



**Ngugi v County Government of Nakuru & another (Petition E21 of 2021)  
[2023] KEHC 22624 (KLR) (25 September 2023) (Judgment)**

Neutral citation: [2023] KEHC 22624 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
PETITION E21 OF 2021  
HM NYAGA, J  
SEPTEMBER 25, 2023**

**BETWEEN**

**ROBERT KAMAU NGUGI ..... PETITIONER**

**AND**

**COUNTY GOVERNMENT OF NAKURU ..... 1<sup>ST</sup> RESPONDENT**

**HON LEE KINYANJUI ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

**The Petition**

1. Vide a petition dated 12<sup>th</sup> August, 2021, the Petitioner seeks the following reliefs from the court;
  - a. A declaration be and is hereby issued declaring that the Petitioner's right to human dignity under Article 28 of *the Constitution* of Kenya, 2010 was violated by the Respondent's unauthorized, unjustified and unlawful publication, use and exploitation of the Petitioner's photograph;
  - b. A declaration be and is hereby issued declaring that the Petitioner's right to privacy under Article 31(c) of *the Constitution* of Kenya, 2010 was violated by the Respondent's unauthorized, unjustified and unlawful publication, use and exploitation of the Petitioner's photograph;
  - c. A declaration be and is hereby issued declaring that the petitioner's right to protection of personal property under Article 40(1) of *the Constitution* of Kenya, 2010 was violated by the respondent's unauthorized, unjustified and unlawful publication, use and exploitation of the Petitioner's photograph;



- d. A declaration be and is hereby issued declaring that the Petitioner is entitled to general damages as a consequence of the breaches of his rights and fundamental freedoms by the Respondent as a consequence of prayers (a), (b), and (c) hereinabove;
- e. Further and as a consequence of prayer (d) hereinabove, this Honourable Court be pleased to award the petitioner general damages for the unauthorized publication, use and exploitation of his photograph by the Respondent;
- f. A permanent injunction restraining the Respondent whether by itself, its employees, agents and/or otherwise from further publishing or causing to be published the petitioner's photograph on the internet/World Wide Web through an account and/or profile owned, managed and/or controlled by the Respondents on the Respondent's social media account and profile on Facebook, and/or in any other social and/or electronic media.
- g. A mandatory injunction compelling the Respondent to permanently remove the Petitioner's photograph from the Respondent's social media account and profile on Facebook and/or website or in any other social and/or electronic media;
- h. Any other relief of this Honourable Court deems fit to grant.
- i. Costs of this petition; and
- j. Interests on (e) and (i) hereinabove at court rates from the date of filing this petition until payment in full.

### **Background**

2. The Petitioner is aggrieved by the infringement of his rights to dignity under Article 28, privacy and confidentiality under Article 31 and right to protection of property under Article 40 of [the Constitution of Kenya, 2010](#).
3. He averred that on diverse dates between 15<sup>th</sup> March, 2018 or thereabouts the Respondents herein published and or caused to be published his photograph portraying him in a hospital bed receiving treatment as an advertisement for promotional and or popularization campaign being ran by the 1<sup>st</sup> and 2<sup>nd</sup> respondents on their official social media platform and website respectively namely Facebook under credential User name "Nakuru County Governor @GovernorLeeKinyanjui" as from Thursday 15<sup>th</sup> March 2018 & <https://nakuru.go.ke/> using the online /internet metadata tag dubbed as "Governor's 4 Key Agendas" respectively without his consent.
4. He averred that following the publication of the photograph, the respondents benefitted in one way or another by exploiting his attributes through unauthorized, unjustified and unlawful use of his photographs for the advertisement of the promotional campaign.
5. He accused the respondents of exploitation and appropriation of his photographs which according to him resulted in them receiving political mileage, commercial and or monetary benefit, global exposure, brand and reputational growth in the public domain.
6. The Petition is supported by an Affidavit sworn on the even date by the petitioner, wherein he reiterated that the Respondents used his photograph without his consent.
7. He deposed that on 8<sup>th</sup> March, 2021, through his advocate he wrote a demand letter to the Respondents concerning the unlawful use of his photographs but the respondents have never responded to the said demand letter.



