

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
CONSTITUTIONAL PETITION NO. E014 OF 2023

IN THE MATTER OF ARTICLES 28, 29(d) AND 31(c) OF THE CONSTITUTION OF
KENYA, 2010

AND

IN THE MATTER OF CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS

AND

IN THE MATTER OF RULES 4,10,11,13 AND 20 OF THE CONSTITUTION OF KENYA
SUPERVISORY AND PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF
THE INDIVIDUAL (HIGH COURT PROCEDURE RULES) 2013

AND

IN THE MATTER OF VIOLATION OF THE PETITIONER'S RIGHT TO PRIVACY, RIGHT TO
ACQUIRE AND OWN PROPERTY, AND RIGHT TO HUMAN DIGNITY

BETWEEN

LILIAN MANASSEH.....PETITIONER

VERSUS

MEDIAMAX NETWORK LIMITED.....1STRESPONDENT

MBUGUA NG'ANG'A.....2ND RESPONDENT

JUDGMENT

1. This Judgment pertains to a Constitutional Petition dated 17th January 2023, brought by Lilian Manasseh (the Petitioner) against Mediamax Network

Limited, the publisher of the People Daily Newspaper, and its then Managing Editor, Mbugua Ng'ang'a, the 1st and 2nd Respondents respectively. The Petition raises questions regarding the interplay between media freedom on one hand and the fundamental rights to privacy, human dignity, and property on the other; in the context of the alleged unauthorized publication of a personal photograph.

2. The factual background to the matter is that in October 2020 she contracted a professional photographer, Karugo Mwangi, to capture her wedding. One of the photographs taken on the morning of her wedding day at her private residence depicted her having her hair styled by one Tony Maina of Tony Hair Pro Salon.
3. It is not in dispute that on 5th January 2023, the 1st Respondent published an article in its People Daily Newspaper, both in print and on its online *e-paper*, titled "*Hair Comes The Bride!*" The article featured the story of Tony Maina, a hairdresser, detailing his journey in the industry and his recognition as the "*Bridal Hairstylist of the Year 2022.*" Accompanying this article was the Petitioner's aforementioned wedding preparation photograph, published without her knowledge or consent.
4. The Petitioner learned of the publication on the same day, 5th January 2023, through a WhatsApp message from a colleague. Through her Advocates, she issued a Demand Letter to the Respondents on 9th January 2023, requesting the removal of the image and an admission of liability. The

Respondents did not comply with the Petitioner's pre-litigation demands, leading to the filing of this Petition.

THE PETITIONER'S CASE

5. The Petitioner's case, as crystallized from her Petition, Supporting Affidavit, and subsequent filings, is that the Respondents' actions constituted a gross violation of her fundamental rights and freedoms. Her case rests on three primary pillars.

6. First, the Petitioner contends that the publication violated her right to privacy under Article 31(c) of the Constitution. She depones that the photograph was an intimate image captured in the sanctity of her private home during a deeply personal moment, her wedding preparations. The Petitioner argues that she had a reasonable expectation that this image would remain private. The Petitioner contends that the Respondents obtained and disseminated this image without her consent, thereby intruding upon her private and family life.

7. Secondly, the Petitioner asserts that the Respondents' actions were a violation of her right to human dignity under Article 28 of the Constitution. The unauthorized publication, she avers, subjected her to ridicule, false accusations of bigamy, and unwarranted scrutiny from her peers, church community, and the public. She particularizes instances where she was mocked for allegedly engaging in "*menial*" advertisement, questioned by her "*Mama Kanisa*" [female church elder] for allowing a man to touch her

hair, and pestered for money by community members who assumed she had been paid handsomely by the 1st Respondent for the use of her image.

