and conditions of service and the procedure for recruitment and disciplinary measures for civilian members of the Service;

10

(1)(l) develop policies and provide oversight over training in the Service;

10

(1)(p) review and make recommendations to the national government in respect of conditions of service, code of conduct and qualifications of officers in the Service;

84. Putting the legislated functions side by side with the stated objectives of the Task Force especially c, d and e; one cannot fail to notice the obvious overlap yet these functions specifically belong to the National Police Service Commission in so far as the members of the national police service are concerned. That is as per provisions of the *National Police Service Act* which is given constitution backing under Article 246 (3) (c).

85. Indeed, reading the further detailed scope of work assigned to the Task Force by the President, this becomes even more glaring especially where it expounds on the objective relating to welfare of the members of NPS and KPS. I picked out the following:

- e) recommend review of remuneration of members of NPS and KPS and consideration of new and applicable allowances to the NPS and KPS to enhance professionalism, efficiency and effectiveness of NPS and KPS
- f) assess the adequacy or otherwise of the current medical scheme for NPS and KPS recommend comprehensive reform or revision of the same with a view to improving it
- h) Assess and recommend improvement of working and living conditions of NPS and KPS
- j) Examine capacity building measures including training curriculum, syllabus, continuous development training, reward measures and recommend reforms including incorporation incentives for police and prison officers especially lower cadres to address professionalism, motivation and retention.



86. In my view the above responsibilities squarely fall under the express mandate of the National Police Service Commission in relation to members of the police Service hence is a gross interference for the President to divest, through an executive fiat, and assign such functions as are constitutionally and statutorily vested on the National Police Service Commission to a Task Force.
87. In assigning the Task Force the specific responsibilities reserved for a Constitutional Commission, the President's actions were violation of the rule of law principle under Article 10 (2) (a) and 246 (3) of the *Constitution* to extent of the incursion made in respect of the mandate assigned to the National Police Service Commission.
88. Nevertheless, it is important to note that the Task Force was not limited to the functions that overlapped with those of National Police Service Commission. There were other terms of reference that were quite broad, expansive and thus not tied to the specific functions of the National Police Service Commission.
89. For instance, the Task Force was also tasked to deal with a broad spectrum of issues such as identifying legal, policy, administrative, institutional and operational constraints that were considered a hindrance to service delivery and to make recommendation for reforms thereof. It was also to review the uptake of recommendations by the previous Task Forces, the titling processes of the land belonging to NPS and KPS, the guidelines on formation of special police units all which constitute broad policy issues requiring policy formulation to guide governmental action either through enactment of laws, regulations or programmes. Such matters are definitely beyond the functions of the Commission and rightfully and perfectly belong to the Executive branch to coordinate and lead. They properly fell within the general executive authority of the President exercisable under Article 132 (4) (a) and 131 (1) (b) of the *Constitution*.
90. While therefore there are aspects of the gazette notice that are constitutionally and legally objectionable for usurping the express functions of an independent Commission, that is, the National Police Service Commission; I am also persuaded that there also certain aspects of the what was mandated to the Task Force that perfectly fell within the scope of the President to deal.
91. Consequently, apart from what I have singled out as encroaching on the mandate of the National Police Service Commission; by and large, the Court observes that the Task Force could deal with the broad policy matters such as the emerging constraints, existing laws, regulations and policies to guide in the development of the governmental action pertaining to the same.
92. Be that as it may, the President cannot under the guise of exercising executive Authority under Article 129 (1) & (2) or 131 (1) (b) or 132 (2) (a) assign specific functions of an Independent Constitutional Commission to any other body or person. He has no constitutional authority to divest a specific responsibility assigned to an independent constitutional commission to any other person or body. That is an abrogation of the *Constitution* and sovereignty of the people.

Whether the Petitioner has cause of action against the 6th Respondent

93. The Court in *Isaiah Ondiba Bitange v 3 others v Institute of Engineers of Kenya another* [2017] KEHC 7565 (KLR) discussed cause of action as follows:

“A cause of action was defined by Obi Okoye — *Essays on Civil Proceedings*, [1] thus — "By a cause of action is meant any facts or series of facts which are complete in themselves to



found a claim or relief.”[2] In the case of *Drummond Jackson v British Medical Associations & Ors.*,[3] Lord Pearson stated as follows:-

“..... the expression “reasonable cause of action”[4]No exact paraphrase can be given, but I think “reasonable cause of action” means a cause of action with some chance of success when..... only the allegations in the pleading are considered, if it is found that the alleged cause of action is to fail, the statement of claim should be struck out.”

The Supreme Court of Nigeria in the case of *Oshoboja v Amuda & Ors.*:[5] held that a reasonable cause of action means a cause of action with some chances of success, when only the allegations in the Statement of Claim are considered. Our law is the law of the practitioner rather than the law of the philosopher. Decisions have to draw their inspiration and their strength from the very facts which framed the issues for decisions.”