8. He averred that as a result of the said publication he has suffered mental anguish and anxiety since the respondents are continuing to accrue the aforementioned benefits to his detriment.
9. It was his further averment that he has since lost business relationship with his business partners who have questioned his health wellness and ability to sustain the business in the long term.
10. He thus believes that he has a justifiable basis for the reliefs sought in the petition and prayed that the same be granted as prayed.
11. In response to the Petition, the Respondents filed a Replying Affidavit sworn 8<sup>th</sup> February, 2022 by the Director of Communications of the 1<sup>st</sup> Respondent, Beatrice Obwacha. She deposed that on Thursday 15<sup>th</sup> March, 2018 or thereabouts, the Hon. Governor in the company of Senior officers of the 1<sup>st</sup> Respondent, Safaricom Limited Rift Valley Region officials visited Nakuru County Referral Hospital (NCRH) for purpose of officially receiving a new dialysis machine donated by Safaricom Foundation.
12. She averred that NCRH is a public hospital managed by the 1<sup>st</sup> Respondent and that the visit by the 2<sup>nd</sup> Respondent was to inspect the status of and officially inaugurate the new lifesaving state of the art dialysis machine donated by the Safaricom Foundation in the spirit of his constitutional mandate as provided in Article 179 and section 2 of part 2 of the Fourth Schedule of *the Constitution* and amplified in Sections 30 and 31 of the County Government Act.
13. That at the time of the said visit the said dialysis machine ,the only one available at the hospital, had already been installed and was operational serving one patient daily and that coincidentally and fortunately during the said inauguration function of the dialysis system, the petitioner was the patient receiving the lifesaving treatment meant to highlight the important occurrence and ultimately inform the general public of the availability of the lifesaving dialysis facility at the NCRH and the remarkable strides made by their county to enhance its health facilities.
14. She deposed that the said photograph which is a subject of this suit was not taken as an advertisement for promotion and or propagation of personal and/or political ends but rather for the purposes of facilitating public awareness and access to information in accordance with sections 93, 94, 95 and 96 of the County Government Act of 2012.
15. She averred that any visit by the 2<sup>nd</sup> respondent to any of the 1<sup>st</sup> respondent's institution is preceded by a formal notification and accordingly all members of staff and patients of the hospital were properly notified of the impending 2<sup>nd</sup> respondent's visit without any exceptions.
16. She deposed that the said photograph was lawfully and justifiably taken and published by the 1<sup>st</sup> respondent with the Petitioner's knowledge.
17. She further averred that the petitioner has not suffered in any manner whatsoever as a result of the publication of the aforesaid photograph and as such the instant petition is malicious, ill-conceived and misleading.
18. It was also her averment that the petitioner's case is time barred, frivolous, and defective, and an abuse of this court's process and prayed that it be dismissed with costs.
19. The Petition was disposed of by way of written submissions which are summarized as follows.

### **Petitioners Submissions**

20. The Petitioner submissions are dated 14<sup>th</sup> May,2023 in which he framed the following issues for determination;-



