



REPUBLIC OF KENYA



**KENYA LAW**  
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**Muindi v Mwandigha (Petition 6 of 2023)**  
**[2025] KEHC 15816 (KLR) (3 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 15816 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT MACHAKOS**

**PETITION 6 OF 2023**

**RC RUTTO, J**

**NOVEMBER 3, 2025**

**IN THE MATTER OF ARTICLES 19, 20, 21, 22, 23, 24, 25, 28, 31,**  
**48, 50 & 159 (2) (A) & (B) OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF THE ALLEGED CONTRAVENTION**  
**OF RIGHT TO HUMAN DIGNITY AND PRIVACY**

**UNDER ARTICLES 28 & 31 OF THE CONSTITUTION OF KENYA**

**BETWEEN**

**MIRIAM NDUKU MUINDI ..... PETITIONER**

**AND**

**PAUL MWANDIGHA ..... RESPONDENT**

**JUDGMENT**

1. The Petitioner has filed this petition pursuant to Articles 19, 20, 21, 22, 23, 24, 25, 28, 31, 48, 50 & 159 (2) (a), & (b) of *the Constitution* of Kenya seeking the following reliefs;
  - a. A declaration that the taking and circulation of the Petitioner's nude photographs by the Respondent is an infringement on the petitioner's right to human dignity and right to privacy as provided for under Articles 28 and 31 of *the Constitution* of Kenya.
  - b. A permanent injunction to issue stopping the Respondent from circulating and or distributing the illegally and unlawfully taken nude photographs of the Petitioner herein.
  - c. An order do issue compelling the Respondent to pull down the illegally and unlawfully take nude photographs from his social media.



- d. An order do issue compelling the Respondent to issue public apology in a newspaper of national circulation for illegally and unlawfully taking and circulating and/or distributing the Petitioner's nude photographs.
- e. General damages for mental and psychological trauma caused by the Respondents actions to illegally and unlawfully take nude photographs of the Petitioner and circulate the same on his WhatsApp and Facebook pages.

### **Factual Background**

2. The facts according to the Petition are that the Petitioner is married to one Peter Kamau Wanjohi, and they have two children. The Petitioner states that the Respondent is known to her, and that they have met on several occasions, both privately and in public. She alleges that the Respondent illegally, unlawfully, and without her consent, took nude photographs of her and subsequently shared them on his social media platforms, including WhatsApp and Facebook. These images have reportedly been widely circulated within Machakos County and beyond.
3. The Petitioner claims she was shocked to receive calls and screenshots of her nude photographs appearing on social media. As a result, she has faced ridicule and mockery by family, friends, and neighbours. She further states that she was humiliated on her Facebook page and WhatsApp status, prompting her to deactivate both accounts. She asserts that she has suffered severe psychological and mental distress, has sunk into depression, and even contemplated suicide.
4. The Petitioner adds that she has sought medical treatment and counselling due to the trauma. She claims that the photographs were also sent to her husband, leading to the breakdown of her marriage. She now resides with her parents along with her two children. She argues that the Respondent's actions violated her rights to human dignity and privacy as guaranteed under Articles 28 and 31 of *the Constitution*, and she seeks redress under Articles 22 and 23 of *the Constitution*.
5. In support of the Petition, the Petitioner has sworn an affidavit reiterating the above facts and has annexed copies of the impugned photographs, treatment notes and screenshots of the said photographs allegedly sent to her husband.

### **Respondent's reply**

6. In a Replying Affidavit sworn on 15<sup>th</sup> May 2023, the Respondent denies the allegations. He asserts that the photographs have not been linked to his social media accounts and claims that he first learned of their existence when his mother inquired about them via WhatsApp on 23<sup>rd</sup> March 2023.
7. The Respondent further states that he was admitted at Coptic Hospital from 15<sup>th</sup> to 17<sup>th</sup> March 2023 due to illness, making it impossible for him to have circulated the photographs during that time. He also claims that the images depict both himself and the petitioner, and urges if he had shared them, he would have edited out his own images to avoid personal embarrassment.
8. The Respondent maintains that the Petitioner's averments are unfounded, and that he too has suffered embarrassment, public ridicule, and mockery. He denies having circulated or shared the photographs, or violated the Petitioner's Constitutional rights to human dignity and privacy.

