



Mala v Attorney General & 2 others (Constitutional Petition E009 of 2025) [2025] KEHC 15335 (KLR) (31 October 2025) (Judgment)

Neutral citation: [2025] KEHC 15335 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CONSTITUTIONAL PETITION E009 OF 2025**

DK KEMEL, J

OCTOBER 31, 2025

BETWEEN

FREDRICK OMONDI MALA PETITIONER

AND

ATTORNEY GENERAL 1ST RESPONDENT

JUDICIAL SERVICE COMMISSION 2ND RESPONDENT

SIAYA COUNTY GOVERNMENT 3RD RESPONDENT

JUDGMENT

1. The Petitioner has filed this petition dated 28th January 2025 wherein he raised several issues inter alia; that Siaya County is characterized by a pathetic security system; that insecurity and safety within the county of Siaya is worse as many people lose their lives in the awkward ways; that Siaya County is worse and due to that many people in the county have lost their lives due to negligence from the health officers thereby infringing on the fundamental rights and freedom contained in *the Constitution*; that the County of Siaya is involved in corruption which affects service delivery ranging from the office of the Governor to the land registrar and that the public have not been fully involved in the operation of the county as enshrined in Article 261(4) of *the Constitution*, and in which case further public participation enshrined in Article 10(2) as read with Article 118 of *the Constitution* must be respected; that the Act has introduced substantive amendments to various statute law, on matters not ordinarily amendable through a statute law (Miscellaneous Amendment) Act; that the amendments were brought without following the due procedure for legislation whose effect is to amend *the Constitution* and without public participation as required by the national values and principles of government in Article 10 of *the Constitution*; that the said statute law (Miscellaneous Amendment) Act, 2012 contains amendments to statute law, which amendment contradict the letter and spirit of *the Constitution* of Kenya; that the matter of the contents of the Statute Law (Miscellaneous Amendment) Act, 2012 is of great interest to Kenyan lawyers on whose behalf the Applicant comes before this Honourable Court, who will be



greatly jeopardized; that the matter is also of great national importance since it touches on amendments that violate the letter and spirit of *the Constitution*; that the Applicant herein is statutory mandated to safeguard the public interest in all matters incidental to the law, the rule of law including adherence to constitutionalism; that the substance of the Statute Law (Miscellaneous Amendment) Act, 2012, as well as the procedure adopted to enact it violates and is likely to continue violating the Applicant's fundamental rights and freedoms of Kenyan lawyers as well as those of Kenyan general public contrary to Articles 27, 41 and 43 of *the Constitution*; that in Siaya County, officers continue to act contrary to the dictates of public office as provided for in respect of State and Public officers under *the Constitution*; that in Siaya County, officers continue to act contrary to its legislative duties as provided for in *the Constitution* which undermines the rule of law and the implementation of *the Constitution* of Kenya; that the officers violate *the constitution* by the removal of the competitive methods of obtaining jobs in the county and by promoting nepotism and corruption; by unlawfully ensuring transfer of properties without following the due process for instance the Land registrar transferring properties illegally; that inequality in getting tenders within the county as the same is done through bribery; that even though the police are entitled to ensure security to the Kenyan citizen, they have gone ahead to kill and abduct the same citizens yet they are supposed to protect; that even though the police should maintain law and order, and to educate the citizens, they have gone ahead to frustrate them; that the ODPP has continued to violate its mandate of carrying the independent investigation of the crimes and has gone ahead to violate its mandate.

2. The Petitioner therefore sought the following reliefs:
 - a. That a declaration be issued to the effect that there is a pathetic security system within the county of Siaya as many people lose their lives in an awkward way.
 - b. A declaration that health sectors within Siaya County is worse and due to that many people in the county have lost their lives due to negligence from the health officers thereby infringing on the fundamental rights and freedoms contained in *the Constitution*.
 - c. A declaration that the county of Siaya is involved in corruption which affects service delivery ranging from the offices of the Governor to the Land Registrar and that the public have not been fully involved in the operations of the County as enshrined in Article 261 (4) of *the Constitution*, and in which case further, public participation enshrined in Article 10(2) as read together with Article 118 of *the Constitution* must be respected.
 - d. An order be and is hereby issued to declare Siaya County a food insecurity area until this matter is heard and determined.
 - e. Any other relief that this Honourable Court may deem just and appropriate to safeguard the fundamental rights and freedom contained in Articles 27, 41, and 43 of *the constitution* in relation to the Petitioner herein and the broader Kenyan Public.
3. The application was vehemently opposed by the Respondents.
4. The 1st Respondent raised grounds of opposition dated 11/6/2025 which are inter alia; that the petition is incurably defective both in form and substance, lacking precision, clarity and coherence rendering it ambiguous, speculative, and incapable of being answered in any meaningful way; that the Petitioner has failed to particularize what rights or fundamental freedoms under the Bill of Rights were denied and the manner of the alleged denial; that the issues in the Petition have been presented in a convoluted manner, merely referencing constitutional provisions without tying them to the circumstances or actions complained of; that this lack of specificity deprives the Respondents of the opportunity to mount a substantive defence; that the 1st Respondent has been improperly included in



