

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

CONSTITUTIONAL PETITION NO 395 OF 2013

IN THE MATTER OF SECTION 84(1) OF THE CONSTITUTION OF KENYA

AND

**IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND
FREEDOMS UNDER ARTICLE 29, 32 (1), 33, 49 & 77 (2) AND 79 (1) OF THE
CONSTITUTION OF KENYA, 1969**

AND

**IN THE MATTER OF ARTICLES 23, 29, 31, 32 AND 39 OF THE CONSTITUTION OF KENYA
2010**

AND

**IN THE MATTER OF PAST AND CONTINUING INFRINGEMENT OF FUNDAMENTAL
RIGHTS OF THE PETITIONER**

FLORENCE WAKIURU

MUCHIRI.....1STPETITIONER

**ANTHONY MUNDIA MUCHIRI.....2ND
PETITIONER**

VERSUS

THE HON. ATTORNEY

GENERAL.....RESPONDENT

JUDGEMENT

PETITIONERS CASE

The petitioners bring this action as the administrators of the estate of the late Charles Wainana Chege- (hereinafter referred to as the deceased). The petitioners aver that the deceased was arrested on the 16th day of June 1986 at Wangige in Kiambu by two plain-clothes policemen who also searched his house. The deceased was taken to Kilimani Police Station where he was held for a night, and the following day he was blindfolded and driven around for hours and later taken to basement cells at Nyayo House where was held under inhumane conditions without food for 11 days and without water for 11 days and that he was tortured and physically assaulted and asked to sign a confession that he had taken an oath to overthrow the government.

It is averred that the deceased was charged in court on 26th June 1986 at 5.30 PM with the then Director of Public Prosecutions Bernard Chunga prosecuting the case and he was charged with being in possession of seditious publication without lawful excuse, that is "Mpatanishi no. 12 and draft program of Mwakenya." The deceased admitted the charge and was jailed for three years and was taken to Kamiti

Prison and later transferred to Nakuru G.K. Prison where the prison warders continued to subject him to torture, cruelty and inhuman and degrading treatment. It is also averred that the deceased was held in segregation and solitary confinement. It is the petitioners case that the acts attributed to the police, the acts of torture and inhuman/degrading treatment were/are illegal and unauthorized by the law.

The Respondents case

On 31st October 2013, the Respondent filed grounds of opposition stating *inter alia* that the petition is incurably defective, that the deceased was arrested and charged with "a capital offence, i.e. sedition, and as such his detention was bound to be longer" hence the detention was lawful.

Oral evidence

On 26th November 2014, Ngugi J directed that the petition proceeds by way of oral evidence. Hearing started on 21st July 2015 when the first petitioner, the deceased's widow testified. She essentially adopted the affidavit in support of the petition. On cross-examination she stated that the deceased told her how he was mistreated after arrest and while in jail.

The Respondent did not call any witnesses. Both counsels were directed to file written submission. The matter came before me on 14th March 2017 and parties asked for a judgement date, having agreed that the matter proceeds from where it had reached.

Petitioners counsels submissions

Counsel for the petitioner cited the decision in the case of *David Gitau Njau & 9 Others vs A.G.*^[1] in support of his argument that the law of limitation does not apply to cases of this nature and relied on *Otieno Mak'onyango vs A.G.*^[2] where the court awarded Ksh. 20,000,000/= as damages. Counsel urged the court to award damages in the sum of Ksh. 6,000,000/=.

Respondents Counsels submissions

Counsel described the unexplained delay of 27 years before filing this case as unreasonable and cited the case of *Ochieng Keneth K'ongutu vs Kenyatta University & 2 Others*^[3] where the court warned of great danger of parties abusing constitutional protection rights by bringing claims aimed at enriching themselves rather than vindication of rights and further that the petitioner did not prove the case to the required standard and cited *Lt. Col. Peter Ngari Kagume & Others vs A.G.*^[4] in support of the said position and further urged the court in the event it considers awarding damages to be guided by the principles enumerated in the said case^[5] which are; **(a)** if there is any other remedy in addition to damages, that other remedy should usually be granted initially and damages should only be granted in addition if necessary to afford just satisfaction, **(b)** the court should not award exemplary or aggravated damages; **(c)** an award should be "of no greater sum than that necessary to achieve just satisfaction;" **(d)** the quantum of award should be moderate and normally on the lower side by comparison to tortious awards.

