REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 164 OF 2014

SAMUEL MULAVU SEGERO……1ST PETITIONER

PROTUS UNGAYI MILIMU……2ND PETITIONER

PROTAS MACHINA MUKANZI……3RD PETITIONER

COSMAS INGAVI AYEKHA……4TH PETITIONER

HENRY LUBEMBE NGAIRA……5TH PETITIONER

PETER MANYENGO MIHESO……6TH PETITIONER

GEORGE NYALIGU ISEMERE……7TH PETITIONER

JULIUS NDEVWA BULEDI……8TH PETITIONER

ALLAN SAGALA LAGOSWA……9TH PETITIONER

VERSUS

THE HON. ATTORNEY GENERAL……1ST RESPONDENT

THE KENYA ARMED FORCES……2ND RESPONDENT

JUDGMENT

A: Introduction

1. The petitioners were enlisted into the Kenya Air Force (KAF) on diverse dates and were service officers as at 1st August 1982. Following the attempted coup on 1st August 1982, an announcement was issued directing all Air Force

personnel report to the nearest military bases or police stations. The petitioners responded and were immediately arrested and detained at various military camps and police stations for several days before being taken to various prisons without having been taken to a court of law.

2. During their stay in remand prisons, the petitioners were beaten and forced to undress naked; were tortured and kept in dark rooms flooded with water to knee-high level. They were denied food medical attention; toiletry and other basic necessities. Their employment contracts were later terminated unlawfully without payment or terminal dues. They lost valuables including documents and personal effects.

B: Petition

3. The petitioners filed this petition dated 4th April 2014 against the respondents, claiming violation of

their rights and fundamental freedoms and sought declarations to that effect, an order for compensation and costs of the petition.

4. The petitioners stated that they were subjected to torture, cruel, inhumane and degrading treatment and punishment during their arrest and confinement. Their constitutional rights and fundamental freedoms guaranteed under articles 25, 28, 29, 39, 40, 41, 49 and 51 of the Constitution were also violated.

C: Oral evidence

5. The petitioners testified and gave evidence in no particular order since they were available to testify at different times. Julius Ndegwa Buleni, the 8th petitioner was the first to testify. He told court that he enlisted with KAF in September 1977 and assigned service No. 022785. On the night of 31st

July 1982, he was woken up by firing at the Eastleigh Airbase where he was stationed. He went out only to find the Base surrounded by officers. He was ordered to go to a central point where they were ordered to kneel down. They were ordered to go to the armoury and take arms which they did. They were then ordered to enter army vehicles and taken to the city centre.

6. At the city centre, there was indiscriminate firing. They were ordered to alight and were disarmed. Within a short time, GSU officers arrived and took them into custody. They were about 15 people and were made to walk in a single line. Some of them were shot in the process. They were ordered undress; frog marched and made to lie down. After a while, they were ordered to stand and recite their service numbers, rank and station. He was sixth in the line and all those ahead of him were shot. They

were taken to central police station where he was beaten and kicked. He was also hit in his private parts and had to undergo surgery at Mukuru Hospital.

7. In the evening, they were taken to Langata Army Barracks where he was again beaten, kicked and pushed from one side to another. Later at about 8pm, they were loaded onto a lorry and taken to Kamiti Maximum Security Prison where they were put in one room and made to squat for about one hour. The following morning, he was taken to Naivasha Maximum Security Prison where he was again tortured. He was kept in a water-logged cell while naked and made to relieve himself in the same room. He was kept incommunicado and went without food for 7 days.

8. After 10 days, he was taken to another room which did not have water and was made to clean the blocked toilets with bare hands. He was thereafter forced to eat food without washing his hands leading to diarrhoea. He was detained at Naivasha Prison for a month and later returned to Kamiti. He was taken to a Court Martial where he was threatened and made to plead guilty. He was sentenced to four years which he served at King'ong'o GK Prison. He was released after one year and thereafter he was discharge and given a discharge certificate. In 1983 he was called to collect his identity card. He told court that his life changed after that ordeal. He did not find his wife at home and he never recovered his documents.

9. In cross examination, he told court that after he was discharged from service, some officers told him he could go back to work. When he went to

the DoD, he was told that they only wanted him to collect his Identity Card. He stated that as a result of the torture at Kamiti and Naivasha Prisons, he developed some ailment. He also told the court that even though he had tried to apply for jobs, he did not succeed. His sister died on hearing what he was going through.

10. Samwel Mulavu Segero, the 1st petitioner, testified and adopted his witness statement dated 4th April 2014 and the anextures as his evidence before the court. He told court that he enlisted with KAF in 1977 and assigned service No. 022666. After initial military training he was posted to worked as a fighter control operator/Radar operator. On 1st August 1982, he was away from his station when the coup took place. He surrendered at an army post in Kisumu from where he was taken to Nakuu Kenya Army Rifles where he was held for three weeks. After interrogation, he

was told there was no problem. However, after three weeks, he was taken to Kamiti Prison where he stayed for three months during which he was tortured, given little or no food and allowed a few hours in the sun. They were about 100 people in a room and they would relieve themselves in the same room.

11. He was later transferred to Naivasha Prison where they were kept four people in a water-logged cell up to knee high for one week and without food. He was again returned to Kamiti Prison and later taken to town and asked to go home with directions to report to his Area chief daily and not to return to Nairobi.

12. Segero told the court that he did not have a document to show that he was at Kamiti prison. His name was tarnished because of what he went

through and his father died after hearing that he had been arrested.

13. Henry Lubembe Ngaira, the 5th petitioner, also adopted his witness statement dated 4th April 2014 as evidence and annextures as exhibits. He stated that he enlisted with KAF on 21st February 1977 and assigned service number 022475. He was arrested on 2nd August 1982 after the attempted coup and held in various security facilities where he was tortured. He was later discharged because his service was no longer required. He was issued with a certificate of service on 31st January 1983. he stated that he was not charged before a court martial and although his certificate of discharge showed that he was of good conduct, he could not get a job. After discharge, he sought medical attention but did not have evidence of treatment in court because it had been long.

14. Cosmas Ingavi Ayekha, the 4th petitioner, equally adopted his witness statement dated 4th April 2014 and annextures as exhibits. According to Ayekha, he joined KAF on 21st February 1977 and given service No. 022546. After initial military training, he was posted to work as a clerk. He was discharged on 20th October 1982. He told court that he lost his personal effects and certificates when he was arrested and on being discharged, he was not allowed to go back to look for his documents. He had tried to get a job without success because of having been a member of the disbanded KAF. His family suffered while in he was in detention since they were depending on him. His life was adversely affected and that of his family following his discharge.