the suit as a party without clear allegations or legal justification amounting to a misjoinder of parties; that the petitioner has failed to disclose any prima facie violation of constitutional rights or duties attributable to the 1st Respondent, and that no justiciable cause of action has been disclosed; that the petition is fatally defective for misjoinder of causes of action combining constitutional issues with tortious claims that ought to be pursued through ordinary suits; that the petition is not only vague but also unintelligible, with insufficient particulars; that it does not disclose adequate particulars as relates the alleged claim necessary to enable the Respondents to ascertain the precise constitutional issues for determination; that the reliefs sought are speculative and bad in law as the same is ambiguous as to why and which party is responsible for paying the decretal sum; that the petition is an abuse of court process and should accordingly be struck out or dismissed with costs for being scandalous and vexatious as there exists proper forums and avenues in law that ought to be explored and exhausted by the Petitioner.

5. The 2nd Respondent file ground of opposition dated 8th July 2025 wherein it raised objections inter alia; that the petition is fatally defective, misconceived, and incompetent, as it invites the Honourable court to usurp constitutional and statutory functions vested in other independent organs and institutions; that the 2nd Respondent has been wrongly enjoined in these proceedings, and no justiciable cause of action has been pleaded or established against it within the context of the facts and reliefs sought; that the reliefs sought including the removal of the Governor of Siaya County is exclusively provided for under Article 181 of *the Constitution*, the County Government Act, and the applicable standing orders of the County Assembly and the Senate; that these provisions set out the exclusive legal and procedural mechanism for removal of a governor from office, including impeachment by the County Assembly and determination by the Senate; that the petition violates the doctrine of exhaustion of alternative remedies, as *the Constitution* and statute provide an adequate and effective process for dealing with allegations of corruption or gross misconduct by a governor; that the petition is an affront to the principle of separation of powers, as it seeks to involve the Judiciary in matters expressly reserved for the legislative arms of County and National government, namely the County Assembly and the Senate; that the Petitioner has not demonstrated any violation or threats of violation of constitutional rights that cannot be addressed through the applicable legislative or accountability mechanism; that the Petitioner has not pleaded with the required degree of precision any specific constitutional violation committed by the 2nd Respondent, thereby rendering the Petition vague, speculative, and legally untenable; that the petition is premature, speculative, and incompetent, and fails to meet the constitutional and legal threshold required to invoke the court's jurisdiction under Articles 22 and 23 of *the Constitution*; that the petition amounts to an abuse of court process, and is intended to circumvent constitutional procedures, undermine established democratic structures, and improperly obtain judicial sanction for a political process.
6. The 3rd Respondent filed a replying affidavit dated 12th June 2025 sworn by Joseph Ogutu who averred inter alia: that he is the County Secretary of the Respondent herein, conversant with the facts raised herein and duly authorized by the 3rd Respondent to answer this affidavit; that from the onset, he wishes to state that both the said application and Petition is fundamentally incurable and fatally defective, bad in law, ill-conceived, an abuse of the court process, misconceived, mischievous and as such ought to be struck out and or dismissed with costs to the 3rd Respondent; that the application is in his opinion otiose; that the 3rd Respondent is a devolved government established pursuant to Article 176 of *the Constitution* and the Fourth Schedule under the leadership of the County Government Act; that Article 181 of *the Constitution* read together with Section 33 of the County Government Act have prescribed the grounds and process of removal of the Governor from office; that the Honourable court lacks jurisdiction to entertain the Petitioner's prayer seeking to remove the Governor of Siaya County Government on grounds of corruption; that there is an established independent Constitutional Office



of the Auditor General mandated under Article 229 of *the Constitution* to oversee the management of public resources. Further under Article 185 of *the Constitution*, read together with Section 8 of the County Government Act, the County Assembly has the mandate to oversight the Executive, hence the Petitioner herein seeks the Honourable Court to act ultra vires; that the Applicant has not placed any documentary evidence before the Honourable court in support of his prayer number 4 in his chamber summons dated 28/1/2025; that the Petitioner has failed to enumerate the constitutional right infringed by the Respondent, how those rights have been infringed and the manner of the infringement by the Respondents; that the Petition together with the Chamber summons application are ambiguous, speculative and incapable of being answered in any meaningful way and its aimed at achieving nothing but to embarrass the Respondents herein; that the petition together with the chamber summons all dated 28/1/2025 should be dismissed with costs.