### **Petitioner's Supplementary Affidavit**

9. In response, the Petitioner filed a Supplementary Affidavit sworn on 29<sup>th</sup> May 2023. She contends that the Respondent has not denied taking the photographs. She argued that the images, clearly show



- the respondent as the person who captured them and that he had possession and control over the content. Therefore, she asserts he bears the responsibility of explaining how they were leaked and widely circulated on WhatsApp and Facebook.
10. The Petitioner further notes that the Respondent admitted that the photographs were circulating on WhatsApp, having been sent to him by his mother, who had received them from his father. She emphasizes that neither party has explained how the Respondent's father obtained the images, indicating that the photographs are widely shared.
  11. On the issue of hospitalization, the Petitioner challenges the credibility of the Respondent's claim arguing that the medical records presented do not indicate that he was incapacitated or unable to use his phone during the stated period. She further states that she continues to reside with her parents, and that efforts by her family, relatives, elders, and clergy to reconcile her with her husband have been unsuccessful. The Petitioner also disputes the respondent's assertion that he has been ridiculed, maintaining that any such consequences, if true, are self-inflicted and arise from his own conduct.
  12. Both parties filed their respective witness statements. The Respondent's witness statement essentially reiterates the contents of his Replying Affidavit. The Petitioner submitted her own witness statement along with those of George Mutua Muindi, Moses Makau Mwanzia and Silvester Mutuku Musyoki.
  13. On 13<sup>th</sup> November 2024, the Court directed the parties to file written submissions in respect of the Petition. The Petitioner's submissions are dated 4<sup>th</sup> December 2024 while the Respondent's submissions are dated 17<sup>th</sup> May 2025.

#### **Petitioner's Submissions**

14. The Petitioner began her submissions with a brief summary of the facts of the case as outlined in her Supporting Affidavit. She reiterated that she is a married woman and a mother of two children and argued that she stands to suffer greater harm from the continued circulation of her nude photographs. She describes her involvement with the Respondent, whom she characterized as an adventurous young man and a university student eager to showcase his exploits to the world.
15. In support of her case, the Petitioner relied on the decisions in *S.W.M v G.M.K [2012] eKLR* and *Communications Commission of Kenya & 5 Others v Royal Media Services Limited & 5 Others [2014] eKLR*, in submitting that a person alleging infringement of a fundamental right or freedom must clearly specify the Constitutional provision allegedly violated, the manner of infringement, and the nature and extent of that infringement.
16. The Petitioner submitted that the constitutional provisions infringed are Articles 28 and 31 of *the Constitution* of Kenya. On the manner of infringement, she argued that the Respondent, by illegally and unlawfully taking nude photographs of her without her consent and subsequently sharing them on social media platforms, violated her right to dignity under Article 28, and her right to privacy under Article 31(c), which protects individuals from the unwarranted disclosure of personal or family-related information.
17. On the nature and extent of the infringement, the Petitioner submitted that it is undisputed that nude photographs of her were taken. She only became aware of their existence after receiving them from friends and relatives, who mocked and ridiculed her. She further submitted that the photographs continue to circulate widely on social media, and even with a court order, it would be practically impossible to remove them entirely, as they have been repeatedly shared, re-shared, and saved by various users for personal use.



18. The Petitioner stated that she has fallen into depression and requires constant monitoring, due to suicidal ideation. She explained that she was unable to attend court and testify in person because she feared being judged by individuals who may have seen the photographs. She contended that the Respondent, in his Replying Affidavit, failed to demonstrate that he has suffered any prejudice or that his own rights were infringed as a result of the photographs' circulation on social media.
19. The Petitioner further submitted that the medical records annexed to the Respondent's Replying Affidavit do not indicate that he was admitted to the Intensive Care Unit or otherwise incapacitated during the relevant period, thereby failing to establish that he was unable to share the photographs. She urged that this supports her claim that her rights to dignity and privacy were indeed violated by the Respondent's actions.
20. In further support of her submissions, the Petitioner relied on the decisions in *S v Makwanyane & Another* (CCT3/94) [1995] ZACC 3 and *M.W.K & Another v Attorney General & 4 Others*; Independent Medical Legal Unit (IMLU) (Interested Party); The Redress Trust (Amicus Curiae) [2017] eKLR, where the courts emphasized the centrality of human dignity as an indispensable constitutional value and the importance of providing effective remedies for its violation. The Petitioner urged the Court to award her Kshs.20,000,000/- as reasonable compensation, submitting that although no amount of monetary award can fully restore her dignity or undo the psychological and social harm caused, such an award would serve as a measure of justice and deterrence.
21. In conclusion, the Petitioner urged this Court to find in her favour and grant the reliefs sought in the Petition.

