



**Kanchory v Service & 3 others; Law Society of Kenya & another
(Interested Parties) (Petition E009 of 2024) [2025] KEHC 13792 (KLR)
(Constitutional and Human Rights) (30 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13792 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS**

PETITION E009 OF 2024

M THANDE, J

SEPTEMBER 30, 2025

BETWEEN

SAITABAO OLE KANCHORY PETITIONER

AND

**THE INSPECTOR GENERAL OF THE NATIONAL POLICE
SERVICE 1ST RESPONDENT**

**THE CABINET SECRETARY, MINISTRY OF INTERIOR & NATIONAL
ADMINISTRATION 2ND RESPONDENT**

THE HON. ATTORNEY GENERAL 3RD RESPONDENT

INDEPENDENT POLICING OVERSIGHT AUTHORITY 4TH RESPONDENT

AND

THE LAW SOCIETY OF KENYA INTERESTED PARTY

**KENYA NATIONAL COMMISSION ON HUMAN RIGHTS ... INTERESTED
PARTY**

JUDGMENT

1. The Petitioner filed the Petition herein dated 24.6.24, seeking the following reliefs:
 - I. A Declaration that the use of water cannons, tear gas, live ammunition, rubber bullets or other crude weapons or draconian measures and/or the deployment of brute force or any form of violence against persons exercising their constitutional rights to protest against the Finance



Bill, 2024 is illegal, unconstitutional and unacceptable in an open and democratic society like Kenya;

- II. An Order of Prohibition be and is hereby issued forbidding the 1st and 2nd Respondents from using water cannons, tear gas, live ammunition, rubber bullets or other crude weapons or draconian measures and from deploying brute force or any form of violence against persons exercising their constitutional rights to protest against the Finance Bill, 2024;
- III. A Declaration that the extrajudicial killing, arrest, abduction, detention, harassment, intimidation, torture, cruel, inhuman and degrading treatment of persons exercising their constitutional rights to protest against the Finance Bill, 2024 is a gross violation of *the constitution*;
- IV. An Order of Prohibition be and is hereby issued forbidding the 1st and 2nd Respondents from committing any further extrajudicial killings, arrests, abductions, detentions, harassment, intimidation, torture, cruel, inhuman and degrading treatment of persons exercising their constitutional rights to protest against the Finance Bill, 2024;
- V. A Declaration that the 1st Respondent has failed and neglected to discharge his obligations under Articles 244 and 245 of *the Constitution* and Sections 8, 8A and 10 of the NPS Act (cap 84) in that he has failed to uphold the highest possible standards of professionalism and discipline among the Kenyan police and to foster and promote good relations between the police and the broader society.
- VI. An Order of Prohibition be and is hereby issued forbidding the 1st Respondent from deploying armed police in civilian clothes against persons exercising their constitutional rights to protest against the Finance Bill, 2024 contrary to his obligation under Articles 244 and 245 of *the Constitution* and Sections 8, 8A and 10 of the NPS Act (cap 84) to uphold the highest possible standards of professionalism and discipline among the Kenyan police and to foster and promote good relations between the police and the broader society.
- VII. A Declaration that the 1st Respondent has failed and neglected to exercise independent and impartial command of the NPS contrary to Articles 244 and 245 of *the Constitution* and Sections 8, 8A and 10 of the NPS Act (cap 84) to the extent that he takes illegal instructions and orders from above from the 2nd Respondent and other higher powers.
- VIII. An Order of Prohibition be and is hereby issued forbidding the 1st Respondent from taking illegal instructions and orders from above from the 2nd Respondent or any other higher powers in contravention of Articles 244 and 245 of *the Constitution* and Sections 8, 8A and 10 of the NPS Act (cap 84) which require him to exercise independent and impartial command of the National Police Service.
- IX. An Order of Prohibition be and is hereby issued against the 1st and 2nd Respondents forbidding them from interfering with the right to freedom of expression and association through social media platforms such as X (Formerly Twitter), TikTok, Instagram, YouTube or any other online platform by shutting down the internet or limiting internet connectivity.
- X. An Order of Prohibition be and is hereby issued against the 1st and 2nd Respondents restraining them from imposing any curfews or other restrictions on persons exercising their constitutional rights to protest against the Finance Bill, 2024 which may limit or fetter their enjoyment of fundamental rights and freedoms.



