



Macharia v I & M Bank Limited; Mute & 3 others (Interested Parties) (Petition E443 of 2023) [2025] KEHC 14903 (KLR) (Constitutional and Human Rights) (14 October 2025) (Judgment)

Neutral citation: [2025] KEHC 14903 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
PETITION E443 OF 2023
EC MWITA, J
OCTOBER 14, 2025**

BETWEEN

WILSON NDERITU MACHARIA PETITIONER

AND

I & M BANK LIMITED RESPONDENT

AND

LAWRENCE MURUGU MUTE INTERESTED PARTY

KENYA NATIONAL COMMISSION ON HUMAN RIGHTS ... INTERESTED PARTY

CHAMPIONING FOR INCLUSIVE COMMUNITIES IN KENYA . INTERESTED PARTY

THE CENTRAL BANK OF KENYA INTERESTED PARTY

JUDGMENT

Petitioner’s case

1. The petitioner, a visually impaired person, approached the respondent’s branch at Panari along Mombasa Road in March 2023 with an intention to open a bank account. The petitioner was assisted by the respondent’s staff to fill account opening forms but was not allowed to use a thumbprint signature due to his visual disability. The petitioner was asked to donate a power of attorney to another person to operate the account for him but the petitioner expressed reservations on that suggestion.
2. On 27th June 2023 the petitioner held a meeting with the respondent’s legal department personnel who proposed that the petitioner signs a deed of indemnity as an alternative to a thump print. The



petitioner inquired whether this was a standard procedure in the respondent bank but he was informed that it was not.

3. The petitioner felt he had been unfairly treated due to his visual disability and filed this petition, amended on 12th May 2024 claiming violation of his rights and fundamental freedoms and sought several declarations and orders. The petition is supported by an affidavit and written submissions.
4. The petitioner stated that the respondent placed unreasonable discriminative and prejudicial conditions because of his disability, which violated his right to equality; non-discrimination, dignity, privacy, accessibility and legal capacity.
5. The petitioner cited articles 2(4), 2(5), 10, 24, 27(1), (4) (5) and (6), 28, 54(1) of *the Constitution*; sections 25(1) (b) and 25 (3) of the Disability Act; articles 1, 2, 3, 4, 5, 9(2) (b), 12, 19(c), 21(c) and 22 of the UN Convention on the Rights of Persons with Disabilities (CRPD), article 16 and 26 of the International Covenant on Civil and Political Rights (ICPR) and articles 1, 3 and 7 of the Protocol to the African Charter on Human and People's Rights on the Rights of Persons with Disabilities in Africa to support his position.
6. The petitioner argued that the respondent's demand for a power of attorney or deed of indemnity in order to open an account amounted to discrimination on the basis of his disability, a violation of article 27 of *the Constitution* and article 5 of the CRPD. The demand amounted to discrimination through distinction, exclusion and restriction on the basis of his disability; denial of reasonable accommodation and institutionalised discrimination.
7. The petitioner cited, articles 2 and 5 of the Convention on Rights of Persons with Disability (CRPD) and articles 1, 4(1) (e) and (f) and 5 of the Protocol to the African Charter on Human and People's Rights on the Rights of Persons with Disabilities that define and prohibit discrimination against persons with disabilities.
8. The petitioner asserted that his request that he provides the documents in soft copy and use his left thumb as his signature were declined despite demonstrating that he had operated bank accounts both locally and abroad without a power of attorney or deed of indemnity. His demonstration that he could read his screen reader enabled phone or personal computer and was able to communicate to its staff through email could not dissuade the respondent from its position.
9. The petitioner relied on article 5(3) of the CRPD and the decisions in *Gichuru v Package Insurance Brokers Ltd* [2021] KESC 12 (KLR); *JMM v Smollan Kenya Limited* [2019] KEELRC 1905 (KLR) and *Anupa & another v Attorney General & another* [2012] KEHC 1081 (KLR) on discrimination based on disability.
10. The petitioner argued that the respondent's internal policies were unfriendly to persons with disabilities such as demand for power of attorney or deed of indemnity and therefore amounted to differential treatment based on disability which amounts to institutionalized discrimination and infringed on his right to exercise his legal capacity guaranteed under article 27(1) of *the Constitution* and article 12 (1), (2), (5) of the CRPD.
11. The petitioner maintained that the right to equality before the law is also a civil and political right under article 16 of the International Covenant on Civil and Political Rights to which Kenya is a signatory and Kenya should undertake measures to protect this right. The respondent also failed to recognize the petitioner's legal capacity to manage his financial affairs and to engage in transactions as a customer on an equal basis with others.



