



**Mwenda v Inspector General of National Police Service & 3 others (Constitutional
Petition 24B of 2023) [2025] KEHC 16681 (KLR) (11 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 16681 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CONSTITUTIONAL PETITION 24B OF 2023**

HM NYAGA, J

NOVEMBER 11, 2025

**IN THE MATTER OF ARTICLES 2, 10, 19, 20, 21, 22, 23,25(A), 26,
28,29, 40, 43,47, 48,159,165, 258,259 & 260 OF THE CONSTITUTION**

BETWEEN

FREDRICK KALERIA MWENDA PETITIONER

AND

INSPECTOR GENERAL OF NATIONAL POLICE SERVICE .. 1ST RESPONDENT

INDEPENDENT POLICE OVERSIGHT AUTHORITY 2ND RESPONDENT

NATIONAL POLICE SERVICE 3RD RESPONDENT

HONOURABLE ATTORNEY GENERAL 4TH RESPONDENT

JUDGMENT

1. The Petitioner filed the Petition dated 2nd October, 2023, seeking the following orders:-
 - a. A declaration that the respondents' action and or inactions of failing to investigate the complaints lodged by Petitioner violate and or threaten to violate his right to life under article 26(1) of *the Constitution*.
 - b. A declaration that the respondent's action of failing to investigate the complaint lodged by the Petitioner led to the violation of the Petitioner's right to human dignity under article 28 of *the Constitution*.
 - c. A declaration that the respondents' action of failing to investigate the complaint lodged by the Petitioner led to the violation of the Petitioner's right to freedom and security of persons under article 29 of *the Constitution*.



- d. A declaration that as a result of the respondents' failure to investigate the complaint lodged by the Petitioner the respondents violated the Petitioner's right to property under Article 40 of *the Constitution*.
 - e. A declaration that as a result of the respondents' failure to investigate the complaint lodged by the Petitioner the respondents violated the Petitioners' socio-economic rights under article 43(a) and (b) of *the Constitution*.
 - f. A declaration that the failure by the 3rd respondent to investigate the complaint, lodged by the Petitioner violated the Petitioners' right to fair administrative action under Article 47 of *the Constitution*.
 - g. A declaration that the failure by the 3rd respondent to investigate the complaint lodged by the Petitioner violated the petitioners' right to access to justice under article 48 of *the constitution*.
 - h. A declaration that the failure by the 3rd respondent to investigate the complaint lodged by the petitioner violated the petitioner's rights under article 21(1) of *the Constitution*.
 - i. An order directing the 1st, 2nd and 3rd respondents to investigate all the complaints lodged by the Petitioner.
 - j. Compensation for the violation of the Petitioners' rights under articles 26, 28, 29, 40, 43, 47 and 48 of *the Constitution*
 - k. Any other relief that the honourable committee deems fit to grant in the interest of justice
 - l. Costs of claim
2. The Petitioner's case, in a nutshell, is that he is a businessman at Laare in Meru County. That he entered into a lease agreement with one M'Kiombe Bakiome, but despite discharging his obligations, under the said agreement, he was unable to take possession of the land leased to him. That he then filed a suit in Maua Chief Magistrate's Court to enforce the said agreement. That soon thereafter, he started receiving threats to his life and so he went to report the case at Laare Police Station and then Maua Police Station but no action was taken. He followed up the issue with the DCIO and CCIO but no action was taken either.
 3. The Petitioner further avers that he was later charged in Mau Chief Magistrate's Court Criminal Case No. 349 of 2019 with giving false information to a person employed in the public service. That due to fear for his life, he fled and sought the assistance of the Kenya National Human Rights Commission.
 4. It is the Petitioner's case that the reaction of the police over his complaint amounts to a violation of his right to life under Article 26(1) of *the Constitution*, the right to freedom and security under Article 29 of *the Constitution* and right to human dignity under Article 28 of *the Constitution*.
 5. The Petitioner further avers that there has been a violation of the following rights: -
 - a. Highest attainable standard of health, and having under Article 43(1) (a) and (b).
 - b. Right to property under Article 40.
 - c. Right to fair administrative action under Article 47.
 6. The 1st, 3rd and 4th respondent filed grounds of opposition. It was stated that:-
 - a. The petition lacks in precision; thus, it fails the test outlined in the case of Anarita Karimi Njeru.