- XI. An Order of Certiorari be and is hereby issued quashing any illegal and unconstitutional directive issued or to be issued by the 2nd Respondent including the imposition of curfews, state of emergency or shutting down of the internet.
 - XII. An Order of Mandamus be and is hereby issued compelling the 4th Respondent to investigate complaints relating to disciplinary and criminal offences committed by individual members of the National Police Service against persons exercising their constitutional rights to protest against the Finance Bill, 2024 in the nationwide Gen Z protests and to make recommendations including prosecution, compensation, internal disciplinary action or any other appropriate relief.
 - XIII. Costs of this Petition;
 - XIV. Such other or further relief as this Honourable court may deem just, expedient or equitable to grant.
2. The Petitioner's case as set out in the Petition is that in exercise of their fundamental freedom of expression and the right to assembly, picket and demonstrate, the young people of Kenya popularly known as Generation Z or Gen Z (hereinafter Gen Z), staged nationwide peaceful protests against what they perceived to be excessive, inhumane and insensitive taxes introduced and/or enhanced by the Finance Bill, 2024. The protesters remained unarmed, peaceful and even good natured but were met with police brutality, extrajudicial killings, illegal arrests, abductions, detention, intimidation, harassment, torture, cruel, inhuman and degrading treatment and other excesses and violence. Additionally, the police acting under instructions from the 1st and 2nd Respondents responded to the peaceful protests by use of brute force and violence and deployed water cannons, teargas, live ammunition, rubber bullets and other crude and archaic weapons against peaceful protesters. The petitioner asserted that as a result of the aforesaid state sponsored violence against peaceful protesters, several innocent young Kenyans lost their lives and many were wounded.
 3. The Petitioner further stated that the police also resorted to arbitrary arrests and illegal abductions of protesters and to intimidation and harassment of their perceived ring leaders hence violating their right to liberty and their illimitable freedom from torture and from cruel, inhumane and degrading treatment fundamentally safeguarded under *the Constitution*. Further that the 1st and 2nd Respondents deployed the Directorate of Criminal Investigations (DCI) to harass and intimidate perceived leaders of the Gen Z. The 2nd Respondent deployed armed police officers some sinisterly in civilian clothes against acceptable standards of professionalism and discipline of the National Police Service (NPS).
 4. The Petitioner thus contended that the 1st Respondent failed and neglected to discharge his obligations under Articles 244 and 245 of *the Constitution* and the relevant provisions of the NPS Act in that he failed to uphold the highest possible standards of professionalism and discipline among the Kenyan police and to foster and promote good relations between the police and the broader society. The 1st Respondent further failed to exercise independent command and maintain political neutrality as required under Article 245 of *the Constitution* and the NPS Act and is taking illegal instructions and orders from above from the 2nd Respondent and other higher powers.
 5. The Petitioner claimed that the rights and fundamental freedoms violated by the Respondents include those which pursuant to Article 25 of *the Constitution* cannot be limited under any circumstances whatsoever including freedom from torture and cruel, inhumane or degrading treatment or punishment; freedom from slavery or servitude; the right to a fair trial and the right to an order of habeas corpus. Additionally, that the Gen Zs being youth, are a vulnerable group requiring special protection under Articles 20 and 21 of *the Constitution*.



6. The Petitioner further averred that he is apprehensive that the Respondents may seek to shut down the internet and to impose curfews in the guise of public order thus further violating the constitutional rights and freedoms of Kenyans. Additionally, that the Gen Z protestors have been mobilizing and associating through social media platforms such as X (Formerly Twitter), Tiktok, Instagram which would be affected if the Respondents interfere with the internet connectivity in Kenya.
7. The Petition is opposed by the 1st and 3rd Respondents vide a replying affidavit sworn on 15.7.24 by Elizabeth Marube, an Assistant Superintendent of Police of the Directorate of Legal Affairs at the Kenya Police Headquarters in which the allegations of the Petitioner were denied. It is the 1st and 2nd Respondents' case that the rights under Article 37 is not absolute and is subject to limitations where there is a breach of peace or when demonstrators are armed. She stated that the Gen Z protestors were not peaceful armed with crude weapons such as such as stones and rungun contrary Article 37 of *the Constitution* and the *Public Order Act*. Further, that during the protests and demonstrations, roads were businesses were disrupted, protests were blocked thus curtailing movement, people not participating in the vehicles were burnt, harassed by protestors, public service vehicles and private public and private property destroyed. It was asserted that police officers did not harass, torture, abduct, illegally detain or kill any demonstrators who were peaceful and unarmed during the protests and that any force used was within the confines of the law.
8. It was further averred that police officers attached to Directorate of Criminal Investigations, Internal Affairs Unit, V.I.P protection sections and Crime Branches, are mandated through the Service Standing Orders to wear civilian clothes when on duty. Additionally, that police officers in civilian clothes are required to identify themselves through display of their identification badges. It was further averred that the wearing of civilian clothes by police officers is crucial in performance of their duties including collection of criminal intelligence, detection and prevention of crime and curtailing civilian clothes will adversely affect national security.
9. The IPOA filed a replying affidavit sworn on 4.11.24 by Abdirahman Jibril, its Senior Assistant Director Investigations. He averred that pursuant to its statutory mandate IPOA monitored the conduct of police officers during the GEN Z protests that took place in June, July and August 2024 and observed inter alia that:
 - i. The police response ranged from providing security from a distance to using, tear gas, arrests, rubber and live ammunition during the demonstrations.
 - ii. In a majority of instances, police conduct was restrained while in others there was use of force which led to injuries and fatalities.
 - iii. Hooded and masked officers in civilian clothes were deployed and also some of the police vehicles used had concealed identities contrary to the law and service standing orders.
 - iv. Some police commanders concealed their badges of rank and name tags contrary to the law and service standing orders.
 - v. The police lobbed teargas at the medical camps at Jamia Mosque and the Holy Family Basilica contrary to the law.
 - vi. In certain instances, protestors turned violent, overpowered police officers damaged and looted property.
10. It was further averred that IPOA found that the police did not effectively facilitate the protests as envisaged under Article 37 of *the Constitution* and that it made recommendations to address the



lapses observed. Additionally, that pursuant to its statutory obligations, IPOA on its own motion and upon receipt of complaints also commenced investigations into 59 cases of death and 234 cases of injuries that occurred during the protests alleged to have been caused by members of the NPS. IPOA has already concluded investigations into 9 cases of death and 13 cases of serious injuries and where applicable forwarded the investigation files to the Director of Public Prosecutions for further action. Upon conclusion of investigation into the other cases, IPOA will make appropriate recommendations as required by the IPOA Act. In view of the steps taken, IPOA urged that the orders of mandamus sought by the Petitioner against it be dismissed.