- a. Whether the Respondents published the Petitioner’s photograph without his consent;
  - b. Whether public interest outweighs an individual’s right to privacy and dignity;
  - c. Whether the Petitioner’s right to privacy and human dignity was violated
  - d. Is the petitioner entitled to be compensated?
  - e. Who should bear the costs of this petition?
21. In regards to the first issue, the petitioner submitted that the respondents have failed to present any evidence that consent was sought from him to have him photographed and his photographs published for onward purposes as averred in their Replying Affidavit.
22. With respect to the second issue, the petitioner submitted that it is indisputable the photographs exhibited captured him in a hospital bed receiving treatment on a dialysis machine and thus evident that the publication by the respondents of the said photographs was unacceptable exploitation of one’s photograph or likeness for their purposes or programs without his consent and thus an invasion of his rights to privacy.
23. In support of his submissions, the petitioners cited the provisions of Sections 26 (a) and (c) and 29 of the Data Protection Act and the case of Kenya Legal and Ethical Network on HIV & AIDS (KELIN) & 3 others vs Cabinet Secretary Ministry of Health & 4 others [2016] eKLR where the court quoted the Constitutional Court of South Africa in the case of Mistry vs Interim National Medical and Dental Council of South Africa (1998) (4) SA 1127 (CC) where it was stated that in order to determine whether there is a violation of the right to privacy, the Court ought to take into account the fact;
- (i) whether the information was obtained in an intrusive manner,
  - (ii) whether it was about intimate aspects of an applicants’ personal life;
  - (iii) whether it involved data provided by an applicant for one purpose which was then used for another purpose and (iv) whether it was disseminated to the press or the general public or persons from whom an applicant could reasonably expect that such private information would be withheld.
24. The petitioner also relied the case of J W I & another vs Standard Group Limited & another [2015] eKLR where the court in determining the scope of right to privacy referred to the definition of Article 8(2) of the European Convention on Human Rights which provides for the right to privacy of an individual’s private and family life, his home and correspondence, as follows;
- “The right to privacy consists essentially in the right to live one’s own life with a minimum interference. It concerns private family and home life, physical and moral integrity, honour and reputation, avoidance of being placed in a false light, non-revelation of irrelevant and embarrassing facts, unauthorized publication of private photographs, protection from disclosure of information given or received by the individual confidentially”.
25. The petitioner also made reference South African case of Angella Wells vs. Atoll Media (PTY) Ltd & Anor, Western Cape High Court Case No. 11961/2006 where it was inter alia stated that:
- “...the appropriation of a person’s image or likeness for the commercial benefit or advantage of another may well call for legal intervention in order to protect the individual concerned.”



26. The petitioner further submitted that publication of his photograph constituted an unjustifiable invasion of his personal rights as an individual including his dignity and privacy. In support of his submissions the Respondent relied on Articles 28 & 31 of *the Constitution*, Article 1 of the Universal Declaration of Human Rights, South African case of *S vs Makwanyane & Another* (CCT3/94) [1995] ZACC 3 & Kenya Human Rights Commission vs Communications Authority of Kenya & 4 others [2018] eKLR
27. The petitioner further argued that the 1<sup>st</sup> respondent has not stated that the services of the said dialysis machine are free so as not to gain any revenue therefrom. He urged this court to take judicial notice that the public hospitals including the 1<sup>st</sup> Respondent herein charge patients medical fees for medical bills incurred by them and as such derive revenue therefrom. He contended that even if no commercial benefit was derived therefrom, it was clear the photographs in issue were appropriated or exploited to the Respondent's advantage.
28. He also argued that the 2<sup>nd</sup> respondent was a substantive Governor of Nakuru County and posting his said photographs was for purposes of advancing his political mileage.
29. With regard to the third ground, the petitioner submitted that the Respondent's justification on taking his photograph is not legally tenable. Citing Article 20(1) of *the Constitution*, the petitioner argued that he is a private person who was being attended to in a hospital and the respondents have not shown any reason how and why such a picture is of any importance to the general public.
30. It was thus submitted that public interest does not outweigh or override the interest of the petitioner. That a person's life is a restricted realm in which only that individual has the power of determining whether another may enter, and if so, when and how long and under what conditions.
31. On the fourth issue, the petitioner submitted in the affirmative and prayed for Ksh.6, 000,000/= as general damages for infringement of his aforesaid constitutional rights. In support of this position, reliance was placed on the cases of *Joel Mutuma Kirimi & Another vs National Hospital Insurance Fund (NHIF)* [2020] eKLR & *M W K & another vs Attorney General & 3 others* [2017] eKLR.
32. On costs the petitioner submitted that the same follows the event. He prayed to be awarded costs of the suit.

