



**Achieng & 2 others v Cabinet Secretary, Ministry of Interior and Coordination of Government & 2 others (Petition E404 of 2023) [2025] KEHC 10658 (KLR) (Constitutional and Human Rights) (18 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10658 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CONSTITUTIONAL AND HUMAN RIGHTS**

**PETITION E404 OF 2023**

**EC MWITA, J**

**JULY 18, 2025**

**BETWEEN**

**PATRICIA ACHIENG ..... 1<sup>ST</sup> PETITIONER**

**MCE (SUING THROUGH PATRICIA ACHIENG) ..... 2<sup>ND</sup> PETITIONER**

**IOE (SUING THROUGH PATRICIA ACHIENG) ..... 3<sup>RD</sup> PETITIONER**

**AND**

**CABINET SECRETARY, MINISTRY OF INTERIOR AND COORDINATION OF GOVERNMENT ..... 1<sup>ST</sup> RESPONDENT**

**DIRECTOR, DEPARTMENT FOR IMMIGRATION ..... 2<sup>ND</sup> RESPONDENT**

**DIRECTOR OF CRIMINAL INVESTIGATIONS ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

**Petition**

1. Sometime in August 2023, the 2<sup>nd</sup> and 3<sup>rd</sup> respondents' officers visited the petitioners' residence in Nairobi, picked Mr. Olajide Oluwatobi Ekunpa (Mr. Ekunpa) and took him Muthaiga police station where he was incarcerated without being informed the reason for that action. At Muthaiga police station, the officers demanded that Mr. Ekunpa books an air ticket back to Nigeria and threatened him with continued incarceration if he did not comply.
2. For fear of continued incarceration, Mr. Ekunpa opted to purchase an air ticket to Nigeria. He was then escorted by officers from the station to JKIA airport to take a flight to Nigeria.



3. The 1<sup>st</sup> petitioner is a Kenyan citizen and wife to Mr. Ekunpa, a Nigerian national. The two lawfully got into matrimony in 2015 and have been in marriage since then. They are blessed with two children, the 2<sup>nd</sup> and 3<sup>rd</sup> petitioners.
4. Following the marriage, Mr. Ekunpa and the 1<sup>st</sup> petitioner established a matrimonial home in Kenya where they have lived with their children. The two have lived as a family both in Kenya and Nigeria. Mr. Ekunpa periodically came to Kenya and always applied for and was issued with the necessary documents by the authorities in Kenya.
5. After Mr. Ekunpa's deportation the petitioners filed this petition on their behalf and that of Mr. Ekunpa claiming violation of their rights and fundamental freedoms. The petition is supported by an affidavit sworn by the 1<sup>st</sup> petitioner.
6. It is the petitioners' case that at the time of his arrest and detention, Mr. Ekunpa was in the country lawfully and had a valid entry permit. The petitioners stated that Mr. Ekunpa had over the years maintained close connections with Kenya and lawfully visited and stayed with them. At all material times he had been to Kenya, he always applied for and was issued with a visa on arrival and left within the time the visa allowed. He was never charged with any criminal offence in Kenya or accused of any prohibited acts.
7. The petitioners asserted that the respondents' actions have caused them psychological trauma, mental pain and anguish and violated articles 25, 27(1), 45, 47 and 50 of *the Constitution*. The petitioners sought declarations and orders on the violations of rights and freedoms as well as *the Constitution* and compensation.

#### **Respondents' case**

8. Although the respondents were served with pleadings, they did not file a response. They only filed written submissions uploaded on the CTS on 7<sup>th</sup> November 2024.

