



REPUBLIC OF KENYA



Ouko & 6 others v Inspector General of Police & 11 others (Constitutional Petition E005 of 2025) [2025] KEHC 12696 (KLR) (10 September 2025) (Judgment)

Neutral citation: [2025] KEHC 12696 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CONSTITUTIONAL PETITION E005 OF 2025**

FN MUCHEMI, J

SEPTEMBER 10, 2025

**IN THE MATTER OF THE ENFORCEMENT OF THE BILL OF RIGHTS
UNDER ARTICLE 22(1) OF THE CONSTITUTION OF KENYA, 2010**

AND

**IN THE MATTER OF ALLEGED CONTRAVENTION OF ARTICLES 25,
28, 29, 31, 40, 48, 49 & 50 OF THE CONSTITUTION OF KENYA, 2010**

BETWEEN

**OMONDI DICK OUKO 1ST PETITIONER
SHENAZ ABDALLA 2ND PETITIONER
SHAMIM ERICA NESSY 3RD PETITIONER
GETRUDE CHEROTICH 4TH PETITIONER
ELIZABETH WAMBUI 5TH PETITIONER
MUKAMI PEGGIE 6TH PETITIONER
ANITA NJOROGE 7TH PETITIONER**

AND

**THE INSPECTOR GENERAL OF POLICE 1ST RESPONDENT
OCS JUJA POLICE STATION 2ND RESPONDENT
INSPECTOR MUNYIRI 3RD RESPONDENT
PC MARTIN KIAMBI 4TH RESPONDENT
CORPORAL DAVID GACHERU 5TH RESPONDENT
CORPORAL BONPHACE OUMA 6TH RESPONDENT
PC GERALD KARIUKI 7TH RESPONDENT**



PC MOHAMMED HASSAN (IBRA)	8 TH RESPONDENT
PC ESTHER MAINA	9 TH RESPONDENT
IPOA	10 TH RESPONDENT
JUDITH SERETI	11 TH RESPONDENT
ELIAS KOECH	12 TH RESPONDENT

JUDGMENT

Brief Facts

1. This petition dated 9th April 2024 seeks for the following orders:-
 - a. A declaration that the arrest and subsequent detention of the petitioners was illegal.
 - b. A declaration that the respondents violated the constitutional rights of the petitioners and in particular Articles 25, 28, 29, 31, 40, 48, 49 and 50 of *the Constitution*.
 - c. A declaration that prior to making an arrest, a police officer has to be able to articulate the exact section and act that they suspect the person of contravening.
 - d. A declaration stipulating that whenever it is suspected that evidence of an offence is contained within a computer, a police officer must obtain a search warrant prior to confiscating the computer.
 - e. A declaration that any police officer conducting a search of a house and seizing property without a warrant, absent compelling reasons for not obtaining one, is guilty of police misconduct.
 - f. A declaration that any police officer who arrests a suspect without a warrant except under special circumstances permitted in Section 60 of the *National Police Service Act* is guilty of police misconduct.
 - g. A declaration affirming that confiscating a computer to access its information without a search warrant constitutes a criminal offence.
 - h. A declaration that the independent police oversight authority has an obligation to investigate any criminal offence committed by the police and to recommend prosecution.
 - i. A declaration that a police officer who contravenes the national police service standing orders is guilty of police misconduct.
 - j. A declaration that the independent police oversight authority has an obligation to recommend disciplinary action against any police officer found guilty of misconduct.
 - k. An order of mandamus compelling the independent police oversight authority to investigate the contraventions of the standing orders by the 2nd to 9th respondents and recommend disciplinary actions.
 - l. An order of mandamus compelling the independent police oversight authority to investigate the criminal offences committed by the 2nd to 9th respondents and recommend prosecution.



- m. An order to compel the 2nd respondent and their subordinates to release the 1st petitioner's bail money to the court.
 - n. An order for adequate compensation to the petitioners for false detention and wrongful arrest.
 - o. An order for compensatory general damages for loss of opportunity as a result of the confiscation of the computers.
 - p. General damages be awarded to the petitioners for inconvenience, pain and suffering caused by the actions of the respondents.
 - q. Punitive damages be awarded to the petitioners.
 - r. Costs of the petition.
2. The 10th respondent filed a replying affidavit dated 23rd May 2025 in opposition to the petition.

The Petitioners' Case

3. The 1st petitioner is a film maker, an activist and a former tenant at the rental property located in Juja Kiambu. The 1st petitioner was awarded a contract to shoot a racing movie and his residence doubled up as a studio where the petitioners frequented to shoot the movie. The 1st to 9th respondents are law enforcement public officers employed by the National Police Service whereas the 10th respondent is a regulatory body tasked with overseeing the conduct of law enforcement agencies including the National Police Service and the 11th respondent is one of its employees.
4. The petitioners state that the 4th respondent whilst investigating a burglary at Waroma in Juja approached the 1st petitioner and demanded film and internet mast licences from them and threatened to report them to the communications authority if they did not comply. The petitioners aver that the 1st petitioner declined to produce the licences stating that the filming was taking place in a private residence and further declined to engage the 4th respondent in a bribe. On 3rd November 2022, the 4th respondent in the company of four DCI officers, the 5th and 6th respondents amongst them went to his house and the petitioners were arrested and their car and equipment confiscated. The 1st petitioner avers that the police requested for a cash bail of Kshs. 10,000/- to avoid spending the night in jail which he complied by paying the said amount for his employees but he was never issued with a receipt.
5. The 1st petitioner states that the police retained his equipment but released the motor vehicle and asked for a further Kshs. 10,000/- to secure the release of the equipment. The 1st petitioner avers that he paid the said amount as the computers contained his client's work and he was determined not to jeopardize his clients' relationships by losing valuable data or missing deadlines. Upon release of the equipment, the police began to routinely demand money from him every month which he remitted to the 5th and 6th respondents from November to April when he ceased making the payments. The 5th and 6th respondents incessantly called him but he held his ground and chastised the corrupt police officers.
6. On 13th May 2023, at 7pm, 14 police officers from Juja Police Station led by the 4th respondent raided the compound and they did not give any reason for the raid or arrest. The 1st petitioner states that he directed the other petitioners to record the actions of the policemen and upon the police observing that, they seized their mobile phones. The 1st petitioner further avers that some of the petitioners resisted surrendering their devices prompting the police officers to forcefully confiscate them resulting in several devices being damaged in the ensuing struggle including the phones of the 3rd, 6th and 7th petitioners.