12. The petitioner relied on the decisions in *S v Makwanyane* [1995] ZACC 3; *Dawood and another v Minister of Home Affairs and Others*; *Shalabi and Another v Minister of Home Affairs and Others*; *Thomas and Another v Minister of Home Affairs and Others* [2000] ZACC 8; *MWK & another v Attorney General & 4 others*; *Independent Medical Legal Unit (IMLU) (Interested Party)[The Redress Trust (Amicus Curiae)* [2017] KEHC 1496 (KLR); *ANN v Attorney General* [2013] KEHC 6004 (KLR), among others, for the position that the respondent's actions violated his right to dignity by imposing on him conditions that were not imposed on customers who do not have visual disability.
13. The petitioner again relied on article 54 of *the Constitution*, article 9 of the CRPD, article 15 of the Africa Disability Protocol, General Committee General Comment No.2-article 9: Accessibility CRPD/C/GC/2, Para 1 and the decision in *Bacher v Austria* (CRPD/C/19/D/26/2014) on the right of accessibility, to argue that the respondent's reliance on its policies, and the Central Bank of Kenya's Risk Management Guidelines to justify violation of his constitutional rights violates the supremacy of *the Constitution* in article 2(1).
14. The petitioner maintained that there is no correlation between Proceeds of Crime and Anti-Money Laundering laws; his disability status and his legitimate request to open a bank account. According to the petitioner, the *Proceeds of Crime and Anti-Money Laundering Act* or Central Bank of Kenya Risk Management Guidelines do not classify an individual's disability as a high risk. The respondent did not demonstrate how signing a deed of indemnity or power of attorney to another person would mitigate or eliminate the potential risk; or that these laws limit rights of persons with disabilities to operate bank accounts. The petitioner relied on *Nyutsi and Takacs v Hungary* (Communication No. 1/2010, Views adopted on 16 April 2013).
15. The petitioner again relied on article 23(3) (e) of *the Constitution* and the decision in *Charles Muturi Macharia & 6 others v Standard Group & 4 others* (SC Petition No. 13 (E015) of 2022) for the position that he is entitled to damages for violation of his constitutional rights.
16. The petitioner further relied on the CRPD Committee's General Comment 6 on equality and non-discrimination (adopted on 26th April 2018 (paragraphs 28 and 29) that the respondent being the duty bearer, ought to have taken reasonable accommodation measures to facilitate the opening of an account with the aim of eliminating any barriers that would have impeded access to opening the account. The reasonable accommodation measures should be based on the will and preference of the person such as his request to sign the account opening forms using his thumb print and to access requisite documentation in soft copy which the bank disregarded.
17. The petitioner urged the court to award general damages of Kshs. 2,000,000 for disability-based discrimination, Kshs. 2,000,000 for infringement of his right to human dignity, Kshs. 2,000,000 for infringement of his right to legal capacity and Kshs. 2,000,000 for infringement of his right to accessibility, plus costs.
18. The petitioner relied on the decisions in *William Musembi & 13 others v Moi Educational Centre Co. Ltd & 3 others* [2021] KESC 50 (KLR); *Gichuru v Package Insurance Brokers Ltd* [2021] KESC 12 (KLR) and *Jasbir Singh Rai & 3 others v Tarlochan Singh Rai and 4 others* [2014] eKLR.

Respondent's case

19. The respondent opposed the amended petition through a replying affidavit sworn by Andrew K. Muchina. The respondent admitted through Mr. Muchina that the petitioner approached its branch officials but that he was advised on the need for a power of attorney or deed of indemnity as required



