



IN THE HIGH COURT AT NAIROBI

MILIMANI LAW COURTS

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 37 OF 2014

BETWEEN

A.K.M.M.....PETITIONER

AND

E.M.K.K1ST RESPONDENT

J.M.K.....2ND RESPONDENT

INFOYOTE.COM LIMITED3RD RESPONDENT

JUDGMENT

Petitioner's Case

1. This is an unfortunate case where the petitioner has sued his parents, the 1st and 2nd respondents, for the alleged violation of his fundamental rights and freedoms. The crux of the petitioner's case is stated as follows in his affidavit sworn on 23rd January 2014, "*That I seek Restorative Justice for about 60 counts of Physical and Psychological Torture (Article 29(c – f) inflicted by the 1st and 2nd respondents over a period of 18 years (Age 12-30) since 1995, upon change of faith.*"
2. The petition is now aged 30 years. He claims that he has suffered incidents of torture by his parents throughout his childhood from the time he was 12 years up to now. He has outlined these incidents in a document titled, "*Snapshot of Traumatic Experiences*" in which he states as follows;

SNAPSHOT OF TRAUMATIC EXPERIENCES

1995-1997 (Age 12-14), coincidentally upon change of Faith, a sudden increase in excessive domestic labour at the expense of studies, such as simultaneously doing laundry, utensils, scrubbing, cooking, gardening, feeding livestock, milking, cleaning cowsheds e.t.c. accompanied with insults, shouting and severe beating e.g. with motor vehicle fan belt until bleeding and stripping of skin as Corporal Punishment for omissions made by either self or siblings; lower back pains, nose bleeding while at sleep at night, migraine headaches anxiety disorders and weight loss; Denied School Trip to Mombasa with Classmates, Average KCPE Performance (53%);

1998-2001 (Age 15-18), Improvement in academic grades (70-80%) while in boarding school despite Peer Pressure and Social Class differences but poor to average performance again when back home;

2002-2004 (Age 19-21), Denied fare and often trekked while going to College; Elected as CU Official, took 7-14 days of Prayer and Fasting but mistaken 14 as refusing to eat and being stubborn and so hard hit on the head with a wooden mop stick until it broke, skull ruptured and blood spilled on the floor marking a trail from the kitchen to the dining room which is then mopped by brother, sat in the sitting room being interrogated 6 and then ordered not to go to bed, slept upright holding head with serviette turned all red with blood, did not report for medical attention or police intervention, continued with college when the injury formed clot but grades dropped from a high of 91% to 50-60%; Started doing part-time work such as Data Entry; Also worked as Designer, Painter, Forman, Mason for Parents' Rental Properties.

2005-2006 (Age 22-23) Searched for and obtained Internship in a Web and Software Company and started rising through the ranks; Offered monetary gifts to parents despite meagre earnings;

2006-2007 (Age 23-24) Coerced to leave employment as a condition for sponsorship to complete education when parents realised sibling had completed high school and they wanted to take him straight through uninterrupted university programme same with other sibling; Missed one coursework submission deadline due to being forced to be overly involved in grandfathers funeral which was marked as non-submission (zero) despite providing a mitigation letter as required and submission in second deadline Obtained Second Class Upper Division (72%); Lost hope of obtaining a Scholarship for further studies abroad as had put much effort to;

