



**LO v Stellan Consult Limited t/a Parents Africa, alias Parents Magazine alias
Parents Africa Magazine (Petition E237 of 2024) [2025] KEHC 10006 (KLR)
(Constitutional and Human Rights) (10 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10006 (KLR)

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

PETITION E237 OF 2024

EC MWITA, J

JULY 10, 2025

BETWEEN

LO PETITIONER

AND

**STELLAN CONSULT LIMITED T/A PARENTS AFRICA, ALIAS PARENTS
MAGAZINE ALIAS PARENTS AFRICA MAGAZINE RESPONDENT**

JUDGMENT

Petitioner's case

1. The petitioner filed a petition dated 13th May 2024 against the respondent claiming violation of rights and fundamental freedoms. The petition was supported by an affidavit of the same day, further affidavit and written submissions.
2. The facts giving rise to this litigation, were that on 30th September 2021, the respondent published the petitioner's video on their Parent's Magazine's Instagram, Facebook, X (formerly Twitter), YouTube, TikTok, and other social media platforms. The videos speak to the traumatic experiences she endured as a victim of sexual abuse perpetrated by her father.
3. The respondent subsequently re-published the videos on 11th April 2024 on their social media platforms without her consent. The petitioner found out about those videos when she received WhatsApp messages and calls from several people about the videos.
4. The petitioner stated that she sent an Instagram message to the respondent asking that the videos be removed but the request was declined. The petitioner then sent a demand letter dated 29th April 2024



and, in a response, dated 2nd May 2024, the respondent indicated that they had an eternal right to use and post her videos and pictures.

5. The petitioner asserted that the respondent runs commercial advertisements in the newspaper and on their online digital platforms and therefore the use of her videos is meant to generate traffic to their digital platforms thus, attract commercial gain.
6. The petitioner further asserted that the respondents also generates revenue through online newspaper and other digital platforms by creating traffic to their website, social media sites and YouTube which are constantly running commercial advertisements. This, in turn, increases the metric shares of their pages, views, and clicks which attracts advertisers who pay to advertise on its pages. The respondent also sells online digital newspapers for Kshs. 250.
7. The petitioner stated as a result of the publications her rights guaranteed under articles 28 and 31 (1) (a) and (c) and 40 of *the Constitution* have been violated. She further stated that the publication has affected her social life and strained her relationship with her parents, peers and the society at large.
8. Based on the above grounds, the petitioner sought the following relief:
 - a. A declaration be issued that the respondents violated the petitioner's fundamental right to privacy and human dignity under article 28 and 31 of *the Constitution* by publishing the petitioner's videos for purpose of commercial advertisement or other exploitative purposes without the petitioner's consent.
 - b. A declaration be issued that the petitioner's intellectual property rights, right of publicity, and personality rights were infringed when the respondents published the petitioner's videos for purpose of commercial advertisement or other exploitative purposes without seeking authority/consent from the petitioner.
 - c. An order of a mandatory injunction compelling the respondents to delete the petitioner's videos from all their digital sites.
 - d. An order barring the respondent from posting the petitioner's videos on their digital sites, print media, or at all.
 - e. An order that the respondent be compelled to compensate the petitioner in general damages for infringement of her constitutional rights.
 - f. Any other relief that the Court deems fit to grant.
 - g. Costs of the petition be borne by the respondent.

Respondent's case

9. The respondent opposed the petition through a replying affidavit sworn by E M (Ms M). The respondent asserted through Ms Mathu's affidavit that the petition is premature because the petitioner had not exhausted the available alternative dispute resolution mechanism, hence this court's jurisdiction has been improperly invoked.
10. The respondent maintained that the petitioner contacted it for an interview and willingly attended the interview with its staff, one W N at its offices in Nairobi. The videos of her interview were uploaded in the YouTube channel on 30th September 2021 and 5th October 2021 and have remained there since then.



11. The respondent asserted that the petitioner voluntarily consented to having her story published in the respondent's YouTube channel and other social media channels on 30th September 2021 and 5th October 2021. Further, all videos uploaded on the platforms relate to a monthly issue and therefore do not have a timeline and can be reposted as they remain the respondent's curated content.
12. According to the respondent, the petitioner expressly indicated her intention to create awareness for younger people going through the same experience as hers so that they could get help. With the express consent, the petitioner's video recordings were on 11th April 2024 retrieved from the archives and uploaded on different social media platforms with the intention of creating awareness as April is the Sexual Abuse Awareness Month.
13. The respondent refuted the claim that the petitioner withdrew the consent, varied or set it aside. The respondent contended that the allegations that the publication was for advertising, marketing and promotion is untrue since the videos had been on the channel from 30th September 2021 and reposting them does not amount to unauthorized publication. The respondent denied the allegations on violation of the petitioner's constitutional rights.