- by its policies in compliance with the Central Bank of Kenya's Risk Management Guidelines, 2013 and protect his rights.
20. The respondent stated that although the deed of indemnity is not a standard requirement to all customers, it is often used by banks to safeguard itself from operational and exposure risks. The respondent asserted that the policies are aimed at protecting customers' interests as well complying with relevant laws, regulations and industry practices regulating the banking sector.
 21. It was the respondent's position, that the petitioner did not demonstrate bias or discrimination he was exposed to when he sought to open an account; how the requirement of a power of attorney or deed of indemnity infringed his constitutional rights and the loss he suffered. The petitioner did not also show that the requirements were illegal and contrary to the law in view of the Central Bank of Kenya's Risk Management Guidelines and its fiduciary duty to its customers.
 22. The respondent argued that in processing the petitioner's request, it was bound by, among others, provisions of the *Banking Act*, the *Proceeds of Crime and Anti-Money Laundering Act*, and the Central Bank Guidelines.
 23. The respondent relied on articles 2 and 5 of the CRPD; General Comment on Equality and Non-discrimination (Article 5) and the decisions in *James Mweu & another v Kenya Commercial Bank* [2019] eKLR and *Nelson Andayi Havi v Law Society of Kenya & 3 others* [2018] eKLR for the proposition that the request for a deed of indemnity met the criteria for reasonable accommodation and was not discriminatory.
 24. The respondent maintained that requiring a power of attorney or deed of indemnity did not violate the petitioner's right to exercise legal capacity. The respondent relied on Article 12: Equal recognition before the law by the Committee on the Rights of Persons with Disability for the position that it did not interfere with the petitioner's will and preference.
 25. The respondent argued that the request for a power of attorney or deed of indemnity did not violate the petitioner's right to human dignity because it is a requirement for a prospective customer intending to open a bank account with any financial institution to provide details required by such financial institution in order to establish a contractual relationship. Failure to meet these requirements does not injure the customer's dignity because he has an option to seek a different relationship with another financial institution.
 26. The respondent maintained that when the right to open a bank account is correlated with the right to dignity, then it is subject to limitations in terms of article 24 of *the Constitution* through a law that is reasonable and justifiable in an open and democratic society. Such law is the *Proceeds of Crime and Anti-Money Laundering Act*, the *Proceeds of Crime and Anti-Money Laundering Regulations, 2013*, among others.
 27. The respondent cited General Comment No. 2 (2014), Article 9; Accessibility by the Committee on the Rights of Persons with Disability to argue that the petitioner did not demonstrate that access to the bank was impeded or he was unable to access information about its processes on account opening. The respondent relied on the decision in *Peter Ndegwa Kiai t/a Pema Wines & Spirits v Attorney General & 2 others* [2021] KECA 328 (KLR) for the position that the petitioner should not be awarded any costs but in the event the petition is allowed, the court should award a nominal award of Kshs. 100,000. The respondent urged the court to dismiss the amended petition.



1st interested party's case

28. Lawrence Murugu Mute, the 1st interested party, supported the amended petition through a replying affidavit and written submissions. The 1st interested party took the position that Article 27(5) of *the Constitution* prohibits discrimination by any person and article 9(2) (b) of the CRPD prohibits private entities, including banks, from discriminating against persons with disabilities when providing financial facilities and services that are open to the public.
29. The 1st interested party supported the position that subjecting a visually impaired person to terms or protocols not ordinarily offered or required of others amounts to denying that person control of his or her financial affairs on the basis of equality and amounts to indirect discrimination, institutionalised discrimination and denial of reasonable accommodation.
30. The 1st interested party asserted that in his experience as a visually impaired customer who has for nearly three decades operated bank accounts with several banks in Kenya and the United Kingdom, banks can and do put in place reasonable accommodation measures to ensure visually impaired applicants open and operate accounts on equal basis with others.
31. The 1st interested party agreed with the petitioner that questioning the legal capacity of a visually impaired person seeking to open a bank account violates article 12 of CRPD. The 1st interested party relied on articles 3(1), 10(2) and 20(1) of *the Constitution* and the decision in *Musembi & 13 others v Moi Educational Centre Co. Ltd & 3 others* (supra) for the argument that the respondent as a private person was required to safeguard the rights of another private person.
32. The 1st interested party again relied on article 27(4) (5) of *the Constitution* and the decisions in *Mitu-Bell Welfare Society v Kenya Airports Authority & 2 others*; *Initiative for Strategic Litigation in Africa (Amicus Curiae)* [2021] KESC 34 (KLR); *Gichuru v Package Insurance Brokers Ltd* [2021] KESC 12 (KLR); *Nyarangi & Others v Attorney General* [2008] KLR 688 and the Committee on the Rights of Persons with Disabilities in United Nations General Comment No. 6 (2018): On Equality and Non-Discrimination to support the position regarding discrimination in its various forms.
33. Regarding reasonable accommodation, the 1st interested party relied on paragraphs 23 and 24 of General Comment 6 and the decision in *JMM v Smollan Kenya Limited* [2019] KEELRC 1905 (KLR) for the contention that reasonable accommodation must be provided the moment a person with disability wants to exercise his rights; may be requested by the person who requires access or their representative and must be negotiated with the applicant through dialogue between the duty bearer and right holder.
34. On reasonableness, the 1st interested party cited the Committee on CRPD paragraph 25 (a) and 26 for the position that subjecting a visually impaired applicant to terms or protocols not ordinarily required from other applicants amounts to denying that person control of his or her financial affairs on the basis of equality which amounts to indirect discrimination, institutionalised discrimination and denial of reasonable accommodation, which was the case in the petitioner's circumstances.
35. The 1st interested party contended that banks should adapt standard operating procedures, processes and facilities to accommodate the visually impaired persons seeking banking serviced. The 1st interested party argued that the respondent's action amounted to denial of reasonable accommodation because it purported to enter dialogue with the petitioner by dictating to the petitioner without considering his disability and sought to give options that only protected the respondent's interests. The respondent failed to recognise that visually impaired customers have the legal capacity to open accounts and do not



