



Marwa v National Assembly & 3 others; Law Society of Kenya & 2 others (Interested Parties) (Constitutional Petition E019 of 2023) [2024] KEHC 14081 (KLR) (7 November 2024) (Judgment)

Neutral citation: [2024] KEHC 14081 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CONSTITUTIONAL PETITION E019 OF 2023
JK SERGON, J
NOVEMBER 7, 2024**

BETWEEN

MICHAEL MWITA MARWA PETITIONER

AND

THE NATIONAL ASSEMBLY 1ST RESPONDENT

THE SPEAKER OF THE NATIONAL ASSEMBLY 2ND RESPONDENT

THE HON CHIEF JUSTICE OF KENYA AND PRESIDENT OF THE SUPREME COURT OF KENYA 3RD RESPONDENT

THE HON ATTORNEY GENERAL 4TH RESPONDENT

AND

THE LAW SOCIETY OF KENYA INTERESTED PARTY

IRENE CHEROTICH INTERESTED PARTY

MARY CHEPKIRUI INTERESTED PARTY

JUDGMENT

1. The petitioner filed a petition dated 21st November, 2023 seeking the following reliefs;
 - a) A declaration that Sections 50(1) of the *Law of Succession Act* Cap 160, Laws of Kenya in so far as it seeks to limit access to justice for some litigants while granting the same access to others is discriminatory and unconstitutional and offends the provisions of Articles 25(c),27(4) ,47,48 of *the Constitution* of Kenya;
 - b) A declaration that Section 50 (1) of the Law of the Succession Act Cap 160, in so far as it seeks to advance that for one to seek access to justice to a higher court other than the High Court



from decision emanating from the Magistrates Court even on point of law they have to ascribe to a certain religion or a certain set of law precisely the Islamic law is unconstitutional and offends the provisions of Article 27 (4) and 32 of the Constitution of Kenya;

- c) A declaration that Sections 50 (1) of the Law of Succession Act in so far as it seeks to place the Magistrates Court and the Kadhi's court in different cadres other than "Subordinate Courts" as is provided for in the Constitution of Kenya is unconstitutional as it violates the provisions of Article 169 (1) of the Constitution of Kenya;
 - d) A declaration that Sections 50 (1) of the Law of Succession Act in so far as it seeks to limit the powers of judicial officers to grant access to justice to some litigants while granting access to others is unconstitutional as it violates the provisions of Article 1,2 and 10 of the Constitution of Kenya;
 - (e) That an order be issued compelling the 1st Respondent to pass the appropriate laws amending Section 50 (1) of the Laws of Succession Act to align with the clear provisions of the Constitution of Kenya; and
 - (f) Costs of this petition to be paid to the Petitioner by the Respondents jointly and or severally.
2. The crux of the Petition is an allegation by the Petitioner that Section 50 (1) of the Act is discriminatory and unconstitutional for reasons that it limits access to justice to those not professing the Islamic faith by limiting their avenues for appeal in succession matters to the High Court.
 3. The Petitioner further alleges that section 50 (1) of the Law of Succession Act seeks to limit access to justice to one group of litigants arising from disputes filed in courts of equal status while allowing access to justice to the other group is discriminative, illegal and unconstitutional for violating the express provisions of Articles 25(c), 27(4), 32, 47, 48 and 169 (1) of the Constitution of Kenya 2010.
 4. The petition is supported by the verifying affidavit of Micheal Mwita Marwa the petitioner herein.
 5. The 1st and 2nd Respondent filed a joint replying affidavit sworn by Serah Kioko the Deputy Clerk of the 1st Respondent herein and duly authorised by the Rt. Hon. Speaker of the National Assembly the 2nd Respondent, to swear this affidavit on his behalf and on behalf of the National Assembly.
 6. She avers that the gist of the petition is the constitutionality of section 50 (1) of the Law of Succession Act, Cap 160 of the Laws of Kenya and that the Petitioner alleges that the Act limits access to justice by those not professing Islamic faith by limiting their avenues for appeal to the High Court.
 7. She avers that under Article 94 of the Constitution of Kenya the legislative authority of the Republic is derived from the people and at the national level, it is vested in and exercised by Parliament. The Law of Succession Act was enacted by Parliament in 1972, in accordance with the laws of Kenya, to provide a streamlined legal framework for handling the assets and properties left behind by deceased individuals in Kenya. The House in considering and passing the impugned provision complied with the provisions of the Constitution and the National Assembly Standing Orders.
 8. She avers that there is a general but rebuttable presumption that a statute or statutory provision is constitutional and the burden is on the person alleging unconstitutionality to prove that the statute or its provision is constitutionally invalid.
 9. She avers that the Petition herein is premised on a misreading or misunderstanding of the law. Section 50 of the Law of Succession Act provides as follows;
 50. Appeals to High Court