### **Respondent's Submissions**

22. The Respondent identified three issues for determination, that is:
  - i. Whether the petition meets the threshold of a Constitutional Petition; ii. Whether the Respondent illegally and unlawfully circulated and/or distributed the nude photographs of the Petitioner; and
  - iii. Whether the Petitioner is entitled to damages and the costs of the Petition.
23. On the first issue, the Respondent submitted that the petition does not meet the threshold of a Constitutional Petition as set out in *Anarita Karimi Njeru v Republic* [1979] KLR 154 and *Matiba v Attorney General* [HC Misc. Appl. No. 666 of 1990]. It was argued that, apart from citing the omnibus provisions of *the Constitution*, the Petitioner failed to provide specific particulars of the alleged violations or demonstrate the manner in which the rights were infringed.
24. On the second issue, the Respondent contended that the alleged circulation of the nude photographs could not be linked to his WhatsApp or Facebook accounts. He argued that the Petitioner had not presented any evidence to prove that the accounts used to disseminate the photographs belonged to him or were associated with him. The Respondent further asserted that the Petitioner must be guided by the provisions of the *Evidence Act* specifically Sections 106B, 107 and 109 which require the Petitioner to establish, on a balance of probabilities, that the Respondent was indeed responsible for circulating the photographs. He maintained that the Petitioner cannot merely present the photographs before the Court and invite it to presume his responsibility. Additionally, the Respondent argued that his failure to lodge a complaint regarding the alleged circulation does not, in itself, constitute proof of his involvement.



25. While making reference to Section 106B of the *Evidence Act*, the Respondent submitted that the photographs, as presented, are inadmissible in evidence. Consequently, there is no proof supporting the Petitioner's allegations. He relied on the case of *Miller v Minister of Pensions* [1947] 2 All ER 372 to urge that, given the inadmissibility of the photographs, the Petitioner has failed to meet the requisite standard of proof for the alleged violation of Articles 28 and 31 of *the Constitution*.
26. Regarding damages and costs, the Respondent submitted that the Petitioner had not provided any basis for the proposed award of Kshs.20,000,000/=. He urged that the Petitioner neither explained how that figure was determined nor justified it with any legal or factual foundation. The Respondent described the amount as exorbitant and unsupported by precedent. He further submitted that, should the Court consider an award, a nominal sum of Kshs. 100,000/- would be reasonable. In support of this position, he relied on the case of *FAF (Suing on her own behalf and as next friend of SAS and NAMS) v Norwegian Refugee Council* [2019] eKLR, where the Court awarded a global sum of Kshs. 219,000/= as compensation for the violation of Article 31 of *the Constitution*.
27. In conclusion, the Respondent urged this Honourable Court to find that the photographs are inadmissible under Section 106B of the *Evidence Act* and therefore, the Petitioner is not entitled to the reliefs sought. He prayed that the Petition be dismissed with costs.

### **Analysis and Determination**

28. I have considered the issues raised in the petition, the Respondent's reply, and the respective submissions. The key issues that arise for determination are:
  - a. Whether the petition meets the threshold of a constitutional petition;
  - b. Whether the electronic evidence tendered is admissible;
  - c. Whether the Petitioner has proved on a balance of probabilities that the Respondent took and/or circulated the nude photographs;
  - d. Whether the Petitioner is entitled to damages.