2008-2013 (Age 25-30) Evicted thrice, invited back twice for about 3 months each but stayed away alone for 4 years, at one time evicted during the Post-Election Violence and another time at 3 am; Had to depend on casual jobs to pay for rent despite assisting to construct parent's rental properties and their residence on 5-bedroom on half acre property with no other siblings; Witnessed smashing of 21 TV down with rage in marital conflict; Accused of long hours on computer; Once offered mother a thank you card and a packet of biscuits as a recondition gesture but she ate them and a few days later returned cash and a note saying that "overworking yourself for no apparent reason." Lost phone and friends' contacts from college and church; Missed Graduation for lack of money to check email in a cyber cafe; Unable to commute to church in Valley Rd; Suffered circumstantial opportunistic illnesses such as Typhoid, Malaria, Piles and would recover with little or no medication from a chemist; Prior to and in-between evictions, lost a software project lead worth KES 300K despite displaying to parents the evidence of a contract in request for peace; lost job interviews worth KES 40-80K due to psychologically-related underperformance where interviewers found papers and skills were good but was disturbed and unenthusiastic, lost lead to sign-up 20K-200K Subscribers worth KES20 Million per year after transferring duress from home to the client despite going with one parent to the board meeting to prove gainful engagement and thus request for nothing else but peace to carry on with project; While away, in-between hassles for daily bread, endured and invested over 3,000 hours while living on one half dollar meal a day and walking 10 kilometres to use a landlord's office after developing such rapport and trust; Won 4 nationally competitive awards, one or two each year since 2011 but was locked out to sleep outside the house in the first instances and when moved out other awards were completely despised to the extent of receiving comments from a relative such as 'why no investor' 'you are not special:' yet lacked fare and cash to follow-up on training accompanying such awards as a requirement for funding; Made presentation to 100 people in business forum and received 1 out of 3 Prospective Shareholders worth KES 210K; Reported the matter to the Area Chief in 2011 but parents failed to honour their part of voluntary mediation settlements; Parents, especially mother, spreading lies and threats to siblings, relatives and family friends so as not to assist, Mother sending SMS saying "I don't know you", "I wish you were not born to me", "I demand my milk", "I pity you no one will ever assist you like I have done; When away, Mother sends people who spread lies about mental illness and plan to apprehend and sedate as done with a relative; Mother sends SMS deceiving to offer her log book so as to obtain a loan then completely denying the same once forced by friends who were providing assistance to move back and negotiate with them: Parents performing certain acts to disguise their guilt as concern, then making a fuss about their insistence, Cycling from Roysambu to Upperhill, about 50 kilometres return, sometimes

in the rain, searching for justice Drain and Burnout ; barely on about one dollar or less a day.

3. As a result of the torment he has undergone, he seeks several reliefs from the Court as follows;
 - a. *?Interlocutory Injunctions including emergency compensation for the Petitioner and Counselling for the Respondents and to bar actions going;*
 - b. *Orders necessary to facilitate jurisprudence of this Matter including:*
 - i. *Disclosures of Biological, Financial and Phone Records;*
 - ii. *Criminal Investigation Department (CID) or National Intelligence Service (NIS);*
 - iii. *Amicus Curiae and Expert Opinions by Kenya Counselling and psychologists Association, Kenya psychiatrists Association; Marketing Society of Kenya (MSK), Commission of Higher Education (CHE) , Institute of Human Resource Management (HRM), Judicial Service Commission (JSC), Ministry of Planning Vision 2030, Ministry of Foreign Affairs (American, Australian, British, Canadian, German and South Africa Embassies);*
 - c. *Compensation of KES 1 Million Cash and KES 20 Million Collateral;*
 - d. *Recommendation of a Constitution Re-orientation Course for all Law Society of Kenya (LSK) Members and Streamlining of legal aid government agencies including Kenya National Commission on Human Rights (KNCHR) and National Legal Aid & Awareness Programme (NALEAP):*
 - e. *Any other remedy the Court deems fit for the petitioner in particular and Society in general;*
4. The petitioner was permitted to file the suit without paying court filing fees under **rule 34** of the **Constitution of Kenya (Protection of Fundamental Rights and Freedom) Practice and Procedure Rules, 2013** (“the **Rules**”). Although the petitioner did not file a petition which conformed to the form provided under the **Rules**, the respondent did not raise any objection to this and I was satisfied that the parties were not prejudiced. In view of the nature of the matter, I directed that the same be heard by *viva-voce* evidence as the petitioner was unrepresented.
5. As part of his evidence, the petitioner produced a document, which he called his draft autobiography. The autobiography is posted on the website of his company *infoyote.com*. It is available to the whole world and is easily downloadable. In his oral testimony, the petitioner reiterated the allegations stated in the “*Snapshots of Torture.*”
6. It is obvious from the petitioner’s pleadings, affidavits and reports that he has strong feelings about how he has been treated by his parents. He feels that his parents have not given him due care and attention and that he had been denied certain opportunities he would have had.
7. As a result of the events he has narrated, the petitioner claims that he has suffered, “*loss of economic opportunities such as business prospects worth Ksh. Twenty (20) million per annum since 2010; loss of education opportunities such as post graduate scholarships due to drop in Academic grades from about 90% to 50%. Degradation of health such as bleeding from head and stripping of skin by corporal punishment, I⁰ haemorrhoids and post-traumatic stress disorder (PTSD); deprivation of social wellbeing such as living under one hundred bon (Ksh100/=) [per day mostly in Alms and Casual jobs; residence near Ghetto Slum and loss or property stolen thereto (Mururui Police OB 2/21/11/2013). Difficulty paying rent and electricity, currently with two months arrears, despite low cost of about Kshs.3,500/= per month; walking and cycling up to 60 Km despite ill health as a means of commuting for lack of bus fare and recent injury consisting of shoulder dislocation and bruises due to bicycle accident on 13th January 2013 for which the petitioner lacked KES 5,000 for medical care and nutrition.*”