11. Additionally, IPOA asserted that circumstances in which police officers can use force are well prescribed in section 61 of the NPS Act as read with the Sixth Schedule to the Act. Further, that the circumstances when police officers can use firearms have further been prescribed by the High Court in *Katiba Institute & another v Attorney General & another: Independent Policing and Oversight Authority & 3 others (Interested Parties) (Constitutional Petition 379 of 2017) 120221 KEHC 17072 (KLR) (Constitutional and Human Rights) (16 December 2022) (Judgment)* where the court found paragraphs 1(c), (d) and (e) of part B of the sixth schedule are unconstitutional null and void ab initio and have no legal effect whatsoever. Consequently, police officers can only use firearms in circumstances set out in paragraphs I (a) and (b) of part B of the Sixth Schedule to the NPS Act to wit saving or protecting the life of the officer or other person and in self-defence or in defence of other person against imminent threat of life or serious injury. As far as Chapter 47 of the Service Standing Orders allows police officers to use firearms in circumstances not prescribed in the Sixth Schedule of the NPS Act as read with the court's judgment in the cited case, the same is ultravires the Act and is unlawful. Consequently, the use of live ammunition to disperse an assembly does not accord with the law.
12. It was further stated that as per international guidelines on the use of less lethal weapons, tear gas and kinetic projectiles such as rubber bullets is restricted to only where there is imminent threat of injury to either a law enforcement official or a member of the public but cannot be used for the sole purpose of dispersing a protest. Such means can only be used against violent protestors but should be employed as a measure of last resort after de-escalation techniques have failed but should never be used in closed spaces. Additionally, that water cannons can only be used where there is a serious public disorder, where there is a significant likelihood of loss of life, serious injury or the widespread destruction of property, but even then, should not be targeted at an individual or groups of persons at short range.
13. Further, that pursuant to the Sixth Schedule of the NPS Act, a police officer in uniform is required to at all times affix a nametag or identifiable service number in a clearly visible part of the uniform, to ensure police officers can be easily identifiable for purposes of accountability. As such, deployment of police officers in civilian attire or hooded and masked officers to police protests undermines the obligation to ensure police officers are identifiable and frustrates efforts by IPOA to hold police officers accountable where there is unlawful use of force and firearms. IPOA thus stated that pursuant to Articles 23 and 165 of *the Constitution* the Court can issue orders to ensure police officers comply with constitutional and legal standards as informed by international guidelines and standards during public order management.
14. IPOA supports grant of prayer VI of the Petition but is unable to comment on the culpability or otherwise of members of the NPS and leaves the issues raised in prayers I, II, III, IV, V, VII, VIII, IX, X, XI for determination by the court. IPOA however urged that prayers XII and XIII against it be dismissed.
15. Parties filed their written submissions which I have duly considered. The following issues fall for determination:



- i. Whether the petition has been pleaded with the requisite degree of precision.
- ii. Whether the actions taken by the police against persons exercising their Article 37 rights were within the confines of the law and their mandate.
- iii. Whether the Petitioner is entitled to the reliefs sought.

Whether the Petition has been pleaded with the requisite degree of precision

16. The 1st and 2nd Respondents submitted that the Petition has not met the threshold of a constitutional petition in that Petitioner has not pleaded in a precise manner the constitutional provisions alleged to have been violated and the manner of violation. They contend that the Petitioner has merely cited omnibus provisions of *the Constitution* and unsubstantiated allegations without providing sufficient particulars such as dates and geographical location the same or the particulars of the youth allegedly killed, harassed arrested, tortured and unlawfully detained by the Respondents. Additionally, that the Petitioner has not demonstrated the way in which the 1st Respondent sponsored the alleged violence against protestors.

17. All constitutional petitions are required to be pleaded with reasonable precision, and a party who alleges violation of rights must clearly state the nature of injury, the rights violated and the manner in which they have been violated. This principle was enunciated in the oft cited case of Anarita Karimi Njeru v Republic [1979] eKLR in which Trevelyan and Hancox, JJs stated:

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.

18. This principle was upheld in the case of Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] eKLR by the Court of Appeal, which observed as follows:

The principle in Anarita Karimi Njeru (supra) that established the rule that requires reasonable precision in framing of issues in constitutional petitions is an extension of this principle. What Jessel, M.R said in 1876 in the case of Thorp v Holdsworth (1876) 3 Ch. D. 637 at 639 holds true today:

“The whole object of pleadings is to bring the parties to an issue, and the meaning of the rules...was to prevent the issue being enlarged, which would prevent either party from knowing when the cause came on for trial, what the real point to be discussed and decided was. In fact, the whole meaning of the system is to narrow the parties to define issues, and thereby diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing.”

The petition before the High Court referred to Articles 1, 2, 3, 4, 10, 19, 20 and 73 of *the Constitution* in its title. However, the petition provided little or no particulars as to the allegations and the manner of the alleged infringements.

19. The Supreme Court in Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others [2014] eKLR held that:

Although Article 22(1) of *the Constitution* gives every person the right to initiate proceedings claiming that a fundamental right or freedom has been denied, violated or infringed or



threatened, a party invoking this Article has to show the rights said to be infringed, as well as the basis of his or her grievance. This principle emerges clearly from the High Court decision in Annarita Karimi Njeru v. Republic, (1979) KLR 154: the necessity of a link between the aggrieved party, the provisions of *the Constitution* alleged to have been contravened, and the manifestation of contravention or infringement. Such a principle plays a positive role, as a foundation of conviction and good faith, in engaging the constitutional process of dispute settlement.