### **Respondents' submissions**

33. The Respondent submissions are dated 7<sup>th</sup> July, 2023. According to the Respondents, the main issue for determination is whether based on the allegation floated in the pleadings, the petitioner is entitled to the orders sought.
34. The respondents reiterated that the visit by the 2<sup>nd</sup> respondent was preceded by a formal notification to all members of staff and patients of NGPH and therefore the photographs in questions were justifiably taken and published by the 1<sup>st</sup> respondent with the petitioners' knowledge.
35. The respondents asserted that this suit is time barred, an afterthought having been filed after an unreasonable and inordinate delay of over 3 years. They placed reliance on the case of *James Kanyiita Nderitu v Attorney General & another* [2019] eKLR where the court stated that;

‘Although there is no limitation period for filling proceedings to enforce fundamental rights and freedoms, the court in considering whether or not to grant relief under Section 84 of *the Constitution*, is entitled to consider whether there has been inordinate delay in lodging the claim. The court is obliged to consider whether justice will be served by permitting a



respondent, whether an individual or the State, in any of its manifestations, should be vexed by an otherwise stale claim.’

36. Guided by the above authority, the respondents submitted that the petitioner has not given any explanation to justify the unreasonable and inordinate delay of over 3 years.
37. They referred this court to the case of Jessicar Clarise Wanjiru vs Davinci Aesthetics & Reconstruction Centre & 2 Others [2017] eKLR which enumerated the key elements of a Claim for unlawful use of Name or image which a petitioner must establish to succeed in a case such as this as follows:-
  - a. Use of a Protected Attribute: The plaintiff must show that the defendant used an aspect of his or her identity that is protected by the law. This ordinarily means a plaintiff’s name or likeness, but the law protects certain other personal attributes as well.
  - b. For an Exploitative Purpose: The plaintiff must show that the defendant used his name, likeness, or other personal attributes for commercial or other exploitative purposes. Use of someone’s name or likeness for news reporting and other expressive purposes is not exploitative, so long as there is a reasonable relationship between the use of the plaintiff’s identity and a matter of legitimate public interest.
  - c. No Consent: The plaintiff must establish that he or she did not give permission for the offending use.
38. Based on the above case, the respondents submitted that the petitioner has not met the above conditions.
39. The respondents also argued that the petitioner did not object to the photographs being taken or sought to know the purpose of the same and therefore his silence and indifference ought and should be interpreted as implied consent.
40. The respondents contended that the petitioner has not proved that the said photograph was taken for exploitative purposes.
41. The respondents posited that the said photographs was taken for purposes of facilitating public awareness and access to information in strict accord with Article 35 of *the Constitution* and Sections 93,94,95 and 96 of the County Government Act of 2012.
42. With respect to whether the petitioner is entitled to general damages, the respondents submitted that it is trite that courts are guided by the principles established by precedents in determining the appropriate award in constitutional matters. In support of this proposition reliance was placed on the cases of Dendy vs. University of Witwatersrand, Johannesburg & Others [2006] 1 LRC 291 as cited in Gitobu Imanyara & 2 others vs Attorney General [2016] eKLR, Peter M. Kariuki vd Attorney General [2014] eKLR & Zipporah Seroney & 5 others vs Attorney General [2020] eKLR.
43. The respondents submitted that there is no evidence that the petitioner was subjected to psychological trauma or suffering by their actions and that they made any monetary or political gain from the publication as alleged.
44. They submitted that in the unlikely event the court finds otherwise, they asked the court consider the awards in light of the principles set out in the above cited precedents and the awards made in the cases of Rukia Idris Barri vs Mada Hotels Ltd [2013] eKLR & Shiverenje Simani vs Star Newspaper & another [2021] eKLR.