Rejoinder

14. In her further affidavit sworn on 8th July 2024, the petitioner asserted that this court has jurisdiction and denied contacting the respondent for the interview. She further asserted that she shared her story with a respondent's representative who had reached out to her on the premise that she would be referred to necessary psycho-social support as part of their Corporate Social Responsibility initiatives. She maintained that she did not consent to her videos being published on the respondent's social media platforms.
15. The petition was disposed of through written submissions and both sides filed respective submissions. When the petition came up for highlighting of submissions, counsel for the petitioner was present but counsel for the respondent did not attend though the date had been taken in the presence of both counsel. Counsel for the petitioner adopted their written submissions and urged the court to allow the petition as prayed.

Petitioner's submissions

16. The petitioner affirms that this court has jurisdiction to determine the legal questions raised in the petition and that the respondent had not demonstrated any other available forum with jurisdiction to adequately determine infringement of rights and other questions she has raised. Reliance was placed on the decisions in *Nicholus v Attorney General & 7 others*; *National Environmental Complaints Committee & 5 others (Interested Parties)* [2023] KESC 113 (KLR); *Alex Malikhe Wafubwa & 7 others v Elias Nambakha Wamita & 4 others* [2012] eKLR and *Fleur Investments Ltd v Commission of Domestic Taxes & another* [2018] eKLR.
17. The petitioner cited sections 8 and 9 of the Data Protection Act and argued that none of these sections contain the reliefs sought by her as part of the powers or functions or the office of the Data Protection Commissioner. The petitioner further relied on ODP Complaint No. 1586 of 2023; *Joanna Block & Gabriel Oser (Legal Guardians to V.O Minor) vs. Karim Anjarwalla*.
18. The petitioner submitted that the petition raises constitutional issues as determination of these issues involves determination of whether the respondent's actions infringed her rights to privacy, human dignity and property guaranteed by articles 31, 28 and 40 of *the Constitution*.



19. The petitioner reiterates that by publishing her videos on 30th September 2021 and 11th April 2024 without her consent the respondent violated her right to privacy. The right was further violated by the respondent failing to delete the videos upon her request and demands through her advocates and herself.
20. The petitioner further argued that in any event, the consent if at all granted, was withdrawn when she requested for the deletion of the videos. The petitioner cited Daniel J Solove, ‘The Limitations of Privacy Rights’ (2023) 98 Notre Dame Law Review 975 at pages 114, 118, 151, 155; articles 17 and 19 of the United Kingdom’s General Data Protection Regulation (GDPR); article 12 of the Kenya’s Data Protection (General) Regulations, 2021 and the decisions in Zulfiqar Ahman Khan v Quintillion Business Media Pvt. Ltd CS (OS) 642/2018 and Wanjiru v Machakos University [2022] KEHC 20599 (KLR) on the right to deletion.
21. The petitioner cited articles 1 of the Universal Declaration of Human Rights (UDHR) and article 28 of *the Constitution* to argue that by refusing to delete the videos from online and social media sites, the respondent treated her as an object for content creation violating her right to dignity. The petitioner reiterated that publication had also impacted her social life and strained her relationship with her parents, peers and society.
22. The petitioner argued that the respondent violated her right to property by publishing her video containing her person and presence; that the respondent runs commercial advertisements which implies a motivation for financial gain. By using her videos on its social media sites, the respondent has violated her rights to determine how her image, likeness and person is disseminated.
23. The petitioner relied on the decisions in GSN v Nairobi Hospital & 2 others [2020] eKLR and Dhabiti Sacco Limited v Sharon Nyaga [2022] eKLR on damages and urged that the court to allow the petition with costs.

Respondent’s submissions

24. The respondent argued that this court’s jurisdiction has been improperly invoked as the petitioner should have approached the Data Commissioner. Reliance was placed on the decisions in Mwanzia v Rhodes [2023] KEHC 2688 (KLR); SG v Standard Media Group & 3 others [2022] KEHC 13633 (KLR) and Tumaz and Tumaz Enterprises Limited & 2 others v National Council for Law Reporting [2022] KEHC 14747 (KLR).
25. The respondent argued that the petition does not raise a constitutional issue and the petitioner has not provided evidence on violation of the constitutional provisions alleged to have been violated. The respondent maintained that the petitioner took the interview voluntarily and consented to publishing of the videos. The respondent relied on Mwangi & another v Naivasha County Hotel t/a Sawela Lodges [2022] KEHC 10975 (KLR).
26. The respondent asserted that the petition does not meet the threshold for granting the relief sought. Reliance was placed on Siaya County Public Service Board v County Assembly of Siaya & Another [2020] eKLR; Samson Mumo Mutinda v Inspector General National Police Service 4 others [2014] eKLR; Jessicar Clarise Wanjiru v Davinci Aesthetics & Reconstruction Centre & 2 others [2017] eKLR and Matendechele v Ruiru Mabati Factory [2023] KEHC 1605 (KLR).
27. The respondent again relied on the decision in CMM (Suing as next friends of and on behalf of CWM & 6 others v Standard Group & 4 others [2022] KECA 586 (KLR) and urged the court to dismiss the petition with costs.



Determination

28. I have considered the petition, the response and arguments by parties as well as the decisions relied on. The issue that arises for determination is whether the petitioner's rights were violated and, if the answer is in the affirmative, whether the court should grant compensatory damages.