20. Flowing from the cited case, it is quite evident that for a constitutional petition to succeed, a petitioner must cite with precision, the constitutional provisions alleged to have been violated or threatened and must also demonstrate the manner in which the said provisions have been violated or are threatened with violation and demonstrate the same with facts and evidence. of the case.
21. The Petitioner's case herein is that in exercise of their fundamental freedom of expression and their rights to assembly, picket and demonstrate, the GenZ staged nationwide peaceful protests against what they perceived as excessive, inhumane and insensitive taxes in the Finance Bill, 2024. Further that in response thereto, the police under the instructions of the 1st and 2nd Respondents used brute force and violence and deployed water cannons, teargas, live ammunition, rubber bullets and other crude and archaic weapons against the peaceful protestors. The Petitioner contends that the police failed and neglected to discharge their obligations under Article 244 and 245 of *the Constitution* and under the NPS Act. The Petitioner further claims that the rights violated are among those listed in Article 25 that cannot be limited. Further that the GenZ are a vulnerable group requiring special protection under Articles 20 and 21 of *the Constitution*. Additionally, the Petitioner has claimed that the violated the provisions of Article 29 on freedom from torture and cruel, inhumane or degrading treatment or punishment, Article 30, freedom from slavery or servitude; Article 50 on the right to a fair trial and the right to an order of habeas corpus and Article 26 on right to life. Further, that the Gen Zs being youth, are a vulnerable group requiring special protection under Articles 20 and 21 of *the Constitution*.
22. A careful reading of the Petition will show that the Petitioner has set out the provisions in *the Constitution* and the manner in which they have been violated by the Respondents. I am accordingly satisfied that the Petition has met the threshold for a constitutional petition.

Whether the actions taken by the police against persons exercising their Article 37 rights were within the confines of the law and their mandate

23. The Petitioner's complaint is that in quelling the GenZ protests, the 1st and 2nd Respondents acted heavy-handedly, disproportionately, unprofessionally, unlawfully and unconstitutionally in the handling of peaceful protesters and have in so doing violated the protesters' fundamental rights and freedoms including the right to life (Article 26); freedom and security of the person (Article 29); freedom of expression (Article 33); right to assemble, demonstrate, picket and petition (Article 37); and the rights of arrested persons and persons held in police custody or imprisoned under Articles 49 and 51 of *the Constitution*. Further, that as State organs they failed to respect, uphold and defend *the Constitution* as stipulated under Article 3 of *the Constitution* of Kenya and to discharge their fundamental duty to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights as required under Article 21(1) of *the Constitution*.
24. The Petitioner submitted that that Gen Z protesters while properly exercising their fundamental right under Article 37 of *the Constitution* were met with untold and unacceptable police brutality, extrajudicial killings, illegal arrests, abductions, detention, intimidation, harassment, torture, cruel, inhuman and degrading treatment and other excesses and violence instigated by the police under the command and instructions of the 1st and 2nd Respondents. Further, that in their brutal and



- violent response to peaceful protests, the police deployed water cannons, teargas, live ammunition, rubber bullets and other crude and archaic weapons; that officers from the Directorate of Criminal Investigations (DCI) or any other unit or quarters were deployed who resorted to arbitrary arrests and illegal abductions of protesters and to intimidation and harassment of their perceived ring leaders hence violating their right to liberty and their illimitable freedom from torture and freedom from cruel, inhuman and degrading treatment. 12.
25. Additionally, the Petitioner submits that the deployment of armed police officers in civilian clothes is contrary to acceptable standards of professionalism and discipline of the NPS. Further, that the 1st Respondent failed to exercise independent command and maintain political neutrality and also failed and neglected to discharge his obligations under Articles 244 and 245 of *the Constitution* and Sections 8, 8A and 10 of the *National Police Service Act* (cap 84) requiring him to lawfully administer, control and manage the NPS as a disciplined service and to uphold the highest possible standards of professionalism and discipline among the Kenyan police and to foster and promote good relations between the police and the broader society.
26. In defence of the actions of the police, the Attorney General submitted that the Gen Z protestors failed to notify the regulating officer of the intended demonstrations which notification is intended to allow the police maintain law and order and provide security to the protestors as well as third parties not taking part in the demonstrations. The Gen Z protestors were armed with weapons such as rungs and stones, contrary to the provisions of *the Constitution*. Moreover, the protestors caused breach of peace by disrupting businesses, blocking roads, harassing third parties, burning public and private vehicles and destroying public and private property. Further, the protestors engaged in illegal activities including violence against police officers and looting of private and public property. They also raided the Supreme Court and the Parliament vandalized property of unknown value and set fire to the Nairobi County Government Offices, Uganda House, Cianda Market, Cafee Point Hotel. The protestors further damaged police vehicles attached to different police stations within the Republic of Kenya including GKB from Central Police Station Nairobi, GKB 065Y Embakasi Police Station, GKB 3440 and GKB 742B both from Dagoretti Police Station among others. The 1st and 3rd Respondents contended that the protests were not peaceful and violated the provisions of Article 37 of *the Constitution*.
27. It was further submitted that, Police Officers attached to the Directorate of Criminal Investigations, Internal Affairs Unit, V.I.P protection Sections and Crime Branches are mandated through the Service Standing Orders to wear civilian clothes when on duty. Additionally, any police officer may wear civilian clothes when the circumstances require it. Further, that police officers in civilian clothes are required to identify themselves through display of their identification badges. It was further submitted that the wearing of civilian clothes by the police officers is crucial in the performance of their duties including collection of criminal intelligence, detection and prevention of crime and curtailing civilian clothes will adversely affect national security. The 1st and 3rd respondents thus asserted that the actions taken by the police during the protests were within the confines of the law and well within their mandate.
28. In its submissions, IPOA submitted that in its monitoring report, it observed that police did use water cannons, rubber bullets and live ammunition leading to cases of serious injuries and fatalities among protestors and even persons not participating in the protests. IPOA also observed instances where protestors were armed and violent and assaulted police officers and damaged property. IPOA however submitted that most cases were under investigation and appropriate recommendations would be made upon conclusion of investigations.