## Analysis & determination

45. I have considered the Petition, the Affidavits on record and the submissions of the parties. It is not in dispute that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents took the photographs of the petitioner taken while receiving treatment at Nakuru County and Referral Hospital and published it on their official social media account and online website respectively.
46. The issues that arise for determination are :-
- a. Whether the petitioner's rights to privacy, dignity and protection of property were infringed under Articles 28, 29(d) and 31(c) of *the Constitution* were violated
  - b. Whether the petitioner is entitled to the reliefs sought.

## Whether the petitioner's rights to privacy, dignity and protection of property were infringed

47. Article 19 of *the Constitution* stipulates that the Bill of Rights is the cornerstone of democracy in Kenya. It enshrines the rights of all people in the country and affirms the democratic values of human dignity, equality and freedom.
48. Article 28 of *the Constitution* provides that every person has inherent dignity and the right to have that dignity respected and protected.
49. Human dignity connotes self-worth and respect. Hence, according to Black's Law Dictionary, Tenth Edition, dignity is defined as:

“The quality, state, or condition of being noble; the quality, state or condition of being dignified.”

50. Article 31 of *the Constitution* provides that;

“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.

51. Article 1 of the Universal Declaration of Human Rights, 1949 provides as follows;

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”

52. Article 12 of the UDHR provides that;

“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, or to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”

Section 2 of the Data Protection Act defines data as;

“data” means information which—(a)is processed by means of equipment operating automatically in response to instructions given for that purpose;(b)is recorded with intention that it should be processed by means of such equipment;(c)is recorded as part of a relevant filing system;(d)where it does not fall under paragraphs (a), (b) or (c), forms part of





an accessible record; or(e)is recorded information which is held by a public entity and does not fall within any of paragraphs (a) to (d).”

53. The same section defines an identifiable Natural person as a person who can be identified directly or indirectly, by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social or social identity. The identifiable natural person in this case is the Petitioner.

54. In *J WI vs Standard Group Limited & Another* (supra) Lenaola, J. (as he then was) took the view that:

“...the right to human dignity has been recognised as the basis of fundamental rights and the Universal Declaration of Human Rights in its Preamble states that;

“Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”

In the context of the issue under consideration, human dignity need not be pleaded as a right for it to be enforced because it is inherent and together with the right to life, they form the basis for all other rights to be enjoyed by a human being qua human being. I need not say more...”

55. In the South African case of *S vs Makwanyane & Another* (CCT3/94) [1995] ZACC 3 (supra), the importance of dignity was underscored thus:

“The importance of dignity as a founding value of the new Constitution cannot be over emphasized. Recognizing a right to dignity is an acknowledgement of the intrinsic worth of human beings; human beings are entitled to be treated as worthy of respect and concern. This right therefore is the foundation of many other rights that are specifically entrenched in *the Constitution*”.

56. The right to privacy essentially necessitates that a person’s private details are not consumed by the public without their consent which essentially violates their right to dignity. The decision in the case of *Jessica Clarise Wanjiru* (supra) serves as an important reference point to underscore this point:

“‘Privacy’, ‘dignity’, ‘identity’ and ‘reputation’ are facets of personality. All of us have a right to privacy and this right, together with the broader, inherent right to dignity, contributes to our humanity.

It is the personality rights of dignity and privacy that underscore individuality and set both the limits of humanity and of human interaction. But, the reasons for protecting privacy are wider than just protecting the dignity of the individual.”

57. Chemitei, J in the case of *T O. S vs. Maseno University & 3 others* [2016] eKLR held that:

“From the above reasoning and expositions of the law it is clear that publication or use of the images of an individual without his consent violates that person’s right to privacy. I say so because a person’s life is a restricted realm in which only that individual has the power of determining whether another may enter, and if so, when and for how long and under what conditions.”