7. The 1st petitioner states that he continued recording the police prompting the 4th, 7th and 8th respondents to forcefully move him to another location and physically assault him in an attempt to compel him to delete the recordings. The assault was witnessed by the 7th petitioner. Once it became evident that he would not delete the recordings, his phone was severely damaged at which point two policemen named Swaleh and Hassan intervened and rescued him from the assault inflicted by the 4th, 7th and 8th respondents.
8. The 1st petitioner avers that they were arrested and taken to Juja Police Station and charged with the offence of sharing pornography. The 1st petitioner states that upon being asked to pay Kshs. 100,000/- by the police, he declined to do so and the DCI officials contacted the 4th respondent to seize his computers but he remained steadfast and declined to issue a bribe.
9. The 1st petitioner states that they were released on 15th May 2023 on a total cash bail of Kshs. 100,000/- and a bail receipt was issued to him. From 15th May 2023 to 23rd May 2023, the 1st petitioner avers that he was hounded by constant phone calls from the 5th, 6th and 9th respondents telling him to furnish a bribe or he would be imprisoned. On 23rd May 2023, the petitioners went to court to take plea as indicated in their receipts but they discovered that their names had not been recorded at the registry and when he called the 9th respondent who was the investigating officer, she panicked and told them to go to Juja Police Station to take their equipment and bail money. The 9th respondent then instructed him to sign all the bail receipts and then handed him Kshs. 70,000/- which is Kshs. 30,000/- less of the bail that was issued.
10. The 1st petitioner further states that the 9th respondent did not check the petitioners' items one by one against the inventory list instead she dumped the items on the floor of the police station and left and when he realized that his Wacom tablet was missing, the 9th respondent asked for a Kshs. 2,000/- bribe to motivate her to look for it. The 1st petitioner states that he reported the events to IPOA on 5th June 2023 and on 9th August 2023, Judith Sereti, from IPOA called him and instructed him to go to Juja Police Station and demand Kshs. 30,000/- bail from the 3rd respondent.
11. The 1st petitioner states that on 10th August 2023, he went back to Juja Police Station where the 3rd and 9th respondents refused to return the Kshs. 30,000/- bail and upon learning that IPOA was investigating the matter, the 9th respondent sent back the Kshs. 2,000/- she had asked for to look for the Wacom tablet. On 23rd November 2023, the 11th respondent contacted him and conveyed that she had concluded the investigations asserting that the Juja police were not guilty of any misconduct. The 1st petitioner states that the same was determined despite the overwhelming evidence presented, including the observation of the petitioners' arrests, the absence of charges or offences, the lack of a complainant, numerous photographs provided documenting the damaged phones, MPESA screenshots clearly identifying the 5th, 6th and 9th respondents and an x-ray confirming his fractured tooth resulting from the assault.
12. The 1st petitioner argues that the respondents violated his constitutional rights particularly Article 25(a) as evidenced by the x-ray of the broken molar tooth following the assault by the 1st and 2nd respondents in getting him to delete the photographic images he took of the illegal police raid. Article 28 for the wrongful arrest which violate their right to dignity by subjecting them to unjust deprivation of liberty and casting doubt on their reputation and integrity. Further, the petitioners were arrested for an offence that does not exist in law causing them emotional distress, humiliation and a sense of powerlessness. Thus, they were wrongfully arrested and detained without legal justification. Article 29 as their freedom was curtailed for three days as shown in the OB and bail receipts. There was no reasonable or probable cause to believe any of them had committed an offence. The petitioners argue



- that they were apprehended within their respective residences located within a private compound and without the police verifying their individual identities. To support their contentions, the petitioners rely on the case of James Kahindi Simba vs Director of Public Prosecution & 2 Others [2020] eKLR. The petitioners argue that the arrest appears to have been retaliatory following the 1st petitioner's cessation of bribe payments. To support their contentions, the petitioners refer to the case of Anthony Murimi Waigwe & the Attorney General (no citation given). The petitioners further argue that the offences written in the OB and the bail receipts were offences that do not exist in law and further, the police never extracted a single pornographic image or video from the person or possession of the 1st petitioner. Furthermore they were not brought before a court of law contrary to Section 37 of the Criminal Procedure Code. Thus, the arrest was illegal and without any legal justification and a direct and clear violation of Article 29 of *the Constitution*. To support their contentions, the petitioners refer to the case of Daniel Waweru Njoroge & 17 Others vs Attorney General Civil Appeal No. 89 of 2010 [2015] eKLR.
13. Article 31 as the police raided the 1st petitioner's home on two occasions and confiscated computers and other equipment which is evidenced by the inventories signed by the police. The 1st petitioner states that his house was searched and his possessions seized without a search warrant contrary to Section 60 of the *National Police Service Act*. The 1st petitioner states that as the police raided his premises in November 2022 and March 2023 in the company of the 4th respondent and thus if the petitioners were engaged in criminal activity the police had to have known about it for at least 5 months and thus there would be no delay in them obtaining a warrant. Furthermore, the police arrested the petitioners and went back to his house a day later to confiscate his computers. To support their contentions, the petitioners rely on the case of Standard Newspaper Ltd & Another vs Attorney General & 4 Others [2013] eKLR. The petitioners further argue that pursuant to Section 48 of the Computer Misuses and Cybercrimes Act, computers cannot be seized without a warrant.
 14. The petitioners state that their right to property under Article 40 was violated when the police confiscated their property without any reasonable cause. In the first raid, the property was confiscated for a month while in the second raid, the property was confiscated for two weeks. Furthermore, Chapter 15(8.c) of the Police Standing Orders provides that under no circumstances shall cash bail be retained at any police station after the date on which the accused shall have appeared in court yet they appeared in court on 23rd May 2023 and the police continue to hold the cash bail over a year later, thus violating their right to property. The petitioners further argue that the imposition of a bail amount totalling to Kshs. 100,000/- for a non violent offence raises concerns regarding the proportionality measure. The substantial bail amount suggests a potential ulterior motive behind the arrest indicative of an attempt to extract money from the petitioners rather than a genuine pursuit of justice. Further, the police had already confiscated equipment worth millions which equipment could have stood as bond and an assurance that they would attend court.
 15. The petitioners refer to Chapter 33(25) of the Police Standing Orders and submit that there is no provision in law that allows for the state to confiscate property in order to coerce a person to furnish officers with a bribe to secure release of the property. The police also broke several of their phones to stop them from recording, while they had every right to record the police as they were in their private residence.
 16. Article 48 as the 1st petitioner reported that he was assaulted by the 4th respondent to the 3rd respondent and the 9th respondent yet absolutely no action was taken. The petitioners state that when the assault was reported to IPOA they directed the 1st petitioner to take a P3 Form from Juja Police Station and when the OB desk learnt that it was a police being reported, they refused to issue the P3 Form. Further Section 6 of the *Bribery Act* forbids officers employed in the public service from receiving money in