- 1) An appeal shall lie to the High Court in respect of any order or decree made by a Resident Magistrate in respect of any estate and the decision of the High Court thereon shall be final.
 - 2) An appeal shall lie to the High Court in respect of any order or decree made by a Kadhis' Court in respect of the estate of a deceased Muslim and, with the prior leave thereof in respect of any point of Muslim law, to the Court of Appeal.
10. She avers that a basic reading of the provisions of Section 50 (2) of the *Law of Succession Act* reveals that the appeals from the Kadhis' Court in respect of the estate of a deceased Muslim may be made to the High Court and the only exception provided in the section is with respect to a point of Muslim law. Further, in order for an appeal on the point of Muslim law to be made to the Court of Appeal, there must be leave sought to file the same.
 11. She avers that on the question of violation of the Petitioner's rights under Articles 25(c), 27(4), 32,47, 48 and 169 (1) of *the Constitution* of Kenya, the Petitioner has failed to demonstrate with specificity the manner in which any of these rights have been violated by the National Assembly. The Petition thus fails the specificity test established in the case of Anarita Karimi Njeru v Republic [1979] eKLR.
 12. She avers that the Petitioner herein, while stating the alleged provisions of *the Constitution* which were violated has failed to specifically outline instances or to demonstrate that the law with regard to the limitation of the right to appeal has been applied in a discriminatory manner. Consequently, the Petitioner having failed to provide any proof of the allegations of discrimination, or specifically pleaded cases of violation of their rights as required by the Mutunga Rules and as outlined in various court decisions, has failed to prove their Petition as required.
 13. She avers that Courts have previously pronounced themselves on questions of jurisdiction and whether the Court of Appeal could rightly hear an appeal from the High Court where the law has expressly provided that the High Court's decision is final. She cited the Supreme Court in Petition No. 38 of 2018, Hamdia Yaro Shek Nuri v Faith Tumaini Kombe & Others where the apex court stated that where there is no express provision in law for an appeal to the Court of Appeal, no such right could apply.
 14. She avers that the provisions of Section 50 of the Law of Succession indicate the clear intention of Parliament to regulate the scope of appeals to the Court of Appeal for succession matters emanating from the Resident Magistrates Court which fall within its powers as under *the Constitution* of Kenya. The Provisions are therefore not only constitutional but are also endorsed by rulings from the Supreme Court. The Petitioner can therefore not ask the Court to impose jurisdiction on Courts where the jurisdiction is expressly enforced by legislative statutes.
 15. The 1st and 2nd Respondent filed grounds of opposition dated 23rd November, 2023 in opposition to the instant petition based on the following grounds that:
 - (1) That the Petition herein is premised on a misreading and misapprehension of the impugned provisions of the *Law of Succession Act* (Cap 160).
 - (2) That under Article 94 of *the Constitution* of Kenya, legislative authority of the Republic is derived from the people and, at the national level, it is vested in and exercised by Parliament.
 - (3) That *the Constitution* provides in Article 109 that in the exercise of its legislative powers, Parliament shall exercise its legislative power through Bills passed by Parliament and assented to by His Excellency the President.