need to donate power of attorney. The demand was only intended to protect the respondent's interests but not those of the petitioner.

36. The 1st interested party relied on article 24 of *the Constitution* and the decision in *Karen Njeri Kandie v Allasane Ba and another* [2017] eKLR that the Anti-money Laundering law and the Central Bank Guidelines the respondent relied on for its actions do not expressly provide the intention to limit the rights of persons with disabilities.
37. The 1st interested party relied on the decisions in *Gwer & 5 others v Kenya Medical Research Institute & 3 others* [2020] KESC 66 (KLR); *Mohamed Fugicha v Methodist church in Kenya (suing through its registered trustees) & 3 others* [2016] KECA 273 (KLR) and *Khalifa & another v Principal Secretary, Ministry of Transport & 4 others; Katiba Institute & another (Interested parties)* [2022] KEHC 368 (KLR) and urged the court to allow the amended petition.

2nd interested party's case

38. Kenya National Commission on Human Rights, the 2nd interested party supported the amended petition through a replying affidavit and written submissions. The 3rd interested party stated that the 1st respondent's actions were intrusive and a denial of the right to exercise legal capacity. Insisting on indemnity was discrimination based on disability.
39. The 2nd interested party asserted that persons with disabilities have the right to make personal decisions as opposed to substituted decision making thus, respecting their autonomy and legal capacity; enhances dignity and provides effective access to the support they may need to communicate their decisions, will, and preferences.
40. The 2nd interested party argued that discrimination against persons with disabilities is rampant especially in the service industry. There is need for an inclusive approach that recognises provision of reasonable accommodation and accessibility to persons with disabilities. According to the 3rd interested party, legislation, policies and practices ought to reflect and enforce the principles of autonomy, supported decision making, reasonable accommodation, accessibility and inclusivity which should be ongoing and dynamic.
41. The 2nd interested party relied on article 27(4) of *the Constitution* to argue that both the public and private sectors are prohibited from any form of discrimination. The 2nd interested party again cited articles 28 and 54(1)(a) of *the Constitution* to for the position that as a person with disability the petitioner has the right to be treated with dignity and respect by both the state and non-state actors. According to the 2nd interested party, section 2 of the *Persons with Disabilities Act*, and articles 9 and 12 of the CRPD, the respondent's action demonstrates that it has different policies applied to persons with disabilities when requiring the petitioner to rely on someone else rather than make his own decisions so as to have exclusive control over his bank account thereby disregarded the petitioner's right to legal capacity.
42. The 2nd interested party relied on the decisions in *Nairobi Bottlers Limited v Ndung'u & another* [2023] KECA 839 (KLR) for the position that the respondent's action requiring the petitioner to donate a power of attorney or deed of indemnity before opening a bank account was discriminatory and violated the petitioner's rights. The 2nd interested party again relied on article 23(3) of *the Constitution* and the decision in *Mitu-Bell Welfare Society v Kenya Airports Authority & 2 others* (*supra*) and urged the court to allow the amended petition.