29. IPOA supported the Prohibition of the 1st Respondent from deploying ununiformed police officers against persons exercising their right to protest. It was submitted that in its report regarding the conduct of police officers during the protests, IPOA noted the deployment of police officers in civilian clothing who carried and deployed riot equipment and also conducted arrests. Some of the officers were hooded and masked. IPOA also observed the deployment of police vehicles with concealed names and number plates. IPOA thus submitted that deploying police officers with clear identification in public order management, is critical in ensuring the accountability requirement in the Sixth Schedule to the National Police Act.
30. IPOA is established under Section 5 of the [Independent Policing Oversight Authority Act](#). Section 4 of the Act provides that IPOA is independent and shall not in the performance of its functions be subject to any person, office or authority. The objectives of IPOA as stipulated in Section 5 of the Act are to hold the Police accountable to the public in the performance of their functions; give effect to the provision of Article 244 of [the Constitution](#) that the Police shall strive for professionalism and discipline and shall promote and practice transparency and accountability; and finally) ensure independent oversight of the handling of complaints by the Service.
31. Article 37 of [the Constitution](#) guarantees to every person the right to assembly, demonstration, picketing and petition as follows:
- Every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities.
32. The right to peaceful assembly is also guaranteed under Article 20 of the Universal Declaration of Human Rights and Article 21 of the International Covenant on Civil and Political Rights.
33. The right to assemble, picket and to demonstrate is an essential feature of any democratic society. A key component of the right under Article 37 is that it must be exercised peaceably and participants must be unarmed. This right may only be limited by law. Such limitation must be reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom. The limitation must also adhere to the principles outlined in Article 24 of [the Constitution](#).
34. To this end, Section 5 of the [Public Order Act](#) has made elaborate provision for regulation of public meeting and processions by the police. A positive obligation has been placed upon the State to facilitate and protect the peaceful exercise of the Article 37 rights.
35. In the case of Ferdinand Ndung'u Waititu & 4 others v Attorney General & 12 others [2016] eKLR, Onguto, J. recognized the prospect of peaceful protests turning unruly and violent and stated:
37. It is however not atypical for the protest processions or marches to turn unruly violent and riotous. However, that does not implicate the right to assemble, demonstrate and picket for the basic reason that [the Constitution](#) is supreme. The right to picket and to demonstrate which is an essential feature of any democratic society ought to be protected especially where it is shown that the marches often start as peaceful ones. The focus should not be on the fact that they turn violent but rather on how to ensure that they do not turn violent.
36. The Petitioner submitted that the use of force by the police to disperse the Gen Z was an attempt to limit the rights under Article 37 by unconstitutional means.
37. The Attorney General submitted that Gen Z protestors failed to notify the regulating officer of the intended demonstrations which notification is intended to allow the police maintain law and order



and provide security to the protestors as well as third parties not taking part in the demonstrations. Further that the protestors were armed and violent.

38. The National Police Service (NPS) is established under Article 243 of *the Constitution*. Article 244, places an obligation upon the NPS to strive for the highest standards of professionalism and discipline among its members; to prevent corruption and promote and practice transparency and accountability; to comply with constitutional standards of human rights and fundamental freedoms; to train staff to the highest possible standards of competence and integrity and to respect human rights and fundamental freedoms and dignity; and to foster and promote relationships with the broader society. This accords with Article 232 of *the Constitution* which sets out the values and principles that apply to public service, which include inter alia high standards of professional ethics; responsive, prompt, effective, impartial and equitable provision of services, accountability for administrative acts.
39. The National Police Act was enacted by Parliament to give effect to Articles 243, 244 and 245 of *the Constitution*. Section 24 of the National Police Service (NPS) Act provides that the functions of the Kenya Police Service include inter alia to maintain of law and order, investigate of crimes prevent and detect of crime and apprehend offenders.
40. Section 61 of the NPS Act stipulates the powers of a police officer to use firearms as follows:
 1. Subject to subsection (2), a police officer shall perform the functions and exercise the powers conferred by *the Constitution* and this Act by use of non-violent means.
 2. Despite subsection (1), a police officer may use force and firearms in accordance with the rules on the use of force and firearms contained in the Sixth Schedule.
41. The conditions for use of force and firearms are set out in the Sixth Schedule to the NPS Act.
42. Part A of the Sixth Schedule sets out the conditions as to the use of force. It provides as follows:
 1. A police officer shall always attempt to use non-violent means first and force may only employed when non-violent means are ineffective or without any promise of achieving the intended result.
 2. The force used shall be proportional to the objective to be achieved, the seriousness of the offence, and the resistance of the person against whom it is used, and only to the extent necessary while adhering to the provisions of the law and the Standing Orders.
 3. When the use of force results in injuries—
 - a. the police officers present shall provide medical assistance immediately and unless there are good reasons, failing to do so shall be a criminal offence; and
 - b. shall notify relatives or close friends of the injured or affected persons.
 4. A police officer who uses any form of force shall immediately, report to the officers superior explaining the circumstances that necessitated the use of force and the supervisor shall judge the rightfulness and decide on the next step, subject to these regulations.
 5. Any use of force that leads to death, serious injury and other grave consequences shall be reported immediately by the officer in charge or another direct superior of the person who caused the death or injury, to the Independent Police Oversight Authority who shall investigate the case.
 6. ...