- b. The petition raises issues of contract law as the basis for instituting the suit, therefore it violates the doctrine of Constitutional Avoidance as this matter can be resolved via another forum.
 - c. The Petition is unripe and would subject this court to an academic exercise since investigating organs are still working on the allegations raised by the Petitioner for meaningful action to be taken.
 - d. The petitioner is a fugitive of the law, having been charged in Maua Law Courts in criminal Case No. 384 of 2018 and upon absconding severally, a warrant of arrest was issued on 19th November, 2019.
 - e. That this petition is an outright abuse of the court process, as the Petitioner is on a detestable and deliberate spree of misleading the court by alleging violation of rights without full disclosure of the events that happened prior to instituting this suit.
 - f. Law enforcement officers have repeatedly reached out to the Petitioner to furnish them with more information to enable them make necessary arraignments, but the petitioner has never availed himself to help with further investigations.
7. The said respondents also filed a replying affidavit sworn by Samuel K. Bett, SSP, the County Criminal Investigations Officer(CCIO). He confirmed that the Petitioner filed a report at Laare Police station vide OB/18/31/08/2018 over an alleged mysterious death, saying that on 20th of 2017(sic), he had been informed by one Joseph Kaari that one M'Ikiome Baikiome had been killed and his body hurriedly buried. That the officer who took over the case tried to reach the Petitioner several times but he was unreachable.
 8. The deponent further confirmed receipt of a letter from the 2nd respondent dated 30/8/2021 which they responded to. That later, the petitioner called one of the police officers using a different number and claimed to be in hiding due to personal reasons. That he promised to avail himself but never did so. That the 2nd respondent did inform the petitioner's advocates of their investigation's findings.
 9. The deponent described the Petitioner as a fugitive, who has an active warrant of arrest issued by Maua Court.
 10. In its response, the 2nd respondent filed a replying affidavit sworn by or a Ruth Kaguta, a Senior Assistant Director, complaints Services.
 11. The officer stated the functions and mandate of the, 2nd respondents and its relationship with the 3rd respondent.
 12. In regard to the matter at hand, it is deponed that the 2nd respondent learnt of the matter through a letter from the Petitioner's advocates dated 16th December, 2019. That due process was accorded to the complaint and it wrote to the 3rd respondent seeking more information. That the 3rd respondent responded, stating that the alleged threats were not true. They then informed the Petitioners advocates. That the said advocate then informed the 2nd respondent, that the Petitioners statement had been processed by officer Karithi and to date the Petitioner has not provided it with any update of dissatisfaction.
 13. To the 2nd respondent, this Petition is premature as the case was under investigations.
 14. Parties filed submissions which I will not rehash. It suffices to state that I have duly considered them and will where necessary refer to them.
 15. The issues for determination are:-



- a. Whether the Petition has been pleaded with precision.
 - b. Whether the doctrines of ripeness and constitutional avoidance apply herein.
 - c. Whether the Petitioner has proven the violation of his rights under Articles 2(1), 26(1), 28, 29, 40, 43(a), 47 and 48 of *the Constitution*.
 - d. What remedies are available to the Petitioner.
 - e. Who bears the costs of this petition.
16. The threshold, for a Constitutional Petition were set out in the well known case of Anarita Karimi Njeru v Republic [1979] KLR 159 where it was held that a Constitutional petition should set out with a degree of precision the petitioner’s complaint, the provisions infringed and the manner in which they are alleged to be infringed.
 17. It is thus well settled law that in a constitutional petition therefore, a party is not supposed to merely cite constitutional provisions. He/she must with some reasonable degree of precision identify the constitutional provisions that are alleged to have been violated or threatened to be violated and the manner of the violation and/or threatened violation and state some particulars of alleged infringement to enable the respondent to be able to respond to each allegation accordingly.
 18. This principle was later reaffirmed by the Court of Appeal in the case of Mumo Matemo vs Trusted Society of Human Rights Alliance & 5 others (2013) eKLR. The Court at paragraph 87(3) of the judgment stated as follows: -

“It is our finding that the petition before the High Court was not pleaded with precision as required in Constitutional Petitions. Having reviewed the petition and supporting affidavit we have concluded, that they did not provide adequate particulars of the claims relating to the alleged violations of *the constitution* of Kenya and the *Ethics and Anti-corruption Commission Act, 2011*, accordingly the petition did not meet the standard enunciated in the Anarita Karimi Njeru case.”

19. In Peter Michobo Muiru v Barclays Bank of Kenya Ltd & another [2016] eKLR while discussing the principles enunciated in Anarita Karimi Njeru’s case the court observed as follows: -

“The principle, as this court has previously stated, does not however equate absolute precision. There is no need for absolute and artificial specificity: see Kevin Turunga Ithagi – v- Hon. Justice Fred Ochieng & 5 Others (No.1) HCCP No.442 of 2015 [2015] eKLR. The general approach should be that each case must be independently viewed and understood by the court and where the court as well as the Respondent can painlessly identify and understand the petitioner’s case as well as the constitutional trajectory the case takes, then the merits of the case ought to be ventured into. Stalling the case through the technicality of want of formal competence will take a back seat. As was stated in the case of Donovan Earl Hamilton –v- Ian Hayles (Claim No. 2009 HCV 04623) by the Supreme Court of Judicature in Jamaica, the striking out of pleadings in constitutional petitions should be done only in the clearest of cases.