- (4) That the Courts have held previously that there is a general presumption that a statute or statutory provision is constitutional and the burden is on the person alleging unconstitutionality to prove that the statute or its provision is constitutionally invalid. (*Susan Wambui Kaguru & 7 Others v Attorney General & Another* [2013])
 - (5) That section 50 the *Law of Succession Act* (Cap 160), enjoys a presumption of constitutionality which the Petitioner has failed to rebut.
 - (6) That the Petitioner has failed to demonstrate that the 1st and 2nd Respondents have violated the law or acted ultra vires in the enactment of section 50 of the *Law of Succession Act* (Cap 160).
 - (7) That the Petition herein is premised on a misreading or misunderstanding of the Section 50 of the *Law of Succession Act* (Cap 160)
 - (8) That the Petitioner has failed to note that the appeals to the Court of Appeal with regard to the estate of a deceased Muslim may only lie with respect of any point of Muslim law and not estate disputes
 - (9) That the Petitioner has misapprehended the law with regard to the rights of persons professing the Muslim faith who subject themselves to the Kadhis' court having a carte blanche to appeal on issues of a deceased Muslim's estate to the Court of Appeal.
 - (10) That the Petitioner has failed to provide any proof of the allegations of discrimination, or specifically pleaded cases of violation of their rights as required by Rule 10 of the Mutunga Rules.
 - (11) That the Petitioner has failed to demonstrate with specificity the manner in which any of his rights have been violated by the 1st and 2nd Respondents and therefore the petition fails the specificity test established in the case of *Anarita Karimi Njeru v Republic* [1979] eKLR.
 - (12) That the Courts have previously pronounced themselves on questions of jurisdiction as to whether the Court of Appeal could rightly hear an appeal from the High Court where the law has expressly provided that the High Court's decision is final.
 - (13) THAT the Supreme Court in *Petition No. 38 of 2018, Hamdia Yaroi Shek Nuri v Faith Tumaini Kombe & Others* stated that where there is no express provision in law for an appeal to the Court of Appeal, no such right could apply.
 - (14) That the Petitioner has failed to provide any cogent reasons for the grant of the orders compelling the National Assembly to pass laws amending Section 50 (1) of the Law of Succession (Cap 160).
 - (15) That the Petition herein is misplaced and based on a misapprehension and misunderstanding of facts and the law by the Petitioner.
16. Mary Chepkirui the 3rd Interested Party herein duly authorised by the 2nd Interested Party filed a replying affidavit in support of the petition, citing the fact that the instant petition raises substantive points of law that need to be determined by this Court.
 17. She avers that on 8th March 2016, the 2nd and 3rd Interested Party petitioned the Magistrate's Court at Kericho vide Kericho Chief Magistrates Cause No. 4 of 2016 for a Grant of Letters of Administration over the estate of their late father, KIPSOI ARAP KENDUIWO(Deceased) and a Grant of Letters of Administration Intestate was duly issued.