On the issue of Limitation

The question of limitation in cases of breach of fundamental rights has in many cases been raised by the State and our courts have consistently held that there is no limitation with respect to constitutional petitions alleging violation of fundamental rights^[6] with a section of our judiciary holding that a court must always consider whether the delay in filing a petition alleging violation of constitutional rights is unreasonable and prejudicial to a respondent's defense^[7] and further the state cannot shut its eyes on its past failings^[8] nor can the court ignore the dictates of transitional justice.

Transitional justice refers to the ways countries emerging from periods of conflict and repression address large scale or systematic human rights violations so numerous and so serious that the normal justice

system will not be able to provide an adequate response.[9]

Transitional justice is rooted in accountability and redress for victims. It recognizes their dignity as citizens and as human beings. Ignoring massive abuses is an easy way out but it destroys the values on which any decent society can be built. Transitional justice asks the most difficult questions imaginable about law and politics. By putting victims and their dignity first it signals the way forward for a renewed commitment to make sure ordinary citizens are safe in their own countries – safe from the abuses of their own authorities and effectively protected from violations by others.[10]

The primary objective of a transitional justice policy is to end the culture of impunity and establish the rule of law in a context of democratic governance. The legal and human rights protection roots of transitional justice impute certain legal obligations on states undergoing transitions. It challenges such societies to strive for a society where respect for human rights is the core and accountability is routinely practiced as the main goals.

In general, therefore, one can identify eight broad objectives that transitional justice aims to serve: establishing the truth, providing victims a public platform, holding perpetrators accountable, strengthening the rule of law, providing victims with compensation, effectuating institutional reform, promoting reconciliation, and promoting public deliberation. Transitional justice is not a special form of justice. It is, rather, justice adapted to the often unique conditions of societies undergoing transformation away from a time when human rights abuse may have been a normal state of affairs.[11]

My understanding of the jurisprudence on the issue of limitation is that courts will be reluctant to shut out a litigant on account of limitation of time unless there are obvious reasons to do so. In considering such delays, the court cannot avoid taking judicial notice of the immense difficulties which prevailed at the period of the alleged violations making it impossible for aggrieved persons to file cases of this nature against the government. In fact it is the promulgation of the constitution of Kenya 2010 that opened the doors of justice thereby making it possible for aggrieved persons to institute cases of this nature.

This petition was filed on 1st August 2013, almost three years after the promulgation of the 2010 constitution. I do not think that there was inordinate delay in filing it. Considering the prevailing political situation which made it impossible for victims to file cases of this nature and bearing in mind the dictates of transitional justice discussed above, and in particular the need to uphold and strengthen the rule of law, and to hold the perpetrators human rights abuse accountable, and providing victims with compensation, and the need to effectuate institutional reform, I find that it would be unfair to uphold the defense of limitation in this circumstances.

I have carefully analysed, evaluated and considered the evidence tendered by the petitioners and the affidavits filed in court. I have also considered the rival submissions filed by both parties, the applicable law and the authorities cited by both counsels and in my view two issues fall for determination, namely, **(i)** Whether the petitioners proved her case to the required standard and **(ii)** Whether the petitioners are entitled to the reliefs sought in the petition.

Counsel for the Respondent opted not to call witness but cross-examined the petitioner. Thus, the only evidence on record is the evidence tendered by the petitioners. In the case of *Interchemie EA Limited vs. Nakuru Veterinary Centre Limited*[12] it was held that where no witness is called on behalf of the defendant, the evidence tendered on behalf of the plaintiff stands uncontroverted. It is trite that where a party fails to call evidence in support of his case, that party's pleadings remain mere statements of fact since in so doing the party fails to substantiate his pleadings. In the same vein the failure to adduce any evidence means that the evidence adduced by the Plaintiff against the defense is uncontroverted and therefore unchallenged.[13] Further, instead of filing a replying affidavit, the Respondent only filed grounds of objection, which to me are mere statements of law yet there issues of fact raised in the petition which in my view ought to have been replied by way of an affidavit. In short, the petitioners evidence remained unchallenged.