8. Thirdly, the Petitioner claims a violation of her right to property under Article 40, specifically her intellectual property and image rights. She argues that by paying the photographer, she acquired the intellectual property rights to the photographs; and that the Respondents' subsequent unauthorized commercial use of her image in their newspaper and online platform, which the Petitioner contends generates revenue through traffic and advertisements, amounted to an unjust enrichment and an infringement of her proprietary rights over her own likeness.
9. In support of her claims, the Petitioner filed a Further Affidavit from her photographer, Karugo Mwangi, who confirmed he took the photo, transferred it to Tony Maina for personal reference only, and did not authorize its further publication. The Petitioner also produced WhatsApp messages in which Tony Maina apologized, stating, "*my bad I didn't inform you about the photo. I really apologize,*" which she argues is irrebuttable proof of the lack of consent.
10. The Petitioner seeks several reliefs, including declarations of the violations, a mandatory injunction for the removal of her image from all the Respondents' platforms, general damages of Kshs.3,000,000, together with the costs of the Petition.

THE RESPONDENTS' CASE

11. The Respondents' defence is based in the Replying Affidavits of Jasmine Atieno Odera and Tony Maina. In their response to the Petition, the Respondents deny that they violated any of the Petitioner's constitutional rights. Primarily, they assert that Tony Maina, the hairdresser, provided the photograph voluntarily and that they consequently relied on his representation that he had received consent from his clients to use their images, as they were already published on his public Instagram account.
12. The Respondents further characterize the article as a non-commercial, inspirational "*resilience story*" published in their "*People Plus*" segment of the People Daily, which they averred is a free-circulation newspaper. The Respondents further characterized the People Plus segment of their newspaper as a section of their publications that is intended to uplift and encourage readers. They deny any exploitative or commercial intent, stating they neither paid Tony Maina nor received payment for or commercial gain from the article.
13. Tony Maina, in his sworn statement, states that he had a long-standing professional relationship with the Petitioner. To buttress this claim, Tony Maina averred that he often tagged her in his Instagram posts in which he posted her images, and that she never objected to his publication of those images on his Instagram page. He claims she was aware of his participation in the competition for which he used her photographs, to an extent that she

even voted for him. His position is that he thus had a reasonable belief that he had the implied consent of the Petitioner to use her image. He characterizes the Petitioner's action as an attempt to "profiteer" from a well-intentioned story.

14. In further defence, it is averred by the Respondents that the Article of 5th January 2023 on the 1st Respondent's e-paper is only accessible to and by persons with the access link, which they further contend is no longer active. They contended that any person who wishes to find that Article must first find that link or specifically search for the Article from their old files. Additionally, it is averred that there is no cause for the Respondents to delete the photos from the e-paper or from the 1st Respondent's website as they are already freely and readily accessible to the general public *vide* Tony Maina's Instagram account. They argue, therefore, that the photos are already in the public domain and were in the public domain prior to the Respondents act of publication.

15. Further, the Respondents averred that the Article was balanced, complied with media ethics, it was fair, and they had no intention to violate anyone's constitutional rights including that of the Petitioner. Having argued in omnibus that the Petition was unsubstantiated and unmerited, this Court was thus urged to dismiss the Petition with costs to the Respondents.

16. The Petition was canvassed by way of written submissions and both sides complied by filing their respective submissions.