3rd interested party's case

43. Championing For Inclusive Communities in Kenya, the 3rd interested party, also supported the amended petition. The 3rd interested party argued that legal capacity is inherently tied to the individual's ability to make his own decisions; enter into contracts and engage fully in civil and public life. Reliance was placed on articles 19 (3) (b), 27, 28 and 54 of *the Constitution*, paragraph 12 of the CRPD, General Comment No.1, Article 12: Equal Recognition Before the Law, 11th Sess., U.N. Doc. CRPD/C.GC/1 (19 May 2014); United Nations, 'Explanatory Note on Legal Capacity and Forced Interventions by the United Nations.
44. The 3rd interested party again cited article 12 on equal recognition before the law of CRPD to argue that denial of legal capacity inhibits an individual's freedom to make personal choices. The 3rd interested party argued therefore that the respondent's actions were a direct infringement of the petitioner's legal capacity and amounted discriminatory in violation of article 12 as read with article 5 of CRPD.
45. It was the 3rd interested party's position that legal capacity cannot be limited on grounds of disability and the respondent's action amounted to discrimination based on the petitioner's disability contrary to article 27(4) of *the Constitution*. The 3rd interested party again relied on CRPD Committee, Inquiry concerning Hungary under Article 6 of the Optional Protocol to the Convention, CRPD/C/HUN/IR/1 (Hungary -X v. Hungary).
46. The 3rd interested party supported the argument that the respondent's requirement that the petitioner involve a third party in his financial affairs questioned the petitioner's ability to manage his own affairs due to his disability, a disregard to his capacity; autonomy; his will and preferences thereby substituting the petitioner's judgment with that of another person. The 3rd interested party relied on *Straton v Swayze*, 2003 SCC 32 [2003] 1 S.C.R. 722; and *PBU & NJE v Mental Health Tribunal* [2018] VSC 564 (1 November 2018).
47. The 3rd interested maintained that failure by the state through the 4th interested party to regulate banks in a way that prevents violations such as the petitioner was subjected to, and ensure accommodative practices to all, is a failure on its obligations under both *the Constitution* and other international instruments, particularly article 12 of CRPD. The 3rd interested urged that the 4th interested party has a duty to protect rights of persons with disabilities and should ensure that financial institutions do not engage in practises that violate rights of persons with disabilities.
48. The 4th interested party though served, did not take part in these proceedings.

Determination

49. I have considered the pleadings, arguments by parties, and the decisions relied on. The issue that arises for determination is whether the 1st respondent's actions violated the petitioner's rights and fundamental freedoms and what reliefs to grant.
50. The petitioner argued in the affirmative that the respondent's actions violated his rights and fundamental freedoms, a position supported by the 1st, 2nd and 3rd interested parties. The respondent took the opposite view, maintaining that it did not violate rights or fundamental freedoms.
51. The facts of this petition are largely undisputed. The petitioner is a person with disability (visual impairment). He approached one of the respondent's branches intending to open a bank account. The petitioner filled account opening forms with the help of the respondent's staff but was not allowed to