As mentioned above, the Respondents' counsel opted not to call witnesses but cross-examined the

petitioner. Since no evidence was tendered to support the Respondents case the petitioners' evidence remains unchallenged. The purpose of cross-examination is three-fold; **(a)** *To elicit evidence in support of a party's case;* **(b)** *To cast doubts on, or undermine the witness's evidence so as to weaken the opponent's case, and to undermine the witness's credibility;* **(c)** *To lay out a party's case and challenge disputed evidence.* But once a party cross-examines an opponent's witness, he can only rebut the issues raised during cross-examination by calling witnesses. Hence, failure to call witness leaves the petitioners evidence unchallenged.

Regarding the constitutional issues raised in the petition, it must be borne in mind that the Constitution must be interpreted in a broad way and not in a narrow and pedantic sense. Certain rights have been enshrined in our Constitution as fundamental and, therefore, while considering the nature and content of those rights the Court must not be too astute to interpret the language of the Constitution in so literal a sense as to whittle them down. On the other hand the Court must interpret the Constitution in a manner which would enable the citizens to enjoy the rights guaranteed by it in the fullest measure subject, of course, to permissible restrictions.^[14]

The spirit of the constitution must preside and permeate the process of judicial interpretation and judicial discretion.^[15] The disposition of Constitutional questions must be formidable in terms of some Constitutional principles that transcend the case at hand and is applicable to all comparable cases. Court decisions cannot be *had hoc*. They must be justified and perceived as justifiable on more general grounds reflected in previous case law and other authorities that apply to the case before the court.^[16] The privy council in the case of *Minister for Home Affairs and Another vs Fischer*^[17] stated that:-

“a constitutional order is a document sui generis to be interpreted according to principles suitable to its particular character and not necessarily according to the ordinary rules and presumptions of statutory interpretation... It is important to give full recognition and effect to those fundamental rights and freedoms.....”

Lord Wilberforce, in the above case observed:- *“A constitution is a legal instrument giving rise, amongst other things, to individual rights capable of enforcement in a court of law. Respect must be paid to the language which has been used and to the traditions and usages which have given meaning to the language. It is quite consistent with this, and with the recognition that rules of interpretation may apply, to take as a point of departure for the process of interpretation recognition of the character and origin of the instrument and to be guided by the principle of giving full recognition and effect to those fundamental rights and freedoms..”*

The Supremacy of the Law

The concept of the Supremacy of the Law is a vital feature in Constitutionalism, where by the law as a whole ought to be regarded with great esteem. The law for purposes of this study includes but is not limited to the Constitution. Other laws in the queue include the laws enacted by legislative organ of the given State. This primarily involves the supremacy of the Constitution and respect of others laws made there under, which are consistent with it. Everybody, including institutions and organs of Government are bound and must respect it. All citizens are constitutionally mandated to safeguard the Constitution or any provision thereof.

Fundamental rights and freedoms of the individual are inherent and not granted by the State.^[18] They are to be respected, upheld and promoted so as to promote Constitutionalism. In the Indian case of *Rao and Company vs State of AP*^[19] the court stated:-

“No legal or political system today can place the State above law as it is unjust and unfair for a citizen to be deprived of his property illegally by negligent act of officers of the State without any remedy. The modern social thinking of progressive societies and the judicial approach is to do away with archaic State protection and place the State of the Government at par with any other juristic legal entity”

The spirit of our Constitution is that whatever is to be done under it affecting the Fundamental Rights and Freedoms must be done without unreasonable delay and in conformity with the constitution. My discernment from the foregoing jurisprudence is that in interpreting the Constitution, the court should attach such meaning and interpretation that meets the purpose of guaranteeing Constitutionalism, non-discrimination, separation of powers, and enjoyment of fundamental rights and freedoms.