PETITIONER'S SUBMISSIONS

17. The Petitioner, in her submissions dated 19th March, 2025 and 30th July, 2025, vigorously defends this Court's jurisdiction. She cites Article 165(3) of the Constitution which grants the High Court unlimited original jurisdiction in cases alleging a violation of a right or fundamental freedom. She distinguishes the powers of the Office of the Data Protection Commissioner (ODPC), arguing that the ODPC cannot grant the wide-ranging constitutional declarations, permanent injunctions, and damages for dignity violations that she seeks. She relies on the Supreme Court decision in ***Nicholus v Attorney General & Others [2023] KESC 113 (KLR)***, which held that the availability of an alternative remedy does not bar an individual from seeking constitutional relief.
18. On the merits, the Petitioner relies on a line of authorities to fortify her claims. On privacy, she cites ***J W I & another v Standard Group Limited & another [2015] KEHC 7398 (KLR)***, where the court outlined that the right to privacy includes "**non-revelation of irrelevant and embarrassing facts, and unauthorized publication of private photographs.**" Further reliance was placed on ***Wanjiru v Machakos University [2022] KEHC 10599 (KLR)*** which cited with approval the South African case of ***Mistry v Interim National Medical and Dental Council of South Africa (1998) (4) SA 1127 (CC)***, which sets out factors for determining a privacy violation, all of which she argues are satisfied in her Petition.
19. Concerning the violation of her right to dignity, she relied on the case of ***Ahmed Issack Hassan v Auditor General [2015] KEHC 4712 (KLR)***, which described the right to human dignity as the foundation of all other rights. It

was submitted that the unauthorized use of her image robbed her of autonomy and control, leading to the humiliation and distress she detailed.

20.Regarding the alleged violation of the Petitioner's property rights, the Petitioner submitted that her image is a form of intellectual property, and its unauthorized commercial use by the Respondents, who profit from website traffic and ad revenue, constitutes a violation of Article 40.

21.On whether a mandatory injunction should be issued, it was submitted that after the Petitioner endeavored to have the Respondents cease using her image, the response she got from the Respondents proves that they are keen on keeping a permanent record of her image on their website unless this Honourable Court requires them to delete it.

22.Finally, on damages, she points to awards in comparable cases such as ***GSN v Nairobi Hospital & 2 Others (2020) eKLR*** where an award of Kshs. 2,000,000 was issued for breach of right to privacy, and ***Mutuku Ndambuki Matingi v. Rafiki Microfinance Bank Limited [2021] eKLR*** where an award of Kshs.2,000,000 was issued for the violation of image rights and privacy as a guide for the Court. The Court was thus urged to allow the Petition and grant the reliefs sought, with costs to the Petitioner.

RESPONDENTS' SUBMISSIONS

23.The Respondents filed their written submissions dated 10th June, 2025 which reiterated their jurisdictional objection, placing heavy emphasis on

the Data Protection Act. They argue that the Act's preamble and substantive provisions, particularly Sections 8 and 9, create a specialized regime for handling data privacy complaints, ousting this Court's jurisdiction in the first instance. They relied on the case of *Kirima v Solar Panda Company & another [2024] KEHC 11499 (KLR)* in support of this proposition.

24. It was further submitted that the Petitioner's grievances, particularly concerning data privacy, fall squarely within the purview of the Data Protection Commissioner under the Data Protection Act, 2019. They argue that the Act is a comprehensive statutory framework designed to give effect to Article 31(c) and (d) of the Constitution and that this Court is usurping the functions of a specialized statutory body by entertaining this Petition. They further submitted that any claims based on innuendo or reputational harm should have been pursued as a defamation suit in the civil division, not as a constitutional petition.

25. The Respondents invoked the doctrine of constitutional avoidance, arguing that where a statutory mechanism exists to address a grievance, the constitutional route should not be pursued. They also point out a discrepancy in the Petition regarding the date of publication (2022 vs. 2023), arguing this renders the Petition defective. Further, it was submitted that another contraction is on the date of the wedding where on the annexed exhibit on the Petitioner's Supporting Affidavit, a document titled "Invoice" shows that the wedding was held on 9th October, 2020 between 7.00 a.m. and 6.00 p.m. whereas as alleged at paragraph 2 of the

photographer's affidavit it is indicated to have been held on 10th October, 2020.

26. On the merits of the Petition, it was submitted that the Petitioner implicitly consented to the use of her image by not objecting to Tony Maina's Instagram posts. They argue that the image was already in the "public domain," and thus, its republication by them was not an intrusion or breach of any of the Petitioner's rights. They characterize the social and religious backlash described by the Petitioner as stemming from her own choices and the prejudices of her community, for which the Respondents cannot be held liable. Further, it was submitted that the Petitioner did not disclose the church she fellowships at or the church doctrine that she purportedly violated by letting a man touch and make her hair at her wedding. The Respondents argued that consequently the allegation of distress flowing from innuendos of that kind are unsubstantiated.