15. Protas Machina Mukanzi, the 3rd petitioner, adopted his witness statement dated 4th April 2014 and annextures as evidence and exhibits in court. According to Mukanzi, he joined KAF on 2nd September 1977 and was assigned service No. 022742. After military training, he was posted to work as a storeman. After his arrest, he was detained at Kamiti Prison under harsh conditions; he was kept in a wet cell without clothes and was denied food for 15 days. He lost his belonging and certificates during his arrest. After discharge, he sought medical attention but due to the long period it had taken, he did not have medical evidence. He was discharged on 31st January 1983. He relied on the certificate of service as proof of service with KAF.

16. Allan Sagala Lagoswa, the 9th petitioner, also adopted his statement dated 4th April 2014 and

exhibits as his evidence before the court. He stated that he joined KAF on 20th May 1977 and given service No. 022922. He was attached at Nanyuki Airbase as at 1st August 1981. On 31st July 1981, after duty, he travelled to Nairobi with friends and arrived at Eastleigh at 9 pm. He did not find his brother and left for town where he spent the night and only learnt about the coup in the morning. He went to Eastleigh airbase and was made to arm himself and proceeded to the city centre but they were attacked on the way. He escaped and went back to the station.

17. The following morning, he reported at the camp where he was arrested and taken to Kahawa Barracks. They were later transferred to Kamiti Prison and later to Naivasha Prison. They were tortured; kept naked in a dark waterlogged room was denied food for 7 days. He was held for several

months and later taken to the court martial on 15/10/82 and charged with mutiny and sentenced the same day to 9 years and later discharged from service. He suffered while in prison and was still feeling the after effects. He was not given medical records when he was released on 15th October 1988.

18. Protus Ungayi Milimu, the 2nd petitioner, testified adopting his statement dated 4th April 2014 and exhibits as his evidence. He enlisted with KAF on 7th February 1979 and assigned service No. 024038. After basic military training, he was deployed at the ground to Air defence unit. On 1st August 1982 he was away from the station when the coup took place. He reported at Jogoo Police Station on 5/8/82 and was immediately arrested and taken to Army Headquarters and later to Athi River prison. He was interrogated and later

transferred to Kamiti prison then Naivasha Prison. He was tortured; kept in dark waterlogged cell and denied food and other basic necessities. He was discharged from service on 31st January 1983. After being discharged, he tried to get employment without success. He also lost his academic certificates. He was still under medication.

19. George Nyaligu Isemere, the 7th petitioner, also adopted his witness statement dated 4th April 2014 and exhibits as his evidence in court. He joined KAF on 12th September 1979 and assigned service No. 024324. After basic military training, he was posted to work as a fireman. He was arrested and tortured during incarceration. He was later tried at the court martial, convicted and sentenced to 3 years. He lost his property following his arrested.

20. Peter Manyengo Miheso, the 6th petitioner did not testify and therefore did not take part in this petition.

D: Respondents' response

21. The respondents opposed the petition through grounds of opposition and a replying affidavit sworn by Major Edwin Kibiru Muta (Major Muta) on 2nd June 2023. Major Muta stated that the petitioners are guilty of laches having instituted the petition more than thirty-two years after the cause of action arose thus, the 2nd respondent will be prejudiced because its evidence has been lost or degraded while witnesses have either left service or died.

22. Major Muta denied the alleged violations of rights and fundamental freedoms; denied that the

petitioners were members of the Armed Forces and that they were arrested on account of merely being personnel of the Armed Forces. Major Muta stated that if the petitioners were members of the Armed Forces, any arrests were as a result of their participation in the attempted coup, either actively or passively, by obeying illegal orders and arming themselves against the government.

23. Major Muta again denied the petitioners' claim that they were arrested without reasonable cause; that they were kept in solitary confinement, tortured or unlawfully discharged from service. He also denied allegations that petitioners were frequently moved from one place of detention to another; that they were kept in cruel, inhuman and degrading conditions or were detained incommunicado.

24. Major Muta asserted that if the petitioners were servicemen in the Armed Forces, they were subject to the repealed Armed Forces Act (Cap 199) and were entitled to the Constitutional rights and freedoms enshrined under the repealed constitution subject to the limitations specified thereunder.

25. According to Major Muta, the petitioners were all taken into lawful custody in accordance with section 70 of the repealed Armed Forces Act as read with rule 6 of the repealed Armed Forces Rules of Procedures on account of having been reasonably suspected of participating in the coup. Major Muta stated that the petitioners were sentenced to dismissal from service on account of being found culpable of involvement in the coup after undergoing summary trial before their respective commanding officers. Due process was

followed with regard to the arrests, investigations as well as administrative, disciplinary and or penal sanctions applied against the petitioners.

E: Oral evidence

26. Major Muta testified on behalf of the respondents and adopted his replying affidavit as his evidence. He informed the court that he is the Staff Officer II Records at the Department of Defence Headquarters which keeps the records of retired officers and service members. He had worked at Defence Headquarters since July 2022 but had been in KDF for 19 years. He confirmed that he had not attached any documents to show the records of any of the petitioners. He was also not aware if the petitioners were reassigned to other stations, if they were imprisoned in service

prisons in Kenya and would have no records of such imprisonment.

27. Major Mute told the court that there would be no records on the petitioners' torture or medical condition while under detention. He was equally not aware of any records regarding the petitioners' trial in court. He told the court that the Kenya Defence Forces Act does not allow torture and that the petitioners' records do not exist.

28. Major Muta stated that retired officers are service members who honourably served and left the service. He did not have the petitioners' records because documents are destroyed after 10 years. He maintained that KDF does not condone torture of whatever form and that an offender can be dealt with through court martial, summary procedures or the Defence Council can deal with

any offenders at any time. According to Major Muta, an offender can be placed under confinement in the Barracks but that is not detention. A service member can be placed in prison if he is to be interrogated and the guard room cannot contain the member.