- use a thumbprint as his signature. Instead, he was asked to donate a power of attorney to another person, which the petitioner expressed reservations over.
52. The petitioner later held a meeting with the respondent's officials who proposed that he (petitioner) provide a deed of indemnity as an alternative to thumbprint signature, even though this was not a standard requirement to everyone intending to open a bank account with the respondent. The petitioner felt this treatment was discriminatory and filed this petition arguing that the respondent's action was discriminatory based on his disability.
 53. The respondent denied that the request for a power of attorney or deed of indemnity violated the petitioner's rights, including the right to human dignity. The respondent maintained that it is a requirement for a person intending to open a bank account with a financial institution to provide details required by the particular financial institution in order to establish a contractual relationship. Failure to meet these requirements does not injure the person's rights, including dignity because that person has an option to seek a relationship with another financial institution.
 54. Article 19 of *the Constitution* provides that the Bill of Rights is an integral part of Kenya's democratic state and the framework for social, economic and cultural policies. Under Sub Article (2), the purpose of recognising and protecting human rights and fundamental freedoms, is to preserve the dignity of individuals and communities and to promote social justice and the realisation of the potential of all human beings.
 55. Sub Article (3) states that the rights and fundamental freedoms in the Bill of Rights— belong to each individual and are not granted by the State; do not exclude other rights and fundamental freedoms not in the Bill of Rights, but recognised or conferred by law, except to the extent that they are inconsistent with this Chapter; and are subject only to the limitations contemplated in *the Constitution*.
 56. Article 20 adds that the Bill of Rights applies to all law and binds all State organs and all persons. The Article makes it clear that every person should enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom.
 57. Article 20 (3) requires a court in applying a provision of the Bill of Rights, to develop the law to the extent that it does not give effect to a right or fundamental freedom; and adopt an interpretation that most favours the enforcement of a right or fundamental freedom. Sub Article (4) states that in interpreting the Bill of Rights, a court, tribunal or other authority should promote the values that underlie an open and democratic society based on human dignity, equality, equity and freedom; and the spirit, purport and objects of the Bill of Rights. In that regard, provisions in the Bill of Rights have to be construed in a manner that secures for individuals, the full measure of the protection of their rights and fundamental freedoms.
 58. The petitioners' case is that his rights were violated based on his disability because he was denied an opportunity to open a bank account with the respondent. Article 27 of *the Constitution* provides that every person is equal before the law and has the right to equal protection and equal benefit of the law. Equality includes the full and equal enjoyment of all rights and fundamental freedoms regardless of one's state. The State is also prohibited from directly or indirectly discriminating against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, "disability", religion, conscience, belief, culture, dress, language or birth. *The Constitution* further prohibits a person from directly or indirectly discriminating against another person on any of the prohibited grounds in article 27 (4).
 59. The Constitutional text in Article 27 is clear that all persons are equal before the law and enjoy equal protection and benefit before the law. That is; every person must enjoy all the rights and fundamental



freedoms guaranteed in the Bill of Rights since *the Constitution* prohibits both direct and indirect discrimination by either the state; state agencies or any other person. *The Constitution* therefore, applies both vertically and horizontally.

60. Section 25(1)(b) of the Persons with Disability Act also provides that no person should, on the ground of disability alone, deny a person with a disability “the provision of any services or amenities to which members of the public are entitled, unless such denial is motivated by a genuine concern for the safety of such person.” The section advocates for equality of all persons regardless of ones’ status or state of health.
61. Article 5 (1) of CRPD again provides that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law. Article 5(2) requires States Parties to prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.
62. The petitioner’s desire to open a bank account drove him to seek services provided by the respondent to the general public but rather than allowing him, the respondent asked the petitioner to donate a power of attorney to a third party to operate the account on his behalf, or furnish a deed of indemnity to indemnify the respondent from any risks that may arise due to the petitioner’s operation of the account given his disability.
63. The respondent did not argue that the demand of a power of attorney or deed of indemnity was a general requirement that applies to all persons seeking to open bank accounts. The fact that this requirement was applied to the petitioner only must have been due to his state of disability because he was different from others who do not have the disability the petitioner had. This was differential treatment on the basis of disability thus, amounted to discrimination.
64. Under Article 9 of CRPD, persons with disabilities should live independently and participate fully in all aspects of life. In that regard, States Parties are required to take appropriate measures to ensure persons with disabilities access, on an equal basis with others, physical environment, transportation, information and communications, including information and communications technologies and systems, and other facilities and services open or provided to the public. The measures should include identification and elimination of obstacles and barriers to accessibility.
65. One of the principles of the Convention under article 3 of CRPD is respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons. Article 4 (1) of the Convention on the obligations requires States Parties to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability (b) “To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;” and (e) “To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise.”
66. Applying this principle in *JMM v Smollan Kenya Limited* (supra), the court held that the respondent’s failure, neglect and refusal to install or provide a screen reader, voice command or any other technology to help the complainant overcome her disability amounted to discrimination on the basis of disability in violation of Articles 10, 27, 28, 41 and 54 of *the Constitution*.
67. Similarly, in *Bacher v Austria* CRPD/C/19/D/26/2014, it was held that:

States parties also have the obligation to protect rights by adopting measures to prevent the direct or indirect interference of individuals with their enjoyment. Thus, the scope of the provisions of the Convention extends to relations between individuals. Under article



4(1) of the Convention, “States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties: (e) [have] to take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise.

