



**Masika v Gilanis Supermarket Limited (Constitutional Petition
E021 of 2024) [2025] KEHC 16201 (KLR) (3 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 16201 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CONSTITUTIONAL PETITION E021 OF 2024**

SM MOHOCHI, J

NOVEMBER 3, 2025

**IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS
AND FREEDOMS UNDER THE CONSTITUTION OF KENYA TO WIT CONTRARY
TO ARTICLES 10, 25, 27, 28, 29, 31, 35, 47 AND 50 OF THE CONSTITUTION 2010**

BETWEEN

SARAH NECHESA MASIKA PETITIONER

AND

GILANIS SUPERMARKET LIMITED RESPONDENT

JUDGMENT

1. I find this Petition to be premature, the petitioner alleges to have reported the assault and the police never acted on it. I have had a look at the Occurrence Book referenced and it does not reveal a complaint of assault but rather a complaint of harassment.
2. The Petitioner initiated this instant action within a fortnight of the incident and has not show cased any efforts at follow up with the police.
3. The Petitioner has not provided sufficient evidence in proof and has not laid basis for vertical application of fundamental rights against the corporate entity.
4. The Petitioner had an option of initiating a Common Law Tort Claim but elected to litigate the same as a Constitutional Petition.
5. Having found no merit in this petition, I am constrained to dismiss the same with costs.
6. For the adjudication of allegation of contravention of non-derogatory fundamental right as is enshrined in Article 29(d) as is domesticated by the *akn ke act 2017 12 Prevention of Torture Act*, the onus is on the Petitioner to show case the role of the state as a basis of invocation of vertical application.



7. In other words, for a vertical application to be deployed it must be shown that the state failed to protect the Petitioner, sanctioned the transgression or acquiesced to the same. The same is lacking.
8. The petitioner may also show case lack of a prompt and impartial investigation by the state.
9. It cannot be that a Constitutional Petition alleging torture can be prosecuted to the exclusion of the state.
10. I award costs to the Respondent in line with Section 27 of the *Kenya Civil Procedure Act 1924*.

SIGNED DATED AND DELIVERED AT NAKURU

THIS 3RD DAY OF NOVEMBER, 2025.

MOHOCHI S.M.

JUDGE

