

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT SIAYA
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NUMBER E002 OF 2025

**IN THE MATTER OF THE ALLEGED VIOLATION OF ARTICLES
1,2,3, 10, 19,20(1), 21(1) AND (3), 22, 232, 238(2)(b) AND
244 OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF THE CONTRAVENTION AND
THREATENED CONTRAVENTION OF THE FUNDAMENTAL
RIGHTS AND FREEDOMS UNDER ARTICLES 26(1)(3), 27, 28
29©, 35,47 48 and 50(1) OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF INTERPRETATION, ENFORCEMENT AND
PROTECTION OF BILL OF RIGHTS UNDER ARTICLES
19,20,21,22,23,24, 165,258 AND 259 OF THE
CONSTITUTION**

AND

**IN THE MATTER OF THE PUBLIC OFFICERS ETHICS ACT NO.
4 OF 2003**

AND

**IN THE MATTER OF THE ACCESS TO INFORMATION ACT NO.
31 OF 2016 AND**

**IN THE MATTER OF THE LEADERSHIP AND INTEGRITY ACT
NO. 19 OF 2012**

BETWEEN

**CHRISTINE ALUOCH ANYANGO (suing as the administrator
of the estate of COLETA AMONDY**

ONYANGO (deceased).....

....PETITIONER

VERSUS

THE INSPECTOR GENERAL, NATIONAL

POLICE SERVICE.....1ST

RESPONDENT

OFFICE OF THE DIRECTOR OF

PUBLIC PROSECUTION.....2ND

RESPONDENT

MINISTRY OF INTERIOR & COORDINATION

**OF NATIONAL GOVERNMENT3RD
RESPONDENT**

**OFFICE OF THE ATTORNEY GENERAL4TH
RESPONDENT**

JUDGMENT

1. By a Constitutional Petition dated 17th January 2025, the Petitioner has approached this court alleging violations of rights under articles 1,2,3,10,19, 20(1), 21(1) (3), 22, 232, 238(2)(b), 244, 26(1)(3)27,28, 29(c), 35, 47,48, and 50(1) of the Constitution of Kenya 2010.
2. The Petitioner alleges that the deceased herein was a high school teacher stationed at Wambasa Girls' School within Siaya County. that in the year 2016, she was a victim of a police shooting by an officer called Lotugh Angorita deployed under the authority of the National Police Service (NPS). That she succumbed to the injuries sustained while receiving treatment at Bondo Sub-County Hospital.
3. The Petitioner averred that she reported the incident to the Independent Police Oversight Authority (IPOA) for investigations but that no response came forth. That she

made attempts to follow up at the local police station but the same became fruitless.

4. That due to the inaction by IPOA, the Petitioner forwarded the complaint to the Office of the Ombudsman who in turn urged IPOA vide a letter dated 10/05/2017 to investigate the complaint and bring the culprit to justice.
5. That on 04/06/2020, IPOA released a press statement announcing their intention to charge and arraign six police officers for deaths, shootings and assault including the shooter one Lotugh Angorita. That there was another press statement by the acting Cabinet Secretary incharge of the 3rd Respondent Hon. Fred Matiangi who expressed commitment to move forward in prosecuting errant police officers including the officer who had fired the shot that killed the deceased.
6. That the matter remained without any progress which necessitated the Petitioner through her counsel to write to the 1st ,2nd and 3rd Respondents inquiring on the status of the criminal proceedings against the suspect officer Lotugh Angorita.
7. That the 2nd Respondent replied by referring them to their Kisumu Regional Officer on matters of jurisdiction however, no response came forth for months until the Petitioner's counsel did a follow up to the 2nd Respondent on 09/12/2021.

8. That ever since until the filing of this petition, none of the Respondents honored the Petitioner's inquiries. That after numerous rounds to the concerned state offices, the victim's family has been left in the dark with no hope for justice.
9. That the Petitioner alleged that the 1st Respondent is responsible for coordinating cooperation of the NPS with IPOA towards prosecution in line with Section 25 of the IPOA Act. However, the 1st Respondent developed cold feet since the Petitioner's inquiries remained unanswered.
10. The Petitioner contends that in failing to pursue the prosecution of the suspect officer, the 2nd Respondent contravened their duty of transparency, accountability and fidelity to the rule of law. That the 2nd Respondent, particularly the Kisumu Regional Office abandoned their duty to provide information to the Petitioner pursuant to article 35 of the Constitution and Access to information Act.
11. The Petitioner therefore has brought this Petition and seeks for the following reliefs:
 - a) A declaration that the Respondents' omission to promptly and efficiently investigate the wrongful death of the deceased Coleta Amondy Anyango infringed upon the Petitioner's fundamental rights and freedoms,

particularly Articles 26 (1)(2), 27, 28, 29(c), 47 and 48 of the Constitution of Kenya.