18. She avers that they subsequently filed an application for confirmation of the said Grant and proposed that the estate of the above named deceased be subdivided into equal portions and distributed among all the dependants save for one, Rebecca Siele who had renounced her rights thereto.
19. She avers that upon service of the said Summons for Confirmation of Grant, the Respondents lodged a Protest to the Confirmation of Grant; which protest was heard and a ruling delivered on 6th March, 2019 in favour of the Protestors.
20. She avers that being aggrieved by the said decision, they promptly filed an application seeking review and setting aside of the ruling but the same was dismissed on 21st August, 2019.
21. She avers that their Advocates on record then advised them that they ought to have filed an appeal against the ruling dated 6th March, 2019 and not have sought for review of the same.
22. She avers that they consequently sought leave to appeal out of time vide High Court Misc. Succession Cause No. 70 of 2019; which leave was granted on 18th March, 2022. She further avers that they followed up on the proceedings and subsequently filed the Record of Appeal on 24th October, 2022. The appeal was admitted on 29th November, 2022 and canvassed by way of written submissions.
23. She avers that upon considering both parties' respective submissions, judgement was delivered on 24th April, 2023 in favour of the Protestors/Respondents.
24. She avers that being aggrieved by the said Judgement, they intended to appeal against it to the Court of Appeal. However, their Advocates on record informed them that the *Law of Succession Act*, Section 50 (1), provides that a decision rendered in an appeal to the High Court in respect of any order or decree made by a Resident Magistrate in respect of any estate shall be final.
..
25. She avers that it is their position that section 50 (1) of the *Law of Succession Act* is discriminatory as it limits access to justice to persons whose estates are governed by the Magistrates Act to the extent that they are only allowed to appeal the decision to the High Court, which decisions shall be final yet section 50 (2) provides that an appeal shall lie to the High Court in respect of any decree or order made by a Kadhis' Court in respect of the estate of a deceased Muslim and, to the Court of Appeal; with prior leave of the High Court.
26. She avers that it is apparent from the above that despite *the Constitution* of Kenya having given all persons equal treatment before the law, the said Section 50(1) of the *Law of Succession Act* tends to limit this right as it accords persons that profess the Islamic Religion or that ascribe to Islamic law a higher standard than persons of other religious persuasions.
27. The parties were directed by this court to file written submissions
28. The petitioner filed submissions in support of the instant petition. The petitioner contended that this Court is empowered by virtue of Article 23 of *the Constitution* of Kenya 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 as per Article 165 of *the Constitution* of Kenya and further to this Article 165 (3) (d) (i) & (ii) of *the Constitution* of Kenya provides that this Court has the jurisdiction to hear any questions respecting the interpretation of *the Constitution*, including the determination of questions involving declaration of constitutionality of an Act of Parliament and whether any law is inconsistent with or in contravention of *the Constitution*.



29. The petitioner reiterated that Section 50(1) of the Law of Succession Act in so far as the same is inconsistent with Section 50 (2) of the Law of Succession Act, is unconstitutional. The said section states as follows;

“(1) An appeal shall lie to the High Court in respect of any order or decree made by a Resident Magistrate in respect of any estate and the decision of the High Court thereon shall be final. (2) An appeal shall lie to the High Court in respect of any order or decree made by a Kadhis' Court in respect of the estate of a deceased Muslim and, with the prior leave thereof in respect of any point of Muslim law, to the Court of Appeal.” The Petitioner argued that Section 50(1) of the Law of Succession Act in so far as it seeks to limit access to justice to persons that ascribe to other religious beliefs while advancing those that ascribe to the Islamic faith, then the same is discriminatory and goes against the tenets to Article 27(4) of the Constitution. The petitioner also argued that to the extent that section 50 (1) of the Law of Succession Act seeks to place the Magistrates Courts and the Kadhis Court in different cadres other than "Subordinate Courts" as is provided for in the Constitution of Kenya, then Article 169 (1) of the Constitution of Kenya, 2010 has been violated.

30. The petitioner argued that the Kadhis Courts are not specialised courts save that their jurisdiction is limited to hearing matters relating to muslim law relating to personal status, marriage and inheritance; to this extent, the Kadhis Courts are subordinate courts on whose supervisory powers of the High Court lie. To therefore assume that succession matters arising from Kadhis' Courts are special in any way besides being Muslim matters would be tantamount to anarchy. The preferential treatment of the same to the extent that any dispute arising therefrom can find its way all the way to the Court of Appeal on matters of law whereas their counterpart from the Magistrates' court must abate at the High Court is not only discriminatory but highly unconstitutional.