#### **Petitioners' submissions**

9. Mr. Otieno Willis, learned counsel for the petitioners highlighted their written submissions arguing that the deportation of Mr. Ekunpa was not done in accordance with the provisions of section 33 (2) of *Kenya Citizenship and Immigration Act*. The respondents did not disclose the reasons for deporting Mr. Ekunpa and there was no notice declaring him a prohibited immigrant or inadmissible person.
10. Learned counsel argued that the respondents violated Mr. Ekunpa's the right to fair administrative action since he was not informed the reasons for his removal from Kenya or served with a notice declaring him as a prohibited immigrant or inadmissible person. He was not accorded an opportunity to respond to any allegations against him that would have led to his declaration as a prohibited immigrant or inadmissible person or given particulars of any acts that would inform the decision to declare him a prohibited immigrant or inadmissible person.
11. Mr. Otieno Willis relied on the decisions in *Bashir Mohamed Jama Abdi v Minister for Immigration & Registration of Persons & 2 others* [2014] eKLR; *Jeremiah Gitau Kiereini v Capital Markets Authority & another* [2013] eKLR; *Republic v Ethics and Anti-Corruption Commission & 2 others Ex-parte Gatebe* [2016] eKLR and *Republic v Minister of State for Immigration and Registration of Persons Exparte C.O.* [2013] eKLR.
12. Learned counsel reiterated that the respondents' actions infringed on Mr. Ekunpa's right to fair hearing, freedom of movement and security of the person and the right to family. Counsel argued that



as family members, the petitioners have a right under article 45 of *the Constitution* to live with and see Mr. Ekunpa as husband and father thus, his removal from Kenya violated the 2<sup>nd</sup> and 3<sup>rd</sup> petitioners' rights to parental care.

13. Mr. Otieno Willis again cited article 35 (2) of *the Constitution* for the argument that owing to the respondents' failure to give reasons for the treatment accorded to Mr. Ekunpa, this court should find that he is entitled to the deletion of any erroneous information that the respondents may hold against him. Counsel relied on the decision in Republic v Director of Immigration Services Ex-parte Planet Motors Company Limited & another [2016] eKLR and urged the court to allow the petition.

### **Respondents' submissions**

14. As earlier stated, the respondents did not file a response, did not attend court although they filed written submissions in this petition.
15. The respondents submitted, citing article 13 of the International Convention on Civil and Political Rights (ICCPR); sections 33 (1) (g) and 33 (7) of the *Kenya Citizenship and Immigration Act* and the decision in Knauf v Shaughnessy 338 U.S. 537 (1950) that Mr. Ekunpa was deported because he was engaged in activities detrimental to the moral fabric and national security of Kenya.
16. The respondents submitted that through a notice dated 30<sup>th</sup> June 2023 issued under section 43 (b) of the Act the Cabinet Secretary made an order for Mr. Ekunpa's deportation which was done in conformity with the law and due process.
17. The respondents relied on article 24 (1) of *the Constitution* and the decision in Republic v Commission for Higher Education Exparte Peter Shoita Shitanda [2013] eKLR for the position that procedural fairness was adhered to in this case since Mr. Ekunpa was informed that he had conducted activities detrimental to Kenya and was detained as provided by law.
18. The respondents again relied on article 39 of *the Constitution*, sections 22 (1) (a), 33 (1) (d) and 43(1) of the *Kenya Citizenship and Immigration Act*, The Universal Declaration of Human Rights (UDHR), the ICCPR and the African Charter on Human and People's Rights for the argument that aliens do not have the right of entry. Further argument was that the order issued on 30<sup>th</sup> June 2023 is a sovereign order of the executive and the orders sought violate the principle of separation of powers. the court was urged to dismiss the petition with costs.

### **Determination**

19. I have considered the petition and arguments by parties. The issue for determination is whether the removal of Mr. Ekunpa from Kenya violated his rights and rights of the petitioners.
20. Some facts in this petition are not in dispute. There is no dispute that the petitioners are related to Mr. Ekunpa as wife and children respectively. There is also no dispute that Mr. Ekunpa had been coming and leaving Kenya to visit and stay with the petitioners. There is again no dispute that Mr. Ekunpa was removed from Kenya. What is in dispute, however, are the circumstances under which he left Kenya. The petitioners argued that he was unlawfully removed from Kenya in violation of *the Constitution* the law and their rights and fundamental freedoms, while the respondents argued through written submissions that the removal was lawful.