F: Submissions

29. Parties filed written submissions which they relied on.

G: Petitioners' submissions

30. The petitioners filed written submissions through their advocates. On delay in filing the petition, they argued that there is no limitation period for filing a claim on violation of fundamental

rights and freedoms. They relied on the decisions in *Dominic Arony Amolo v Attorney General* [2003] eKLR; *Kamlesh Mansuklal Damji Pattni v Republic* [1995] KECA 127 (KLR) and *Joan Akinyi Kabasellah & 2 others v Attorney General* [2014] eKLR.

31. The petitioners submitted that there have been decisions in cases filed against the respondents from the same cause of action, including *David Gitau Njau & 9 others v Attorney General* [2013] eKLR and *Peter M. Kariuki v Attorney General* [2014] eKLR and it would be discriminatory if this court dismissed their claim on grounds of delay.

32. The petitioners argued that the respondents' argument that they will be prejudiced is not correct. The petitioners maintained that the government and public bodies possess institutional

succession and perpetuity and, therefore, evidence and records cannot be easily affected by lapse of time. They stated that they could not have pursued justice earlier because of the political situation under the repressive government of the day.

33. The petitioners cited article 1 of the Convention Against Torture and Other Cruel, inhuman or Degrading Treatment or Punishment and the decisions in *Samwel Rukenya Mbura & others v Castle Brewing Kenya Limited & another* [2006] eKLR and *Republic v Minister for Home Affairs and 2 others Exparte Leonard Sitamze* [2008] eKLR on the definition of torture, cruel, inhuman and degrading treatment which they were subjected to.

34. The petitioners relied on the decision in *David Gitau Njau & 9 others v Attorney General* [2013]

eKLR for the position that their right to freedom from torture and cruel, inhuman or degrading treatment was violated when they were locked in dark waterlogged rooms for several days while naked; being denied food, water, toilet facilities and other basic necessities; being slapped, kicked, gun-butted; frog marched and denied proper medical care. The petitioners maintained that they did not have medical records because they could not have accessed treatment since they were being held incommunicado and for long periods of time.

35. The petitioners relied on article 25 (a) of the Constitution; article 5 of the United Nations Universal Declaration of Human Rights (UDHR) and Guidelines of Committee of Ministers of the Council of Europe on Human Rights and the Rights against Terrorism, 11th July 2002, for the proposition that

torture, inhuman and degrading treatment are prohibited and there is no justification for it.

36. The petitioners again relied on the decisions in *Ann Njogu & 5 others v Republic* [2007] eKLR and *Albanus Mwasia Mutua v Republic* [2006] KECA 346 (KLR) to submit that their right to human dignity was violated because they were held in detention for months without being arraigned in a court of law; they were dismissed from service without a hearing and their rights as arrested persons guaranteed under article 49 of the Constitution were violated because they were arrested and detained without trial. They argued that their treatment was an affront to sections 48 and 72 (2) of the repealed Armed Forces Act.

37. The petitioners asserted that the 2nd respondent's action of keeping them in

incommunicado confinement without trial violated their right to personal liberty and human dignity. They reiterated that the torture they were subjected to while in detention was in violation of their rights guaranteed under article 51 of the Constitution. They relied on the decisions in *Njuguna s/o Kimani & 3 others v Reginam* [1954] 21 EACA 316; *David Gitau Njau (*supra); *Peter M. Kariuki v Attorney General* [2014] eKLR; *Peter Tonny Wambua & 17 others v Attorney General* [2017] eKLR and *Silla Muhia Kinyanjui & 2 others v Attorney General* [2020] eKLR.

38. The petitioners again submitted that their right to remission of sentence was violated because they were forced to serve unwarranted imprisonment for periods ranging between 8 and 16 months as these were periods for which their sentences could have been reduced as provided

under section 46 of the Prisons Act. They argued that failure to remit their sentences amounted to illegal detention thus, violated their rights under sections 70(a), 73(1) and 77 of the repealed constitution and articles 8(3) and 9(1) of the ICCPR.

39. The petitioners again cited rules 95(1), 96 and 97 of the Prisons Rules and the decisions in *David Oloo Onyango v Attorney General* [1987] eKLR and *Stephen Nderu Njuguna v The Commissioner of Prisons & another* [2011] eKLR for the position that denial of remission of sentence without lawful justification violated their right to liberty and they are entitled to compensation.

40. The petitioners maintained that their right under article 41 of the Constitution was violated because although they were never charged with any offence in a court martial or any court, after

release they were dismissed from service. They were also not paid any terminal or redundancy dues and were sent home without payment of any salary, terminal benefits and or pension contrary to the Armed Forces Act and the Armed Forces Standing orders.

41. On quantum, the petitioners relied on the decisions in *Captain (Rtd) Frank Mbugua Munuku v Kenya Defence Forces & another* [2013] eKLR; *Dominic Arony Amolo* (supra); *Jennifer Njoroge Muthoni & 10 others v Attorney General* [2012] eKLR; *Odhiambo Olei v Attorney General* civil Case No. 365 of 1995 and *Peter Kariuki v Attorney General* (Petition No. 233 of 2009) and urged the court to award Kshs. 20,000,000 each as general damages. They also prayed for exemplary damages of Kshs. 5,000,000 each and costs of the petition.

H: Respondents' submissions

42. The respondents also filed written submissions through their advocates. The respondents submitted, relying on sections 107 and 109 of the Evidence Act and the decisions in *Evans Otieno Nyakwana v Cleophas Bwana Ongaro* [2015] eKLR and *Ahmed Mohammed Noor v Abdi Osman* [2019] eKLR, that the petitioners did not prove that they served as members of KAF and the Armed Forces.

43. The respondents argued that the petitioners were guilty of latches because the petition was filed after more than thirty years without plausible reasons; it was an afterthought and affected their (respondents' rights) guaranteed under article 50 of the Constitution as they were unable to mount a

plausible defence. The respondents relied on the decision in *Wellington Nzioka Kioko v Attorney General* [2018] KECA 858 (KLR).

44. The respondents urged the court to take into account the fact that as early as 2003, persons aggrieved by acts of the "Moi era" approached courts for redress for alleged violations of constitutional rights and fundamental freedoms before the promulgation of the 2010 Constitution. They relied on *Stanley Waweru Kariuki v Attorney General* [2013] eKLR; *Harun Thungu Wakaba v Attorney General* [2010] eKLR and *Oduor Ong'wen and 20 others v Attorney General* [2011] KEHC 260 (KLR).

