

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT SIAYA**  
**CONSTITUTIONAL PETITION NO. E003 OF 2025**

**FREDRICK OMONDI MALA.....PETITIONER**

**VERSUS**

**ATTORNEY GENERAL.....1<sup>ST</sup> RESPONDENT**

**JUDICIAL SERVICE COMMISSION.....2<sup>ND</sup> RESPONDENT**

**SIAYA COUNTY GOVERNMENT.....3<sup>RD</sup> RESPONDENT**

**THE OCS SIAYA.....4<sup>TH</sup> RESPONDENT**

**ODPP.....5<sup>TH</sup> RESPONDENT**

**DCIO.....6<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. The Petitioner has filed this petition dated 31<sup>st</sup> March 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.

In support of the petition, the Petitioner filed a supporting affidavit dated 31<sup>st</sup> March 2025 wherein he raised claims of various acts of constitutional violations as per attached letters addressed to various institutions. That he has faced hostilities on the ground and reported the same to relevant authorities with no action being taken as per the annexed copy of the letter and addressed to people concerned within the county). That it is in the interest of the members of the public within Siaya that the entire application be granted. That the Respondents will suffer no prejudice if the orders sought are granted. That the orders sought are in good faith with the aim of protecting the best interest of the public and himself.

3. The application was vehemently opposed by the Respondents.
4. The 1<sup>st</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondents raised grounds of opposition dated 31/7/2025 which are inter alia; that the petition is incurably defective in both form and substance and that it is incoherent, legally untenable and too vague to permit any meaningful response; that the petition reflects a fundamental misunderstanding of the constitution and the Petitioner's own constitutional rights hence is untenable to state which particular rights have allegedly been infringed or the relationship between the parties and the reliefs sought; that the petition is premised on generalized, untenable and speculative allegations, unsupported by credible evidence or documentations; that the petition improperly invokes public interest litigation while in

substance it merely reflects the Petitioners personal dissatisfaction with public institutions and governance rather than a genuine enforcement of constitutional rights; that the Petitioner is engaging in forum shopping having filed numerous petitions and applications arising from substantially similar facts against overlapping parties and seeking near-identical remedies; that there exists a multiplicity of suits as the issue raised herein are pending in other related matters filed by the same petitioner; that the relief sought are speculative, imprecise and legally untenable as they are manifestly outside the scope of constitutional reliefs and are unsupported by facts or law; that the cumulative effect of the above is that the petition is frivolous, vexatious, scandalous and an abuse of the court process and ought to be struck out or dismissed with costs.

5. The Petition was canvassed by way of written submission. The Petitioner complied while the Respondents relied on the ground of opposition.
6. I have considered the Petition together with the grounds of opposition as well as submissions filed. I find the issue for determination is whether the petition has merit.
7. As the Petitioner has filed a constitutional petition, he is under obligation to ensure that the issues complaint of have been properly framed up and the rights infringed and/or violated have been identified as well as the reliefs sought. This is mandatory

in order to ensure the Respondents know what and how to respond to the petition. 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...”***

8. 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 against all the Respondents 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 some of the Respondent have been improperly included in the suit as parties 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 Respondents, 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 claims that ought to be pursued through ordinary suits or in the proper forums. 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 such as National Police Service, County Assembly of Siaya, Senate, EACC, NCAJ, Public Service Commission etc instead of this court. **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.”***

9. Being guided by the foregoing authorities, it is clear that the Petitioner has drafted this petition in a manner that does not

specifically disclose the specific violations and the reliefs sought and further they do not indicate which forum is to address those grievances if any. He has lumped up allegations against all the Respondents some of whom are not connected at all with the Petitioners alleged claims. For instance, the Petitioner has made a raft of allegations against the Siaya County Government yet the same has not been roped in as one of the Respondents. It is the view of this court that the petition is incurably defective in both form and substance and that it is incoherent, legally untenable and too vague to permit any meaningful response and that it reflects a fundamental misunderstanding of the constitution and the Petitioner's own constitutional rights hence the same is untenable as it does not state which particular rights have allegedly been infringed or the relationship between the parties and the reliefs sought. Further, the petition is premised on generalized allegations which are unsupported by credible evidence or documentations against the Respondents herein. Again, the petition improperly invokes public interest litigation while in substance it merely reflects the Petitioner's personal dissatisfaction with public institutions and governance rather than a genuine enforcement of constitutional rights. It is instructive that a keen perusal of the petition reveals that the Petitioner seems to have issues with several government institutions especially within Siaya and which forms the bulk of his claims. It is further noted that the Petitioner is engaging in forum shopping as he has filed numerous petitions and applications arising from substantially similar facts against overlapping parties and which seek near-identical remedies

leading to multiplicity of cases now pending for determination. It would therefore appear that the reliefs sought by the Petitioner are speculative, imprecise and legally untenable as they are manifestly outside the scope of constitutional reliefs and are unsupported by facts or law. Hence, the cumulative effect of the foregoing observations is that the petition is frivolous, vexatious, scandalous and an abuse of the court process and ought to be struck out or dismissed.

10. In the final analysis, it is my finding that the petition herein is bereft of any merit. The same is dismissed with no orders as to costs.

**Dated and delivered at Siaya this 31<sup>st</sup> day of October 2025.**

**D. KEMEI**

**JUDGE**

**In the presence of:**

**Dr. Fredrick Mala.....Petitioner**

**M/s Esendi.....or 1<sup>st</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondents.**

**Owiti.....for 2<sup>nd</sup> Respondent.**

**N/A.....for 3<sup>rd</sup> Respondent.**

**N/A.....for 5<sup>th</sup> Respondent.**

**Maureen.....Court Assistant.**