27. Further, the Respondents denied any commercial exploitation, stressing that the "People Plus" segment is contained within a non-commercial free newspaper. Accordingly, they argued that the Petitioner has failed to discharge the burden of proving a constitutional violation and this Honourable Court to dismiss the Petition with costs.

ANALYSIS AND DETERMINATION

28. From the pleadings, affidavits, and submissions, the following issues fall for this Court's determination:

- a. *Whether this Court has jurisdiction to entertain this Constitutional Petition.*
- b. *Whether the Respondents violated the Petitioner's right to privacy under Article 31 of the Constitution.*
- c. *Whether the Respondents violated the Petitioner's right to human dignity under Article 28 of the Constitution.*
- d. *Whether the Respondents violated the Petitioner's right to property under Article 40 of the Constitution.*
- e. *Whether the Petitioner is entitled to the reliefs sought.*

Whether this Court has jurisdiction to entertain this Constitutional Petition.

29. The Respondents' jurisdictional challenge is serious and requires careful consideration. It is trite law, as held in the seminal case of ***Samuel Kamau Macharia v Kenya Commercial Bank Limited & 2 Others [2012] eKLR***, that a court's jurisdiction is derived from the Constitution or legislation and cannot be conferred by parties or assumed by the court.

30. The Respondents' argument that the Data Protection Act ousts this Court's jurisdiction is, with respect, misconceived. The Data Protection Act, 2019, was enacted to give effect to Article 31(c) and (d) of the Constitution. It establishes the Office of the Data Protection Commissioner (ODPC) with powers to oversee data processing and investigate complaints. However,

the Act does not, and indeed cannot, oust the original and unlimited jurisdiction of the High Court under Article 165(3)(b) to hear and determine applications for the enforcement of fundamental rights and freedoms.

31. The relationship between specialized tribunals and the High Court's constitutional jurisdiction was clarified by the Supreme Court in ***Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others [2014] KESC 53 (KLR)***. The Court held that the existence of a specialized body does not divest the High Court of its constitutional mandate. The High Court retains the jurisdiction to determine whether any right has been denied, violated, or infringed. In arriving at the decision, the court stated as follows;

“Article 165(3)(d) makes it clear that that power extends well beyond the Bill of Rights when it provides that the High Court has jurisdiction to hear any matter relating to any question with respect to interpretation of the Constitution “including the determination of (i) the question whether any law is inconsistent with or in contravention of this Constitution; (ii) the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention, of this Constitution; (iii) any matter relating . . . to the constitutional relationship between the levels of government.” These provisions make clear that Kenyan courts have a far-reaching constitutional mandate to ensure the rule of law in the governance of the country.”

32. Furthermore, the Petitioner's claim is not confined to a mere data protection issue. She alleges violations of her right to human dignity under Article 28 and property under Article 40, which are broad constitutional guarantees. The ODPC's mandate, while crucial, is primarily focused on data processing principles. It lacks the jurisdiction to grant the comprehensive constitutional declarations and the broad-based assessment of damages for violation of a person's right to dignity that this Court is empowered to provide and which fall outside the ODPC's mandate.

33. The Supreme Court's holding in ***Nicholus v Attorney General & Others (supra)*** is directly on point: the availability of an alternative remedy does not bar an individual from seeking constitutional relief. The Petitioner was therefore at liberty to approach this Court directly.

Whether the Respondents violated the Petitioner's right to privacy under Article 31 of the Constitution.

34. Article 31(c) guarantees every person the right not to have "information relating to their family or private affairs unnecessarily required or revealed." The determination of whether this right has been violated involves a contextual analysis of the nature of the information, the circumstances of its obtaining, and the manner of its dissemination.