Violations

29. The facts giving rise to this petition according to the petitioner are that sometime in September 2021, the respondent published the petitioner's video on its Parent's Magazine's Instagram, Facebook, X (formerly Twitter), YouTube, TikTok, and other social media platforms. The videos were in relation to the petitioner's traumatic experience she endured as a victim of sexual abuse perpetrated by a person known to her. The respondent again published the videos in its social media platforms in April 2024 without her consent. The petitioner found out about those videos when she received messages and calls from several people informing her about the videos.
30. The petitioner stated that she sent a message to the respondent asking that the videos be removed but her request was ignored. The petitioner then sent a demand letter dated 29th April 2024 and, in a response, dated 2nd May 2024, the respondent indicated that they had an eternal right to use and post her videos and pictures. The petitioner then filed this petition claiming violation of her rights and fundamental freedoms.
31. The respondent denied violating the petitioner's rights and maintained that the petitioner took the interview voluntarily and consented to the videos being published online. According to the respondent, it had the petitioner's express and unequivocal permission to do so.
32. Article 22 of *the Constitution* grants every person 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. Once a petition is filed, this Court exercises its jurisdiction conferred by article 23(1) as read with article 165 to determine the application for redress of a denial, violation or infringement of or threat to the right or fundamental freedom.
33. The petitioner alleged that several of her rights guaranteed in the Bill of Rights were violated, including the right to human dignity guaranteed under article 28; right to privacy guaranteed under 31 (a) and (c) and right to property guaranteed under article 40. Article 28 provides that every person has inherent dignity and the right to have that dignity respected and protected. Article 31 states that every person has the right to privacy including, the right not to have their person, home or property searched; their possessions seized information relating to their family or private affairs unnecessarily required or revealed and the privacy of their communications infringed. On the other hand, article 40 provides that every person has the right, either individually or in association with others to acquire and own property of any description and in any part of Kenya.

Human Dignity

34. The right to human dignity is the foundation of many of the other rights in the Bill of Rights. In *S v Makwanyane And Another* (CCT 3 /94) [1995] ZACC 3, the Constitutional Court of South Africa held that "The rights to life and dignity are the most important of all human rights, and the source of all other personal rights....By committing ourselves to a society founded on the recognition of human rights we are required to value these two rights above all others."



35. In our constitutional scheme, the right to human dignity is specifically guaranteed and can only be limited by legislation which passes the stringent article 24(1) limitation test that the limitation be justifiable in an open and democratic society based on freedom and equality, it must be both reasonable and necessary and it must not negate the essential content of the right. Violation of one's dignity is a serious intrusion in one's personal worth which once pierced, cannot be restored. This right must be respected and protected.

Privacy

36. The right to privacy is an individual's intrinsic and fundamental right under *the Constitution*. Article 31 guarantees every person's right to privacy not to have their person, home or property searched; their possessions seized; information relating to their family or private affairs unnecessarily required or revealed and the privacy of their communications infringed. In that regard, the right to privacy is one of the fundamental rights guaranteed under *the Constitution*.

37. In Justice K.S Puttaswamy(Rtd) vs Union of India AIR 2018 SC (SUPP) 1841, 2019 (1) SCC 1, the Supreme Court of India held that "the right to privacy is protected as an intrinsic part of the right to life and personal liberty" The court clarified that the right to privacy could be infringed upon only when there was a compelling state interest for doing so.

38. The claim that rights in the Bill of Rights have been violated, infringed or are threatened is first a question of fact. Once facts are established, it becomes a question of law that has to be proved to the required standard of balance of probabilities. The petitioner stated and pleaded that the respondent violated her rights to human dignity, privacy and property by publishing the contents of the interview she had with the respondent's representative without her consent. The respondent on the other hand maintained that the petitioner gave express consent to publication of that interview.

39. I have carefully considered the petitioner's position vis a vis that of the respondent. Each side took a position that was diametrically different from the other. Whereas the petitioner argued that she did not give consent, the respondent maintained that indeed, there was consent. I have also perused the letters exchanged between advocates for the parties prior to the filing of this petition. The respondent's counsel pointed out in the letter responding to the letter by counsel for the petitioner pointing out that the petitioner had given express consent.

40. The issue of whether or not there was consent is a question of fact. Unfortunately, parties relied on affidavit evidence and written submissions without the benefit of cross examination to enable the court determine who between the petitioner and the respondent was telling the truth and who to believe. Where facts which are the basis of the petition are disputed there is need for the parties to call evidence and subject it to cross examination to elicit the truth. In a situation where facts are not agreed, proceeding by way of submissions does not assist the court at all in determining the real question in controversy.

41. In the circumstances of this case, the petitioner's position that there was no consent was disputed by the respondent holding that there was consent, leaving the issue of who is telling the truth in the limbo.

42. Consequently, and for the above reasons, the conclusion the court comes to, is that the petitioner has not proved her case to the required standard of balance of probabilities. The petition fails and is dismissed. Each party shall bear own costs.

DATED AND DELIVERED AT NAIROBI THIS 10TH DAY OF JULY 2025

E C MWITA



JUDGE