7. The Petition was canvassed by way of written submission. However, it is only the Petitioner who complied. The Petitioner filed submissions dated 11th July 2025 while the Respondents relied on the ground of opposition and replying affidavit.
8. I have considered the petition, rival affidavits and grounds of opposition. I find the issue for determination is whether the petition has merit.
9. It is noted that the Petitioner has made a raft of allegations against the Respondents and has sought several reliefs thereunder. The Petitioner is under obligation to ensure that whenever constitutional petitions seeking to invoke the jurisdiction of the High Court in accordance with Article 22 of *the Constitution* and must therefore plead with specificity about the rights that have been infringed upon and/or violated. In the case of Communications Commission of Kenya & 5 others Vs Royal Media Services Ltd & 5 Others [2014] eKLR the Supreme Court held as follows:

“(349)...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 that 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 Anarita 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...”

Also, in the case of Japheth Ododa Origa v Vice Chancellor University of Nairobi, Academic Registrar, and Another- Constitutional Petition No. E197 OF 2023 – Judgement Page 23 of 40 Nairobi & B.M Waweru [2018] KEHC 4861 (KLR) the Court discussed the issue of precision in pleadings as follows:

- “15. Precision in pleading is vital in Constitutional Petitions because it enables the opposite party to fully understand the case they face and be in position to adequately respond to it. It also enables the court to decipher the issues brought before it for adjudication. It helps in avoiding surprises and ambiguities in the litigation but more importantly it shows the link between the aggrieved party, the litigation but more importantly it shows the link between the aggrieved party, the constitutional provisions at play and the possible infringement. This was well stated by the Supreme Court in the case of Communication Commission of Kenya & 5 Others v. Royal Media Services Limited & 5 Others [2014] eKLR....”



10. Being guided by the foregoing authorities as juxtaposed with the various claims raised by the Petitioner, it is clear that the Petitioner's petition is a jumbled-up mess wherein one cannot tell as to which claims or rights have been infringed or violated. The Petitioner has simply thrown in all manner of accusations without being clear and candid about the specific violations. That kind of scenario is not tenable as it denies the Respondents the opportunity to respond to the petition appropriately. The petition in my view can be summed up as *inter alia*; that it is incurably defective both in form and substance, lacking precision, clarity and coherence rendering it ambiguous, speculative, and incapable of being answered in any meaningful way; that the Petitioner has failed to particularize what rights or fundamental freedoms under the Bill of Rights were denied and the manner of the alleged denial; that the issues in the Petition have been presented in a convoluted manner, merely referencing constitutional provisions without tying them to the circumstances or actions complained of; that this lack of specificity deprives the Respondents of the opportunity to mount a substantive defence; that the 1st Respondent has been improperly included in the suit as a party without clear allegations or legal justification amounting to a misjoinder of parties; that the petitioner has failed to disclose any *prima facie* violation of constitutional rights or duties attributable to the 1st Respondent, and that no justiciable cause of action has been disclosed; that the petition is fatally defective for misjoinder of causes of action combining constitutional issues with tortious claims that ought to be pursued through ordinary suits; that the petition is not only vague but also unintelligible, with insufficient particulars; that it does not disclose adequate particulars as relates the alleged claim necessary to enable the Respondents to ascertain the precise constitutional issues for determination; that the reliefs sought are speculative and bad in law as the same is ambiguous as to why and which party is responsible for paying the decretal sum; that the petition is an abuse of court process and should accordingly be struck out or dismissed with costs for being scandalous and vexatious as there exists proper forums and avenues in law that ought to be explored and exhausted by the Petitioner. Indeed, the Petitioner is aware that the claims he has made against the Respondents could as well be resolved by other institutions or forums instead of this court.
11. It is further noted that the petition is fatally defective, misconceived, and incompetent, as it invites the Honourable court to usurp constitutional and statutory functions vested in other independent organs and institutions. It is instructive that the 2nd Respondent has been wrongly enjoined in these proceedings, and no justiciable cause of action has been pleaded or established against it within the context of the facts and reliefs sought since there is nowhere that the 2nd Respondent is alleged to have violated any of the rights of the Petitioner. The Petitioner simply roped in the 2nd Respondent for no apparent reason. Further, the reliefs sought including the removal of the Governor of Siaya County is exclusively provided for under Article 181 of *the Constitution*, the County Government Act, and the applicable standing orders of the County Assembly and the Senate and that these provisions set out the exclusive legal and procedural mechanism for removal of a governor from office, including impeachment by the County Assembly and determination by the Senate. The petition also violates the doctrine of exhaustion of alternative remedies, as *the Constitution* and statute provide an adequate and effective process for dealing with allegations of corruption or gross misconduct by a governor and that the petition is an affront to the principle of separation of powers, as it seeks to involve the Judiciary in matters expressly reserved for the legislative arms of County and National government, namely the County Assembly and the Senate. It is also instructive that the Petitioner has not demonstrated any violation or threats of violation of constitutional rights that cannot be addressed through the applicable legislative or accountability mechanism and that the Petitioner has not pleaded with the required degree of precision any specific constitutional violation committed by the Respondents, thereby rendering the Petition vague, speculative, and legally untenable. It is clear that the petition is premature, speculative, and incompetent, and fails to meet the constitutional and legal threshold required to invoke the court's jurisdiction under Articles 22 and 23 of *the Constitution* and that the same amounts to an abuse of court