35. I find the framework set out by the Constitutional Court of South Africa in ***Mistry v Interim National Medical and Dental Council of South Africa***

(*supra*), and subsequently adopted by Kenyan courts in *Wanjiru v Machakos University (supra)* to be highly persuasive. The relevant factors are:

- a. Whether the information was obtained in an intrusive manner.
- b. Whether it was about intimate aspects of the applicant's personal life.
- c. Whether it involved data provided for one purpose and used for another.
- d. Whether it was disseminated to persons from whom the applicant could reasonably expect such information to be withheld.

36. Applying this framework to the present case leads to an inescapable conclusion that the Petitioner's right to privacy was violated. On the first limb on intrusive manner, the photograph was taken in the Petitioner's private home on the morning of her wedding. It was a moment of intimate preparation, not a public event. The Respondents obtained this photograph second-hand from Tony Maina, who himself had received it from the photographer for a limited purpose. The Respondents made no attempt to contact the Petitioner to verify consent, and they had no proof such as a written release or any other evidence of the Petitioner's alleged consent.

37. The Respondents' argument that the availability of the image on Tony Maina's Instagram page equally provides no shield from their liability. Firstly, the Respondents, as the party making the assertion of public domain, ought to have shown that the page was indeed publicly accessible

and one that fits squarely within the definition of the public domain. They did not, for example, show that the concerned social media page does not have limitations on who can access the content therein, that it is not restricted to followers only, and that image on the particular page appears in public internet searches.

38. Additionally, the Petitioner's alleged consent to Tony Maina's use and publication was not and cannot be construed as consent to every other party to use her image. A media organization of the repute of the 1st Respondent ought to have internal processes that ensure that each and every image published on its platforms is either indisputably within the public domain and available for free or licensed use or is the subject to consent given for use by the 1st Respondent. This was not the case in the instant Petition and this was thus an intrusion on the Petitioner's right to privacy.

39. On the second limb about intimate aspects, a Bride preparing for her wedding in her home is one of the most intimate and personal moments in her life. This is not a photograph taken at a public ceremony as it is a behind-the-scenes glimpse into a private sphere. As was held in *J W I & another v Standard Group Limited (supra)*, the unauthorized publication of private photographs is a quintessential infringement of privacy.

40. The fact that the image may have appeared on another platform is not a valid defence against a claim of breach of the right to privacy unless its

publication on that other platform clearly made the image a public one not a private one. That was not the case in the present case. Indeed, the setting and context of the photograph was all the more reason for the Respondents to endeavor to reach out directly to the subject, the Petitioner, and receive her express and unequivocal consent before publication; or to require the subject of the Article to show them firm proof of express and unequivocal consent by the Petitioner.

41. On the third limb on purpose misalignment, the Petitioner provided her likeness to her photographer to capture her wedding memories. This was then used by a hairdresser for his portfolio and social media, and ultimately by a national newspaper for a feature article. Each step was a further deviation from the original, private purpose. Consent at one step and for one purpose, cannot be treated as consent for all other subsequent steps or purposes.

42. On the last element, dissemination to the public, the image was published in a national newspaper with both print and online circulation. The Petitioner had a reasonable expectation that this intimate moment would be withheld from the general public. The Respondents' argument that the image was already on Instagram is not an adequate shield against the Petitioner. As held by the court in *Shiverenje Simani v Star Newspaper another 2021KEHC13582(KLR)*, the fact that information may be accessible somewhere in the public domain does not grant a license for its widespread

republication by third parties, especially when such republication significantly amplifies its reach and impact.

43.The Respondents' defence of "public domain" and "implied consent" is weak. Consent to be tagged on a social media post by a service provider does not equate to consent for republication in a national newspaper. The burden was on the Respondents, as a media house, to secure clear and informed consent, a duty underscored in ***Aubry v Les Editions Vice Versa Inc (1998) 157 D.L.R 577***, which was cited with approval in the Kenyan context. Their failure to do so was a fundamental dereliction of their ethical and legal duty.