31. The petitioner argued that the event of any dispute arising out of the decision of the magistrates, both sets of groups would lodge an appeal to the High Court; however, when either of the parties is dissatisfied with the decision of the High Court, only the litigants professing the Muslim faith and beliefs are allowed to lodge a Second Appeal to the Court of Appeal on matters of law. The petitioner argued that this differentiation is not justified at all, as a matter of fact, both sets of groups ought to be allowed to lodge an appeal to the Court of Appeal on matters of law and not only one set. The petitioner cited the case of *Free Kenya Initiative & 17 Others V Independent Electoral & Boundaries Commission & 5 Others: Kenya National Commission On Human Rights & Another (Interested Parties)* (Constitutional Petition E160 of 2022 & Petition E219, E225 & 12 of 2022 (Consolidated)) [2022] KEHC 10217 (KLR) (Constitutional and Human Rights) (5 July 2022) (Judgement) where the court stated that;- “Discrimination was any distinction, exclusion or preference made on the basis of differences to persons or group of persons based on such considerations as race, colour, sex, religious beliefs, political persuasion or any such attributes that had real or potential effects of nullifying or impairing equality of opportunity or treatment between two persons or groups. Article 27 of the Constitution prohibited any form of discrimination. The Constitution advocated for non-discrimination as a fundamental right which guaranteed that people in equal circumstances were treated or dealt with equally both in law and practice without unreasonable distinction or differentiation.” The petitioner reiterated that the differential treatment alluded to at section 50(1) vis a vis section 50 (2) of the Law of Succession Act is discriminatory and offends the provisions of the Constitution, hence unconstitutional.



32. The petitioner contended that the Doctrine and Principle of Finality dealt with the all-too human predilection to keep trying until something gives, and that this principle was majorly applicable when the Court of Appeal was the Court of last resort and there was an obvious need to curtail litigation from proceeding to the highest court in the land. The petitioner argued that this doctrine has gradually faded with the promulgation of the 2010 Constitution and is applied sparingly and more-so where its applicability would not lead to discrimination and unconstitutionality. The petitioner cited the case of Standard Chartered Financial Services Limited & 2 Others V Manchester Outfitters (suing Division) Limited (now Known As King Woollen Mills Limited & 2 Others [2016] eKLR where the court held that with *the Constitution* of Kenya 2010, all parameters must be observed before a matter can be subjected to the doctrine of finality. The Court stated that the principles of justice would outweigh the doctrine of finality with the 2010 constitution. It stated as follows;- “ Therefore the focus in the 2010 Constitution is on justice, and in order to give effect to the objective and purpose of *the Constitution*, this Court must, in interpreting its jurisdiction, go beyond the letter in *the Constitution* and legislative provisions and apply the spirit of *the Constitution*. While the decision in the Rai case laid stress on the letter of the law as it was then, and the need for finality in litigation, the position has now changed as this Court is obligated not just to follow the letter but also the spirit of *the Constitution* which stresses on justice being done. Thus where appropriate as in this case, the principle of fairness and justice must take priority over the principle of finality . We reiterate that position and stress that this Court is clothed with residual jurisdiction to reopen and rehear a concluded matter where the interest of justice demands, but that such jurisdiction will only be exercised in exceptional situations where the need to obviate injustice outweighs the principle of finality in litigation.”
33. The 1st and 2nd respondent filed joint submissions, they submitted that the purpose of the *Law of Succession Act*, Cap 160 of the Laws of Kenya is provided for in its long title, it is: “An ACT of Parliament to amend, define and consolidate the law relating to intestate and testamentary succession and the administration of estates of deceased persons; and for purposes connected therewith and incidental thereto”
34. They submitted that the petitioner failed to provide any proof of the allegations of discrimination, or specifically pleaded cases of violation of their rights as required by Rule 10 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (Mutunga Rules) which govern the form of and hearing of constitutional petitions by the Courts. They further argued that the Courts have interpreted the provisions of Rule 10 as requiring specificity by the Petitioner of the offences or threatened violation of the rights of the Petitioner. They cited the case of Anarita Karimi Njeru v Republic [1979] eKLR where the court held as follows: “We would, however, again stress that 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 a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed.” They reiterated that the Petitioner has not only failed to provide evidence of discriminatory application of the impugned provision of the law but the Petitioner has also failed to demonstrate with specificity the manner in which any of his rights have been violated by the 1st and 2nd Respondents.
35. They submitted on the jurisdiction of court and cited the case of Samwel K. Macharia & Another v Kenya Commercial Bank & 2 Others, SC *CA 2/2011*, the Supreme Court noted that a court’s jurisdiction flows from either *the Constitution* or legislation or both and further section 50 (2) of the *Law of Succession Act*, provides that appeals to the High Court may lie in respect of any order or decree made by a Kadhis’ Court in respect of the estate of a deceased Muslim. Further that it is only with prior leave that an appeal may lie to the Court of Appeal and that appeal may only be in respect of any