exchange for service while Section 300 of the Penal Code forbids any person from threatening another with prosecution in order to solicit funds. The petitioners state that there is irrefutable evidence that the 1st petitioner had sent money to the 5th, 6th and 9th respondents and for the 10th and 11th respondents to conclude that the Juja Police were not guilty of any misconduct is a travesty of justice. Further the 1st petitioner sustained severe bodily injuries as a consequence of the assault inflicted by the 4th respondent. Although he underwent an x-ray examination, he was not issued with a P3 Form. Thus, IPOA had the necessary authority but they failed to oversee the police officers' actions and whether they complied with the law. Therefore, their failure to take any action constitutes a violation of their rights to justice. The petitioners aver that the issue was reported to IPOA and detailed explanations were given of the specific sections and acts breached by the police were provided in an email dated 6th December 2023. The failure by IPOA to investigate and recommend charges was not merely an oversight due to lack of awareness but a deliberate choice of inaction.

17. The petitioners state that an arrested person has a fundamental right to know the grounds of their arrest however the police failed to communicate the reasons for the arrest to the 1st petitioner. The petitioners argue that throughout their ordeal, IPOA demonstrated a consistent pattern of inaction at best and explicit support for police misconduct at worst. Thus through its inaction, IPOA violated the 1st petitioner's right to justice.
18. The petitioners further state that the respondents violated Article 49 as they were never informed as to why they were arrested. Further, the petitioners aver that their right was further violated when the police confiscated their phones and thus they could not communicate with an advocate. The petitioners further state that they were not released on reasonable bail as the sum of Kshs. 100,000/- was exorbitant considering the equipment and computers worth millions had already been held by the police and could act as bond. The petitioners argue that their right to fair trial under Article 50 was infringed as they were arrested for an offence that is not existent in law and was not an offence at the time of arrest.
19. The petitioners state that they lost income as they were unable to access their computers for a duration of 52 days leading to loss of numerous ongoing projects as well as potential new job opportunities offered by clients. Furthermore missing deadlines for ongoing projects and being unable to commit to upcoming projects resulted in them losing long standing clients permanently as the clients deemed them unreliable.
20. The petitioners aver that the repeated police raids within a span of six months led many neighbours to perceive them as criminals and the landlord evicted them abruptly. The eviction resulted in the 1st petitioner forfeiting two months rent for two houses and necessitated additional expenses for relocation and securing new accommodation. Further, the petitioners aver that they experienced social ostracization with friends, family and neighbours distancing themselves and the 2nd and 7th petitioners, both students, found it challenging to concentrate on their studies due to ridicule and mockery. The petitioners state that they all endured cyberbullying due to the stigma associated with allegations of involvement with pornography.
21. The petitioners assert that their arrest halted their daily routines leading to a disruption in their business engagements and social events. They further experienced a sharp decline in their quality of life, transitioning from spacious self-contained mansions to a cramped foul smelling cell. The 1st petitioner states that he suffered grievous bodily harm as he was assaulted by the police resulting in the loss of a right upper molar.



The 10th Respondent's Case

22. The 10th respondent avers that pursuant to Section 6(a) of the *Independent Policing Oversight Authority Act*, it is responsible for conducting investigations into complaints related to disciplinary or criminal offences committed by members of the national police service. The 10th respondent states that it received a complaint from the 1st petitioner alleging police unlawful entry and search, extortion, blackmail, illegal arrest and withholding of cash bail. It completed its inquiry into the matter and recommended that the complaint be closed upon establishing that cash bail was refunded to the 1st petitioner and his electronic equipment was returned. The 1st petitioner was further informed via telephone of the outcome of its investigations.
23. The 10th respondent avers that the 1st petitioner's complaint was received and action taken as contemplated by its constitutive act of parliament. The 10th respondent further states that the petitioners have not demonstrated the violation or threatened violation of their fundamental rights and freedoms in the manner in which their rights have been violated or threatened by it.
24. The petition was disposed of by way of written submissions.