68. Article 9(2) of CRPD further requires States Parties to take appropriate measures to: (b) “Ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities.” This is in line with article 4 (1)(e) of the CRPD which requires States “To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise.”
69. The respondent offers banking services to the general public and therefore is required under article 9(2)(b) of CRPD as read with Article 27(5) of *the Constitution* to take into account all aspects of accessibility for persons with disabilities so that its services are accessible to persons like the petitioner without subjecting them to unnecessary barriers or impediments so that the petitioner as a person with disability would be recognised as equal before the law to others for purposes of accessing the respondent’s services.
70. In this regard, under article 12(2) of CRPD persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life. And (3) States Parties are required to take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity. The essence of article 12 is that persons with disabilities being persons equal in all respects to others, should exercise their legal capacity without any impediments or barriers being placed in their right to legal capacity. The requirement that the petitioner either provides a power of attorney to a third party or a deed of indemnity placed a barrier to his right to exercise his legal capacity due to his disability which not only violated Article 27 (5) of *the Constitution* but also article 12(2), (3) of CRPD.
71. In *Nyutsi and Takacs v Hungary* CHRPD/C/9/D/1/2020, the Committee underscored the importance of CRPD stating:

[9.4] under article 4, paragraph 1(e), of the Convention, States Parties undertake “to take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise”. To this end, States Parties are required pursuant to article 9 of the Convention to take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to, inter alia, information, communications and other services, including electronic services, by identifying and eliminating obstacles and barriers to accessibility. States Parties should, in particular, take appropriate measures to develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public (art. 9, para. 2(a), of the Convention), and ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities (art. 9, para. 2(b)).

The Committee further stated that “The State party is under an obligation to take measures to prevent similar violations in the future, including by: (a) Establishing minimum standards for the accessibility of banking services provided by private financial institutions for persons with visual and other types of impairments.”

72. Persons with disabilities require reasonable accommodation so that they can enjoy their rights as equal members of society. In the petitioner’s situation, the respondent had an obligation to



reasonably accommodate him given his disability. Reasonable accommodation is an equalizing linkage to fundamental rights of persons with disability.

73. In *Vikash Kumar v Union Public Service Commission* [2021] 12 S.C.R. 311, AIR 2021 SUPREME COURT 2447, AIRONLINE 2021 SC 56, while dealing with the concept of reasonable accommodation, the Supreme Court of India stated:

[49.] As the Committee on the Rights of Persons with Disabilities noted in General Comment 6, reasonable accommodation is a component of the principle of inclusive equality. It is a substantive equality facilitator. The establishment of this linkage between reasonable accommodation and non-discrimination thus creates an obligation of immediate effect. Under this rights-based and disabled-centric conceptualization of reasonable accommodation, a failure to provide reasonable accommodation constitutes discrimination. Reasonable accommodation determinations must be made on a case-by-case basis, in consultation with the disabled person concerned. Instead of making assumptions about how the relevant barriers can be tackled, the principle of reasonable accommodation requires dialogue with the individual concerned to determine how to tackle the barrier. (emphasis)

74. The principle of reasonable accommodation was reiterated in *Gulshan Kumar v Institute of Banking Personnel Selection and Others* (Writ Petition (Civil) No 1018/2022)) where the Supreme Court of India again stated:

[52] ...Among the obligations which are cast on the Government is the duty to take necessary steps to ensure reasonable accommodation for persons with disabilities. The concept of reasonable accommodation...incorporates making "necessary and appropriate modification and adjustments" so long as they do not impose a disproportionate or undue burden in a particular case to ensure to persons with disability the enjoyment or exercise of rights equally with others.

75. The Court went on to state:

(63) In the specific context of disability, the principle of reasonable accommodation postulates that the conditions which exclude the disabled from full and effective participation as equal members of society have to give way to an accommodative society which accepts difference, respects their needs and facilitates the creation of an environment in which the societal barriers to disability are progressively answered.

Accommodation implies a positive obligation to create conditions conducive to the growth and fulfilment of the disabled in every aspect of their existence - whether as students, members of the workplace, participants in governance or, on a personal plane, in realising the fulfilling privacies of family life. The accommodation which the law mandates is "reasonable" because it has to be tailored to the requirements of each condition of disability. The expectations which every disabled person has are unique to the nature of the disability and the character of the impediments which are encountered as its consequence.

76. In *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, [2007] 1 S.C.R. 650, 2007 SCC 15, the Supreme Court of Canada stated with regard to reasonable accommodation that "while human rights law includes an acknowledgment that not every barrier can be eliminated, it also includes a duty to prevent new ones, or at least not knowingly to perpetuate old ones where preventable.