43. Part B of the Sixth Schedule stipulates the conditions as to the use of firearms as follows:
1. Firearms may only be used when less extreme means are inadequate and for the following purposes—
 - a. saving or protecting the life of the officer or other person; and
 - b. in self-defence or in defence of other person against imminent threat of life or serious injury.
 - c. protection of life and property through justifiable use of force;
 - d. preventing a person charged with a felony from escaping lawful custody; and
 - e. preventing a person who attempts to rescue or rescues a person charged with a felony from escaping lawful custody.
 2. An officer intending to use firearms shall identify themselves and give clear warning of their intention to use firearms, with sufficient time for the warning to be observed, except—
 - (a) where doing so would place the officer or other person at risk of death or serious harm; or
 - (b) if it would be clearly inappropriate or pointless in the circumstances.
 3. A police officer shall make every effort to avoid the use of firearms, especially against children.
 4. Any use of firearm, even if there's no injury, shall immediately be reported to the officer's superior.
 5. Any use of fire arms that leads to death, serious-injury and other grave consequences shall be reported by the officer in charge or another direct superior of the person who caused the death or injury, to the Independent Police Oversight Authority who shall investigate the case.
 6. ...
44. Under Principle 3 of the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (the UN Principles) cited by the Respondents, the development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.
45. From the foregoing provisions, it is clear that the default modus operandi in the performance of functions and exercise of power conferred by *the Constitution* and the NPS Act is by use of non-violent means.
46. The use of force or firearms is very regulated and controlled as provided in the Sixth Schedule. The law places an obligation on the police to always attempt to use non-violent means first. Force and firearms may only be employed when non-violent means are ineffective or without any promise of achieving the intended result. Additionally, any use of force or firearms shall be proportional to the objective to be achieved, the seriousness of the offence, and the resistance of the person against whom it is used, and only to the extent necessary while adhering to the provisions of the law and the Standing Orders.
47. In this regard I concur with Mrima, J. who in the case of *Katiba Institute & another v Attorney General & another; Independent Policing and Oversight Authority & 3 others (Interested Parties) (Constitutional Petition 379 of 2017) [2022] KEHC 17072 (KLR) (Constitutional and Human*



Rights) (16 December 2022) (Judgment) stated that the use of firearms is permitted if need be, and only in the circumstances construed in paragraphs 1(a) and 1(b) of part b of the sixth schedule to the [National Police Service Act 2011](#).”

48. In the present case, the police used water cannons, rubber bullets and live ammunition which resulted in serious injuries and fatalities among protestors and even persons not participating in the protests. This was confirmed by IPOA in its monitoring report and also seen on national television. IPOA also noted that hooded and masked officers in civilian clothes were deployed and also some of the police vehicles used had concealed identities contrary to the law and service standing orders. Also extensively televised, was the abduction of young and other people by hooded and masked police officers in unmarked vehicles. Indeed, there was a public outcry on the lethal response by the police of which the Court takes judicial notice.
49. The Respondents contend that the protestors did not notify the police of the protests. Further that the violent and destructive actions of the protestors justified the use of water cannons, tear gas and rubber bullets after all no-violent means proved futile.
50. It is noted that the Respondents did not state what non-lethal means they used during the protests and how and to what extent they failed, thereby necessitating the use of force and firearms. The conduct of the police during the protests was in clear violation of Article 29 on freedom from torture and cruel, inhumane or degrading treatment or punishment, Article 30 on the freedom from slavery or servitude, Article 50 on the right to a fair trial and the right to an order of habeas corpus and Article 26 on right to life. Additionally, that the Gen Zs being youth, are a vulnerable group requiring special protection under Articles 20 and 21 of [the Constitution](#).
51. The law is that before firearms are used, the police are required to identify themselves and give clear warning of their intention to use firearms, with sufficient time for the warning to be observed. There is no evidence that this was done and none was provided to the Court.
52. Additionally, Paragraph 3 of Part A of the Sixth Schedule provides that when injuries arise from the use of force, the police officers present shall immediately provide medical assistance and failure to do so shall be a criminal offence, unless there are good reasons. The police are also required to notify relatives or close friends of the injured or affected persons.
53. The police did not comply with this provision. Indeed, in its monitoring report, IPOA noted that the police lobbied teargas at the medical camps at Jamia Mosque and the Holy Family Basilica contrary to the law. Clearly, rather than immediately providing medical assistance to those injured from the use of force as required under the NPS Act, the police undermined and frustrated the efforts of those giving medical attention to the victims of their use of force and firearms.
54. Further, no material was placed before the Court to demonstrate that the police immediately reported to their superiors explaining the circumstances that necessitated the use of force and firearms. Similarly, nothing was placed before the Court to show that the use of force and firearms which led to the death and serious injury of protestors and uninvolved persons and other grave consequences were reported immediately to IPOA. All these are requirements under the Sixth Schedule to the NPS Act.
55. As regards the complaint of deployment of police officers in civilian clothes, the Petitioner’s contention is that in the wake of increased complaints from the public over rogue police officers, it is imperative that police officers on duty be identifiable by uniform badge and service number. Further, that identification is essential for public trust and confidence in the police and accountability of individual officers in line with Article 244(b) and (e) of [the Constitution](#).