45. The respondents argued that an explanation for the delay is a necessary requirement even if there is no limitation of time for filing constitutional

petitions. Reliance was placed on the decisions in *Peter Ngari Kagume & 7 others v Attorney General* [2009] KEHC 4179 (KLR); *Masulal Maganlal Rawal v Maneklal Maganlal Rawal* [1989] KEHC 93 (KLR); *Abraham Kaisha Kanzika alias Moses Savala Keya t/a Kapco Machinery Services and Milano Investments Limited v Governor Central Bank of Kenya and 2 others* [2006] KEHC 3525 (KLR) and *James Kanyiita v Attorney General and Another* [2012] KEHC 1420(KLR).

46. They respondents again relied on Black's Law Dictionary 8th Edition and article 1 of the United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment to argue that the petitioners did not proved torture and that no acts of torture recognised in law were committed against the petitioners. Reliance was placed on *Monicah*

Wangui Wamwere v Attorney General [2019] eKLR and *Robert Njeru v Attorney General* [2014] eKLR.

47. The respondents went on to rely on other decisions, including *Peter Ngari Kagume & 7 others v Attorney General* (supra); *Anarita Karimi Njeru v Republic* [1979] eKLR and *Matiba v The Attorney General Misc. Application No. 666 of 1990* (UR) to argue that the petitioners did not prove the alleged detention; did not show where they were held in custody; for how long; when they were transferred and when they were released.

48. The respondents argued that the 7th petitioner admitted in his witness statement that he was tried and convicted by a competent court of law and sentenced to three-years sentence but did not appeal against the conviction and sentence. The respondents maintained that if the petitioners were

members of the Armed Forces, their arrest, detention and prison sentences followed the legal process under the applicable laws governing mutineers.

49. The respondents urged the court to adopt the principles laid in *Peter Ngari Kagume & 7 others v Attorney General* (supra) and consider the case of *Charles Gachathi Mboko v Attorney General* [2014] eKLR in the event it is inclined to grant the reliefs sought. They urged the court to dismiss the petition with costs.

I: Determination

50. I have considered the pleadings; arguments made on behalf of the parties as well as the decisions relied on. The issues for determination are whether the petitioners were members of the

armed forces; whether their rights and fundamental freedoms were violated; whether the petition was brough after inordinate delay and what relief to grant.

51. The petitioners, except Peter Mayengo Miheso, (the 6th petitioner) who did not participate in these proceedings, stated; averred and deposed that they were members of KAF a branch of the Armed Forces of the Republic of Kenya having been enlisted on various dates and assigned individual service numbers. After initial military training, they were posted to different stations to perform various tasks within KAF and were still working as at 1st August 1982 during the coup attempt when things turned for the worse against them.

52. The petitioners told the Court that they were arrested on different dates after the coup attempt,

some after they presented themselves to Police Stations and military camps following the announcement to that effect. Some were was arrested within the city centre where they had been commandeered to by their seniors.

53. The petitioners stated that following their arrest, they were brutally beaten, tortured and locked in waterlogged cells as they were subjected to interrogations. They were taken to Kamiti Prison and later transferred to Naivasha Prison and subjected to cruel and inhuman treatment for several days and months. They were held in crowded cells without food; medical attention and other basic necessities. They were sometimes frog marched, beaten indiscriminately, made to stripped naked while in waterlogged cells and subjected to other inhuman and degrading treatment while being held incommunicado.

54. According to the petitioners, they were held and interrogated for several months without being produced in a court of law. Some were detained for months and released without trial while others were subjected to court martials and forced to plead guilty. It was the petitioners' contention that their constitutional rights guaranteed under sections 70(a) 74(1), 72(3) of the repealed Constitution were violated.

55. The respondents denied that the petitioners were members of the armed forces and, if they were, their arrest was lawful for involvement in the coup attempt. The respondents also denied that the petitioners were tortured, mistreated or subjected to inhuman and degrading treatment. They also denied violating the petitioners' constitutional rights. The respondents argued that

the petitioners were guilty of laches in that they took too long to file the petition.

56. Based on the above contestations, it is important to determine first, whether the petitioners were members of the armed forces as it was then known.

J: Members of armed forces

57. The fact that the petitioners were members of KAF was disputed. However, the petitioners stated that they enlisted with KAF, gave the dates they were enlisted; service numbers assigned to each of them and the posts they were assigned to as they served. The petitioners also stated when they were arrested and when they were discharged from service. The petitioners produced extracts of Certificate of Service/Discharge Service from the Kenya Armed Forces issued on various dates

attached to their documents in support of the position. They were discharged from the Armed Forces on grounds of service no longer required while others were dismissed.

58. The respondents did not dispute the service numbers the petitioners were assigned as belonging to KAF. They also did not disown the discharge certificates. It is also important to point out that the respondents did not deny categorically that the petitioners were members of the armed forces. Rather their denial was a qualified one which means it was a mere denial.

59. In the circumstances, taking into account the petitioners' evidence, including documentary evidence on record, the conclusion the court comes to, is that the petitioners were indeed

members of the armed forces having been enlisted to the KAF branch of the armed forces.

K: Violation of rights and fundamental freedoms

60. The petitioners averred that they were arrested and detained for prolonged periods without being produced in a court of law. During the detention and confinement, they were beaten, tortured, kept incommunicado, placed in waterlogged cells, denied food and subjected to in inhuman and degrading treatment. These facts were not only stated in the averments in the petition and depositions in the affidavits but also in the petitioners' oral testimony in court.

61. The petitioners explained how they were moved from one prison to another between Kamiti and Naivasha Maximum Security Prisons before

some of them were later taken before court martials; forced to plead guilty and sentenced. However, production of those petitioners before the court martial was not done within 14 days as the repealed constitution required. Petitioners who were not taken to court martials were later released but after prolonged detention.

62. The respondents denied the petitioners' arrests and detention. They however qualified this denial stating that if indeed the petitioners were arrested, the arrests were lawful and they were treated lawfully in accordance with the repealed Armed forces Act and the rules made there under.

63. This court has already found that the petitioners were members of KAF, a branch of the armed forces. The petitioners stated clearly that

they were arrest and confined in various police stations and prisons for prolonged periods. Based on this evidence, I have no doubt in my mind that the petitioners were indeed arrested and detained by security agents.