The Petitioner narrated the torture and inhuman treatment subjected to the deceased. The deceased was arraigned before a court at 5.30 PM, after the official working hours. This practice was rampant then and was designed to ensure that an accused is presented before a court of law outside working hours or at a time when securing legal representation would be difficult. Such a deplorable scenario is a clear testimony of how low our judiciary had sunk as a mere rubber stamp of the executive. Never again in the history of our country should accused persons be arraigned before a 'court of law' at 5.30 P.M. or outside the normal court hours and trials hurriedly conducted and convictions rendered.

If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the courts have to be respected and protected at all costs. Otherwise the very cornerstone of our Constitutional scheme will give way and with it will disappear the rule of law and a civilized life in the society.

This court cannot deviate from its own duty of determining acts which amount to infringement of constitutional rights of the citizens. In my view, every act of the state and its organs must pass through the test of constitutionality which is stated to be nothing but a formal test of rationality. In cases of violation of fundamental rights, the Court has to examine as to what factors the court should weigh while determining the constitutionality of the actions complained of. The court should examine the case in light of the provisions of the Constitution. When the constitutionality of an act of state agents is challenged on grounds that it infringes a fundamental right, what the court has to consider is the “*direct and inevitable effect*” of such actions. This would help the court in arriving at a more objective and justifiable approach. In my view, actions that amount to inhuman and degrading treatment are out rightly unconstitutional.

Chapter 5 of the Repealed constitution contained the bill of Rights, that is Protection of fundamental rights and freedoms of the individual. Section 74 guaranteed the right to protection from inhuman treatment while the right to protection of freedom of conscience, expression, assembly and association were guaranteed under sections 78, 79, and 80 of the repealed constitution.

Constitutionalism as an element of the rule of law largely depends on how Constitutional limitations imposed on government are interpreted and enforced. Integral to the rule of law and Constitutionalism is the doctrine of the separation of powers, the independence of Judiciary, the concept of Justice, Judicial discretion to mention but a few. Liberty implies the limitation of power by law and the one institution above all others essential to the preservation of the rule of law has always been and still is an honest, able, learned, and independent judiciar. The maintenance of an independent and accountable judiciary is fundamental to Constitutionalism and the protection of human rights. The worldwide emergence of Constitutions with wide-ranging and justiciable Bills of Rights has rekindled public awareness and interest in the role of courts as a forum through which to seek individual and collective justice and the sustenance of a democratic culture.

The claim before the court is for violation of fundamental rights under constitutional provisions. The notion of inhuman treatment covers at least such treatment as deliberately causes suffering, mental or physical, which, in the particular situation is unjustifiable. The word torture is often used to describe inhuman treatment, which has a purpose, such as the obtaining of information or confessions, or the infliction of punishment, and it is generally an aggravated form of inhuman treatment. Treatment or punishment of an individual may be said to be de-grading if it grossly humiliates him before others, or drives him to an act against his will or conscience.[\[20\]](#)

The term "harassment" in its connotative expanse includes torment and vexation. The term "torture" also engulfs the concept of torment. The word "torture" in its denotative concept includes mental and psychological harassment.[\[21\]](#) In this case, we are not essentially dealing with personal injuries but with

inhuman treatment, torture, harassment and the mental and physiological effects of such actions to the victims.

When a citizen is arrested on allegations of committing an offence as was in the present case, his/her Fundamental Rights are not abrogated *in toto*. His dignity cannot be allowed to be comatose. The right not to be subjected to inhuman treatment enshrined in the Constitution and a *fortiorari*, includes the right to be treated with human dignity and all that goes along with it. Inhuman treatment has many a facet. It fundamentally can cover such acts which have been inflicted with an intention to cause physical suffering or severe mental pain. It would also include a treatment that is inflicted that causes humiliation and compels a person to act against his will or conscience. There is no shadow of doubt that any treatment meted out to a citizen which causes humiliation and mental trauma corrodes the concept of human dignity. The majesty of law protects the dignity of a citizen in a society governed by law. It cannot be forgotten that the State is governed by rule of law which must be paramount.