The principle established in the Anarita Karimi Njeru’s case should thus not be applied line hook and sinker and the court must always be cautious to avoid impeding the course of justice by denying a party access to the court: see Samuel Gunja Sode & Another –v- The County Assembly of Marsabit & 2 others [2016] eKLR, Nation Media Group Ltd –



v- Attorney General [2007] 1 EA 261 as well as the Court of Appeal decision in Peter M. Kariuki –v- Attorney General [2014] eKLR.”

20. I am of the view that the Petitioner was over exuberant in setting out the Articles of *the Constitution* that are alleged to have been violated like that under Article 43 (1) (a) and (b) of *the Constitution*.
21. That said, I find that the Petition has otherwise set out with precision the other rights that have been violated.
22. Therefore, in my view the Petition as drawn passes the test set out in Annarita Karimi Njeru(Supra).
23. The respondents have also submitted that the petition is unripe for determination by the court.
24. The Ripeness doctrine is one facet of the broader principle of non-justiciability. It is a jurisdictional issue that bars a court from considering a dispute whose resolution has not crystallized enough as to warrant the court’s intervention. Its operation is informed by the idea that there exist other fora with the capacity to resolve the dispute other than court process.
25. The doctrine stipulates that a court ought not to engage in premature adjudication of matters. While the court retains the discretion to determine whether on the circumstances of any matter before it ought to be determined by it, it ought not to determine issues which are not yet ready for determination or are only of academic interest.
26. These principles were clearly set out by The Supreme Court in Communications Commission of Kenya & 5 Others v Royal Media Services Ltd & 5 Others Pet. 14A, 14B & 14C of 2014 of [2014] eKLR where it held:

“The doctrine focuses on the time when a dispute is presented for adjudication. The Black’s Law Dictionary 10th Edition, [supra] at page 1524 defines ripeness as:

The state of a dispute that has reached, but has not passed, the point when the facts have developed sufficiently to permit an intelligent and useful decision to be made

Courts should therefore frown upon disputes that are hypothetical, premature or academic which have not fully matured into justiciable controversies.”

27. In Wanjiru Gikonyo & 2 others v National Assembly of Kenya & 4 others [2016] eKLR the court reiterated the same principles. It held that;

“The extensive quotations were deliberate. It is clear from a review of the above case law that there is now a distinct and coherent jurisprudence within our jurisdiction on the justiciability dogma. There is settled policy with clear arguments as well as out of repetitive precedent that courts and judges are not advise-givers. The court ought not to determine issues which are not yet ready for determination or is only of academic interest having been overtaken by events. The court ought not to engage in premature adjudication of matters through either the doctrine of ripeness or of avoidance. It must not decide on what the future holds either.

It is however to be noted that the court retains the discretion to determine whether on the circumstances of any matter before it still ought to be determined.”

28. From the material before me, it is apparent that the Petitioner’s report booked as OB/18/31/08/2018 related to the death of one M’Ikiome Baikiome, and not threats to his life as pleaded. It is also noted



that there is no evidence that the Petitioner followed up on the complaint thereafter, and it was only until in 2021 that his advocate wrote to the respondents.

29. From the court proceedings before the Chief Magistrate's Court at Maua, the Petitioner was charged on 5th February, 2019. On 14th March, 2019, he told the court that his life was in danger, but he never expounded on the issue. The court did not address the issue. From 19th November, 2019, the petitioner absconded court, resulting in a warrant of arrest being issued and subsequent withdrawal of the case under Section 87(a) Criminal Procedure Code(CPC).
30. Clearly, the Petitioner, having lodged a complaint, failed follow up on the issue and only resurfaced with a letter from the advocate, almost three years later. Before then there is ample evidence that he was advised to report to the police to give further information, but he failed to do so for some time.
31. Similarly, there is evidence that when the 2nd respondent took up the matter, the Petitioner never really assisted it with the relevant information. With that forum available to the Petitioner, he ought to have pursued it first before filing this petition.
32. It is thus difficult to understand how the Petitioner can raise a complaint, when he did not follow up the case. In agreement with the respondents, I find that this petition offends the doctrine of ripeness.
33. The above finding determines the petition's competence.
34. Even if I was to find that the Petitioner rightly came to this court, he would still have an uphill task of proving that, that there was inaction by the respondents, when it is clear that they tried to reach him to no avail. If he did not go to file a further report as requested, then how were the respondents expected to act?
35. In my view, the petitioner has not proved that the respondent, violated any of his rights. As a matter of fact, the respondents appear to have gone out of their way to address the issues that the Petitioner had raised but he never assisted them to execute their mandate.
36. That being the case, I find no grounds to fault any of the respondents for not acting.
37. Having found that the Petition offended the principles of ripeness, that is enough to determine this petition. The court cannot proceed on an academic exercise.
38. The Petition is hereby dismissed.
39. On costs, I find that the best course is to order that each party bears its own costs. It is so ordered.

DATED, SIGNED & DELIVERED AT MERU THIS 11TH DAY OF NOVEMBER, 2025.

H. M. NYAGA

JUDGE.