64. Regarding violations, the petitioners stated that their rights and fundamental freedoms were violated in the manner they were arrested, held incommunicado; tortured and subjected to in inhuman and degrading treatment. Although the respondents denied that the petitioners' rights were violated, they did not argue that the petitioners were produced in a court of law as was required by the repealed constitution, or that they were treated in the manner the law allowed.

65. Section 70(a) of the repealed constitution guaranteed every person, regardless of his race, tribe, place of origin or residence or other local connexion, political opinions, colour, creed or sex, the right to fundamental rights and freedoms, including life, liberty, security of the person and protection of the law, subject only to respect for the rights and freedoms of others and the public interest.

66. The repealed constitution guaranteed every person the right to life, liberty, security of the person and protection of the law. Everyperson was therefore protected from deprivation of his or her liberty without due process of the law. Section 72(1) also provided that no person was to be deprived of his personal liberty save as may be authorized by law in given cases.

67. On the other hand, section 72(3)(b) provided:

> *(a) A person who is arrested or detained*
>
> *(b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence, and who is not released, shall be brought before a court as soon as is reasonably practicable, and where he is not brought before a court within twenty-four hours of his arrest or from the commencement of his detention, or within fourteen days of his arrest or detention where he is arrested or detained upon reasonable suspicion of his having committed or about to commit an offence punishable by death, the burden of proving that the person arrested or detained has been brought before a court as soon as is reasonably practicable shall rest upon any person alleging that the provisions of this subsection have been complied with.*

68. The repealed constitution required that an arrested person be produced in court within twenty four hours if suspected of committing a normal criminal offence and within fourteen days where the offence was one punishable by death. The repealed constitution was also clear that the burden was upon the person alleging that the constitution or the law was complied with. The reason for limiting the liberty of an arrested person was for purposes of processing him or her in order to produce the person in court to be dealt with in accordance with the law, thereby checking on the arbitrary arrest and unlawful detention of people in violation of their rights to liberty.

69. The import of section 72 (3) of the repealed constitution was underscored by the Court of Appeal in *Albanus Mwasia Mutua v Republic* (supra)

where the Court of Appeal held that failure to produce an arrested person in court within the time allowed is a gross violation of his constitutional rights guaranteed by section 72(3)(b). The Court observed that *"it is the duty of the courts to enforce the provisions of the Constitution, otherwise there would be no reason for having those provisions in the first place."*

70. On the basis of the evidence on record, there can be no doubt that the petitioners' right to liberty was violated. The petitioners demonstrated on the balance of probability that they were arrested and held in confinement for more than fourteen days without being produced before a court of law as was required by section 72(3)(b) of the repealed constitution.

71. The repealed constitution having guaranteed personal liberty, the arrest and detention of the petitioners without complying with sections 70(a) and 72(3) (b) was deemed to be arbitrary arrest and a violation of their right to liberty. Section 72(3) (b) demanded accountability over persons arrested on suspicion of committing or of being about to commit criminal or other offences so that they could be subjected to due process.

72. Section 72(1) of the repealed constitution by providing that no person could be deprived of his personal liberty save as may be authorized by law and gave the limited instances for the deprivation of that right, it was a constitutional command that had to be obeyed. Deprivation of a person’s liberty had to be in accordance with the constitution or the law, the aim being to outlaw abuse of power so that there would be no deprivasion of one’s

personal freedom or liberty. The inclusion of section 72(1) in the repealed constitution was an express guarantee to everyone's liberty, physical freedom and protection against arbitrary arrest and detention without due process. The court must not lose sight of the fact that rights enshrined in the Bill of Rights were protected and could not be infringed save as justified in law.

73. The respondents having contended that the petitioners were lawfully arrested and held, they were under obligation to demonstrate that there was compliance with the repealed constitution and that the petitioners were subjected to a lawful process within the time allowed. However, the respondents did not demonstrate that the petitioners were subjected to a lawful process and were produced in a court of law within the constitutionally permitted timeline. In the absence

of evidence to the contrary, I find and hold that the petitioners were held in violation of their human rights and fundamental freedoms contrary to sections 70 (a), 72 (1) and 72 (3) (b) of the repealed constitution.

L: *Torture; inhuman and degrading treatment*

74. The petitioners also argued that during their incarceration, they were tortured, beaten, stripped naked, kept in water logged cells, denied food and generally subjected to inhuman and degrading treatment. The respondents denied these allegations and contended that the petitioners did not prove the claims of torture and inhuman and degrading treatment since they did not produce medical evidence to prove this fact.

75. It is true that the petitioners did not produce medical or other documents to show the torture

they underwent or suffered in the hands of state agents. It would have been appropriate for the petitioners to presented themselves for medical examination as soon as they had an opportunity to do so for purposes of confirming the injuries they suffered as a result of their treatment while in confinement. Some of them stated that they went for medical attention but did not have medical documents because of the time lapse.

76. That notwithstanding, the question that begs an answer is whether there can be no proof of torture or inhuman and degrading treatment without a medical report. The answer to this question requires that we look at the meaning of “torture” and “inhuman and degrading treatment.”

77. Black's Law Dictionary, 9th Edition defines "*torture*" as:

> *the infliction of intense pain to the body or mind to punish, to extract a confession or information, or to obtain sadistic pleasure.*

From this definition, torture is intended to inflicted intense pain to the body or mind of a person by any means as a form of punishment with a view to extracting or obtaining a confession or information against that person's will. Torture is therefore achieved through use of some force where some physical act is applied to the person's body to exact physical or mental pain.

78. The same Dictionary defines *"inhuman treatment"* as *"Physical or mental cruelty so severe that it endangers life or health".* Again, inhuman treatment is such treatment that causes

physical or mental pain which may sometimes be a threat one’s life or health.

79. Article 1 of The United Nations Convention Against Torture and Other Cruel and Inhuman or Degrading Treatment defines ‘torture’ as:

> *Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity*.

80. The above definitions show that there must be an element of use of force intended to inflict pain in a person's body or mind and it must be a threat to the life or health of the victim. In that case, therefore, it is possible to have medical evidence on physical injuries sustained as a result of the treatment a person has been subjected to. However, it is not in all instances that medical evidence must be called to prove that a person was tortured by inflicting severe physical or mental pain or suffering on the body, or that the person was subjected to inhuman and degrading treatment.