77. In this petition, the respondent argued that the demand for a power of attorney or deed of indemnity was in compliance with the law, namely; the Proceeds of Crime and Money Laundering Act, the [Banking Act](#) and Central Bank of Kenya's Risk Management Guidelines. The respondent did not



identify any provisions that were being relied on to enable the court determine whether those provisions would pass the constitutional master in article 27 read with article 24 of *the Constitution*; articles 3; 4, 5, 9 and 12 of CRPD and section 25 of Persons with Disability Act.

78. The respondent's demand that the petitioner provides a power of attorney presented an impediment to him as person with disability. Apart from taking away the petitioners' right to legal capacity to manage his own financial affairs, the petitioner faced a barrier where he was not only required to look for a trusted person on whom to entrust his financial affairs, but that impediment was placed on his way due to his disability which is expressly prohibited by article 27(4) of *the Constitution* and CRPD.
79. As the Supreme Court of India appreciated in *Vikash Kumar v Union Public Service Commission* (supra) with regard to General Comment 6 on reasonable accommodation, instead of making assumptions about how the relevant barrier should be tackled, the principle of reasonable accommodation requires dialogue. That is; the respondent should have engaged the petitioner with a view to determining how to tackle the barrier, instead of making a demand whose effect was to drive the petitioner away from accessing the service he deserved and which he had gone to seek.
80. From the above analysis, I agree with the petitioner that the respondent's failure to accord him reasonable accommodation constituted discrimination, a violation of not only the petitioner's rights and fundamental freedoms but also *the Constitution*.

Relief to grant

81. Having considered the pleadings, arguments, the decisions relied on, *the Constitution* and the law, this court can only conclude that the respondent violated the petitioner's rights guaranteed by articles 27 and 28 of *the Constitution* by failing to accord the petitioner reasonable accommodation and allow him full access to services he required. Instead, the respondent placed impediments on the petitioner thereby denying the petitioner participation as an equal member of society and enjoyment of his legal capacity.
83. In *Tinyefuze v Attorney General of Uganda*, (Constitutional Petition No. 1 of 1996) [1997] UGCC 3, the Constitutional Court of Uganda stated that "if a petitioner succeeds in establishing breach of a fundamental right, he is entitled to the relief in exercise of constitutional jurisdiction as a matter of course."
84. Similarly, in *Siewchand Ramanoop v The Attorney General of Trinidad and Tobago*, (PC Appeal No. 13 of 2004), the Privy Council stated:
- When exercising this constitutional jurisdiction the court is concerned to uphold, or vindicate, the constitutional right which has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases more will be required than words. If the person wronged has suffered damage, the court may award him compensation. The comparable common law measure of damages will often be a useful guide in assessing the amount of this compensation. But this measure is no more than a guide because the award of compensation...is discretionary and, moreover, the violation of the constitutional right will not always be co-terminous with the cause of action at law.
85. Consequently, and based on the above principles, the petition succeeds and the court make the following declarations and orders it considers appropriate:
1. A declaration is hereby issued that the requirement by the respondent that the petitioner donate a power of attorney or sign a deed of indemnity in order to open and operate a



bank account with the respondent was discriminatory and a violation article 27(4) of *the Constitution*.

2. A declaration is hereby issued that the requirement by the respondent that the petitioner donates a power of attorney or sign a deed of indemnity in order to open and operate a bank account was discriminatory and injurious to the petitioners' dignity as a person contrary to article 28 of *the Constitution*.
3. A declaration is hereby issued that the requirement by the respondent that the petitioner donates a power of attorney or deed of indemnity in order to open and operate a bank account with the respondent amounted to a denial of the petitioner's right to exercise legal capacity.
4. A declaration is hereby issued, that the refusal by the respondent to allow the petitioner to access the respondent's banking services due to his disability was a violation of the petitioner's right of accessibility in violation of article 54(1) (e) of *the Constitution* and section 25(1)(b) and 25(3) of the *Persons with Disabilities Act*.
5. The petitioner is hereby awarded compensation of Kenya Shillings two million five hundred thousand (Kshs. 2,500,000 against the respondent for violation of his right to non-discrimination based on his disability; legal capacity and accessibility.
6. The respondent will pay interest and costs of the petition to the petitioner.

DATED AND DELIVERED AT NAIROBI THIS 14TH DAY OF OCTOBER 2025

E C MWITA

JUDGE