44.I therefore find and hold that the publication of the Petitioner's photograph constituted a clear and unjustifiable violation of her right to privacy under Article 31(c) of the Constitution.

Whether the Respondents violated the Petitioner's right to human dignity under Article 28 of the Constitution.

45.Article 28 provides that every person has inherent dignity and the right to have that dignity respected and protected. The right to human dignity is the bedrock of the Bill of Rights. It encompasses an individual's right to autonomy, self-worth, and to be free from humiliation and degradation.

46. The nexus between privacy and dignity is intimate. As the South African Constitutional Court eloquently stated in ***NM & Others v Smith & Others (Freedom of Expression Institute as Amicus Curiae) [2007] ZACC 6***, dignity and privacy are inextricably linked. Our sense of self-worth is diminished when our intimate personal information is made public against our will. In furthering the above principle, the Court in ***Jessicar Clarise Wanjiru v Davinci Aesthetics & Reconstruction Centre & 2 others [2017] eKLR*** stated as follows;

“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.”

47. The Petitioner, an Advocate of the High Court, has deponed to specific and credible consequences of the publication: ridicule from colleagues suggesting she was "broke," accusations of bigamy, and censure from her church community. These are not mere conjectures but are corroborated by the WhatsApp message from her colleague, Ali Dawood. While the Respondents did not have any malice or intention to injure, the objective effect of their actions was to subject the Petitioner to public scorn, mockery,

and misunderstanding; thereby attacking her sense of self-worth and standing in the community. Just as not intending to cause physical harm to a person is not a defence in of itself but rather a factor at the assessment of damages stage, the lack of malice or intent is a factor at the assessment of damages stage, not a defence in of itself against allegations of reputational, emotional, and social harm.

48.The Respondents' attempt to blame the Petitioner for the negative responses she received as a result of their actions can only be construed by this Court as indicative of a violator of rights digging in their heels and doubling-down on their violation. Silence on that aspect would have been much more helpful to their case, rather than to attack ' the victim.' This stance, while itself not indicative of a malicious intent to violate human dignity, is certainly worthy of consideration at the damages stage if damages are awarded.

49.By using the Petitioner's image without her consent as an involuntary prop in Tony Maina's "resilience story," the Respondents treated her as an object, stripping her of the autonomy to control her own narrative and likeness. This objectification is, in itself, an affront to human dignity. I consequently find that the Petitioner's right to dignity under Article 28 was violated.

Whether the Respondents violated the Petitioner's right to property under Article 40 of the Constitution.

50.The Petitioner's claim under Article 40 is that her image is a form of property, specifically an aspect of intellectual property and the right of publicity, which was appropriated by the Respondents.

51.The legal recognition of image rights or personality rights in Kenya is an evolving area. While not as codified as copyright or trademarks, Kenyan courts have acknowledged that an individual's likeness can have proprietary value. In *Kamande v Nation Media Group (Constitutional Petition E004 of 2021) [2022] KEHC 16017 (KLR)*, the court expressly found that the unauthorized use of a person's image for commercial purposes infringes upon their property rights under Article 40.

52.The critical question is whether the use was "commercial." The Respondents strenuously argue that the "People Plus" segment is inspirational and non-commercial. This is a narrow view. A newspaper is a commercial enterprise. Its value is derived from its readership, which attracts advertisers. The Respondents' own witness, Jasmine Atieno Odera, admitted in her affidavit that the hairstylist's "target audience would be his anticipated clients such as intending brides," demonstrating a promotional undercurrent to the article.