### **Violations**

21. The petitioners stated that Mr. Ekunpa was picked from the residence, taken to Muthaiga police station where he was held without telling him why he was being detained. He was later forced to buy



- a ticket to Nigeria which he had to do for fear of prolonged incarceration and for his security. He was then taken to the Airport, boarded a flight and left. According to the petitioners no reasons were given for the deportation and the respondents did not comply with the law in Mr. Ekunpa's removal.
22. The respondents only filed written submissions stating that they complied with the law and informed Mr. Ekunpa why he was deported following the Cabinet Secretary's notice date 30<sup>th</sup> June 2023. They relied on among others, sections 22 (1) (a), 33 (1) (d) and 43(1) of the [Kenya Citizenship and Immigration Act](#) to support their position that they acted lawfully.
23. The respondents did not file a response to the 1<sup>st</sup> petitioner's depositions regarding how Mr. Ekunpa was arrested, detained and later deported to Nigeria. They did not deny the petitioners' depositions and contention that Mr. Ekunpa had not committed any illegal activities in Kenya and was lawfully in the country. Their assertion that an alleged notice dated 30<sup>th</sup> June 2023 had been issued against Mr. Ekunpa was mere statement not based on any evidence. The petitioners' depositions remained uncontroverted.
24. Section 22 is on the rights of citizens and could not apply to Mr. Ekunpa in the absence of evidence that he is a citizen of Kenya. Section 33 is on prohibited immigrants and inadmissible persons. The section states that a prohibited immigrant is a person who is not a citizen of Kenya and who—(a)not having received a pardon—
- (i) has been convicted in Kenya or any country of an offence created under a statute for which a sentence of imprisonment is for a minimum term of three years;
  - (ii) has been acquitted by a court of any offence and who at the time of acquittal has no valid immigration status;
  - (iii) has committed or is suspected of having committed an offence provided for under international treaties and conventions ratified by Kenya. A person in respect of whom there is in force an order made or deemed to be made under section 43 directing that such person must be removed from and remain out of Kenya is a prohibited immigrant.
25. On the other hand, subsection (2) provides for circumstances which would make a person inadmissible in the country. That is a person who is not a Kenyan citizen and who—
- (a) refuses to submit for examination by a medical practitioner after being required to do so under section 48(1)(d) of this Act;
  - (b) the family and dependants of a prohibited immigrant;
  - (c) incapable of supporting himself and his dependants (if any) in Kenya;
  - (d) is adjudged bankrupt;
  - (e) anyone who has been judicially declared incompetent;
  - (f) an asylum seeker whose application for grant of refugee status has been rejected under the Refugee Act (Cap. 173); or
  - (g) is, by order of the Cabinet Secretary, declared inadmissible on grounds of national security or national interest.
26. The respondents did not show that Mr. Ekunpa was in any of the categories mentioned in section 33(1) or (2) of the Act. That is; they did not adduce evidence to show that Mr. Ekunpa was a person in respect of whom there is in force an order made or deemed to be made under section 43 directing



