



**Anampiu v Cleanshelf Supermarket Limited (Constitutional Petition
E044 of 2023) [2025] KEHC 15455 (KLR) (31 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15455 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CONSTITUTIONAL PETITION E044 OF 2023**

A MSHILA, J

OCTOBER 31, 2025

**IN THE MATTER OF ARTICLE 2,3,20, 22(1), 23(1) & (3), 50(1), 116,165(3)(B),
258(1) & (2), 259 OF THE CONSTITUTION OF KENYA AND IN THE MATTER
OF THE ALLEGED CONTRAVENTION OF THE RIGHTS AND FUNDAMENTAL
FREEDOMS UNDER ARTICLES 27, 28, 29, 31 & 46 OF THE CONSTITUTION**

BETWEEN

EVERLYN KAGWIRIA ANAMPIU PETITIONER

AND

CLEANSHELF SUPERMARKET LIMITED RESPONDENT

JUDGMENT

Background

1. Before the Court is the Petition by Evelyn Kagwiria Anampiu dated the 3rd day of August, 2023 brought under the provisions of Rule 3, 4(1), 8 and 10 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013.
2. The facts relied upon are well enumerated in the supporting affidavit by the Petitioner. The particulars of violation of *the Constitution* and statutory provisions were that the Respondent violated Article 27(5), 28, 29, 31 and 46 of *the Constitution*.
3. In the end, the Petitioner sought for orders that;-
 - a. A declaration that the Petitioner's rights as enshrined in *the Constitution* with respect to dignity, freedom and security of her person and privacy have been infringed by the acts and/or omissions of the respondent.
 - b. A declaration that the Petitioner's fundamental rights and freedoms as enshrined under Article 46 of *the Constitution* have been contravened and infringed upon by the Respondent.



- c. A declaration that the Petitioner is deserving of damages to be assessed by the Honourable Court.
4. The Petitioner in her supporting affidavit deposed that on or about the 3rd of June, 2023, she visited Cleanshelf Supermarket located in Ruaka where she was accused of shoplifting. She denied the allegations but nevertheless she was subjected to a public physical search on her body and belongings which was horrendous and humiliating. No items were recovered from her to warrant that kind of treatment. She contended that the commotion drew a crowd as such she was subjected to public humiliation. Her report to the management was only met with an apology from the concerned member and her demand letter was ignored. She averred that she now lives with the stigma of being labelled as a shop lifter and is now traumatized by the ordeal. The Respondent was said to have trampled upon the rights of the Petitioner as such the court is urged to order the Respondent to compensate the Applicant for its wayward actions.
5. Olive Wanjiku filed her replying affidavit dated 8th September, 2023 as an Assistant Manager. She stated that the Petitioner was subjected to a routine search process before entering the supermarket which is the same search procedure that the Petitioner was subjected to at the point of search upon the attendant being alerted by the premise managers. She stated that the Petitioner was seen holding a bottle of shampoo for quite some time however upon heading to the counter the same could not be seen. This prompted a search from a due diligence front as the Petitioner was approached by a shop attendant and was questioned in a reasonable manner as to whether she had items that she had not paid for. She denied the claim that the Petitioner was subjected to any horrendous or public humiliation as she was subjected to routine procedure in alignment with the Sub Contracting Company Loss Control Procedures. The Petitioner became aggressive, hostile and loud in her tone as she denied having any items; as such she attracted attention of other customers and bystanders. Efforts to calm her down remained futile as the Petitioner did not lower her voice and she became even more aggressive. The Petitioner was said to have attracted the humiliation and embarrassment she is claiming on herself. Further, she contended that the Respondent has a right to preserve their property as such they conduct searches when customers enter and also in the event any pilferage is suspected. The Petitioner was issued with an apology and that the situation cannot be said to be stigmatizing, traumatizing or embarrassing and the same was fair and justified in law. Being subjected to a routine procedure was in no way discriminative as any person in a similar situation would be subjected to the same. Further, that the Petitioner's freedom and security were not threatened as well as her right to privacy and no damage has been demonstrated as to being suffered. The Petition was said to be defective and meant to kill the Respondent's rights as no cause of action against the Respondent has been established.
6. Parties were directed to file brief written submissions.

Petitioner's Submissions

7. The Petitioner submits that the response by the Respondent is an admission to the Petition as the Petitioner was searched within the premises in an open area in full view of the public and not in a private area as mandated while she had not passed the last pay point. The actions occurred at the premises of the Respondent which is in the area of residence of the Petitioner hence her dignity was violated by being humiliated. It was submitted that the Petitioner was not opposed to the search but the public manner in which it was done in contravention of her right to privacy as well as her consumer rights. She sought for compensation of Kshs.4Million. Reliance was placed in the case of Mwk & Another Vs Attorney General & 4 Others; Independent Medical Legal 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). The Petitioner prays that she is entitled to the prayers sought.