Petitioners' Submissions

25. The petitioners reiterate what they deposed in their petition and submit that the conduct of the 2nd to 9th respondents, who are officers of the National Police Service stationed at Juja Police Station amounted to gross violations of *the Constitution*. The acts complained of were not isolated incidents or mere procedural irregularities but formed part of a deliberate and continuing pattern of abuse of authority which acts include repeated instances of extortion, unlawful confiscation of property, arbitrary arrest and detention, physical assault and wanton destruction of private property all carried out without lawful justification and in flagrant disregard of their constitutional rights.
26. The petitioners submit that they suffered economic loss, reputational harm, physical injury and inhumane treatment. The unlawful seizure of equipment resulted in them losing a contract worth Kshs. 740,000/- and their legitimate animation business. The petitioners submit that the loss of business attributable to the police action in 2022 may reasonably be estimated at Kshs. 1 million annually based on documented earnings.
27. The petitioners further submit that false pornography allegations caused stigma and client disengagement in the trust dependent animation industry. Relying on the case of *Mutua & Another vs Gitau & 2 Others* (Petition E294 of 2022) where the court awarded Kshs. 700,000/- for reputational damage, the petitioners seek Kshs. 1,500,000/- for reputational harm. For pain and suffering due to the 1st petitioner's dental fracture, the petitioners submit that a sum of Kshs. 500,000/- is sufficient compensation.
28. The petitioners rely on the case of *MWK & Another vs Attorney General & 4 Others* (Constitutional Petition 347 of 2015) and submit that a sum of Kshs. 300,000/- per petitioner, is sufficient compensation for violation of the right to dignity by being detained on concrete floors with one daily meal. Relying on the case of *Godfrey Julius Ndumba Mbogori & Another vs Nairobi City Council* [2018] eKLR, the petitioners submit that the respondents profiteering motive warrants Kshs. 2 million in exemplary damages to deter future misconduct.



The 10th Respondent's Submissions

29. The 10th respondent relies on Section 4(1) & (4) of the IPOA Act and the case of Mape Building & General Engineering vs Attorney General & 3 Others [2016] eKLR and submits that it enjoys decisional independence as the depth of its investigations cannot be dictated or even predicted by the investigator or the court.
30. Relying on the case of Republic vs Kenya National Examinations Council ex parte Gathenji & Others (1997) eKLR, the 10th respondent argues that an order of mandamus cannot avail as the petitioners have not demonstrated any failure by it to perform its statutory duties of investigating the impugned acts of the respondent police officers. Furthermore, the order of mandamus is inappropriate in the instant case as its investigative mandate is discretionary as contemplated by Section 4(4) of the IPOA Act.
31. The 10th respondent argues that the attempt by the petitioners to have the court interfere and do away with its findings as set out in the inquiry report reveals the true intention of the petitioners which is to invite the court to usurp the mandate and functions of independent bodies and direct their functions and operations towards a certain expected outcome in the favour of the petitioners to satisfy their vanity. To support its contentions, the 10th respondent refers to the case of Muchanga Investments Ltd vs Safaris Unlimited (Africa) Ltd & 2 Others [2009] eKLR.
32. The 10th respondent submits that it has conducted its functions in accordance with the law and the court ought not to interfere with its investigations and findings. The 10th respondent further relies on Section 36(1) of the IPOA Act and submits that the actions of the 11th respondent were done in good faith and in line with its mandate and thus fall within the ambit of Section 36(1) of the Act.

Issues for determination

33. The main issues for determination are:-
 - a. Whether the petition meets the threshold for a constitutional petition.
 - b. Whether the petitioners' rights were violated.
 - c. Whether the petitioners are entitled to the orders sought.

The Law

Whether the petition meets the threshold for a constitutional petition

34. It is indisputable that a constitutional petition to be sustainable as such must at a minimum satisfy a basic threshold. It must with some reasonable degree of precision identify the constitutional provisions that are alleged to have been violated threatened to be violated and the manner of the violation and/or threatened violation. This principle was enunciated in Anarita Karimi Njeru vs Republic (1979) KLR where the court stated as follows:-

If a person is seeking redress from the High Court on a matter which involves a reference to *the Constitution*, it is important (if only to ensure that justice is done to his case) that he should set out with precision that of which he complains the provisions said to be infringed and the manner in which they are alleged to be infringed.



35. The principle in *Anarita Karimi* was further enunciated in *Mumo Matemu vs Trusted Society of Human Rights Alliance* (2014) eKLR where the court said:-

We cannot but emphasize the importance of precise claims in due process, substantive justice and the exercise of jurisdiction by the court.

The principle in *Anarita Karimi Njeru* underscores the importance of defining the dispute to be decided by the court. In our view, it is a misconception to claim as it has been in recent times with increased frequency that compliance with rules of procedure is antithetical to Article 159 of *the Constitution*. Procedure is also a handmaid of just determination of cases cannot be dealt with justly unless the parties and the court know the issues in controversy. Pleadings assist in that regard and are a tenant of substantive justice, as they give fair notice to the other party. The principle in *Anarita Karimi Njeru* that established the rule that requires reasonable precision of framing of issues in Constitutional petitions is an extension of this principle.

36. It is thus clear from the above case law that it is not sufficient to merely cite constitutional provisions. One must provide the particulars of the alleged infringement to enable the respondent to be able to respond and/or answer the allegations or complaints. Furthermore, one must provide the manner in which the alleged violations were committed and to what extent must be shown by way of evidence.
37. In the instant case, the petitioners have premised their petition on Articles 25, 28, 29, 31, 40, 48, 49, 50 and 51 but substantively the petition focuses on the said rights save for Article 51. The petitioners have explicitly alleged that their rights to human dignity, freedom and security of the person, privacy, property, access to justice, rights of arrested persons and fair trial under Articles 25, 28, 29, 31, 40, 48, 49 and 50 of *the Constitution* were violated by the respondents. The manner of violation was stated to be through the 1st – 9th respondents breaking into the 1st petitioner’s private residence and arrested the petitioners without probable cause and confiscated their equipment without a warrant. The petitioners were then charged for an offence not in law, detained illegally and they were not presented before a magistrate to take plea. It is therefore my considered view that the petition sufficiently satisfies the threshold test of constitutional petitions.

