



REPUBLIC OF KENYA



**Indimuli v Salasya (Constitutional Petition E006 of 2024)
[2025] KEHC 16251 (KLR) (12 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16251 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CONSTITUTIONAL PETITION E006 OF 2024**

S MBUNGI, J

NOVEMBER 12, 2025

**IN THE MATTER OF PROTECTION OF THE CONSTITUTIONAL RIGHTS
AND FUNDAMENTAL FREEDOMS IN SO FAR AS THE PETITIONER'S
RIGHTS UNDER ARTICLES 25, 27,28 AND 29 HAVE BEEN VIOLATED**

**IN THE MATTER OF ARTICLE 165 (3) OF THE CONSTITUTION OF KENYA 2010
AND IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF
RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE & PROCEDURE RULES 2013**

BETWEEN

PETER WALUNYA INDIMULI PETITIONER

AND

PETER KALERWA SALASYA RESPONDENT

RULING

1. Before this court for determination is a notice of preliminary objection dated 25th March 2024 raised by the respondent herein, where he states the following grounds;
 - a. The petition as is does not raise any constitutional question for the Honourable court to determine
 - b. That the petition offends the doctrine of constitutional avoidance and ripeness, as the petitioner's grievances, if any, can effectively be addressed in a forum created by statute and or in a civil suit.
 - c. That the petition does not, with reasonable precision, state the specific provision of *the constitution* and the rights threatened with violation and or violated, the matter of infringement is not stated and or substantiated, and the respondent is inhibited from understanding and appreciating the petitioner's alleged constitutional issues.



2. In support of the notice of preliminary objection, the respondent raised two issues for determination. The first issue of whether the petition offends the doctrine of constitutional avoidance, they argued that the petitioner ought to have brought the suit under the Civil Procedure Act or rules, as the constitutional petition does not raise any triable issues since he alleged physical injury. On the doctrine of constitutional avoidance, they quoted the supreme court case of Communications commission of Kenya & 5 others vs. Royal Media Services Limited & 5 others (2014) Eklr AS WELL AS South lake Panorama Limited vs. Kenya Electricity Transmission Company Limited & 3 others (2021) eKLR and stated that section 5 of the civil procedure Act donated jurisdiction to courts to hear civil disputes.
3. He holds that issues of assault and battery are a tort, and the proper forum to hear them would not be the constitutional court and filing a constitutional petition offended the doctrine of avoidance and prays that the petition be struck out.
4. On the second issue of whether the petition is set out with reasonable precision, he quoted the case of Anarita Karimi Njeru vs. Republic (1979) Eklr. He submitted that although the petitioner cited several constitutional provisions, he failed to state with precision how the same was violated, thus the Petition should be struck off with costs.

Analysis and determination.

5. I have looked at the notice of preliminary objection, including the parties' arguments, and find the following issues for determination;
 - a) Whether the petition offends the doctrine of constitutional avoidance;
 - b) Whether the petition meets the threshold of reasonable precision;
6. The respondent has argued that the petition herein offends the principle of constitutional avoidance, and as such, the issues the petitioner raises can be determined in a civil claim, having not met the threshold to institute a constitutional petition. The doctrine of constitutional avoidance is a judicial principle that discourages courts from deciding constitutional issues when a matter can be resolved through statutory or ordinary legal mechanisms.
7. In *Bernard Murage v Fine Serve Africa Ltd & 3 others* [2015] eKLR, Muriithi J held that:

“Not each and every violation of the law must be raised before the High Court as a constitutional issue. Where there exists an alternative remedy through statutory law, that route must be pursued first.”
8. The Supreme Court in *Communications Commission of Kenya & 5 others v Royal Media Services Ltd & 5 others* [2014] eKLR succinctly held:

“The principle of constitutional avoidance entails that a court will not determine a constitutional issue when a matter may properly be decided on another basis. It is a sound judicial practice for courts to decide cases on non-constitutional grounds if that course is available.
9. Likewise, in *Speaker of the National Assembly v James Njenga Karume* [1992] eKLR, the Court of Appeal stated that where a clear procedure is prescribed by law for redress of a grievance, that procedure must be strictly followed before resorting to constitutional remedies.
10. In relying on the above mentioned principles in the present case, the petitioner's allegations concern an act of physical assault by the respondent. Such an act constitutes both a criminal offence under the



Penal Code and a civil wrong under tort law. Both the civil and criminal courts have clear jurisdiction and procedures for redress of such grievances.

11. I find that the petitioner’s attempt to file a constitutional petition in what is essentially a tortious claim offends the doctrine of constitutional avoidance. The alleged act does not require constitutional interpretation. The High Court’s constitutional jurisdiction is invoked where there is a genuine constitutional controversy, not where ordinary civil remedies are available and adequate to resolve the tortious wrong.
12. In *John Harun Mwau v Peter Gastrow & 3 others* [2014] eKLR: the court held “*The Constitution* should not be turned into a general substitute for the normal procedures for adjudicating civil or criminal disputes.”
13. The doctrine of ripeness also comes into play. It requires that a constitutional issue be mature for adjudication and not merely speculative or theoretical. In the present case, the facts require proof of assault, a matter of evidence not suitable for resolution at a constitutional level. The claim is therefore not ripe for constitutional determination.
14. For the above reasons stated, I find that the petition offends the doctrine of constitutional avoidance and amounts to an abuse of the constitutional process, and as such, should be filed in the right forum to be heard and determined.
15. The respondent raised the element of reasonable precision in a constitutional petition. The test for reasonable precision in constitutional pleadings was set in *Anarita Karimi Njeru v Republic* [1979] eKLR, where the court held that a petitioner must set out with reasonable clarity the specific provisions alleged to have been infringed, the manner of infringement, and the nature of injury caused.
16. The principle was elaborated further by the Court of Appeal in *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* [2013] eKLR, where the Court emphasized that the requirement of precision is not a mere technicality but a substantive rule of pleading.
17. The Court in *Trusted Society of Human Rights Alliance v Attorney General & 2 others* [2012] eKLR warned that a party cannot simply throw constitutional provisions at the Court and expect it to discern the alleged violation on its own. The pleadings must speak with clarity.
18. In the present case, although the petitioner cited violation of his fundamental rights and freedom under Articles 25, 27, 28 and 29 of *the Constitution* and highlighted how he thinks those articles have been violated, so to me he has met the test of precision.

Determination

19. Having analysed the pleadings and authorities, I am persuaded that the petition offends the doctrines of constitutional avoidance and ripeness.
20. The Court therefore finds the Notice of Preliminary Objection dated 25th March 2024 has merit and accordingly, the Constitutional Petition dated 15th March 2024 is hereby struck out for being prematurely brought before the court let the Petitioner first invoke the appropriate jurisdiction as provided for by the law
21. Each party to bear its own costs of the petition and for the preliminary objection for the preliminary objection has succeeded but not on all grounds relied on by the Respondent.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 12TH DAY OF NOVEMBER, 2025.



S.MBUNGI

JUDGE

In the presence of:-

CA: Angong'a

Mr. Maloba for the Respondent, present online.

Mr. Kevin Mukavale for the Petitioner absent, though aware of the date for ruling.

Maloba: I pray for a copy of ruling .

Court: Ruling to be uploaded on the CTS forthwith.