- b) A declaration that the 2nd Respondents unjustified delay in prosecuting the suspect police officer for the deceased wrongful death contravened their binding obligations in Articles 10,20, 21,35,47,48 and 157 of the Constitution.
- c) A declaration that the 1st and 3rd Respondents inaction in coordinating the investigation and prosecution of the suspect officer contravenes their constitutional duties enshrined in Articles 10, 20, 21, 35, 47, and 48 of the Constitution.
- d) A declaration that the Petitioner is entitled to damages for violation of the above stated constitutional rights;
- e) An order of mandamus directed to the 2nd Respondent along with the 1st and 3rd Respondents compelling them to move forward in prosecuting the officer known as Lotugh Angorita for the wrongful death of the deceased.
- f) Compensation totaling to Ksh 5 000 000/= to be paid to the Petitioner and the deceased's family for wrongful death and upkeep of the deceased's surviving dependents.
- g) The Respondents bear costs of the Petition.
- h) Any other relief of this Honorable Court deems fit to grant.

12. The Petition is supported by the undated supporting affidavit sworn by the Petitioner which is a reiteration of the facts supporting the petition and the annexures thereto.
13. The 2nd Respondent failed to file any response to the Petition while the 1st, 3rd and 4th Respondents filed grounds of opposition dated 13th March 2025 which are inter alia; that the petition lacks merit and is an abuse of the court; that the petition does not raise any infringement of the constitutional rights and the Petitioner ought to have filed a normal civil suit; that the orders being sought against the 1st and 3rd Respondents are untenable as they do not have the prosecutorial powers and only the office of the Director of Public Prosecution has the said powers as provided for in Article 157(6) of the Constitution; that there is a grave misinterpretation of facts by the Applicant herein; that the Petition is scandalous, frivolous and vexatious. They sought for the dismissal of the petition with costs.
14. The Petition was canvassed by way of written submissions. The Petitioner as well as the 1st, 3rd and 4th Respondents complied while the 2nd Respondent did not as it had failed to participate in the proceedings.
15. The Petitioner's submissions are dated 10/6/2025. It was submitted that the deceased was denied the right to life under Article 26 and denied the right to human dignity

under Article 28 of the Constitution. The Petitioner further submitted that the 2nd Respondent went against the tenets of its constitutional mandate under Article 157 of the Constitution. The Petitioner relied on several authorities in support of her petition including **Gitobu Imanyara vs AG (2016)** eKLR where the court recognized both compensatory and vindicatory purposes behind constitutional damages. The Petitioner also placed reliance in the case of **Ann Wanjiru Njehira vs Nairobi City County Government & 4 other [2017] KEHC 2080 (KLR), Edward Akongo Oyugi & 2 others vs AG [2019] KEHC 10211 (KLR)**.

The Petitioner thus prayed that the petition be allowed and that the prayers sought be granted.

16. The 1st, 3rd and 4th Respondents filed joint submissions dated 16/6/2025 in rebuttal and contended that the petition does not meet the threshold of a constitutional petition. On this, they relied on several cases including **Mumo Matemu vs Trusted Society of Human Rights Alliance & 5 others [2014] eKLR** by the Court of Appeal; **Gabriel Mutava & 2 Others vs Managing Director Kenya Ports Authority and Another (2016) eKLR** among others. It was also submitted that the petition was not properly pleaded with reasonable degree of precision which shows the rights allegedly infringed and

the basis of each grievance as per the authority in the case of **Anarita Karimi Njeru v Republic [1979] eKLR.**

17. It was also submitted by the Respondents that the Petitioner ought to have filed a civil suit after the incident took place in the year 2016 and hence the principle of Constitutional avoidance should not be invoked by the Petitioner and thus this court should reject the petition since the Petitioner ought to have exhausted an easier remedy namely filing of a civil suit. It was also submitted that the claims against the 1st and the 3rd Respondents should be rejected since they do not have prosecutorial powers. Finally, it was submitted that the petition as drafted has a grave misinterpretation of facts and therefore it lacks merit and it is an abuse of the court process. The said Respondents urged this court to dismiss the petition with costs.