### **Whether the petition meets the threshold of a constitutional petition**

29. It is a well-established principle that a party alleging breach of fundamental rights and freedoms must clearly identify the specific right infringed, and demonstrate how that infringement occurred in relation to them. The court in the case of *Tito Alai Okumu v Commissioner of Customs & Another* [2012] KEHC 5212 (KLR) made reference to the case of *Samura Engineering Ltd & Others v Kenya Revenue Authority* Nairobi Petition No. 54 of 2011(Unreported) which emphasised that;

“(46) The proceedings before the court are essentially for the enforcement of fundamental rights and freedoms protected by *the Constitution* provided under Article 22 and 23 of *the Constitution*. The purpose of the procedure enacted in Article 22 of *the Constitution* is to enforce specific fundamental rights and freedoms of the individual guaranteed under the Bill of Rights set out in Part 2 of Chapter 4 of *the Constitution*.

(47) Since enforcement of the Bill of Rights is a special jurisdiction, it is therefore an incident of this jurisdiction that a party who invokes this special Article 22 jurisdiction has a duty to set out clearly the sections or provisions it is claimed have been infringed or violated and show how these sections are infringed in relation to him or her. This principle has been established in a



long line of cases since *Anarita K Njeru v Republic* (Supra). (See also *Meme v R* (Supra) and more recently in respect of *the Constitution*, *Kerosi Ondieki v The Public Service Commission & Others Nairobi Petition No. 45 of 2011* (Unreported).”

30. Further, Rule 4(1) of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (the “Mutunga Rules”) provides that:

“Where any right or fundamental freedom provided for in *the Constitution* is allegedly denied, violated or infringed or threatened, a person so affected or likely to be affected, may make an application to the High Court in accordance to these rules.”

31. Rule 10 of the “Mutunga Rules” outlines the formal requirement of a constitutional petition. Specifically, Rule 10(2) mandates that a petition must disclose;

- a. The petitioner’s name and address;
- b. The facts relied upon;
- c. The constitutional provision violated;
- d. The nature of injury caused or likely to be caused to the petitioner or the person in whose name the petitioner has instituted the suit; or in a public interest case to the public, class of persons or community;
- e. Details regarding any civil or criminal case, involving the petitioner or any of the petitioners, which is related to the matters in issue in the petition;
- f. The petition shall be signed by the petitioner or the advocate of the petitioner; and
- g. The relief sought by the petitioner.”

32. In summary, a petition seeking enforcement of fundamental rights and freedoms under Article 22 must clearly set out the material facts constituting the cause of action which is the specific violation of the fundamental rights and freedoms. It should not merely recite Constitutional provisions or legal arguments but must demonstrate the specific violation alleged and the injury on the petitioner or the public, if a petition is filed in public interest.

33. The present petition centers on an alleged violation of the Petitioner’s rights to dignity and privacy under Articles 28 and 31 of *the Constitution*. It sets out detailed facts including (a) the taking of nude photographs without consent; (b) their dissemination via WhatsApp and Facebook; (c) resulting psychological harm, medical treatment and family breakdown. From the petition, one can identify the specific rights alleged to be violated (being Article 28 and 31), the manner of infringement attributable to the respondent and the injury suffered as a result of the alleged infringement. These averments are squarely within the constitutional right-infringement paradigm and satisfy the threshold of a constitutional petition.

34. The Respondent’s objection that the petition merely cites omnibus provisions is adequately addressed by the detailed factual pleadings and supporting exhibits attached to the petition which particularize the alleged invasion of dignity and privacy. The petition therefore meets the Constitutional threshold.