53.More concretely, the Petitioner exhibited evidence (LM-4, LM-5, LM-6) showing that the Respondents' e-paper platform runs advertisements (e.g., ALX Africa) and sells digital copies. By publishing content, including the article in question, the Respondents aim to generate traffic, sustain

readership, and ultimately generate revenue. The Petitioner's image was used as a part of this content to make the article more visually appealing and engaging, thereby contributing indirectly to the Respondents' commercial viability. She received no compensation for this use.

54. In the modern digital economy, personal data and likeness have economic value. To use an individual's image to enhance the attractiveness of a publication without their consent and without payment, while the publisher profits from the overall commercial model, constitutes an unjust enrichment and a violation of the individual's nascent but recognizable proprietary interest in their own image. I therefore find a violation of the Petitioner's right to property under Article 40 was perpetrated by the Respondents as alleged.

Whether the Petitioner is entitled to the reliefs sought.

55. Having found violations of the Petitioner's rights under Articles 31, 28, and 40, she is entitled to appropriate relief.

56. The Petitioner seeks an order compelling the Respondents to delete her image from their website and e-paper. The Respondents argue it is buried in an old edition and hard to find. This is no defence. The continued hosting of the image, however inaccessible the Respondents claim it to be, constitutes a continuing violation. A permanent injunction is necessary to provide complete and final relief.

57.The assessment of constitutional damages is discretionary. The purpose is not to enrich the petitioner but to vindicate the violated rights, acknowledge the suffering, and deter future violations. The violations here are significant: an intimate moment was exposed to the nation, causing genuine distress and reputational harm to a professional person.

58.Balancing all the circumstances, the egregious nature of the privacy violation, the tangible impact on the Petitioner's dignity, the indirect commercial benefit to the Respondents, and the need for the award to be proportionate, I find that the Petitioner is entitled to an award for the violation of her constitutional rights.

59.Having considered the authorities in similar cases, and the circumstances of the case, I am satisfied that the Petitioner's claim of Kenya Shillings Three Million (KShs. 3,000,000.00) would be too high. The Petitioner has relied on authorities that point to an award of Kenya Shillings Two Million as being adequate, and after considering the same in light of the Respondents' lack of demonstrable malice, I was in favour of an award of around the Kenya Shillings One Million mark. However, the Respondents stance as analyzed at Paragraph 48 above must be factored in, and it operates to raise the damages that this Court ought to award. Consequently, I find and hold that the various constitutional breaches of the rights of privacy, human dignity, and property collectively in the circumstance should attract an award of

damages in the amount of Kenya Shillings One Million Five Hundred Thousand.

60. In conclusion, the Petitioner has proved on a balance of probabilities that the Respondents violated her constitutional rights to privacy, human dignity, and property. Accordingly, I hereby enter judgment for the Petitioner against the Respondents jointly and severally, and make the following final orders:

- a. A declaration be and is hereby issued that the Respondents' publication of the Petitioner's photograph on 5th January 2023 violated her rights under Articles 28, 31, and 40 of the Constitution of Kenya;
- b. A mandatory injunction be and is hereby issued compelling the 1st Respondent to permanently remove and delete the Petitioner's image from the online e-paper article dated 5th January 2023, and from any other digital platform under its control, within forty-eight (48) hours from the date of this Judgment;
- c. A permanent injunction be and is hereby issued restraining the Respondents, jointly and severally, from any further display or use of the subject photographs without the consent of the Petitioner;
- d. General damages for the violation of the Petitioner's constitutional rights are assessed at Kenya Shillings One Million Five Hundred

Thousand (Kshs.1,500,000), and the same shall be borne by the 1st Respondent and paid within thirty (30) days of the date of this Judgment; AND

- e. The costs of the Petition are awarded to the Petitioner as against the 1st Respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 20TH DAY OF NOVEMBER, 2025.

BAHATI MWAMUYE

JUDGE

In the presence of: -

Counsel for the Petitioner – Mr. Aringa

Counsel for the Respondents – Ms. Muyaa

Court Assistant – Ms. Neema