18. I have considered the petition, the rival submissions, the constitutional provisions plus all the authorities relied upon by the parties. It is not in dispute that the decased herein Coleta Amondya Onyango who was then a secondary school teacher at Wambasa Girls school suffered a gunshot wound wherein a bullet penetrated her chest and right lung leading to her death. It is also not in dispute that the Petitioner herein engaged all the Respondents seeking for

prosecution of the culprits to no avail. I find the issue for determination is whether the petition has merit.

19. It is trite law that all constitutional petitions must meet certain threshold namely that they should be pleaded with reasonable degree of precision and that a Petitioner is under obligation to specifically plead the rights allegedly infringed and proceed to lay basis for each of those violations. This principle of law was laid down in the case of **Anarita Karimi Njeru v Republic [1979] eKLR** as inter alia; that constitution violations must be pleaded with reasonable degree of precision; that the Articles of the Constitution which entitles rights to the Petitioner must be precisely enumerated and how one is entitled to the same; that the violations must be particularized in a precise manner; that the manner in which the alleged violations were committed and to what extent must be particularized. It is noted that the Petitioner in her petition has enumerated the various Articles of the constitution that have been violated and/or infringed. The Petitioner has stated that her grievance is that the deceased who was her daughter was brutally killed by a police officer and that after the death and despite several complaints being made to the relevant authorities who include the Respondents herein, no action has been taken to-date. It is on that basis that the Petitioner lodged this petition as a

last resort to get justice. It is instructive that the Respondents have not filed responses to the averments raised by the Petitioner in her supporting affidavit. The 2nd Respondent failed to respond to the Petition while the rest of the Respondents merely filed grounds of opposition which have not specifically responded to the assertions by the Petitioner. Whereas the Respondents have urged this court to find that the Petitioner has not pleaded the petition with reasonable precision, I find the Petition as drawn clearly reveals the grievances of the Petitioner as she has cited the relevant articles of the constitution which have been violated and or infringed by the Respondents.

20. The Respondents have contended that the Petitioner ought to have used other avenues to lodge her claim which are available either through civil or criminal law as guided in the case of **Gabriel Mutava & 2 Others v Managing Director Kenya Ports Authority and Another (2016) eKLR** where it was held that:

“We are not oblivious to the fact that a party is entitled to sue under the Constitution even if there is an alternative remedy, and or other mechanism for the resolution of the dispute. However, it has since emerged on the authorities that constitutional litigation is a serious matter that should not be sacrificed on the altar of all manner of frivolous

litigation christened constitutional when they are not and would otherwise be adequately handled in other legally constituted forums. Constitutional litigation is not a panacea for all manner of litigation, we reiterate that the first port of call should always be suitable statutory underpinned forums for the resolution of such disputes.

Of course, violations of constitutional rights may nonetheless be different, and more serious than the violations of statutory or contractual rights. There is no clear demarcation however, where one violation begins and ends, and when one violation should attract desperate remedies... Certainly invoking the constitutional route in the circumstances of this case was misguided. The Constitution should not be turned into a thoroughfare for resolution of every kind of common grievance.”

It is noted that counsel for the Respondents has contended that the Petitioner should have reported the matter to the police which could have led to the suspect officer being arraigned in court but not to file a constitutional petition. Whereas this could have been the case, the true position is that the Petitioner made the report but was taken round in circles for all that long period since 2016 without any criminal action being taken against the suspect officer.

The Petitioner being an ordinary citizen who has no powers and resources to mount even private prosecution, was left at the mercy of the Respondents who failed to come to her aid and thus leaving her with no option but to lodge this constitutional petition. Indeed, the Petitioner has annexed the various correspondences to the organs of government but it is clear that there was total inertia, silence for action by the Respondents. Looking at the correspondences, one can clearly see that the Petitioner did her part but no action was taken at all. Further, the Respondents have not availed any evidence to show that investigations following the police shooting of an innocent citizen were commenced and if not, to furnish reasons therefor. Hence, the Petitioner cannot be faulted for taking this move. The Respondents should not be allowed to hide behind perceived technicalities to run away from their constitutional obligations to the citizens. They cannot be allowed to try and pass the buck and leave the Petitioner empty handed without a remedy.