Respondents’ Case

8. The respondents are the parents of the petitioner. The 2nd respondent filed a replying affidavit in which he denied all the allegations against the respondents. The thrust of his opposition to the

petition was that as parents, the respondents tried to do their best for the petitioner by giving the best education and providing him opportunities to better himself despite their meagre means. The 2nd respondent testified that they had all along made efforts to assist the petitioner in his life endeavours out of parental love and affection.

9. The 2nd respondent denied that he had any problem with his son becoming a protestant while the family remained practising Catholics. He stated that he assisted the petitioner, facilitated and encouraged him to participate in Church activities of his choice and as a family they all supported his decision. The 2nd respondent gave evidence how he had assisted the petitioner in paying rent as recently as last year. He also testified how the 1st respondent had provided money for the petitioner to set up his business and even sourced work for him. He further testified that his two sons had gone out of their way to assist their brother with money when he was in need. The 2nd respondent gave evidence how the petitioner even wrote to him a note stating that he did not wish to be given transport to school or assisted in any way. He is therefore surprised by the allegations made against him.
10. The 2nd respondent testified that the family was distressed by the allegations them. The 2nd respondent testified that the allegations of witchcraft and mistreatment by the by the petitioner have really affected the 1st respondent emotionally and she was unable to come to court for that reason. All-in-all, the 2nd respondent stated that the petitioner's autobiography has no factual basis and it ought to be removed from the website as it is injurious to the family.

Determination

11. My task in this case is to address myself to the issue of fundamental rights and freedoms. **Article 22** of the Constitution grants every person the right to move the High Court to enforce fundamental rights and freedoms contained in the Bill of Rights. These rights are very specific and a petitioner who comes before the court must set out with some level of particularity the specific right and how it is violated. This principle was established in the case of **Anarita Karimi Njeru v Republic (No. 1) [1979] 1 KLR 154** and augmented by the Court of Appeal recently in the case of **Mumo Matemu v Trusted Society of Human Rights Alliance Civil Appeal No. 290 of 2012 [2013]eKLR**.
12. Of course, in a case such as this, the Court tries its best to understand the petitioner's case and discern what rights protected by the Bill of Rights has been violated. This is consistent with the Court's duty to promote access to justice. In this case the petitioner seems to say that he has been tortured and that he has suffered mentally and as a result he is entitled to damages or recompense of some kind.
13. The petitioner relies on **Article 29(d)** of the Constitution which deals with freedom and security of the person and it provides that, "*Every person has the right to freedom and security of the person which includes the right not to be subjected to torture in any manner whether from either public or private services.*" As I understand the petitioner's alleges torture from a private source.
14. Torture under our law has acquired a specific meaning drawn historically from international covenants and conventions such as **International Covenant on Civil and Political Rights**. In **Republic v Minister For Home Affairs and Others ex parte Sitamze [2008] 2 EA 323**, Justice Nyamu, citing various authorities stated as follows; "*The provisions of section 74(1) of the Constitution of Kenya are echoed in Article 7 of the International Covenant on Civil and Political Rights, 1966, (ICCPR) which states that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Torture means 'infliction of intense pain to the body or mind; to punish, to extract a confession or information or to obtain sadistic pleasure. It means infliction of physically founded suffering or the threat to immediately inflict it, where such infliction or threat is intended to elicit or such infliction is incidental to means adopted to elicit, matters of intelligence or forensic proof and the motive is one of military, civic or ecclesiastical*