- that he must be removed from and remain out of Kenya as a prohibited immigrant, or that there is an order by the Cabinet Secretary, declaring him an inadmissible on grounds of national security or national interest.
27. In the absence of evidence and the respondents having failed to respond and adduce evidence to justify Mr. Ekunpa's removal from the country, the inescapable conclusion the court can come to, is that there was no lawful reason for Mr. Ekunpa's removal from Kenya, thus, the respondents acted outside the law.
  28. In *Law Society of South Africa v Minister for Transport* [2010] ZACC2011(2) BCLR 150 (CC), the Constitutional Court of South Africa stated that the rule of law requires that all public power be sourced in law, which means that state actors should exercise power within the formal bounds of the law.
  29. In the present petition, the respondents having acted outside the law, they violated a vital element of the principles of good governance in article 10 of *the Constitution*, namely; the rule of law.
  30. The respondents could have observed the rule of law by acting in accordance with the law and subject Mr. Ekunpa and the petitioners to the safeguards guaranteed by articles 47 and 50(1) of *the Constitution*, give him a fair administrative action and hearing. In the context and scheme of our Constitution, article 47 is intended to bring discipline to administrative action so that values and principles of *the Constitution* are infused in matters of public administration in this Republic.
  31. In that regard, the removal of Mr. Ekunpa from Kenya violated the law and due process. The respondents failed to give Mr. Ekunpa and the petitioners reasons for his removal from Kenya. In the circumstances, I agree with the petitioners that the respondents violated their rights guaranteed under articles 47 and 50(1) of *the Constitution*.
  32. The petitioners again argued that as a family, they are entitled to Mr. Ekunpa's company under article 45 of *the Constitution*. Article 45 provides that the family is the natural and fundamental unity of society and the necessary basis of social order and shall enjoy the recognition and protection of the State; that every adult has a right to marry a person of the opposite sex base on the free consent of the parties and parties to a marriage are entitled to equal rights at the time of marriage, during the marriage and at the dissolution of the marriage.
  33. Article 53 (1) also provides that every child has a right (e) to parental care and protection, which includes equal responsibility of the mother and father to provide for the child whether they are in marriage or not. The respondents' action of unjustifiable removal of Mr. Ekunpa from Kenya negatively affected the petitioners' rights under articles 45 and 53 of *the Constitution* since the 1<sup>st</sup> petitioner's rights are curtailed while those of the 2<sup>nd</sup> and 3<sup>rd</sup> petitioners to fatherly care and protection were violated and denied.

### **Relief to grant**

34. Having come to the conclusion that the petitioners' rights were violated, the issue is what relief the court should grant. Article 23 (3) provides that in any proceedings brought under article 22, a court may grant appropriate relief, including a declaration of rights and an order for compensation, among others.
35. In *Tinyefuze v Attorney General of Uganda* *Tinyefuze v Attorney General of Uganda* [1997] UGCC 3, the Constitutional Court of Uganda held that "If a Petitioner succeeds in establishing breach of a fundamental right, he is entitled to the relief in exercise of constitutional jurisdiction as a matter



of course.” The Petitioners having in succeeded in proving violations, what remains is the level of compensatory damages

36. Mr. Ekunpa was removed from Kenya without following the law in violation of the law and his rights and fundamental freedoms. The petitioners’ rights as a family were also violated and the violation continues as the Mr. Ekunpa cannot visit them. The 2<sup>nd</sup> and 3<sup>rd</sup> petitioners as children continue to be denied the right to parental care and protection at least from their father, for reasons they may not know since the respondents did not explain to them why their father was removed from this country. In the circumstances, an award of compensatory damages of Kshs 3,000,000 is fair and reasonable.
37. Consequently, and based on the reasons given in this judgment, the petition succeeds and the court makes the following declarations and orders it considers appropriate.
  - a. A declaration is hereby issue that the decision to forcefully remove Mr. Olajide Oluwatobi Ekunpa from Kenya was contrary to the Constitution and the law and therefore unconstitutional and illegal.
  - b. A declaration is hereby issued that the petitioners’ and Mr. Olajide Oluwatobi Ekunpa’s rights to live as a family and parental protection were violated.
  - c. A declaration is hereby issued that the respondents violated the petitioners’ and Mr. Olajide’s Oluwatobi Ekunpa’s right to fair administrative action in forcefully removing Mr. Olajide Oluwatobi Ekunpa from Kenya.
  - d. An order is hereby issued directing the respondents and or their servants and or agents to rectify and correct any and all inaccurate information in their records relating to Mr. Olajide Oluwatobi Ekunpa.
  - e. The petitioners and Mr. Olajide Oluwatobi Ekunpa are hereby awarded compensatory damages of Kshs.3,000,000 against the respondents for violation of their rights and fundamental freedoms.
  - f. The respondents shall pay costs of the petition and interest

**DATED AND DELIVERED AT NAIROBI THIS 18<sup>TH</sup> DAY OF JULY 2025**

**E C MWITA**

**JUDGE**