Whether the petitioners’ rights to human dignity, freedom and security of the person, privacy, property, access to justice, rights of arrested persons and fair trial were violated

38. Section 107 of the *Evidence Act* places the burden of proof on the petitioner to prove his claim on a balance of probabilities. The person who alleges existence of certain facts and who wishes the court to find in his favour based on those set of facts. The burden of proof on a petitioner in a constitutional petition was addressed by the Supreme Court in *Communications Commission of Kenya & 5 Others vs Royal Media Services Limited & 5 Others* [2014] eKLR as follows:-

Although Article 22(1) of *the Constitution* gives every person the right to initiate proceedings claiming that a fundamental right or freedom has been denied, violated or infringed or threatened, a party invoking this Article has to show the rights said to be infringed, as well as the basis of his or her grievance. This principle emerges clearly from the High Court decision in *Anarita Karimi Njeru vs Republic* (1979) KLR 154; the necessity of a link between the aggrieved party, the provisions of *the Constitution* alleged to have been contravened and the manifestation of contravention or infringement. Such principle plays a positive role, as a foundation of conviction and good faith, in engaging the constitutional process of dispute settlement.



39. The petitioners have argued that their rights under Articles 25, 28, 29, 31, 40, 48, 49 and 50 of *the Constitution* have been infringed
40. Article 25 of *the Constitution* stipulates as follows:-
Despite any other provision in this Constitution, the following rights and fundamental freedoms shall not be limited-
- a. Freedom from torture and cruel, inhuman or degrading treatment or punishment;
41. Article 28 provides:-
Every person has inherent dignity and the right to have that dignity respected and protected.
42. Article 29 provides:-
Every person has the right to freedom and security of the person, which includes the right not to be-
- a. deprived of freedom arbitrarily or without just cause;
 - b. detained without trial, except during a state of emergency, in which case the detention is subject to Article 58;
 - c. subjected to any form of violence from either public or private sources.
43. Article 31 provides:-
1. Every person has the right to privacy, which includes the right not to have -
 - a. their person, home or property searched;
 - b. their possessions seized;
 - c. information relating to their family or private affairs unnecessarily required or revealed;
or
 - d. the privacy of their communications infringed.
44. Article 40(1) provides:-
1. Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property-
 - a. of any description; and
 - b. in part of Kenya.
45. Article 48 provides:
-
The state shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice.
46. Article 49 provides:-
1. An arrested person has the right-
 - a. To be informed promptly, in a language that the person understands, of-
 - i. The reason for the arrest;



- ii. The right to remain silent; and
- iii. The consequences of not remaining silent;
- (c) To communicate with an advocate, and other persons whose assistance is necessary.
- (f) To be brought before a court as soon as reasonably possible, but not later than-
 - i. Twenty four hours after being arrested; or
 - ii. If the twenty four hours ends outside ordinary court hours, or on a day that is not an ordinary court day, the end of the next court day;
- (h) To be released on bond or bail, on reasonable conditions, pending a charge or trial unless there are compelling reasons not to be released.

47. Article 50(2) provides:-

- (2) Every accused person has the right to a fair trial, which includes the right-
 - (n) Not to be convicted for an act or omission that at the time it was committed or omitted was not-
 - i. An offence in Kenya; or
 - ii. A crime under international law.

48. In the instant case, it is the petitioners' case that the police officers from Juja police station raided his private residence on two occasions in November 2022 and May 2023 and arrested them without explaining the reasons for their arrest. That while in the custody of the respondents the respondents sought bribes from them and blackmailed them with court proceedings. The petitioners argued that they were later charged with an offence that did not exist when they declined to bribe the police officers. The petitioners further state that they were detained for three days and the 1st petitioner's machines and equipment was confiscated by the police and held in their custody. Notably, there was no complainant in the case leading to the arrests and furthermore the petitioners did not take plea in court on 23rd May 2023 as was indicated in the cash bail receipt.

49. The petitioners argue that their arrest and detention was without reason hence a violation of Article 29 of *the Constitution* which forbids deprivation of freedom arbitrarily without just cause and detention without trial. According to the 1st petitioner, police officers from Juja police station raided his private residence on two occasions in November 2022 and May 2023 and arrested them without explaining the reasons for their arrest. That while in the custody of the respondents the respondents sought bribes from them and blackmailed them with court proceedings. The petitioners argued that they were later charged with an offence that did not exist when they declined to bribe the police officers. The petitioners further state that they were detained for three days despite the fact that there was no complainant in the case.

50. Additionally, the petitioners argue that their right to privacy under Article 31 of *the Constitution* which includes the right not to have his person, home or property searched and his possession seized was violated by the respondents. The 1st petitioner's case is that his machines and equipment were confiscated by the police and held in police custody.

51. The petitioners assert that the respondents violated Article 50 of *the Constitution*. Their case is that the respondents ought to have afforded them an opportunity to be heard in regard to their decision to detain them. The petitioners further argue that the respondents in the process violated the rights



they were entitled to as arrested persons under Article 49 of *the Constitution*. The petitioners stress that they were not informed of the reasons for their arrest and neither were they accorded an opportunity to contact a lawyer. Furthermore, they were scheduled to appear before a magistrate on 23rd May 2023, as indicated in the cash bail receipt but the same did not take place. Additionally, the petitioners argue that they were released on an exorbitant amount of bail yet the equipment seized by the respondents could have acted as bond to secure their attendance in court.