- point of Muslim law. They submitted that the Petitioner misdirected himself by alleging that section 50(1) is unconstitutional for limiting his right to appeal to the Court of Appeal despite the provision of article 164(3) which provides that the Court of Appeal can hear appeals from the High Courts and tribunals. They therefore argued that the Petitioner had wrongly conflated the question of jurisdiction and right of appeal.
36. They submitted that the courts have held previously that there is a general presumption that a statute or statutory provision is constitutional and the burden is on the person alleging unconstitutionality to prove that the statute or its provision is constitutionally invalid. They cited the case of Hussein Khalid & 16 others v Attorney General & 2 others [2019] eKLR the Supreme Court cited with approval the decision of the High Court in Susan Wambui Kaguru & 7 Others v Attorney General & Another [2013] where the Court held that every statute passed by the legislature enjoys a presumption of legality and it is the duty of every Kenyan to obey the very laws that are passed by their representatives in accordance with their delegated authority. They reiterated that the impugned statute, being an Act of Parliament passed in accordance with the provisions of the law, enjoys a presumption of constitutionality. They reiterated that the Petitioner having asserted that the impugned provision of the law violates the provisions of *the Constitution* by unfairly extending the rights of those professing Islamic faith to the detriment of the rest of the population ought to have demonstrated that prejudicial application of the law. Outside of proof of the same, the allegations by the Petitioner are mere conjecture. They cited the case of Haki na Sheria Initiative v Inspector General of Police & 3 others (2020) eKLR, where the court held that where a party wishes to rebut the presumption of constitutionality of a statute, it falls on the party which wishes to rely on the claim to prove the unconstitutionality of the statute.
37. The 4th respondent filed submissions and reiterated that whereas the petitioner in this suit contends that Section 50(1) of the Act is discriminatory and as such offends and continues to violate the fundamental rights encompassed under Articles 25(c), 27(4), 47 and 48 of *the Constitution* and that the impugned section has a discriminatory effect to the extent that it confers privilege to succession matters emanating from the Kadhis Court to proceed to the Court of appeal whereas in succession matters emanating from the Magistrate Court parties can only appeal to the High Court. The 4th respondent maintained that Section 50 (1) & (2) is drafted in a way that recognizes, respects, protects and promotes the family unit enshrined under Article 45 of *the Constitution*. Section 50 of the Act was intended to ensure finality in succession matters given the nature of its disputes, which tend to be acrimonious hence bringing disharmony in families. The Kadhis Court is a specialised court and appeals from it that lie to the Court of Appeal are limited ONLY to any point of Islamic law. The aforementioned section gives effect to the principle of differentiation for a legitimate function and as such it is not discriminatory in any way. They cited the High Court in Nelson Andayi Havi v Law Society of Kenya & 3 Others [2018] eKLR, where the court observed as follows; “It is not every differentiation that amounts to discrimination. Consequently, it is always necessary to identify the criteria that separate legitimate differentiation from constitutionally impermissible differentiation. Put differently, differentiation is permissible if it does not constitute unfair discrimination.”
38. The 4th respondent contended that this Court can only grant the reliefs under Article 23 (3) of *the Constitution* if the petitioner proves with a degree of precision that rights and fundamental freedoms under the Bill of Rights in *the Constitution* have been denied, violated, infringed or threatened. In view of the foregoing, the petitioners have failed to demonstrate how his rights under Articles 25, 27, 47 & 48 have been violated and therefore the instant petition has no merit and as such the petitioner herein is not entitled to the reliefs sought. The 4th respondents urged this court to dismiss the Petition with costs to the Petitioner.