The Constitution as the organic law of the land has unfolded itself in manifold manner like a living organism in the various decisions of the court about the rights of a person under the bill of rights. When citizenry rights are sometimes dashed against and pushed back by the members of the police force, there has to be a rebound and the Constitution springs up to action as a protector.

It is the sacrosanct duty of the police authorities to remember that a citizen while in their hands are not denuded of their fundamental rights under the Constitution. The restrictions imposed on fundamental rights have the sanction of law by which the enjoyment of fundamental right is curtailed but the citizens basic human rights are not crippled so that the police officers can treat citizens in an inhuman manner. On the contrary, they are under obligation to protect fundamental rights of the citizens and prevent all forms of atrocities.

The law enjoins the police to be scrupulously fair to an alleged offender and to ensure fair investigation and fair trial and also to ensure that the citizens constitutional and fundamental rights are not violated. From the evidence before me, I find that the police subjected the petitioner to inhuman and degrading treatment.

The petitioners claims damages as a result of breach of fundamental rights of the deceased. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting 'compensation' in proceedings under Article 23 of the constitution or seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalizing the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, by not protecting the fundamental rights of the citizen.

A claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed under the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right. It is thus now well settled that award of compensation against the State 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.

I have carefully considered the petitioners case and the relevant law and I find that the deceased's rights were violated and that the petitioners are entitled to damages. On the quantum of damages, award of damages entails exercise of judicial discretion which should be exercised judicially and that means that it must be exercised upon reason and principle and not upon caprice or personal opinion.^[22]The

jurisprudence that has emerged in cases of violation of fundamental rights has cleared the doubts about the nature and scope of the this public law remedy evolved by the Court. The following principles clearly emerged from decided cases;[\[23\]](#)

- 1. Monetary compensation for violation of fundamental rights is now an acknowledged remedy in public law for enforcement and protection of fundamental rights;*
- 2. Such claim is distinct from, and in addition to remedy in private law for damages for tort;*
- 3. This remedy would be available when it is the only practicable mode of redress available;*
- 4. Against claim for compensation for violation of a fundamental right under the constitution, the defence of Sovereign immunity would be inapplicable.*

I note that arriving at the award of damages is not an exact science, and also I am aware that no monetary sum can really erase the scarring of the soul and the deprivation of dignity that some of these violations of rights entailed.[\[24\]](#)

When exercising this constitutional jurisdiction the court is concerned to uphold, or vindicate, the constitutional right which has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases more will be required than words. If the person wronged has suffered damage, the court may award him compensation. The comparable common law measure of damages will often be a useful guide in assessing the amount of this compensation. But this measure is no more than a guide because the award of compensation under is discretionary.[\[25\]](#)

An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach, and deter further breaches. All these elements have a place in helping the court arrive at a reasonable award. The court must consider and have regard to all the circumstances of the case.

An injury suffered as a result of discrimination, harassment or inhuman and degrading treatment is no less real because it does not possess tangible physical or financial consequences. And the difficulty in assessing the amount of compensation for that type of injury should not deter a court from recognizing its potential.[\[26\]](#)

It is self evident that the assessment of compensation for an injury or loss, which is neither physical nor financial, presents special problems for the judicial process, which aims to produce results objectively justified by evidence, reason and precedent. Subjective feelings of upset, frustration worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress, depression and so on and the degree of their intensity are incapable of

objective proof or of measurement in monetary terms. Translating hurt feelings into hard currency is bound to be an artificial exercise. There is no medium of exchange or market for non-pecuniary losses and their monetary evaluation, it is a philosophical and policy exercise more than a legal or logical one.[\[27\]](#) The award must be fair and reasonable, fairness being gauged by earlier decisions; but the award must also of necessity be arbitrary or conventional. No money can provide true restitution.

Although they are incapable of objective proof or measurement in monetary terms, hurt feelings are none the less real in human terms. The courts and tribunals have to do the best they can on the available material to make a sensible assessment, accepting that it is impossible to justify or explain a particular sum with the same kind of solid evidential foundation and persuasive practical reasoning available in the calculation of financial loss or compensation for bodily injury.