The Respondents have blamed the Petitioner by seeking to rely on the principle of Constitutional avoidance and blame her for failing to file a civil or criminal claim instead of filing a constitutional petition. According to the Respondents, the Petitioner should have resorted to seeking remedies through the available statutes such as the Penal Code, Criminal Procedure Code, Civil Procedure Act and Rules.

According to the Respondents, the claim could have been resolved by resorting to these provisions. The principle of constitutional avoidance was discussed in the case of **Communications Commission of Kenya & 5 Others v Royal Media Services & 5 Others, Petition No. 14, 14A, B & C of 2014**, where the Supreme Court at paragraph 256 delivered itself thus on the issue: -

“The appellants in this case are seeking to invoke the “principle of avoidance”, also known as “constitutional avoidance”. The principle of avoidance entails that a Court will not determine a constitutional issue, when a matter may properly be decided on another basis. In South Africa, in S v. Mhlungu, 1995 (3) SA 867 (CC) the Constitutional Court, Kentridge AJ, articulated the principle of avoidance in his minority Judgment as follows [at paragraph 59]:

“I would lay it down as a general principle that where it is possible to decide any case, civil or criminal, without reaching a constitutional issue that is the course which should be followed.”

The 1st, 3rd and 4th Respondents’ counsel has relied on the case of Gabriel Mutava & 2 Others Vs Managing Director

Kenya Ports Authority & Another [2016] eKLR where it was held as follows:

“ We are not oblivious to the fact that a party is entitled to sue under the constitution even if there is an alternative remedy, and or other mechanism for the resolution of the dispute. However, it has since emerged on the authorities that constitutional litigation is a serious matter that should not be sacrificed on the altar of all manner of frivolous litigation christened constitutional when they are not and would otherwise be adequately handled in other legally constituted forums. Constitutional litigation is not a panacea for all manner of litigation, we reiterate that the first port of call should always be suitable statutory underpinned forums for the resolution of such disputes.”

Even though the foregoing guideline ought to be followed, the Petitioner herein has already averred that she made the complaint and lodged the same to the police but that they failed to act on it despite the fact that a family member died as a result of shooting by a police officer whose names and place of work were presented to the police. It is instructive that in the least not even a public inquest was recommended by the Respondents. The Petitioner could not mount a private

prosecution due to her circumstances. As the Petitioner had no other option after all the Respondents failed to act on the complaint, she thus resorted to filing the present petition. In the case of **Mumo Matemo Vs Trusted Society of Human Rights & 5 Others [2013] eKLR** (supra), the court held:

(27) Moreover, we take note that our commitment to the values of substantive justice, public participation, inclusiveness, transparency and accountability under article 10 of the Constitution by necessity and logic broadens access to the courts. In this broader context, this court cannot fashion nor sanction an invitation to a judicial standard for locus standi that places hurdles on access to the court, except only when such litigation is hypothetical, abstract or is an abuse of the judicial process... We hold that in the absence of a showing of bad faith as claimed by the Appellant, without more, the 1st Respondent had the locus standi to file the petition. Apart from this, we agree with the superior court below that the standard guide for locus standi must remain the command in Article 258."

It is noted that the Petitioner has pleaded the requisite articles 22 and 258 of the constitution which deal with the enforcement of the constitution and that the

petitioner has shown that she had a right which has been infringed by the Respondents warranting her to file this petition. In the circumstances, this court should not lock her out but to consider her grievances.