## **Whether the electronic evidence tendered (photographs and social-media screenshots) is admissible**

35. The Respondent contests the admissibility of the electronic evidence presented by the Petitioner, specifically, the screenshots from an online page titled “Leaked Videos in Kenya” and a Whatsapp screenshot of “Kenyan Trending videos”. The Respondent argues that these exhibits do not comply with the requirements of Sections 106A and 106B of the *Evidence Act* and should therefore be excluded from consideration by this Court.
36. Section 106A which provides that the contents of electronic records may be proved in accordance with the provisions of Section 106B. On its part Section 106B (1) provides as follows:
- “106B (1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied on optical or electro-magnetic media produced by a computer (herein referred to as a computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein where direct evidence would be admissible.”
37. The conditions mentioned in Sub-section (1) are provided in Sub-section (2) in the following terms:
- a. the computer output containing the information was produced by the computer during the period over which the computer was used to store or process information for any activities regularly carried out over that period by a person having lawful control over the use of the computer;
  - b. during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;
  - c. throughout the material part of the said period the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its content; and
  - d. the information contained in the electronic record reproduces or is denied from such information fed into the computer in the ordinary course of the said activities.
38. Subsection (4) further requires that a certificate accompany the electronic record. This certificate must identify the electronic device, describe the manner in which the record was produced and be signed by a person in a responsible position regarding the operation of the device.
39. As was held in the case of *Millitonic Mwendwa Kimanzi Kitute v Independent Electoral and Boundaries Commission & 2 others* [2017] eKLR, under Section 106B of the *Evidence Act*, the proponent of an electronic record bears the burden of satisfying the conditions set out in section 106B and establishing the authenticity of the electronic record.
40. In the present case, the Petitioner produced printed photographs and screenshots allegedly obtained from social media platforms and WhatsApp messages, showing the circulation of her nude photographs. These exhibits were not accompanied by a certificate as required under Section 106B(4).



However, the Petitioner, explained that she obtained the screenshots from her own phone and from messages forwarded to her by friends and relatives who had seen the images online.

41. The Respondent does not dispute that the photographs in question depict both himself and the Petitioner nor does he deny having possession of the images. His defence is that he did not circulate them and that they appeared online while he was admitted at Coptic Hospital. However, he has not, demonstrated that he was incapacitated or that his devices were inaccessible during that period. His explanation does not sufficiently rebut the possibility that he directly or indirectly facilitated the dissemination of the images.
42. In *Roshanara Ebrahim v Ashleys Kenya Ltd & 3 others* [2016] eKLR, the court accepted screenshots and correspondence as part of the evidence in a privacy claim, without strict insistence on compliance with the certificate requirement under section 106B(4) of the *Evidence Act*. Similarly, in the present case, given that the Respondent does not deny the existence of the photographs or that he took them, and considering that the screenshots are consistent with the images themselves, this Court is satisfied that the exhibits are genuine and relevant. Their probative value will be assessed in light of all the surrounding circumstances, but their admissibility is established and affirmed.
43. Accordingly, the Court finds that, although the Petitioner did not file a Section 106B(4) certificate, the electronic evidence tendered is satisfactory. The Petitioner has adequately explained the source and manner of production of the screenshots, and the Respondent's partial admissions further corroborate their authenticity. The Court therefore holds that the photographs and social-media screenshots are admissible in evidence. The absence of a Section 106B(4) certificate, in the peculiar circumstances of this case, is not fatal, as the authenticity of the evidence having been otherwise established through testimony and corroborating material. This position is further buttressed on the fact that the allegation complained of before court is not the existence of the evidence comprised in the nude photographs but rather on its circulation on social media and the respondent's culpability for such circulation.

**Whether the Petitioner has proved on a balance of probabilities that the Respondent took and/or circulated the nude photographs**

44. Article 28 of *the Constitution* provides that every person has inherent dignity and the right to have that dignity respected and protected.
45. Article 31 of *the Constitution* further provides that;
  - “ 31. Every person has the right to privacy, which includes the right not to have—
    - a. their person, home, or property searched;
    - b. their possessions seized;
    - c. information relating to their family or private affairs unnecessarily required or revealed; or
    - d. the privacy of their communications infringed.”
46. In the case of *Jessica Clarise Wanjiru –vs- Davinci Aesthetics & Reconstruction Centre & 2 Others* [2017] eKLR privacy was defined as follows:
  - “ 16. The right of the individual to be protected against intrusion into his personal life or affairs, or those of his family, by direct physical means or by publication of information.” ... In the above sense any intrusion of personal life by whatever



means or form such as photography, written articles or caricatures may be grounds for an action for breach of privacy.”