94. The Court went further to state as follows:

“The purpose of pleadings is to enable the defendant to know the case he had to meet so that he could properly plead his defence with the result that the issues would be sufficiently defined to facilitate the appropriate questions for decision to be resolved. This purpose cannot be achieved unless the words are pleaded with sufficient particularity. Pleadings do not only define the issues between the parties for the final decision of the court at the trial; they manifest and exert their importance throughout the whole process of the litigation. They contain the particulars or the allegations of which further and better particulars may be requested or ordered, which help still further to narrow the issues or reveal more clearly what case each party is making. They act as a measure for comparing the evidence of a party with which he has pleaded. They determine the range of admissible evidence which the parties should be prepared to adduce at the trial.

The pith and marrow of it is that where on a consideration of only the allegations in the pleading the court concludes that a cause of action with some chance of success is shown then that pleading discloses a reasonable cause of action. Person, J in *Drummond Jackson v British Medical Association*, the definition of a cause of action was determined as an act on the part of the Defendant which gives the Plaintiff his cause of complaint.”

95. In the same way, the Court in *Njunge v Ministry of Interior & Coordination of National Government & 3 others* [2024] KEHC 4676 (KLR) citing a number of authorities with approval noted as follows:

“That the application discloses no reasonable cause of action or defence in law. In *DT Dobie & Co. (Kenya) Limited v Muchina & Another* [1982] KLR, the Court of Appeal defined reasonable cause of action to mean “an action with some chance of success when allegations in the plaint only are considered. A cause of action will not be considered reasonable if it does not state such facts as to support the claim prayer...” The court went further to define what constitutes a cause of action and held that a cause of action referred to an act on the part of the defendant which gave the plaintiff a cause of complaint. Up to this point the plaintiff has failed to disclose a reasonable cause of action which would enable him to seek a legal remedy against the 3rd Defendant. It is on this basis that we humbly invite the court to strike out the Plaintiff’s application...

...



That in the case of *Karl Webner Claasen v Commissioner of Lands & 4 others* [2019] eKLR the Court further defined a cause of action as follows:

A cause of action denotes a combination of facts which entitles a person to obtain a remedy in court from another person and includes a right of a person violated or threatened violation of such right by another person. The applicant did not disclose any such fact which is sufficient ground for the Court to strike out the application.

...

In answering the question: “what is considered to be a cause of action?” the court borrows from the decision in *Anne Jepkemboi Ngeny v Joseph Tireito & another* [2021]eKLR where the Court of Appeal succinctly stated the following:

“In the Court of Appeal case of *Attorney General & another v Andrew Maina Gitinji & Another* [2016] eKLR Waki JA. held that,

“A cause of action is an act on the part of the defendant, which gives the plaintiff his cause of complaint.”

That definition was given by Pearson J. in the case of *Drummond Jackson v Britain Medical Association* (1970) 2 WLR 688 at pg 616. In an earlier case, *Read v Brown* (1889), 22 QBD 128, Lord Esher, M.R. had defined it as: -

“Every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgement of the court.”

Lord Diplock, for his part in *Letang v Cooper* [1964] 2 All ER 929 at 934 rendered the following definition: -

“A cause of action is simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person.”

96. After carefully going through the Petition, I am persuaded by the contention by the 6th Respondent that the present Petition does not disclose the legal harm capable of being attributed to the 6th Respondent having regard to the facts of this case. Indeed, none of prayers sought in the Petition is directed to the 6th Respondent. In the circumstances, I would thus find that no cause of action was disclosed in this Petition against the 6th Respondent whom I thus find was improperly joined as a Party in the Petition. The case against the 6th Respondent is thus dismissed for the reasons aforesaid.

97. Consequently, I grant the following reliefs:

- a. A declaration is hereby issued that the decision by the President by the President of Kenya to establish the National Task Force on Improvement of the Terms and Conditions of Service and Other Reforms for Members of the National Police Service and Kenya Prison Service and conferring it specific roles that are within the mandate of the National Police Service Commission as reflected of the terms of reference of the Task Force namely; c, d, and e; to wit, review and recommend improvement of the terms and conditions of service; review and recommend improvement of matters relating to welfare of officers in all cadres of National Police Service(hereinafter, NPS) and Kenya Prison Service (hereafter, KPS) and all other matters incidental to optimal service delivery by National Police Service; review and



recommend on any other matter incidental to improved terms and conditions of service in the NPS and KPS; is to the extent that the members of the National Police Service are included a usurpation of the mandate of the National Police Service Commission and thus in violation Articles 10 (2) (a), 246 (3) (c) as read with Sections 10 (1) (a), (b), (e), (l) and (p) of the *National Police Service Commission Act*.

- b. Any resultant recommendation deriving from above-three detailed specific terms of reference of the Task Force is unconstitutional, null and void.
- c. Each Party shall bear its own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 10TH APRIL, 2025.

.....

L N MUGAMBI

JUDGE