21. It is not in dispute that the deceased herein lost her life in the hands of a person meant to protect her, a police officer. Her right to life was thus infringed. Article 26 of the constitution provides firstly, that every person has the right to life and secondly, that a person shall not be deprived of life intentionally except to the extent authorized by this constitution or other written law. The fact that a police officer committed this atrocity, it was a constitutional duty of the 1st Respondent to apprehend the culprit and hand him over to the 2nd Respondent for prosecution purposes. Indeed, all the Respondents were expected to collaborate together to ensure that the cause of justice was served but they failed to do so. Learned counsel for the 1st, 3rd and 4th Respondents has submitted that it is only the 2nd Respondent who has prosecutorial powers and not the rest. Whereas that is the position, what is not in doubt is that they all work and coordinate together in matters relating to criminal justice system. The 1st and 3rd Respondents were expected to facilitate and expedite investigations and provide accountability but it seems they abdicated those duties. The present circumstances clearly show that each of the Respondents are engaged in buck passing to the prejudice

and detriment of the Petitioner. If this state of affairs is allowed to continue, then it is expected that there would be serious violations visited upon the citizens. It is noted that the Petitioner herein has been taken round in circles for about eight years without anything tangible yet she had lost one of her family members (mother) while the state authorities just sat on their laurels. I find that the Petitioner had no option but to approach this court by way of a constitutional petition as herein as the Respondents were all in contravention of the constitution. I find that had the Respondents carried out their duties as mandated by the constitution, then the present suit would not have been lodged. Indeed, all state organs are expected to perform their constitutional duties for the betterment of the citizens and that is what the constitution of Kenya 2010 had envisaged.

22. The Petitioner has sought for damages. The Petitioner annexed several documents to her supporting affidavit namely an autopsy report dated 29/3/2016, certificate of death issued on 31/3/2016 and a limited grant of letters of administration intestate. The autopsy indicated that the cause of death as penetrating injury of the chest and right lung resulting into massive right sided hemothorax from gunshot bullet injury with resultant respiratory failure. It is noted that the parties opted to canvass the petition by way of written submissions. Had they proceeded by way of viva voce evidence, then the Respondents could have had the

opportunity to cross examine the witnesses. That being the position, this court will deal with the available documents. The court in *Gitobu Imanyara Vs Attorney General* [2016] eKLR held that constitutional violations warrant both compensatory and vindicatory orders as redress to the victim who has suffered injury. I am satisfied that the Petitioner is entitled to an award of general damages over the loss of her mother who was probably the sole breadwinner for the family. Indeed, damages are not likely to put the Petitioner and her family to the position they were when the deceased was alive but that the same will represent a measure of some amelioration and consolation bearing in mind that the deceased will not be brought back to life again and that the family will take it as a closure. In the case of *Ann Wairimu Njahira Vs The Nairobi City County Government and Four Others* Petition No. 575 of 2015 Onguto J awarded Kshs 4, 000, 000/ as general damages for the death of the Petitioner's husband. I am of the view that a sum of Kshs 4,000,000/= will be adequate compensation for the Petitioner herein. It is noted that no special damages were sought and hence no award will be made in that regard. As the Petitioner has elected to seek for compensation, I find that the prayer to compel the Respondents to pursue prosecution of the suspect involved in the shooting incident is deemed as abandoned.

23. In the result, it is my finding that the Petition has merit. The same is allowed in the following terms:

- (a) A declaration that the Respondents' omission to promptly and efficiently investigate the wrongful death of the deceased Coleta Amondy Anyango infringed upon the Petitioner's fundamental rights and freedoms, particularly articles 26 (1)(2), 27, 28, 29©, 47 and 48 of the Constitution of Kenya.
- b) A declaration that the 2nd Respondents unjustified delay in prosecuting the suspect police officer for the deceased wrongful death contravened their binding obligations in articles 10,20, 21,35,47,48 and 157 of the Constitution.
- c) A declaration that the 1st and 3rd Respondents inaction in coordinating the investigation and prosecution of the suspect officer contravenes their constitutional duties enshrined in articles 10, 20, 21, 35, 47, and 48 of the Constitution.
- d) A declaration that the Petitioner is entitled to damages for violation of the above stated constitutional rights;
- e) Compensation in the sum of Ksh 4, 000, 000/= to be paid to the Petitioner and the deceased's family for wrongful death and upkeep of the deceased's surviving dependents.
- g) Each party to bear their own costs.

It is so ordered

Dated and delivered this 24th day of October 2025.

**D. KEMEI
JUDGE**

In the presence of:

Okumufor Petitioner

N/A.....for 2nd Respondent

N/A M/s Esendi.....for 1st, 3rd and 4th Respondents

Kimaiyo and Maureen....Court Assistant