interest. It is a deliberate inhuman treatment causing very serious and cruel suffering. "Inhuman treatment" is physical or mental cruelty so severe that it endangers life or health. It is an intentional act which, judged objectively, is deliberate and not accidental, which causes serious mental or physical suffering or injury or constitutes a serious attack on human dignity.'

15. I have considered the evidence, oral and written, and I am of the view that the 1st and 2nd respondents provided a loving environment for the petitioner where he was able to go to a good school through the English GCE system and onward to University where he graduated with Bachelor of Science Honours degree in Applied Business Computing. He also obtained a Higher National Diploma. Without his parents love and dedication he would not have gone this far.
16. My review of the evidence taken as a whole does not disclose that he is in any way treated in a manner to suggest he was tortured or abused as alleged. The petitioner has not proved that he was tortured or in any way subjected to violence or treated or punished in a cruel, inhuman and degrading manner contrary to **Article 29** of the Constitution.
17. The petitioner is now 30 years old, his parents have no legal responsibility for him. Such responsibility ceased when he became an adult. I found Mr K honest and at pains to understand why he has been sued yet he has done his best for his son. He expressed clear feelings that he would continue to assist his son whenever possible out of love and affection.
18. I have tried to understand the petitioner's complaints; he raises many questions that he wants answered about his life. He seeks court orders directed at experts to examine him. He wishes to know how much his parents have spent on him and the like over the years. He wants to know his paternity. He requests the court to order several State entities to conduct open ended inquiries on these issues.
19. Ultimately this Court's jurisdiction under **Article 165(3)(b)** when moved under **Article 22** is to adjudicate on specific allegations of violation of human rights and fundamental freedoms protected under the Bill of Rights. The petitioner has not discharged his burden of proving that his rights were violated. Resolution of his grievances lie elsewhere and dare I say outside the court.
20. This is a matter that the Court is unable to assist the petitioner. One thing is clear though, he needs assistance of another kind and I hope he and his family are able to come together to find answers to whatever afflicts him but absent any other intervention, the petitioner is an adult and must now take control of his own life.
21. Before I conclude, I note that the petitioner has published his autobiography on the website which contains scurrilous material against his parents and family members. The document violates the privacy rights of those involved. His father implored the court to direct that the references to the family be removed from the website. Given the nature of the matter, I am inclined to agree with this request in order to obviate the need for further litigation.

Disposition

22. In the circumstances, the final orders are as follows;

1. **The petitioner's case filed herein is dismissed.**
2. **The petitioner is directed to remove all references to E.M.K, J.M.K either directly or indirectly as the petitioner's parents contained in his autobiography or any other document posted or displayed on the *infoyote.com* website forthwith.**
3. **There shall be no order as to costs.**

DATED and DELIVERED at NAIROBI this 6th day of March 2014.

D.S. MAJANJA

JUDGE

Mr A.K.M.M petitioner in person.

Mr Mathenge instructed by Mbiyu Kamau and Company Advocates for the 2nd respondent.