



JGM (Suing as the Next Friend and Father of TM & TM Minors) v Gichobi alias Kinyua Oversight (Constitutional Petition E006 of 2024) [2025] KEHC 14109 (KLR) (7 October 2025) (Judgment)

Neutral citation: [2025] KEHC 14109 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CONSTITUTIONAL PETITION E006 OF 2024**

**EM MURIITHI, J
OCTOBER 7, 2025**

BETWEEN

**JGM (SUING AS THE NEXT FRIEND AND FATHER OF TM & TM
MINORS) PETITIONER**

AND

PETER GICHOBI ALIAS KINYUA OVERSIGHT RESPONDENT

JUDGMENT

1. By a Petition dated 27/3/2024, the Petitioner seeks specific reliefs that:
 - a. A declaration that the petitioner’s fundamental freedoms guaranteed under Articles 27 (5), 28, 31 (c) (d), 33 (3), 35 (2) have been infringed.
 - b. A declaration that the petitioner’s rights to privacy under the *Children Act* have been violated.
 - c. An order of injunction to restrain the respondent, his servants and/or agents from further publishing words, articles and posting on social media, anything relating to the petitioner’s family and private affairs, more so their custody case.
 - d. An order for correction of the misleading information to be done in a similar medium with wide circulation.
 - e. An order for compensation.
 - f. Costs of the suit
 - g. Or that other such orders(s) as this Honourable Court shall deem just.



Petitioner's Case

2. On 6/3/2024, the Respondent posted/published on his Facebook public group page, MWEA PEOPLE, the Petitioner's private family matters regarding their birth, where he claimed that they were born out of a "one night stand", insinuating that they were born by philanderers. On 8/3/2024, the Respondent, unperturbed, posted the Petitioner's photographs, accompanied by untrue, and misleading information about their family, hence affecting their rights and reputation. Additionally, the Respondent posted on his said Facebook page, a video of the minors, casting aspersions on their well being, livelihood and health, which was an invasion of their privacy and dignity. On 20/3/2024, the Respondent posted on his said page misleading information about Wang'uru children cause No. E003/2024, involving the minors' custody. The said conduct of the Respondent has exposed the Petitioner's private family affairs and their photographs to public and societal ridicule, and is a violation of his fundamental rights under Article 27 (5), 28, 31 (c) (d), 33 (3) and 35 (2) of the Constitution.
3. The Respondent neither responded to the Petition nor filed written submissions.

Petitioner's Submissions

4. The Petitioner urges the Court to find that the Respondent invaded his privacy, family, private affairs and reputation, and cites FSO (Suing as the next friend and father to CDCS) v Kitengela International School Athi River & another (Petition E008 of 2023) [2024] KEHC 9999 (KLR) (29 July 2024) (Judgment); Coalition for Reform and Democracy (CORD) & 2 others v Republic of Kenya & 10 Others (2015) eKLR and FAF (Suing on her behalf and as a next friend of SAS and NAMS) v Norwegian Refugee Council (2019) eKLR.

Analysis and Determination

5. After due consideration of the Petition and the submissions on record together with the authorities relied on, the issue that arises for determination is whether the Petitioner's rights under Articles 27 (5), 28, 31 (c), (d), 33 (3) and 35 (2) of the Constitution were violated by the Respondent.
6. The burden of proof lies on the Petitioner to establish that his rights aforesaid were violated by the Respondent in accordance with the principles of the well known Anarita Karimi Njeru -vs- Attorney General, (1979) KLR 154.
7. In Mohammed Abduba Dida v Debate Media Limited & another [2018] KECA 642 (KLR), the Court of Appeal (Waki, Makhandia & Murgor, JJA.) encapsulated that;

 "...ordinarily, the burden of demonstrating that a right was infringed would be upon the person alleging such violation, as, that person would be in the better position to prove it. It is for the petitioner to show that, compared to another person, he or she has been denied a benefit or suffered a disadvantage, which are matters that are within the petitioner's knowledge. Once the case is made out, the burden shifts to the other party. More particularly, in view of the observation that the rights alleged to have been infringed do not fall within the grounds classified by Article 27 (4), more so the reason for the petitioner have to prove that his or her rights have been infringed in respect of the grounds alleged."
8. The Petitioner contends that the publication of his personal affairs and the private images of the minors in the Respondent's Facebook page, amounted to a violation of his constitutional rights, and has subjected the minors to public ridicule and emotional distress.



9. In *Kenya Human Rights Commission v Communications Authority of Kenya & 4 others* [2018] KEHC 7494 (KLR), the court (John Mativo J, as he then was) emphasized the central place of privacy among the rights in a democratic society as follows:

“ 52. Privacy is a fundamental human right, enshrined in numerous international human rights instruments. [18] It is central to the protection of human dignity and forms the basis of any democratic society. It also supports and reinforces other rights, such as freedom of expression, information, and association. The right to privacy embodies the presumption that individuals should have an area of autonomous development, interaction, and liberty, a “private sphere” with or without interaction with others, free from arbitrary state intervention and from excessive unsolicited intervention by other uninvited individuals. [19] Activities that restrict the right to privacy, such as surveillance and censorship, can only be justified when they are prescribed by law, necessary to achieve a legitimate aim, and proportionate to the aim pursued.[20].”