Respondent's Submissions

8. The Respondent submits that the Petitioner has not demonstrated that the Respondent's actions were discriminative as the search was based on reasonable suspicion and discriminatory intent or bias; as such no prohibited ground has been proved. Reliance was placed in the case of *John Kabui Mwai & 3 Others Vs Kenya National Examination Council & 2 Others* (2011) KEHC 1696 (KLR). It was submitted that the search was conducted in a designated search area by a staff of the same gender and followed the established procedure and that any distress resulted from the Petitioner's refusal to cooperate with the standard procedure and her volatile reaction drew public attention. It was said that there was reasonable suspicion as such the right to privacy is not absolute in such circumstances. The Respondent's actions were said to be proportionate and necessary to protect its property. Reliance was placed in the case of *JWI & Another Vs Standard Group Limited & Another* (2015) eKLR. The Respondent submits that its actions were in line standard loss prevention procedures as in the Respondent's Loss Control Policy. The actions were said to be in good faith and on reasonable suspicion and had no intention of humiliating the Petitioner. An apology was tendered to demonstrate that the Respondent took steps to address any unintended harm. The Petitioner was said to have failed to provide medical or psychological evidence to substantiate the claims that she suffered trauma and public humiliation as she did not call any independent witnesses to corroborate claims of public humiliation. The court was urged to dismiss the Petition for lack of merit.

Issues For Determination

9. Having considered the Petition, the replying affidavit and the rival submissions, the issues arising for determination are;-
 - i. Whether the Petitioner's rights as enshrined in *the Constitution* have been infringed.
 - ii. What remedy is the Petitioner entitled to, if any.

Analysis

10. The Petitioner contended that her rights as enshrined in *the Constitution* have been infringed as such she is deserving of damages.
11. It is the Petitioner's case that she was subjected to a public physical search which was humiliating. She averred that she now lives with the stigma of being labelled a shop lifter.
12. The Respondent avers that the Petitioner was subjected to a routine search from a due diligence upfront and that the Petitioner attracted the attention of the other customers and bystanders as she was hostile and loud. The process was said not be discriminative and that the Petitioner's freedom and security were not threatened.
13. The Petitioner contends that her rights under Articles 27,28,29,31 and 46 of *the Constitution* were violated.
14. The Petitioner submits that the Respondent according to their Loss Control Policy is mandated to conduct the search in a private area before passing the last point with which was not the case herein. The search was conducted in her area of residence hence her right to privacy as well as consumer rights were violated. She sought for damages of Kshs.4Million.



15. The Respondent submits that the search was conducted in a designated search area following the established procedure. The right to privacy is not absolute when there is reasonable suspicion and the search was in line to their Loss Control Policy.
16. The Respondent submit that no evidence has been tendered by the Petitioner to demonstrate that she suffered trauma and public humiliation as she did not call any witnesses.
17. A perusal of the Loss Control Policy annexed by the Respondent in its replying affidavit outlined the search procedure. The policy provides that someone should be searched in a private area before the payment point and in the presence of a managerial staff.
18. From the evidence on record it is not disputed that the Petitioner was subjected to a search. What is in dispute is whether the search was done in accordance with the law as to protect her dignity.
19. It is contended by the Respondent that it is the Petitioner who was loud hence attracted public attention to herself.
20. After careful consideration of the facts and the evidence presented, this court has arrived at the finding that the Petitioner's rights under Articles 28 (human dignity), 31 (privacy) and 46 (consumer protection) of *the Constitution* were violated.
21. The Respondent contends that the Petitioner was loud as such she attracted public attention. This would only mean that the search was being conducted in a public area and not in a private area as mandated by the Respondent's loss control policy.
22. Be that as it may, the Respondent's assistant manager deposed that she summoned one attendant to carry out the search, this is in contravention with their policy as one managerial staff was supposed to be present during the search.
23. The Respondent bears the duty to protect its customers from humiliation and embarrassment and it is clear that the Petitioner was exposed to a search that was carried out in an improper manner thereby infringing on her rights as enshrined in *the Constitution*.
24. The Petitioner claims damages amounting to Kshs. 4 Million due to the trauma, humiliation and embarrassment suffered. This court notes that the Petitioner did not present a witness to support her claims that she suffered humiliation as the search was conducted in her area of residence.
25. Nevertheless, this court having already found that the Petitioner's right under Articles 28 (human dignity), 31 (privacy) and 46 (consumer protection) of *the Constitution* were violated, it finds that the petitioner is entitled to nominal damages.

Findings And Determinations

- a. A declaration be and is hereby issued that the Petitioner's rights as enshrined in *the Constitution* with respect to dignity, freedom and security of her person and privacy were infringed by the acts and/or omissions of the Respondent.
- b. A declaration be and is hereby issued that the Petitioner's fundamental rights and freedoms as enshrined under Articles 28, 31 and 46 of *the Constitution* were contravened and infringed upon by the Respondent.



- c. A declaration be and is hereby issued that the Petitioner is deserving of nominal damages assessed at Kshs.500.000/-.
- d. The Respondent shall bear the costs of this Petition.
- It is so ordered.

DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 31ST DAY OF OCTOBER, 2025.

A. MSHILA

JUDGE

In the presence of;

Sanja – Court Assistant

Ngige Karomo for the Petitioner

Yator for the Respondent