process, and is intended to circumvent constitutional procedures, undermine established democratic structures, and improperly obtain judicial sanction for a political process.

12. The Petitioner's grouse with the 3rd Respondent seems to be misplaced since the 3rd Respondent is a devolved government established pursuant to Article 176 of *the Constitution* and the Fourth Schedule under the leadership of the County Government Act; that Article 181 of *the Constitution* read together with Section 33 of the County Government Act have prescribed the grounds and process of removal of the Governor from office and that the Honourable court lacks jurisdiction to entertain the Petitioner's prayer seeking to remove the Governor of Siaya County Government on grounds of corruption as there is an established independent Constitutional Office of the Auditor General mandated under Article 229 of *the Constitution* to oversee the management of public resources. Further, under Article 185 of *the Constitution* read together with Section 8 of the County Government Act, the County Assembly has the mandate to oversight the Executive, hence the Petitioner herein seeks the Honourable Court to act ultra vires in view of the fact that the said County Assembly has the requisite powers to oversight the office of the Governor and even go ahead to impeach him if need be. Hence, the Petitioner ought not to bring his claim to this court for consideration yet the available forum is for him to present a Petition to the County Assembly through its elected representatives to commence impeachment proceedings against the Governor over the alleged violations. It is also note that the Petitioner has not placed any documentary evidence before the Honourable court in support of his prayers vide his chamber summons dated 28/1/2025 and further failed to enumerate the constitutional rights infringed by the Respondents, how those rights have been infringed and the manner of the infringement by the Respondents. In sum the Petition together with the Chamber summons application are ambiguous, speculative and incapable of being answered in any meaningful way and that it is aimed at achieving nothing but to embarrass the Respondents herein.
13. As noted from the foregoing observations, the Petitioner's petition has raised several claims which can easily be resolved in other forums. That being the position, I find the doctrine of exhaustion must kick in to deny the Petitioner herein the reliefs sought since he has not exhausted the available avenues of dispute resolution. In the case of Speaker of National Assembly v. Njenga Karume (2008) 1KLR 425 and Kones v. Republic & Ano. Exparte Kimani Wa Nyoike & 4 Others (2008) 3KLR (EP) the courts held as follows:
- “where there exists an alternative method of dispute resolution established by Legislation, the Courts must exercise restraint in exercising the jurisdiction conferred by *the constitution* and must give deference to the dispute resolution bodies established by statute with the mandate to deal with such specific disputes in the first instance.”
14. From the foregoing analysis, it is clear that the petition lodged by the Petitioner is unmeritorious. It is my finding that the petition is devoid of any merit and is dismissed with no orders as to costs.

DATED AND DELIVERED AT SIAYA THIS 31ST DAY OF OCTOBER 2025.

D. KEMEI

JUDGE

In the presence of:

Dr. Fredrick Mala.....Petitioner

M/s Esendi.....for 1st Respondent.

Owiti.....for 2nd Respondent.



Okanda for Were.....for 3rd Respondent.

Maureen.....Court Assistant.