10. Whilst Article 27 (5) of *the Constitution* outrightly outlaws direct or indirect discrimination based on race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth, Article 28 of *the Constitution* connotes that the inherent dignity of every person must be respected and protected.
11. Article 31 (c) and (d) of *the Constitution* provides that, “Every person has the right to privacy, which includes the right not to have - (c) information relating to their family or private affairs unnecessarily required or revealed; or (d) the privacy of their communications infringed.”
12. Article 35 (2) of *the Constitution* provides that, “Every person has the right to the correction or deletion of untrue or misleading information that affects the person.”
13. Section 27 of the *Children Act* provides that, “No person shall subject a child to arbitrary or unlawful interference with his or her privacy, family or private affairs, or correspondence, or to attacks upon his or her honour or reputation.”
14. In the exercise of his freedom of artistic creativity as guaranteed under Article 33 of *the Constitution*, the Respondent was under a corresponding obligation to respect and uphold the rights and reputation of the Petitioner.
15. Whereas the information contained in the publications made by the Respondent may be factual and already in the public domain, this court finds that the same was a violation of the Petitioner’s rights to dignity, reputation and privacy under Articles 28, 31 and 33 of *the Constitution*.
16. On whether the Petitioner is entitled to compensation for the violation of his rights, this court respectfully agrees with *MWK & another v Attorney General & 4 others; Independent Medical Lega Unit (IMLU) (Interested Party); The Redress Trust (Amicus Curiae) (Constitutional Petition 347 of 2015)* [2017] KEHC 1496 (KLR) (Constitutional and Human Rights) (18 December 2017) (Judgment), where the court (John Mativo J, as he then was) stated that;

“It was well settled that an award of compensation was an appropriate and effective remedy for redress of an established infringement of a fundamental right under *the Constitution*. The quantum of compensation would, however, depend upon the facts and circumstances of each case. An award of damages entailed an exercise of judicial discretion which would have been exercised judicially and that meant that it had to be exercised upon reason and principle



and not upon caprice or personal opinion. Arriving at the award of damages was not an exact science. No monetary sum could really erase the scarring of the soul and the deprivation of dignity that some of those violations of rights entailed. When exercising that constitutional jurisdiction, the court was concerned to uphold, or vindicate, the constitutional right which had been contravened. A declaration by the court would have articulated the fact of the violation, but in most cases, more would be required than words. If the person wronged had suffered damage, the court could award compensation. An award of compensation would go some distance towards vindicating the infringed constitutional right. How far it went would depend on the circumstances, but in principle it might not suffice. The fact that the right violated was a constitutional right added an extra dimension to the wrong. An additional award, not necessarily of substantial size, would be needed to reflect the sense of public outrage, emphasize the importance of the constitutional right and the gravity of the breach, and deter further breaches. All those elements had a place in helping the court arrive at a reasonable award. The court had to consider and have regard to all the circumstances of the case.”

17. That the enforcement of rights is available in horizontal application of rights to cover private abuse of rights, outside traditional vertical relationship between the individual and the state, is indubitable on the terms of Article 19(2) of *the Constitution*, which gives the object of the Bill that “(2) The purpose of recognising and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realisation of the potential of all human beings” and Article 20 which binds all persons as follows “20. (1) The Bill of Rights applies to all law and binds all State organs and all persons.”

See discussion on application of the Bill of Rights in *The Bill of Rights Handbook*, 5th ed. (2005) by Currie & de Waal at p.43.

18. Indeed, in a horizontal application of rights by case against a private party, *Roshanara Ebrahim v Ashleys Kenya Limited & 3 others* [2016] KEHC 8330 (KLR) . this Court awarded Ksh.1,000,000/- for breach of the right to privacy.
19. See also *FSO (Suing as the next of friend and father to CDCS) v Kitengela International School Athi River & another* (Petition E008 of 2023) [2024] KEHC 9999 (KLR) (29 July 2024) (Judgment), cited by the Petitioner herein where the Court awarded Kshs 700,000/- being damages for the violation of the Petitioner’s child’s right to dignity and privacy in a commercial promotion setting, and where this court in similar circumstances in the case of the *Meru HCCC No. E003 of 2021* , where the Kenya Methodist University’s wrongful use of a student’s photograph on its advertisement billboard got an award of Ksh.500,000/
20. In *FAF* (suing on her own behalf and as a next friend of SAS and NAMS, supra, cited by the petitioner, compensation for breach of privacy for three children in the global sum of kshs.210,000 being general damages to be distributed at Ksh.70,000/- for each of the claimants/petitioners for the petitioner and her two children, her private photographs and photographs of the minors being published on a refugee pamphlet which tended to insinuate to the members of the public that they are refugees.
21. In the present case, publishing the Petitioner’s private affairs and exposing the faces of his two minor children to the public, the Respondent acted inappropriately and maliciously. Bearing in mind all the circumstances of this case, including the obnoxious allegations of the children being products of a “one night stand” and thereby exposing them to public or societal ridicule and indignity, this court considers that a global award of Ksh.300,000 is adequate recompense for the Petitioner and the minors.



Orders

22. Accordingly, for the reasons set out above, the Petition dated 27/3/2024 is merited and it is allowed in the following terms:
- a. A declaration is hereby issued that the Petitioner's Constitutional rights as protected under Articles 27, 28, 31 and 33 of *the Constitution*.
 - b. The Petitioner is awarded general damages of Ksh.300,000/- for the violation of his rights set out above.
 - c. An order of permanent injunction to restrain the Respondent, his servants and/or agents from further publishing words, articles and posting on social media, anything relating to the petitioner's family and private affairs is granted.
 - d. The Respondent is ordered to forthwith delete the publication on the relevant social media platform.

Orders accordingly.

DATED AND DELIVERED THIS 7TH DAY OF OCTOBER 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Momanyi for the Applicant.

N/A for the Respondents.