56. The Respondent defended the wearing of civilian clothes by police officers, arguing that it is crucial in the performance of duties including collection of criminal intelligence, detection and prevention of crime. As such, curtailing the wearing of civilian clothes will affect national security.
57. For IPOA, it was submitted that in its report, it recommended that for purposes of accountability, the 1st Respondent should not deploy ununiformed police officers to police demonstrations and to ensure identification of all police officers so deployed, by affixing name tags. IPOA also recommended clear identification of all police assets and vehicles used in policing demonstrations.
58. The dress code regulations for the police are contained in Chapter 31 of The National Police Service Standing Orders (Standing Orders). Paragraph 21 provides as follows regarding plain clothes:
1. Police officers other than those attached to Directorate of Criminal Investigations, Internal Affairs Unit, V.I.P protection sections and Crime Branches, shall wear uniform when on duty.
 2. The Officer-in-Charge of a formation may direct that plain clothes be worn in the performance of any specific duty, when circumstances require it.
 3. Subject to paragraph (2) plain clothes shall be worn by personnel escorting non-criminal mental patients.
 4. A police officer appearing in court as an accused shall wear civilian clothes.
59. It is appreciated that there are police officers who are exempt from wearing uniform while on duty. Relevant to the matter herein are police officers attached to the Directorate of Criminal Investigations (DCI). While DCI officers may be in civilian clothes while on duty during protests, they must conduct themselves in a manner that meets the objects of the NPS under Article 244.
60. There is nothing in the NPS Act or the Standing Orders that allows the police to be hooded or masked to conceal their faces or the registration numbers of their vehicles when deployed to manage protests or demonstrations.
61. It is globally accepted that the work of law enforcement officials is a social service. Indeed, Appendix 31 (b) of the Standing Orders provides that the Kenya Police Service badge consists of the “Harambee Shield” and crossed spears, surrounded by a circle bearing the words “Utumishi Kwa Wote”, meaning service to all. Identification of police officers is especially critical in protest situations, as participants and uninvolved persons who find themselves in distress can seek refuge with the police.
62. The question that then begs is: given their mandate to serve all, why would police officers conceal their faces and identity and bundle people in unmarked vehicles? It is only criminals engaged in criminal activities that wear hoods and masks to conceal their identity and move in vehicles without registration plates or with false plates to avoid identification and accountability. Why would the police behave in a similar fashion? There is a saying where I come from, that “ngari itarĩ namba nĩ ya mũici” meaning that a vehicle without number plates belongs to a thief. The conduct of the police in the dealing with the Gen Z protests is totally unacceptable in a civilized, open and democratic society like ours. The accusation that the police unleashed terror against the very people they are meant to protect is thus not unfounded.
63. At this juncture, it bears repeating that Article 244, places an obligation upon the NPS to strive for the highest standards of professionalism and discipline among its members. The NPS is also required to prevent corruption and promote and practice transparency and accountability as well as comply with constitutional standards of human rights and fundamental freedoms. The deployment of hooded and



masked police officers and vehicles with concealed registration numbers during the protests, clearly militated against this constitutional imperative.

64. In *Law Society of Kenya v Kithinji & 5 others; Katiba Institute & another (Interested Parties)* (Petition E373 of 2024) [2025] KEHC 7957 (KLR) (Constitutional and Human Rights) (30 April 2025) (Judgment). Mwamuye, J. had this to say about the deployment of police officers with concealed faces and service numbers as well as unmarked vehicles in policing protests:

In order to ensure transparency, accountability and in order to uphold the rule of law, as it is their duty under *the Constitution*, the Respondents and all other police officers are mandated to wear their police uniforms for easier identification unless they fall under the specific exceptions outlined under Chapter 31 Regulation 22 of the National Police Service – Service Standing Orders thus the officers serving under the command and control of the Respondents unnecessarily and unjustifiably wearing plain civilian clothes, balaclavas and using unmarked vehicles to illegally arrest individuals who were exercising their constitutional rights to protest, picket, demonstrate and petition amounted to a violation of *the Constitution*.

65. Article 2(1) of *the Constitution* provides that *the Constitution* is the supreme law of the Republic and binds all persons and all State organs at both levels of government. Similarly, Article 3 obligates every person to respect and uphold *the Constitution*. Additionally, the national values and principles of governance stipulated in Article 10 bind all State organs. By their conduct during the protests, the police violated the values and principles of patriotism, national unity, the rule of law, democracy and participation of the people, human dignity, equity, social justice, human rights, protection of the marginalised, good governance, integrity, transparency and accountability.

66. I now turn to the role of the 1st Respondent. A special feature in our Constitution is the establishment of the independent office of the Inspector-General of Police under Article 245(1). The independence of that office is stipulated in Clause 2(b) which declares that the Inspector-General shall exercise independent command over the National Police Service, established under Article 243(1), and perform any other functions prescribed by national legislation.

67. Article 245(4) of *the Constitution* provides as follows:

The Cabinet secretary responsible for police services may lawfully give a direction to the Inspector-General with respect to any matter of policy for the National Police Service, but no person may give a direction to the Inspector-General with respect to—

- a. the investigation of any particular offence or offences;
- b. the enforcement of the law against any particular person or persons; or
- c. the employment, assignment, promotion, suspension or dismissal of any member of the National Police Service.

68. As can be seen, 2nd Respondent is authorised to give direction to the 1st Respondent with respect to matters of policy only. The provision secures the independence and autonomy of the 1st Respondent with regard to the investigation of any offences, the enforcement of the law against any person and the employment, assignment, promotion, suspension or dismissal of any member of the National Police Service. The 2nd Respondent thus has no power to give direction to the 1st Respondent with regard to the listed matters, which are insulated by *the Constitution*, from interference. Indeed, only



the Director of Public Prosecutions may under Article 157(3), direct the 1st Respondent to investigate any information or allegation of criminal conduct and he is required to comply.

69. In the case of *Law Society of Kenya v Attorney General & another* [2021] eKLR, Mrima J, considered the independence of the office of the Inspector General of Police and stated:

83. The independence of the 2nd Respondent is constitutionally-insulated from any form of interference or directional command. Apart from the Director of Public Prosecutions and only to the extent so provided, no other person, body or entity has the power to give any form of directives to the 2nd Respondent on how to discharge its functions.

84. The above is further ring-fenced in that even the power donated to the Cabinet Secretary under Article 254(4) of *the Constitution* to issue any directives to the 2nd Respondent is only limited to policy issues.