81. In this petition, the fact that the petitioners did not produce medical evidence to show that they sustained injuries as a result of the treatment they were subjected to while in confinement, did not

mean they were not tortured or treated in an inhuman and degrading manner. The petitioners averred and testified that they were beaten, forced to stripped naked and held in waterlogged cells. They had to relieve themselves in the same rooms and were denied food and water for prolonged periods. Others stated that they were forced to unblock toilets using bare hands and thereafter ate food without washing hands. This treatment was not ordinary. It was intended to inflict severe physical or mental pain or suffering in the petitioners' bodies or minds.

82. Even though the petitioners did not adduce other independent evidence to corroborate their assertions that they were subjected to this form of treatment, it is difficult to imagine what other evidence they could have adduced given the circumstances under which they had been held for

months or years. For instance, what evidence could the petitioners adduce to show that they were stripped naked; were held in crowded and waterlogged cells; were forced to relieve themselves in the same cell rooms; or were denied food and water?

83. The petitioners could not get independent witnesses to testify in their favour in order to prove that they were treated in the manner they said they were, given the circumstances then obtaining. Taking such a course, would in my respectful view, downplay the treatment the petitioners were subjected to if not demanding too much from persons who had no control over their affairs and events surrounding them and at a time when they had no opportunity to collect or gather such evidence or witnesses.

84. It is also worth noting, that section 74(1) of the repealed constitution provided that *"no person shall be subjected to torture or to inhuman or degrading punishment or other treatment."* The section used a disjunctive word *"or"* followed by *"other treatment"* which meant torture, inhuman or degrading punishment *or "other treatment*" were all prohibited.

85. The way the petitioners were treated could not have been humane treatment: It was degrading at best. The words *"or other treatment"* used in section 74(1) also being a constitutional provision recognizing fundamental rights prohibiting torture; inhuman or degrading punishment or "other treatment" must be given a broad, liberal and flexible interpretation to include any such treatment that was unusual to human beings and

was intended to humiliate a person for sadistic pleasure. Stripping the petitioners naked; keeping them in crowded and waterlogged cells and denying them food and water were such *"other treatment"* that was outlawed by section 74(1) of the repealed constitution to amount to prohibited treatment.

86. In the *Greek Case 1969 Y.B Eur. Conv. on H.R. 186 (Eur. Comm'n on H.R),* the European Commission on Human Rights stated that "*treatment or punishment of an individual may be said to be de-grading if it grossly humiliates him before others, or drives him to an act against his will or conscience."*

87. In the case *Selmouni v France* (2000) 29 EHRR 403 which dealt with article 3 of the European

Commission on Human Rights, (equivalent to section 74(1) of our repealed constitution), the European Court of Human Rights stated:

> *[99] The acts complained of where such as to arouse in the applicant feelings of fear, anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical and moral resistance. The Court therefore finds elements which are sufficiently serious to render such treatment inhuman and degrading...In any event, the Court reiterates that, in respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in article 3.*

88. 58. The Court went on to observe that article 3 (section 74(1) of our repealed Constitution) enshrines one of the most

fundamental values of democratic societies, and that even in the most difficult circumstances, such as the fight against terrorism and organized crime, the Convention prohibits in absolute terms, torture and inhuman or degrading treatment or punishment. In the same breath, it is the view of this court, that while section 74(1) of the repealed constitution was in place, the petitioners should not have been treated in the manner they were, in violation of their fundamental freedoms and human dignity.

89. Section 74(1) of the repealed constitution guaranteed fundamental rights and freedoms, an all time enduring provision requiring liberal and broad interpretation. In that regard, as the Constitutional Court of Uganda stated in *Tinyefuze*

v Attorney General of Uganda (Constitutional Petition No 1 of 1996 [1997]3 UGCC):

> *A Constitutional provision containing a fundamental right is a permanent provision intended to cater for all time to come and, therefore, while interpreting such a provision, the approach of the Court should be dynamic, progressive and liberal or flexable, keeping in view ideals of the people, socio-economic and politico-cultural values so as to extend the benefit of the same to the maximum possible. In other words, the role of the Court should be to expand the scope of such a provision and not to extenuate it. Therefore, the provisions in the Constitution touching on fundamental rights ought to be construed broadly and liberally in favour of those on whom the rights have been conferred by the Constitution.*

90. In *Minister for Home Affairs & another v Fischer* [1979] 3 ALL ER 21, Lord Wilbeforce, writing for the Court, expressed himself thus:

A Constitution is a legal instrument giving rise, amongst other things, to individual rights capable of enforcement in a Court of law. Respect must be paid to the language which has been used and to the traditions and usages which have given meaning to the language. It is quite consistent with this, and with the recognition that rules of interpretation may apply, to take as a point of departure for the process of interpretation a recognition of the character and origin of the instrument and to be guided by the principle of giving full recognition and effect to those fundamental rights, and freedoms with a statement of which the Constitution commences.

91. Similarly, in the case of *Attorney General v Kituo cha Sheria & 7 others* [2017] KECA 773 (KLR), the Court of Appeal stated that there is a duty to recognize, enhance and protect the human rights and fundamental freedoms found in the Bill of Rights with a view to the preservation of the dignity of individuals and communities. That duty

falls on this court when determining claims of violation of human rights and fundamental freedoms.

92. On the evidence on record, and taking into account the length of the periods the petitioners were held in unlawful confinement without complying with the constitutional timelines, violating their rights guaranteed under the repealed constitution, demanding that they adduce evidence to prove that they were tortured; subjected to inhuman and degrading treatment or "*other treatment*" which was prohibited under section 74(1) of the repealed constitution, would be to demand too much of such persons when there is clear evidence that they were held and treated in violation of the repealed constitution.

93. In the circumstances, I am persuaded and, therefore find and hold, that the petitioners were subjected to inhuman or degrading punishment or other treatment in violation of their rights and fundamental freedoms.

M: Inordinate delay

94. The respondents argued that the petitioners were guilty of laches and filed this petition after inordinate delay of over thirty years. The respondents maintained that late filing of the petition was prejudicial to them because some of their witnesses were either dead or had retired. According to the respondents, due to the delay, records were also destroyed after 10 years. It was the respondents' position, that the petition should be dismissed on that account. They relied on the decision in *Wellington Nzioka Kioko v Attorney General* [2018] KECA 858 (KLR).

