



**Mala v Attorney General & 6 others (Constitutional Petition
E013 of 2025) [2025] KEHC 15617 (KLR) (31 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15617 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CONSTITUTIONAL PETITION E013 OF 2025**

DK KEMEL, J

OCTOBER 31, 2025

BETWEEN

FREDRICK OMONDI MALA PETITIONER

AND

ATTORNEY GENERAL 1ST RESPONDENT

JUDICIAL SERVICE COMMISSION 2ND RESPONDENT

THE CHIEF JUSTICE 3RD RESPONDENT

CHILDREN’S OFFICE 4TH RESPONDENT

EDUCATION OFFICE 5TH RESPONDENT

HUDUMA CENTRE 6TH RESPONDENT

COUNTY COMMISSIONER SIAYA 7TH RESPONDENT

JUDGMENT

1. The Petitioner has filed this petition dated 6th June 2025 and later amended with leave of court wherein he raised several issues 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 statutorily 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 according to Article 2(2) of *the Constitution*, no person may exercise state authority unlawfully or unconstitutionally. In the present case, the Honourable Attorney General has continued to unconstitutionally and unlawfully allowed the land registrar Siaya to continue to act in contravention of *the constitution*; that most of the decisions within the county are made without following the constitutional demands for public participation in law making as provided for in Article 10 as read together with Article 118 of *the Constitution*.

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 office of the Governor to the Land registrar and 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.

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 1st, 4th, 5th, 6th and 7th Respondents filed their grounds of opposition which are inter alia; that the petition is incompetent, misconceived, and fatally defective as it fails to disclose a reasonable cause of



action against the Respondents herein; that the Honourable court lacks the requisite jurisdiction to hear and determine the petition as the dispute raised therein is not a constitutional issue but a labour/ administrative dispute concerning an employment relationship between the Petitioner's wife Joyce Ajwang Owino, and her employer; that matters related to children should be filed in the right court and evidence adduced thereof; that the Petitioner lacks requisite locus standi to institute this Petition as he has not established a direct and personal interest in the matters sought to be litigated; that the petition is jurisdictionally defective as it is tilted the High Court of Kenya at Nairobi but was filed and stamped by the registrar of the High Court of Kenya at Siaya; that the 4th, 5th and 6th Respondents should be struck out from the suit as the Petitioner has named "children Office," Education Office, and Huduma Centre as the Respondents, herein yet they have no capacity to sue or be used in law; that the suit is fatally defective, incompetent, and bad in law and should be struck out.

4. The application was canvassed by way of written submissions. However, none of the parties complied.
5. I have considered the application and the grounds of opposition thereto. I find the issue for determination is whether the petition has merit.
6. As the Petitioner has filed a constitutional petition, he is under obligation to ensure that the issues complained 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...."



7. 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 forum namely Employment and Labour Relation's Court or the Children's Court; 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.
8. It is noted that the Petitioner herein seems to have issues and disputes with his spouse over their children and hence this is a matter which ought to be filed before the Children's court for determination or in the least the Petitioner can engage the relevant department of children over the matter. It is therefore clear that the petition is incompetent, misconceived, and fatally defective as it fails to disclose a reasonable cause of action against the Respondents herein. Further that the Honourable court lacks the requisite jurisdiction to hear and determine the petition as the dispute raised therein is not a constitutional issue but a labour/administrative dispute concerning an employment relationship between the Petitioner's wife Joyce Ajwang Owino, and her employer and that the same should be handled by the Employment and Labour Relation's case by dint of Articles 162(2) (b) of *the Constitution*. Again, matters related to children should be filed in the right court and evidence adduced thereof. Further, the Petitioner lacks the requisite locus standi to institute this Petition as he has not established a direct and personal interest in the matters sought to be litigated and therefore the petition is jurisdictionally defective as it is tilted the High Court of Kenya at Nairobi but was filed and stamped by the registrar of the High Court of Kenya at Siaya. That being the position, the request by the 4th, 5th and 6th Respondents to be struck out from the suit since the Petitioner has named "children Office," Education Office, and Huduma Centre as the Respondents yet these offices have no capacity to sue or be used in law. Consequently, the suit as it stands is fatally defective, incompetent, and bad in law and ought to be struck out.
9. In view of the foregoing observations, it is my finding that the petition lacks merit. The same 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, 4th, 5th, 6th and 7th Respondents.

Owiti.....for 2nd Respondent.

Maureen.....Court Assistant.