52. The 1st – 9th respondents did not put in a response to the petition neither did they file any submissions.
53. Wrongful arrest involves deprivation of a person's liberty; it consists of arresting and holding a person without legal justification. Thus liability thereof is strict, and a party need not show that the person causing the arrest was at fault or that he was aware that the arrest was wrongful. It is one that falls under action injurium and so proof of damage is not necessary to support the action. Even if pecuniary damage has been suffered, the court will award a contemptuous figure for the infringement of the right to liberty.
54. As a general rule, an arrest of a suspect should not be made unless and until his or her case has been investigated with sufficient evidence requiring an answer on the complaint.
55. There is plenty of caselaw on false arrest. In *Daniel Waweru Njoroge & 17 Others vs Attorney General Civil Appeal No. 89 of 2010 [2015] eKLR* the court held:-

False arrest which is a civil wrong consists of an unlawful restraint of an individual's personal liberty or freedom of movement by another person purporting to act according to the law. The term false arrest is sometimes used interchangeably with the tort of false imprisonment, and a false arrest is one method of committing a false imprisonment. A false arrest must be perpetuated by one who asserts that he or she is acting pursuant to legal authority, whereas a false imprisonment is any unlawful confinement. Thus, where a police officer arrests a person without probable cause or reasonable basis, the officer is said to have committed a tort of false arrest and confinement. Thus, false imprisonment may be defined as an act of the defendant which causes the unlawful confinement of the plaintiff. False imprisonment is an intentional tort.

56. *Matavo J* (as he then was) quoted *Harper & James* in their book, *The Law of Torts*, 3rd Edition at page 226 where they authoritatively state that false imprisonment must include the following elements, namely-
 - a. There must be detention, i.e unlawful restraint of a person's liberty or freedom of movement.
 - b. That the detention needs not be forceful. Threats of force by conduct or words coupled with the apparent ability to carry out such threats are sufficient.
 - c. Detention must be total i.e must be within boundaries. The restraint must be total rather than a mere obstruction of the right to go where the plaintiff pleases. Imprisonment is something more than mere loss of freedom to go where one pleases; it includes the notion of restraint within some limited defined by a will or power exterior to our own.
 - d. Detention must be for an appreciable time, however short. In *Prosser on Torts*, it authoritatively stated that the tort is complete with even a brief restraint of the plaintiff's freedom.
 - e. The detention must be unlawful and must have been against the plaintiff's will.
 - f. Malice is not an ingredient in the tort of false arrest.



57. In Anthony Njenga Mbuti & 5 Others vs Attorney General & 3 Others [2015] eKLR, Mumbi J (as she then was) held as follows:-

That the conduct by law enforcement officers profiling suspects on mere suspicion, arresting and detaining them with no evidence of crime committed is arbitrary and discriminatory guaranteed in our constitution.

58. The petitioners produced into evidence cash bail receipts to show that they were arrested on 15th May 2023 and were released on cash bail of Kshs. 10,000/- each for the 2nd – 7th petitioner and Kshs. 30,000/- for the 1st petitioner. The petitioners were arrested on a charge of sharing porn content and were scheduled to appear before the Chief Magistrate’s Court Thika on 23rd May 2023. From the record, it is evident that the petitioners were arrested. The 1st – 9th respondents did not put in any response to the petition, thus the evidence stands unchallenged. It is further evident that there is no complainant in the matter which led to the arrest of the petitioners.

59. The offence the petitioners were charged with is sharing porn content. It is trite law that one ought to be arrested for a known offence in law. The charge of sharing porn content is not an offence known in any law in the Republic. Furthermore, the petitioners argue that they were arrested without a warrant. Section 58 of the *National Police Service Act* grants the police powers to arrest without a warrant on reasonable grounds of having committed a cognizable offence. Further, Section 26 of the Criminal Procedure Code provides for instances when a police officer may arrest a suspect without a warrant and further in the First Schedule of the Criminal Procedure Code lists offences which are cognizable. The charge of sharing porn is not among the listed as it is not even an offence known in law. Therefore, the arrest by the respondents was illegal and unlawful as the arrest was made without a complainant, a warrant and neither was the offence known in law. Thus the arrest of the petitioners being unlawful was therefore in contravention of Article 29(1) which protects the petitioners from being deprived of their freedom without just cause.

60. Furthermore, the 1st petitioner produced MPESA statements showing that he sent money to the 5th and 6th respondents on various occasions as from November 2022 and when the payments stopped, the 1st petitioner’s house was raided and the petitioners were arrested. Accordingly, it appears that the second instance the respondents raided the 1st petitioner’s residence and arrested them, it was retaliatory. The MPESA statements support the theory that once the 5th and 6th respondent stopped receiving payments from the 1st petitioner they retaliated by raiding his house and arrested the petitioners for bogus charges.

61. The petitioners further assert that they were never informed of the reasons for their arrest and the police officers took away their phones therefore they could not call their respective advocates or any person to assist them. Looking to the record, the petitioners state that the police officers raided the 1st petitioner’s residence in November 2022 and May 2023. During the first raid, the 1st petitioner agreed to bribe the respondents and they were released but on the second occasion the 1st petitioner stated that he declined to bribe the respondents and thus they were arrested and taken to the police station and that is when they knew they were charged with the offence of pornography. The petitioners have presented pictures of their phones being damaged which they claim occurred when they were filming the police officers and the police damaged their phones forcing them to delete the videos. The petitioners have produced evidence in terms of witness statements by the 6th petitioner. The 6th petitioner asserts that the 7th respondent took their phones. Thus, it is my considered view that the respondents violated the rights of the petitioners under Article 49(a) and (c) of *the Constitution* as they were never informed of the reasons for their arrest and neither were they accorded an opportunity to contact an advocate or any persons for assistance.