95. The petitioners, on their part, contended that the delay in filing the petition had been explained in that they could not have sued the repressive government of president Moi since they did not expect to get justice then. The petitioners maintained that, in any case, there is no limitation period within which to file claims challenging violation of human rights and fundamental freedoms. They relied on the decisions in *Peter M Kariuki v Attorney General* (supra) and *David Gitau Njau & Others v Attorney General* (supra), among others, to support the position that those cases were filed at almost the same time and declining their petition would be discriminatory.

96. The petitioners were arrested on various dates in 1982 and held for several months during which they were interrogated with regard to the aborted

1982 coup. Some petitioners were charged before the court martials while others were discharged on various dates between 1982 and 1983 without being taken to court martial or court of law. The petitioners contended that they could not have sued the same repressive government they had been accused of attempting to overthrow and expect to get justice.

97. There is no denial that very few people dared file claims at the time against the government over claims of violation of rights and fundamental freedoms. Some tried to sue the government after President Moi left office but even then, many victims had misgivings because much had not changed not even within the judiciary. The promulgation of the Constitution of Kenya 2010, brought hope and saw more people gain courage to file petitions challenging violation of their rights

and fundamental freedoms. Several petitions were filed from 2011 and the petitioners filed this petition on 9th April 2014 just over 3 years after the promulgation of the new Constitution about 31 years after they were arrested or discharged.

98. It is true that there is no limitation period within which one should file a constitutional petition claiming violation of constitutional rights and fundamental freedom. The repealed constitution under which the cause of action arose did not have limitation period either.

99. The issue of limitation of time has been addressed in various decisions by superior courts. In *Domnic Arony Amolo v Attorney General* [2003] eKLR, the Court dealt with the issue and observed that section 3 of the repealed constitution expressly excluded the operation of

section 22 of the Limitation of Actions Act in claims for violation fundamental rights and freedom. The Court further observed that fundamental rights provisions could not be interpreted to be subject to the heads of legal wrongs or causes of action enumerated under that Act.

100. This court associates itself with the position in *David Gitau Njau 9 others v Attorney General* (supra) where it was stated:

> *To my mind, I do not know any law or a particular provision of the Repealed Constitution that provided that a claim based on fundamental rights and freedoms has a limitation period within which the claims ought to be filed. A claim made under the Constitution is neither a claim in tort nor contract that would necessitate the application of the Limitation of Actions Act.... Further, a casual reading of the rules contained under the Legal Notice No. 133 of 2001 (Constitution*

of Kenya (Protection of Fundamental rights and Freedoms of the individual) Practice and Procedure Rules, 2001 would show that they do not place any limitations on the citizens' rights to institute a suit for the redress of violation of fundamental rights and freedoms under Section 84 of the Repealed Constitution.

101. The respondents also relied on the decision in *Wellington Nzioka Kioko v Attorney General* (supra) to support their position on the inordinate delay in filing this petition. In the *Wellington Nzioka case*, the High Court dismissed the petition on the basis that there was no proof of violation of human rights and fundamental freedoms and that the petitioner had not explained the delay in filing the petition. On appeal, the Court of Appeal agreed with the High Court that the delay had not been explained and dismissed the appeal. That petition was therefore dismissed because the delay had not been explained.

102. In *Peter M Kariuki v Attorney General* (supra) the Court of Appeal addressed the fact that the appellant had filed his petition some twenty-three years after his conviction by the court martial, but agreed with the High Court that the claim was not time barred observing, however, that the delay in lodging the claim had some level of prejudice to the respondent. The Court of Appeal did not dismiss the appeal on grounds of delay.

103. This court had also to deal with the same issue in *John Muruge Mbogo v Chief of the Kenya Defence Forces & another* [2018] KEHC 7317 (KLR) and observed that it is prudent to institute proceedings as soon as possible when there is an opportunity to do so. "*However, it is clear from the repealed Constitution and rules made under*

section 84 thereof as well as the judicial pronouncements, that there was no limitation period imposed for seeking redress for violation of fundamental rights and freedoms."

104. In *Federation of African Journalists & others v The Republic of The Gambia*; (Suit No. ECW/CCJ/APP/36/15; Judgment No. ECW/CCJ/JUD/04/18 (13th February, 2018), The Community Court of Justice of The ECOWAS held that there was no limitation clause for filing human rights claims. The Court observed that under the international best practices and the provisions of the fundamental human rights enforcement procedures of most states, claims for enforcement of human rights cannot be caught by limitation statutes.

105. The Supreme Court addressed the issue in *Monica Wangu Wamwere & 5 others v Attorney General* [2023] KESC 3 (KLR), affirming the position that there is no limitation period in claims based on violation of rights and fundamental freedoms being a transitional justice issue. However, courts are entitled to seek explanation for the delay. The supreme Court then observed:

> *[46] In considering whether the delay....was inordinate, we are of the considered opinion that transitional justice claims are context sensitive. It follows that courts ought to be particularly sensitive to the reasons adduced for the delay. At the same time, courts should balance the reasons for delay with the likely prejudice a respondent may face in defending the claim in line with the right to fair trial.*

106. In *Mburu v Attorney General & another* (Civil Appeal 380 of 2019) [2025] KECA 769 (KLR), an

appeal from the decision of this court which had dismissed the petition for not explaining the delay, the Court of Appeal (SG Kairu JA with whom W Korir JA agreed and W Karanja, JA dissenting), observed that the petitioner had explained the delay that the agony and stress he experienced during the torture "and the years thereafter" had adversely affected him but was happy that he could open up to the court and tell the truth of the injustices.

107. The SG Kairu, JA reiterated the position of the Supreme Court that:

> *The idea of transitional justice connoted the broad range of mechanisms, means or modes through which a society confronted the wrongdoings from its past. Its objective being to obtain truth and justice regarding the past so as to ensure the promotion and protection of the rule of law and durable peace going into*

the future. The need to confront and silence the ghosts of past wrongs or historical injustices was relevant in the Kenyan context. That was in light of Kenya's history which was littered with incidences of gross violations of human rights.

108. Applying the above principles to this petition, the petitioners offered an explanation for the delay in filing this petition. They were afraid of filing a case during the repressive regime. The fact of fear was not far fetched considering the circumstances of the time. Very few people would gather courage to sue the government at the time. The petitioners were also directed to go home and report to their Area Chiefs daily. Some were warned not to come to DOD in Nairobi. It would take very strong courage from a person who had experienced what the petitioners went through to venture out and try to sue the same government he was accused of attempting to overthrow. In this regard and, for my

part, the explanation for delay given by the petitioners is not frivolous.