39. This court, having considered the petition, responses to the petition and submissions by the parties, finds that the sole issue for determination is whether the instant petition has met the threshold of a constitutional petition.
40. It is not in dispute that the crux of the instant petition is the assertion by the petitioner that Section 50 (1) of the Act is discriminatory and unconstitutional for reasons that it limits access to justice to those not professing the Islamic faith by limiting their avenues for appeal in succession matters to the High Court.
41. It is therefore the petitioner's case that section 50(1) of the Law of Succession Act insofar as the same is inconsistent with Section 50 (2) of the Law of Succession Act, is unconstitutional. This said section states as follows; “(1) An appeal shall lie to the High Court in respect of any order or decree made by a Resident Magistrate in respect of any estate and the decision of the High Court thereon shall be final. (2) An appeal shall lie to the High Court in respect of any order or decree made by a Kadhis' Court in respect of the estate of a deceased Muslim and, with the prior leave thereof in respect of any point of Muslim law, to the Court of Appeal.” The Petitioner argued that Section 50(1) of the Law of Succession Act insofar as it seeks to limit access to justice to persons that ascribe to other religious beliefs while advancing those that ascribe to the Islamic faith, then the same is discriminatory and goes against the tenets to Article 27(4) of the Constitution.
42. It is the respondents' case that Section 50 (1) & (2) of the Law of Succession Act is drafted in a way that recognizes, respects, protects and promotes the family unit enshrined under Article 45 of the Constitution. Section 50 of the Act was intended to ensure finality in succession matters given the nature of its disputes, which tend to be acrimonious hence bringing disharmony in families. The Kadhis Court is a specialized court and appeals from it that lie to the Court of Appeal are limited ONLY to any point of Islamic law. The aforementioned section gives effect to the principle of differentiation for a legitimate function and as such it is not discriminatory in any way.
43. This court having carefully scrutinized the instant petition finds that whereas the petitioner has clearly set out the provisions of the Constitution which were allegedly violated, the petitioner has failed to specifically outline instances or to demonstrate that the law with regard to the limitation of the right to appeal has been applied in a discriminatory manner.
44. It is therefore the finding of this Court that the Petitioner having failed to provide any proof of the allegations of discrimination, or specifically pleaded cases of violation of their rights as outlined in various court decisions. In the case of *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* [2013] eKLR, the Court of Appeal held that:- “It is our finding that the Petition before the High Court was not pleaded with precision as required in constitutional Petitions. Having reviewed the Petition and supporting affidavit, we have concluded that they did not provide adequate particulars of the claims relating to the alleged violations of the Constitution of Kenya and the Ethics and Anti-corruption Commission Act, 2011. Accordingly the Petition did not meet the standard enunciated in the *Anaritta Karimi Njeru* case.”
45. I have carefully perused the instant petition and note that the same was not pleaded with precision as required in a Constitutional Petition. I have also read the supportive affidavit and no doubt the same has not provided adequate particulars of claims relating to the alleged violation of the Constitution.
46. The petitioner has failed in the instant Petition, to demonstrate the Constitutional violations with precision and the manner in which the said violations were occasioned and the harm suffered by the Petitioners. It is therefore, the finding of this Court that the petition is without merit and the same is dismissed. Each party to bear its own costs.



DELIVERED, SIGNED AND DATED AT KERICHO THIS 7TH DAY OF NOVEMBER, 2024.

.....

J.K. SERGON

JUDGE

In the Presence of:

Miss Sang for the 2nd & 3rd Interested Party

Chepkemoi for the 4th Respondent