62. On further perusal of the record, the cash bail receipts show that the petitioners were to appear before a magistrate at Thika Chief Magistrate’s Court on 23rd May 2023 to take plea. The petitioners assert that when they reached the court the charge against them had not registered to attend court and thus they called the 9th respondent who told them to go to the police station. It is therefore evident that the respondents having arrested the petitioners for an offence that was not known in law they had no intention to take them to court. Thus, the respondents infringed on their right under Articles 49(f) and 50 (2) (n) of *the Constitution*.
63. The petitioners have further argued that their rights under Article 49(h) of *the Constitution* have been infringed as they were subjected to an exorbitant amount of cash bail yet the police officers had in their custody their machines and equipment which would have acted as bond to secure their attendance. I have perused the record and noted that the petitioners were released on a cash bail of Kshs 10,000/ each save for the 1st petitioner who was released on a cash bail of Kshs. 30,000/-. It is not clear why the 1st petitioner was subjected to a cash bail of Kshs. 30,000/- and not Kshs. 10,000/- as his fellow petitioners. The respondents did not reply to this petition to enlighten the court on the offences the 1st petitioner was facing and what offences the other petitioners were facing. It is only the word of the 1st petitioner before this court that all the petitioners were facing a charge of porn. It has not been proved that the cash bail of 10,000 was exorbitant and that any right was violated.
64. The record further shows that the 1st petitioner carried on his business in his private residence which the respondents raided on two occasions without a warrant. Furthermore, the respondents confiscated computers and other equipment. The petitioners have produced an inventory signed by the police of the computers and equipment they took. Sections 57 and 60 of the *National Police Service Act* provides for instances when the police can search private premises without a warrant. A search without a warrant is permissible only under special circumstances when it is believed that a delay in obtaining a warrant would result in evidence being tampered with or lost. In the instant matter, the police first raided the 1st petitioner’s premises in November 2022 and the petitioners state that the 4th respondent was present in both raids. Thus, if the petitioners were engaged in criminal activity the respondents would have had to know about it for 5 months and thus they had ample time to have procured a search warrant. Furthermore, there is no evidence on record by the respondents that they recorded their grounds of their belief and description available to them of the thing which the search is to be made without such search warrant.
65. Among the seized equipment by the police was computers as evidenced in the inventory signed by the police officers. Section 48 of the *Computer Misuse and Cybercrimes Act* provides that computers cannot be seized without a warrant. Therefore the seizure by the respondents of the computers and equipment was illegal. It is my considered view that the respondents violated the right to privacy of the 1st petitioner by entering into his premises without a search warrant and confiscating his computers and equipment without a warrant. There is a connection between an individual’s right to privacy and the right to dignity. Mativo J in *MWK & Another vs Attorney General & 3 Others* [2017] eKLR stated that:-

Privacy fosters human dignity insofar as it is premised on and protects an individual’s entitlement to a “sphere of private intimacy and autonomy. The rights of equality and dignity are closely related, as are the rights of dignity and privacy.



66. Similarly in Kenya Human Rights Commission vs Communications Authority of Kenya & 4 Others [2018] eKLR held:-

Privacy is a fundamental human right, enshrined in numerous international human rights instruments. It is central to the protection of human dignity and forms the basis of any democratic society. It also supports and reinforces other rights such as freedom of expression, information, and association. The right to privacy embodies the presumption that individuals should have an area of autonomous development, interaction, and liberty, a “private sphere” with or without interaction with others, free from arbitrary state intervention and from excessive unsolicited intervention by other uninvited individuals. Activities that restrict the right to privacy such as surveillance and censorship, can only be justified when they are prescribed by law, necessary to achieve a legitimate aim and proportionate to the aim pursued.

67. Thus, the petitioners have established that their right to human dignity under Article 28 was violated.

68. The 1st petitioner has adduced evidence that the respondents violated his rights to property as they confiscated his machinery without a search warrant as required by the law and for no reasonable cause. Furthermore, the equipment was released to the 1st petitioner when they went to the police station on 23rd May 2023 upon instruction by the 9th respondent. For the period the machines and equipment were unlawfully held by the police, the 1st petitioner suffered loss of business.

69. The petitioners have further argued that the respondents did not return their full amount of cash bail as they paid Kshs. 100,000/- but the police officer only returned Kshs. 70,000/-. The petitioners have attached a photograph showing a piece of paper indicating Kshs. 70,000/-. It is my considered view that the same is not sufficient proof that the respondents paid back Kshs. 70,000/- as cash bail instead of the full amount of Kshs. 100,000/-. Thus on that ground, the petitioners have not proved to the requisite burden that Article 40 was violated regards the respondents staying with Kshs. 30,000/- of the cash bail.

70. The petitioners have further argued that their right to access to justice under Article 48 was infringed as they reported the matter to the 10th respondent however no action was taken. The 1st petitioner asserts that on 9th August 2023, the 11th respondent instructed him to go to Juja Police station and demand the cash bail of Kshs. 30,000/- from the 3rd respondent. Further on 23rd November 2023, the 11th respondent contacted him and told him that she had concluded investigations and found that the Juja police were not guilty of any misconduct.

71. Section 4 of the *Independent Policing Oversight Authority Act* provides:-

(1) In the performance of its functions the Authority shall subject to Section 34, not be subject to any person, office or authority.

(4) No person or body may interfere with the decision making, functioning or operations of the Authority.

72. From the record, it is evident that the 10th respondent upon receiving a complaint from the 1st petitioner conducted an investigation into the allegations of the police officers from Juja Police Station pursuant to Section 6 of the IPOA Act. The 10th respondent carried out its investigations and submitted an inquiry report dated November 2023 and recommended that the complaint be closed upon establishing that cash bail was refunded to the 1st petitioner and that his equipment was returned to him. It therefore follows that the authority carried out its function under the law. Therefore this



court cannot interfere with the findings of the authority as envisaged in Section 4(4) of the IPOA Act. Accordingly, it is my considered view that the petitioners have not proved that their right under Article 48 was infringed by the 10th respondent.

73. The 1st petitioner has argued that his right under Article 25 was violated as the police officers physically assaulted him. I have perused the record and noted that the 1st petitioner has produced in evidence treatment notes from County Government of Kiambu Department of health Services dated 20th May 2023 and two x-ray images of his mouth showing his broken tooth. Furthermore, the 6th petitioner stated in her witness statement that when the police raided the 1st petitioner's house on 15th May 2023, they tried to take his phone as he was recording them, leading him to another room where the 4th, 7th and 8th respondents physically assaulted him with kicks and punches. The 6th petitioner states that she began screaming and two policemen went to his rescue. It is my considered view that the 1st petitioner has proved his rights under Article 25 were violated.