109. The petitioners had been arrested under harrowing circumstances, held in incommunicado confinement and underwent prolonged interrogations coupled with what they said was inhuman and degrading treatment and later some were hauled into court martials; made to plead guilty; convicted and immediately sentenced. They were later discharged from the service.

110. The warning and directions to the petitioners to report to their local chiefs daily obviously scared them thereby putting them in a position of perpetual fear. The petitioners had also to get an advocate who was would be ready and willing to take up their case and act on their instructions.

The petitioners were traumatized by the experience they went through during the long period they were incarcerated. They had to gather themselves up, reconstruct events and gather courage to initiate and file this petition.

111. In that regard, therefore, taking into account the fact that there is no limitation period for filing claims for violation of rights and fundamental freedoms, the nature of the petitioners' claims and attendant violations, I hold that the delay in filing this petition was satisfactorily explained.

112. In doing so, I have not only taken into account the nature of the respondents' defence over the petitioners' claims of violations their rights and fundamental freedoms; the constitutional provisions violated and any prejudice they may

suffer, but also the fact that the there is a duty to recognize, enhance and protect human rights and fundamental freedoms in the Bill of Rights with a view to preserving the dignity of individuals and communities. This is a duty placed on this court when called upon to enforce human rights and fundamental freedoms.

N: Reliefs to grant.

113. Having determined that the petitioners were members of the armed forces and that their rights and fundamental freedoms were grossly violated, the next issue is the appropriate reliefs to grant.

114.

115. Article 23(3) of the Constitution vests on this court, jurisdiction to grant appropriate reliefs to redress violations of rights in the Bill of Rights. The

essence of such relief should be to ensure that rights enshrined in the Constitution are protected and enforced. (*Fose v Minister of safety and Security* (CCT14/96) [1997] ZACC 6.)

63. Once the court finds that rights and fundamental freedoms have been violated, it has an obligation to grant an appropriate relief as required by article 23(3) of the Constitution. This position was echoed in *Tinyefuze v Attorney General of Uganda* (supra), 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."*

116. In cases of violation of the constitution and fundamental freedoms, the court must consider whether compensation is the appropriate remedy.

The state may be called upon to pay damages for making decisions that are plainly unconstitutional; are made in bad faith; are abuse of power or violate rights and fundamental freedoms. The petitioners demonstrated that their rights were violated by the same state that was enjoined by the repealed constitution to respect, protect and preserve those rights.

117. As the Supreme Court of Canada stated in *Canada* (*Attorney General) v Power* 2024 SCC 26, (per Wagner, CJ) the charter (read constitution) provides a personal remedy that is specific to the violation of an applicant's rights which is a unique public law remedy against the state that should not be assimilated to the principles of private law remedies. An award of damages as remedy against the state for exceeding its legal powers has been

recognized as an important requirement of the rule of law.

118. 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.*

119. In cases of violation of rights and fundamental freedoms, courts grant compensation as form of deterrence against similar violation in the future. See “Damages as a Remedy for Infringement of the Canadian Charter of Rights and Freedoms”

[1984] 62 Canadian Bar Review 517- that the purpose of awarding damages in constitutional matters should not be limited to simple compensation. Such an award ought, in proper cases, to be made with a view to deterring a repetition of breach or punishing those responsible for it or even securing effective policing of the constitutionally enshrined rights by rewarding those who expose breaches, with substantial damages.

120. In determining the appropriate and just level of compensation the court will consider whether damages would vindicate the right violated; deter future breaches or whether there is alternative remedy that would be more effective than an award of damages as well as the appropriate quantum. In this petition, it was not demonstrated

that there would be another effective remedy than compensation.

121. The Court of Appeal observed in *Koigi Wamwere v Attorney General* [2015] KECA 593(KLR), that an award of damages is not an exact science and no monetary sum can really erase the scarring of the soul and the deprivation of dignity that some of these violations of rights entailed.

122. In that respect, courts merely impose some monetary compensation as a consequence of infringement of human rights and fundamental freedoms to deter future violations but not to repair already violated constitutional rights.

O: Quantum

123. On quantum, the court will consider factors such as the torture or treatment inflicted, if any;

the length of time the petitioners were held in unlawful custody; decided cases on the issue and what would be fair and reasonable award in the circumstances of each particular case. (See *Jeniffer Muthoni Njoroge & 10 others v Attorney General* [2012] eKLR).

124. The petitioners' counsel urged the court to award each petitioner general damages of Kshs. 20,000,000 and exemplary damages of Kshs 5,000, 000 each. They relied on several decisions. The respondents did not suggest any amount as compensation.

125. Considering the periods the petitioners were held in unlawful detention and confinement; the inhuman and degrading treatment they were subjected to such as being stripped naked; beatings; being kept in water logged cells being denied food and other basic necessities as well as

the inflationary trends, I am of the considered view that compensation of Kshs. 5,000, 000 for each petitioner is fair and reasonable.

126. In arriving at this figure, the Court has taken into account the awards made in *Koigi Wamwere v Attorney General* (supra) =where the Court of Appeal enhanced an award of 2.5 million to 12 million; *Eliud Wefwafwa Luucho & 4 others* (Petition No.121 of 2016 consolidated) where the court awarded Kenya shillings 5 million to each petitioner; *Francis Mwangi Munyiri v Attorney General* (petition No. 400 of 2014) where Kshs. 5 million was awarded and *Jamlik Muchangi Miano v Attorney General* [2017] eKLR where again an award of Kshs. 5 million was made.

127. In the end, having been satisfied that the 1st to 5th and 7th to 9th petitioners' rights were violated, the petition dated 4th April 2014 is allowed

and the court makes the following declarations and orders it considers appropriate.

1. *A declaration is hereby issued that the 1st to 5th and 7th to 9th petitioners' human rights and fundamental freedoms enshrined in sections 70 (a), 72(3) (b) and 74(1) of the repealed constitution were violated by agents of the state.*

2. *Each of the 1st to 5th and 7th to 9th petitioners is hereby awarded compensation of Kenya shillings five million (Kshs.5, 000,000) for violation of their rights and fundamental freedoms.*

3. *Costs and interest to the petitioners.*

Dated and delivered at Nairobi this 24th Day of October 2025

E C MWITA

JUDGE