47. The court further emphasized that;
- “ 23. ‘Privacy’, ‘dignity’, ‘identity’ and ‘reputation’ are facets of personality. All of us have a right to privacy and this right, together with the broader, inherent right to dignity, contributes to our humanity.
24. It is the personality rights of dignity and privacy that underscore individuality and set both the limits of humanity and of human interaction. But, the reasons for protecting privacy are wider than just protecting the dignity of the individual.”
48. The Petitioner has exhibited photographs and screenshots and provided a timeline indicating that the images were taken, allegedly by the Respondent and later widely circulated via WhatsApp and Facebook social media platforms. She states that she received calls and screenshots from third parties; and has attached treatment notes indicating psychological harm. She also claims that her marriage collapsed as a result.
49. The Respondent denies circulating the images. He asserts (a) that the images are not linked to his accounts, (b) that he was hospitalized and incapacitated in mid-March 2023, and (c) that circulation was initiated by other people. These denials raise the central factual issue of causation/attribution: did the Respondent take and/or distribute the images?
50. In civil and constitutional matters, the applicable standard is on the balance of probabilities. Where electronic evidence is the primary source, courts will admit electronic records subject to the conditions in the *Evidence Act* and then assess their probative value. This Court has already addressed itself to the admissibility of the electronic evidence tendered.
51. The Petitioner alleges that the Respondent illegally and unlawfully took her nude photographs and circulated them on social media platforms, including WhatsApp and Facebook. She claims that this led to the wide dissemination of the images, thereby subjecting her to ridicule, mockery, and psychological trauma. The Respondent, admits knowledge of the photographs but claims he learned of them through his mother, who received the images and questioned him. He further contends that he was admitted at Coptic Hospital between 15<sup>th</sup> and 17<sup>th</sup> March 2023 and could not have participated in their dissemination.
52. The Respondent has produced medical records confirming his hospital admission during the stated period. However, as the Petitioner, rightly points out, these records do not indicate that the respondent was incapacitated or otherwise unable to use his mobile phone or access social media platforms during his hospital stay. Hospitalization, without evidence of incapacitation or unavailability of devices, does not conclusively negate the possibility of digital activity. This Court takes judicial notice of the fact that most hospitalized individuals retain access to their phones. Therefore, admission to hospital alone cannot be treated as absolute proof of non-involvement, it does not negate the possibility of digital activity. It is also not clear when the photos were circulated in relation to the Respondent’s hospitalisation.
53. The Petitioner has also not produced direct evidence linking the Respondent’s specific WhatsApp or Facebook account to the dissemination of the photographs. The screenshots exhibited show that the images were circulated from an account or page identified as “Leaked Videos in Kenya”. While this confirms online circulation, it does not by itself establish that the Respondent was the source or



responsible for uploading or forwarding them. That said, the Court cannot ignore the surrounding circumstances. In his own statement, the Respondent asserts that he did not illegally or unlawfully take nude photographs of the Petitioner without her consent. By implication, this amounts to an admission that he did take the photographs, albeit with the Petitioner's consent. This interpretation is further supported by the Respondent's failure to deny having taken the images. From the posture and positioning in the adduced photographs it is suggestive that they were taken by someone in close proximity and with access, likely the Respondent but with the full knowledge and consent of the petitioner. Therefore, while the Respondent claims the photographs were taken consensually, he does not dispute that he was the one who captured them. Given his exclusive possession or control of such intimate material and the gadget / phone / camera used to take the photos, the Respondent bore a heightened duty of care to prevent unauthorized disclosure. The burden of explanation as to how the images left his control and entered the public domain, rests heavily on him. Unfortunately, despite the burden shifting to him to demonstrate that he was not the source of its unlawful publication, the Respondent has failed to discharge the burden or even suggest of any unlawful or unauthorised access to his gadget by a third party.

54. In the instant case, even though the Petitioner has not provided conclusive electronic proof linking the Respondent's accounts to the circulation, the evidence on record demonstrates that the photographs subsequently appeared on public social media platforms; and the Respondent has not offered a credible or plausible explanation on how the photographs left his possession. Indeed, the Respondent confirms having received the images from third persons being his own parents, a further demonstration that indeed the photos were circulated on social media. The Petitioner too alleges to have received the images which were shared to her parents and husband.
55. Under Section 119 of the *Evidence Act*, the Court is entitled to draw an adverse inference against the Respondent. The section provides;

“The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.”
56. While the motive for taking such intimate photos remains unknown, it is highly improbable that such intimate material would have found its way into public circulation without the Respondent's knowledge or participation, whether direct or indirect.
57. Accordingly, the Court finds that, on a balance of probabilities, the Respondent was responsible for or facilitated the circulation of the Petitioner's nude photographs, either directly, indirectly or recklessly, thereby violating her rights to dignity and privacy under Articles 28 and 31 of *the Constitution*.