Whether the petitioners are entitled to the orders sought.

74. Article 23 (3) of *the Constitution* provides:-
- a. In any proceedings brought under Article 22, a court may grant appropriate relief including-
 - b. A declaration of rights;
 - c. An injunction;
 - d. A conservatory order;
 - e. A declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights and is not justified under Article 24;
 - f. An order for compensation; and
 - g. An order of judicial review.
75. The petitioners have made their case that their rights under Articles 25, 28, 29, 31, 40, 49, and 50 of *the Constitution* were violated and as such they are entitled to the declaration of rights as proved through the evidence tendered herein,
76. As regards damages, it is well settled that an award of compensation is an appropriate and effective remedy for redress of an established infringement of a fundamental right under *the constitution*.
77. On the question of damages, the Court of Appeal in the case of Peter Ndegwa Kiai t/a Pema Wines & Spirits vs Attorney General & 2 Others (Civil Appeal 243 of 2017) [2021] KECA 328 (KLR) (17 December 2021) (Judgment) stated:-
-that an award of general damages in constitutional petitions is discretionary and will depend on the circumstances of each case, and can indeed be granted as compensation for proven loss.
78. In *Gitobu Imanyara & 2 Others vs Attorney General* Civil Appeal No. 98 of 2014 [2016] eKLR the Court of Appeal held:-
- It seems to us that the award of damages for constitutional violations of an individual's right by state or the government are reliefs under public law remedies within the discretion of a trial court, however, the court's discretion for award of damages in constitutional violation cases though is limited by what is "appropriate and just" according to the facts and



circumstances of a particular case. As stated above the primary purpose of a constitutional remedy is not compensatory or punitive but is to vindicate the rights violated and to prevent or deter any future infringements. The appropriate determination is an exercise in rationality and proportionality. In some cases, a declaration only will be appropriate to meet the justice of the case, being itself a powerful statement which can go a long way in effecting reparation of the breach, if not doing so altogether. In other words, an award of reasonable damages may be called for in addition to the declaration....

79. On questions for damages for false imprisonment, *Mativo J (as he then was) in the Daniel Waweru Njoroge Case (supra)* held as follows:-on quantum of damages the court has to bear in mind the following cardinal principles in the assessment of damages namely:-

- a. Damages should not be inordinately high or too low.
- b. Should be commensurate to the injury suffered.
- c. Should not be aimed to enriching the victim but should be aimed at trying to restore the victim to the position he was in before the damage was suffered.
- d. Awards in past decisions are mere guides and each case depends on its own facts.

This court has applied the above principles to the facts herein and it makes the finding that the action of the defendant was high handed and an award of Kshs. 100,000/- will be an adequate compensation for each of the plaintiff herein as general damages for unlawful arrest and false imprisonment.

80. In light of the foregoing, damages for unlawful arrest and detention should be exemplary and punitive in order to deter would be violators. Such an award is meant to vindicate the violation of the petitioner's rights and deter future infringements and at the same time ameliorate the sufferings the petitioner underwent during the ordeal. Further, having found that the actions of the respondents violated the petitioners' constitutional rights to privacy, human dignity, freedom and security of the person and property, the court finds that the petitioners have established that they deserve an award.

81. The petitioners have further sought for general damages for loss of business, reputational harm, physical injury and inhumane conditions. The petitioners have further sought for punitive damages.

82. On the award of loss of business, the Court of Appeal in *Nyamogo & Nyamogo Advocates vs Barclays Bank of Kenya CA 69 of 2005* held that loss of business must be specifically pleaded and proved. Evidently, the award of loss of business is a special damage claim in nature and therefore it must be specifically pleaded and proven. The 1st petitioner in this case has sought the said award though he has not specifically pleaded by quantifying the loss of business. However, the 1st petitioner produced a contract of engagement between him and Keyframe Kenya and a letter terminating his contract due to failure to meet agreed deadlines to show how he lost business and the amount lost. Consequently, the 1st petitioner has failed to prove that it is entitled to special damages of loss of business.

83. On the claim for reputational harm, the petitioners have failed to show how the stigma of being threatened with charges of sharing pornographic content and how it ruined their reputation. It is important to note that there was no evidence adduced to prove these allegations.

84. The 1st petitioner prays for general damages for pain and suffering for his dental fracture at a sum of Kshs. 500,000/-. He produced medical and treatment notes showing he suffered a fracture of the jaw and is thus entitled to compensation.

85. On the claim for inhumane conditions, the petitioners did not demonstrate what conditions they experienced during the detention in police custody.



86. The petitioners have further sought for orders of mandamus compelling the 10th respondent to investigate the criminal offences committed by the 2nd to 9th respondents and recommend disciplinary actions and prosecution. As outlined before, this court cannot interfere with the decision making, functioning or operations of the Authority. The authority having carried out its investigations, the court cannot interfere with its findings. Thus, the prayer orders for mandamus hereby fails.
87. I here enter judgement in favour of the petitioners against the respondents save for the 10th respondent jointly and severally as follows: -
- a. A declaration that the arrest and subsequent detention of the petitioners was illegal.
 - b. A declaration that the respondents violated Articles 25, 28, 29, 31, 40, 49 and 50 of *the Constitution*.
 - c. That the petitioners be and are hereby compensated for the violations of their rights at the rate of Ksh.500.000/= each.
 - d. That the 1st petitioner is hereby compensated for loss of his business and property at a global sum of one million (Ksh.1,000,000/=).
 - e. That the 1st petitioner is hereby awarded Ksh.300,000 as damages for pain and suffering.
88. The respondents shall meet the costs of the petition.
89. It is hereby so ordered.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 10TH DAY OF SEPTEMBER 2025.

F. MUCHEMI

JUDGE