58. In the instant case, the petitioner averred that he learnt of the aforesaid publication of his photographs through his relative and when he logged into the official Facebook account of the 2<sup>nd</sup> respondent and





the official website of the 1<sup>st</sup> respondent he saw his photographs while under treatment there. He stated that his consent was not obtained before the same were published by the Respondents.

59. According to the respondents there was an official communication sent to the patients prior the official visit of the 2<sup>nd</sup> respondent to the Nakuru County and Referral hospital where the petitioner was receiving his treatment.
60. I have perused the letter in question and I note it was addressed to the hospital, staff and patients. However it is not clear whether the same was brought to the attention of the petitioner. The notification of the visit cannot be taken to infer any form of consent by a patient who was on normal/ routine visit to the hospital. It was not shown that even after the photograph was taken the petitioner was asked to consent to it. Medical records including data on a visit by a patient require confidentiality and may only be made public with the consent of the patient. The photograph as taken breached this requirement. I hereby find that the consent of the petitioner was not obtained prior the publication of his photographs online.
61. Since it is undisputable that the Petitioner's image was published, that was prima facie evidence of violation of his privacy. The said photograph shows the petitioner receiving treatment. Respondents ought to have sought consent and to explain to the petitioner what his image was to be used for. This is clearly spelt out under Section 29 of the Data Protection Act, which states that;
- “A data controller or data processor shall, before collecting personal data, in so far as practicable, inform the data subject of—
- (a) the rights of data subject specified under section 26;
  - (b) the fact that personal data is being collected;
  - (c) the purpose for which the personal data is being collected;
  - (d) the third parties whose personal data has been or will be transferred to, including details of safeguards adopted;
  - (e) the contacts of the data controller or data processor and on whether any other entity may receive the collected personal data;
  - (f) a description of the technical and organizational security measures taken to ensure the integrity and confidentiality of the data;
  - (g) the data being collected pursuant to any law and whether such collection is voluntary or mandatory; and
  - (h) the consequences if any, where the data subject fails to provide all or any part of the requested data.”
62. Having failed to comply with the above provisions of the law, I find and hold that the petitioner's right to privacy and human dignity was violated.
63. As regards the right to own property as provided for by Article 40 of *the Constitution*, the petitioner deponed that he has since lost business relationship with his business partners who have questioned his health wellness and ability to sustain the business in the long term. It required a specific incident that he actually suffered this loss. However, no evidence was adduced to ascertain this averment. I find that the petitioner's right to protection of personal property was not violated.



### Whether the petitioner is entitled to the reliefs sought

64. The petitioner deposed that following the publication of his photograph, respondents have benefitted as they have achieved political mileage by exploiting his photograph for advertisement of their promotional campaign and achievement in the health care sector.
65. The respondents on their part asserted that the said photograph was not taken for advertisement as alleged but for purpose of facilitating public awareness and access to information.
66. Considering the materials placed on record, I do find that the petitioner did not adduce any evidence to prove that his photograph was used for commercial and political gain or that the respondents benefitted to his detriment through publication of his photograph.
67. It is well settled that award of compensation is an appropriate and effective remedy for redress of an established infringement of a fundamental right under *the constitution*. The quantum of compensation will, however, depend upon the facts and circumstances of each case.
68. Article 23 of *the Constitution* gives provision on the orders that the court may grant for violation of constitutional rights;

“ 23. Authority of courts to uphold and enforce the Bill of Rights

- (1) The High Court has jurisdiction, in accordance with Article 165, to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.
- (3) In any proceedings brought under Article 22, a court may grant appropriate relief, including—
  - (a) a declaration of rights;
  - (b) an injunction;
  - (c) a conservatory order;
  - (d) 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;
  - (e) an order for compensation; and
  - (f) an order of judicial review.”