85. The Supreme Court In the Matter of Interim Independent Electoral Commission [2011] eKLR, discussed the meaning and extent of the independence in relation to constitutional Commissions and independent offices. The Court emphasized the need for such entities to co-ordinate for effective service delivery, but delineated the discharge of their respective mandates as follows: -

[60] While bearing in mind that the various Commissions and independent offices are required to function free of subjection to “direction or control by any person or authority”, we hold that this expression is to be accorded its ordinary and natural meaning; and it means that the Commissions and independent offices, in carrying out their functions, are not to take orders or instructions from organs or persons outside their ambit.

86. Applying the foregoing to this case, it therefore, follows that the Inspector General as the one in command of the National Police Service while discharging the duties of the office should not be under the direction or control of any person or authority and should not take any orders or instructions from organs or persons outside his/her ambit. As said, the only exception is what is provided for in Article 157(4) of *the Constitution* relating to the powers of the Director of Public Prosecutions over the Inspector General

70. The command of the national police service is vested in the 1st Respondent who in the discharge of this mandate, is not under the control or instructions of the 2nd Respondent or any other person or authority. Any action by the 1st Respondent at the direction of the 2nd Respondent or any other person or authority except as authorised by Article 245 therefore, is a gross violation of the express provisions of *the Constitution* that would make him liable for removal from office under Article 245(7).

71. The right to peaceably and unarmed, assemble, demonstrate, picket, and present petitions to public authorities is not just inherent in every individual but is also an integral part of a democratic state. The obligation of all state agencies and all persons to protect and guard this right cannot be gainsaid.

72. In the end, and for the reasons stated, I do find that the actions taken by the police against persons exercising their Article 37 rights far exceeded and violated their mandate. The police by their conduct further violated *the Constitution*, specifically Articles 2, 3, 10, 26, 29, 33, 37, 244 and 245.

Whether the Petitioner is entitled to the reliefs sought

73. Having found as I have, that the police acted in excess of their constitutional and statutory mandate, it follows that the Petitioner is entitled to some of the orders sought. Due to effluxion of time, prayers II,



IV, VI and X which relate specifically to the protests against the Finance Bill 2024, have been overtaken by events.

74. As regards prayer IX, the same is speculative and no evidence was placed before the Court to support this prayer.
75. Prayer XII against IPOA is moot as evidence has been led demonstrating that it has conducted investigations into the conduct of the police with regard to the protests in question and its monitoring report is on record. Further, investigations are ongoing.
76. On the prayers relating to the independence of the 1st Respondent, the Petitioner submitted that the resignation of the original holder of the office of the 1st Respondent is an indictment on his inability to discharge his duties under *the Constitution* and the NPS Act and shall not risk flogging a dead horse by submitting any further on this point. The Petitioner appears from his submissions, to have abandoned this prayer. Suffice it to say however, that command of the national police service is vested in the 1st Respondent who in the discharge of this mandate is not under the control or instructions of the 2nd Respondent or any other person or authority. Indeed, the 1st Respondent would be acting in violation of the express provisions of *the Constitution* were he to take directions from the 2nd Respondent other than as provided under Article 245(4).
77. Regarding costs, Rule 26(1) of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, provides that the award of the costs is at the discretion of the Court. Sub Rule (2) provides that in exercising its discretion to award costs, the Court shall take appropriate measures to ensure that every person has access to the Court to determine their rights and fundamental freedoms.
78. It is trite that costs always follow the event. In the case of *Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others* [2014] eKLR, the Supreme Court stated that the purpose of costs is not to penalise the losing party but to compensate the successful party for costs incurred in prosecuting or defending the suit:
- (14) So the basic rule on attribution of costs is: costs follow the event. But it is well recognized that this principle is not to be used to penalize the losing party; rather, it is for compensating the successful party for the trouble taken in prosecuting or defending the suit. In Justice Kuloba's words [Judicial Hints on Civil Procedure, at p.94]:
- “[T]he object of ordering a party to pay costs is to reimburse the successful party for amounts expended on the case. It must not be made merely as a penal measure...Costs are a means by which a successful litigant is recouped for expenses to which he has been put in fighting an action.”
79. While the law provides that the costs of, and incidental to all suits shall be at the discretion of the Court, which shall have full power to determine by whom and to what extent such costs shall be paid, the Court must determine whether the circumstances of this case call for an award of costs. In this regard, I find useful guidance in the case of *Jasbir Singh Rai* (supra), where the Supreme Court went on to state that the principle of law that costs follow the event is not invariable as follows:
- Although there is eminent good sense in the basic rule of costs – that costs follow the event – it is not an invariable rule and, indeed, the ultimate factor on award or non-award of costs is the judicial discretion. It follows, therefore, that costs do not, in law, constitute an unchanging consequence of legal proceedings – a position well illustrated by the considered



opinions of this Court in other cases. The relevant question in this particular matter must be, whether or not the circumstances merit an award of costs to the Appellant.

80. What is before the Court is a public interest matter, specifically the actions taken by the police against persons exercising their Article 37 rights under *the Constitution*. I accordingly find that the circumstances of this case do not call for an award of costs to the Petitioner not least because the same would overburden tax payers of this country.
81. In the end and after the foregoing analysis, the following orders commend themselves to the Court:
1. A Declaration is hereby issued that the use of water cannons, tear gas, live ammunition, and rubber bullets and the deployment of brute force or any form of violence against persons exercising their constitutional rights to protest against the Finance Bill, 2024 is illegal, unconstitutional and unacceptable in an open and democratic society like Kenya;
 2. A Declaration is hereby issued that the extrajudicial killings, arrest, abduction, detention, harassment, intimidation, torture, cruel, inhuman and degrading treatment of persons exercising their constitutional rights to protest against the Finance Bill, 2024 is a gross violation of *the Constitution*.
 3. Each party to bear own costs.

DATED SIGNED AND DELIVERED IN MALINDI THIS 30TH DAY OF SEPTEMBER 2025

M. THANDE

JUDGE