I am persuaded that the petitioners proved to the required standard that the rights of the deceased were violated. Considering the nature of the violations of the deceased's constitutional rights, the above legal principles and bearing in mind the fact that it may not be easy to quantify denial of fundamental rights and freedoms, I find that the deceased was entitled to an award of damages. Doing the best I can, I find that an award of Ksh. 2,500,000/= would be reasonable in the circumstances. Accordingly, I enter judgement in favour of the petitioners as follows:-

*i. **A declaration** be and is hereby issued that the Fundamental Rights and Freedoms of Charles Wainaina Chege-deceased were contravened and grossly violated by the Special Branch Police Officers who were servants, agents and or employees of the Government.*

*ii. **A declaration** be and is hereby issued that the petitioners as the administrators of the deceased's estate are entitled to damages and or compensation for the violations and contraventions of the deceased's fundamental rights and freedoms*

*iii. **That** judgement be and is hereby entered in favour of the petitioners against the Respondent in the sum of **Ksh. 2,500,000/=** by way of general damages.*

*iv. **That** the above sum shall attract interests at court rates from date of filing suit until payment in full.*

*v. **That** the Respondent do pay the costs of this Petition to the petitioners plus interests thereon at court rates.*

Orders accordingly.

Signed, Dated, Delivered at Nairobi this 12th day of May 2017

John M. Mativo

Judge

[1] {2013}eKLR

[2] HC Misc App No. 845 of 2003

[3] Pet No. 306 of 2012

[4] Pet. No. 128 of 2006

[5] Ibid

[6] See Joan Akinyi Kabasellah and 2 Others vs Attorney General, Petition No 41 of 2014, Dominic Arony Amolo vs Attorney General, Nairobi High Court Misc. Civil Case No 1184 of 2003 (OS) [2010] eKLR, Otieno Mak'Onyango vs Attorney General and Another, Nairobi HCCC NO 845 of 2003

[7] Joseph Migere Onoo vs Attorney General, Petition No. 424 of 2013

[8] Gerald Gichohi and 9 Others vs Attorney General Petition No. 487 of 2012

[9] <https://www.ictj.org/about/transitional-justice>

[10] Ibid

[11]http://www.un.org/en/peacebuilding/pdf/doc_wgll/justice_times_transition/26_02_2008_background_note.pdf

[12]{Milimani} Hccc no. 165b of 2000

[13] Trust Bank Limited vs. Paramount Universal Bank Limited & 2 Others Nairobi (Milimani) HCCS No. 1243 of 2001

[14] See Mudholkar J in Sakal Papers v Union of India AIR 1962 SC 305 at p 311

[15] State vs Acheson {1991} 20 SA 805

[16] See Wechsler, {1959}. Towards Neutral Principles of Constitutional Law, Vol 73, Havard Law Review P. 1.

[17] {1979} 3 ALL ER 21

[18] Article 19 (3) (a)

[19] {1994} AIR SC 2663, RM Sahai J

[20] Milka Wanjiku Kinuthia & Others vs The Attorney General, {2013}eKLR

[21]See Joginder Kumar v. State of U.P. (1994) 4 SCC 260, paragraph 23

[22]*Mbogo & Another vs Shah*{1968} EA 93

[23] V.K. Sircar, Compensation for Violation of Fundamental Rights, a new remedy in Public Law Distinct

from relief of damages in tort, <http://ijtr.nic.in/articles/art7.pdf>

[24] Koigi Wamwere v Attorney General{2015} eKLR

[25]Attorney General v Ramanoop [2005] UKPC 15, [2006] 1 AC 338

[26]This concept was well expressed by Mummery LJ in Vento v Chief Constable of West Yorkshire Police [2003] ICR 318, at 331: -

[27] As Dickson J said in Andrews v Grand & Toy Alberta Ltd(1978) 83 DLR (3d) 452, 475-476, (cited by this court in Heil v Rankin [2001] QB 272, 292, para 16)