69. Assessment of quantum of damages is matter of discretion of the court. When determining the appropriate award of general damages, the courts are guided by the principles that have been established through various authorities of the superior courts. The Court of Appeal, while shedding light on these principles in the case of *Gitobu Imanyara & 2 others vs Attorney General* (supra) opined as follows:

“ ...the South African Case of *Dendy v University of Witwatersrand, Johannesburg & Others* - [2006] 1 LRC 291 where the Constitutional Court of South Africa held that:



“...The primary purpose of a constitutional remedy was to vindicate guaranteed rights and prevent or deter future infringements. In this context an award of damages was a secondary remedy to be made in only the most appropriate cases.

“...The primary object of constitutional relief was not compensatory but to vindicate the fundamental rights infringement and to deter their future infringement. The test was not what would alleviate the hurt which plaintiff contended for but what was appropriate relief required to protect the rights that had been infringed. Public policy considerations also played a significant role. It was not only the plaintiff’s interest, but the interests of society as a whole that ought as far as possible to be served when considering an appropriate remedy.”

70. The same Court, while stating the principles of assessment of this damage in the case of Peter M. Kariuki vs Attorney General [2014] eKLR held as follows:

“it bears repeating that assessment of quantum of damages is a matter for the discretion of the trial judge, which must be exercised judicially and with regard to the general conditions prevailing in the country and to prior relevant decisions...”

71. The plaintiff prayed for general damages of Kshs.6,000,000/=. He placed reliance on the cases of Joel Mutuma Kirimi & another vs National Hospital Insurance Fund (NHIF) (supra) where the court awarded the petitioner Kshs. 5,000,000 as general damages for each of the plaintiffs for breach of plaintiffs’ right to human dignity and privacy. Also cited was the case of M W K vs another v Attorney General & 3 others (supra) where Mativo J awarded the first petitioner a global sum of Kshs. 4,000,000/- by way general damages for violation of her constitutional rights to dignity, degrading treatment and privacy.

72. The respondents on their part did not propose any figure but urged this court to be guided by the cases of Rukia Idris Barri vs Mada Hotels Ltd [2013] eKLR where the plaintiff was awarded general damages of KShs.300,000/- for infringement of her rights to human dignity and privacy. They also cited Shiverenje Simani vs Star Newspaper & another [2021] eKLR where General damages for violation of the rights to dignity and privacy of Kshs.250, 000/- was awarded to the Petitioner.

73. I have also looked at the case of Mutuku Ndambuki Matingi vs Rafiki Microfinance Bank Limited [2021] eKLR where Odunga J (as he then was) awarded the petitioner general damages of Kshs 2,000,000.00 for the violation of his right to dignity and privacy.

74. Guided by the above cases, I do hereby exercise my discretion and grant the petitioner Ksh. 500,000/= as general damages for infringement of his rights to privacy and dignity.

75. The upshot is that I find that this petition has merit. I accordingly enter judgment for the petitioner against the respondents jointly and severally as follows:

- a. A declaration that the petitioners fundamental rights and freedoms as enshrined under Articles 28 and 31 (c) of *the Constitution* of Kenya have been contravened and infringed upon by the respondents.
- b. The claim for violation of the petitioner’s rights under Article 40(1) of *the Constitution* of Kenya is dismissed.
- c. General damages for violation of the rights to dignity and privacy is made in the sum of KShs. 500,000/-.



- d. An order of permanent injunction is hereby issued restraining the Respondents from further publishing and/or using the Petitioner's photograph on the internet/World Wide Web through an account and/or profile owned, managed and/or controlled by the Respondents on the Respondent's social media account and profile on Facebook, and/or in any other social and/or electronic media.
- e. A mandatory injunction is hereby issued compelling the Respondents to permanently remove the Petitioner's photograph from the Respondent's social media account and profile on Facebook and/or website or in any other social and/or electronic media;
- f. Costs to the petitioner
- g. Interest on the general damages shall be from date of judgment.

76. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 25<sup>TH</sup> DAY OF SEPTEMBER, 2023.**

**H. M. NYAGA**

**JUDGE**

In the presence of;

C/A Jeniffer

Mr. Maiyo for petitioner

N/A for respondents