### **Whether the Petitioner is entitled to damages**

58. Articles 23 and 23(3) of *the Constitution* empowers the courts to uphold and enforce the bill of rights. In doing so the courts may grant various remedies including a declaration of rights violations and orders for compensation to an aggrieved party.
59. In *Wamwere & 2 others Vrs Attorney General S.C Petition No 34 & 35 of 2019 (2024) KECA 487(KLR)*, the Supreme Court emphasized that the crafting of remedies in human rights adjudication extends beyond the realm of compensation for loss as it was principally for vindicating rights. The court further held that though the appellants did not lead any evidence of the loss they may have suffered due to the violation of their rights and freedom of inhuman treatment, it was important for the court to vindicate and affirm the importance of the violated rights.



60. Having found that the Petitioner’s constitutional rights were violated, the Court turns to the question of damages.
61. The general principle is that damages for constitutional violations serve a dual purpose to vindicate the violated right and to deter future violations. The quantum is therefore not merely compensatory but must also reflect the public interest in upholding the sanctity of constitutional protections.
62. In her written submissions, the Petitioner proposed an award of Kshs.20,000,000/= as reasonable compensation, relying on authorities including *S v Makwanyane & Another (1995) ZACC 3* and *MWK & Another v Attorney General & 4 Others [2017] eKLR*, where courts underscored that damages for constitutional violations should serve to vindicate the rights infringed.
63. The Respondent, without prejudice, submitted that should the Court find in favour of the Petitioner, then an award of Kshs. 100,000/= would be adequate compensation.
64. In the present case, the humiliation, psychological trauma, and the irreparable nature of digital dissemination of intimate images justify a substantial, though not excessive, award. While the sum of Kshs.20,000,000/- sought by the Petitioner is excessive, the Court finds that the Respondent’s proposed Kshs.100,000/- does not adequately reflect the gravity of the violation or serve the purpose of deterrence.
65. In *Roshanara Ebrahim v Ashleys Kenya Ltd & 3 Others [2016] eKLR*, the Court awarded Kshs.1,000,000/= as general damages for the non-consensual publication of private photographs, noting that such exposure “inflicts humiliation, mental anguish and lasting reputational harm.”
66. Similarly, in *Musya v Hornbill Pub Limited (Constitutional Petition E004 of 2023) [2024] KEHC 16216 (KLR) (17 December 2024) (Judgment)* the court, while taking into account the nature of the violation, the length of time the violation was perpetrated, the petitioner's social standing as an advocate, and the impact of the illegalities awarded the sum of Kshs.1,000,000/= for breach of his right to privacy.
67. Considering the enduring harm of non-consensual online exposure and the need for deterrence, this Court awards the Petitioner: Kshs.2,000,000/= as general damages for the violation of her rights to dignity and privacy; and Kshs.500,000/= as exemplary damages for the Respondent’s reckless disregard of those rights, even if he alleges to have been equally embarrassed in the process.
68. Based on the foregoing, the Court therefore finds and holds that:
  - a. The taking and circulation of the Petitioner’s nude photographs without her consent violated her constitutional rights to dignity and privacy under Articles 28 and 31 of *the Constitution* of Kenya.
  - b. The Respondent is hereby restrained, whether by himself or through his agents, from further publishing, sharing, or distributing the said photographs.
  - c. The Petitioner is awarded general damages of Kshs.2,000,000/= and exemplary damages of Kshs.500,000/=, with costs and interest.

Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MACHAKOS THIS DAY OF 3<sup>RD</sup> NOVEMBER 2025**

**RHODA RUTTO**

**JUDGE**



In the presence of;

.....Petitioner

.....Respondent

Selina Court Assistant

