



**Omollo v Ministry of Interior and Co-ordination of the National Government & 4 others (Constitutional Petition E002 of 2024)
[2025] KEHC 18171 (KLR) (4 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18171 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPSABET
CONSTITUTIONAL PETITION E002 OF 2024
JR KARANJA, J
DECEMBER 4, 2025**

BETWEEN

JEREMIAH NYAMBOGO OMOLLO PETITIONER

AND

THE MINISTRY OF INTERIOR AND CO-ORDINATION OF THE NATIONAL GOVERNMENT 1ST RESPONDENT

THE INSPECTOR GENERAL OF THE KENYA NATIONAL POLICE SERVICE (NPS) 2ND RESPONDENT

THE OFFICER COMMANDING POLICE STATION (OCS) - KAPSABET POLICE STATION 3RD RESPONDENT

SGT MAURICE MANGOLI 4TH RESPONDENT

THE HON ATTORNEY GENERAL 5TH RESPONDENT

JUDGMENT

1. Jeremiah Nyambogo Omolo is the Petitioner herein. He alleges violation of his constitutional rights to equal protection and equal benefit of the law and fair administrative action as against the five Respondents, being the Ministry of Interior and Coordination of the National Government, the Inspector General of the Kenya National Police Service, the Officer Commanding Police Station Kapsabet Police Station, Sgt. Maurice Mangoli and the Hon. the Attorney General of the Republic of Kenya.
2. The claim is based on the facts that on the 16th December 2021 at about 9:00am at the Winam Law Courts in Kisumu the fourth [4th] Respondent, Sgt. Maurice Mangoli, acting on instructions from the rest of the Respondents called for the remand of the Petitioner at the Kisumu Maximum Prison to



enable investigations on an allegation of forgery made against the Petitioner vide O/B No. 24 of 24th September 2020 on ground that the Petitioner was a flight risk.

3. Accordingly, the Petitioner was held in custody at the Kisumu Maximum Security Prison where he was forced by the forth Respondent to affix his signature on a pre-written statement and provide specimen signatures. He was thereafter informed that one Omar Cheruiyot was responsible for making the allegation of forgery against him. He was later on the 23rd December 2021 arraigned at a Magistrate's Court in Kapsabet vide Criminal Case No. E02759 of 2021 for the offences of forgery, making a document without authority, uttering a false document and making a false document vide O/B No. 33 of 22nd December 2021 rather than O/B No. 24 of 24th September 2020.
4. The trial ended on the 26th April 2023 with the acquittal of the Petitioner even as his employment contract had long been terminated in the month of December 2021 due to the allegations made against him which subjected him to both physical and mental torture while held in remand custody. His family suffered irreparable damage for his loss of a well paying job and being labelled a criminal on account of a flawed process.
5. The Petition is basically anchored on the Petitioners averments in the supporting affidavit dated 24th June 2024 and further affidavit dated 9th November 2024. The Petitioner thus seeks orders for compensation and indemnity from the Respondents for loss of employment together with loss of salary for the period 16th December 2021 to 26th April 2023. He also seeks damages for malicious prosecution as well as exemplary and punitive damages against the Respondents jointly and severally in their personal and official capacities on account of gross violation of his constitutional rights.
6. The Petitioner further prays for declaration orders specifically against the Fourth Respondent for acting unlawfully and therefore unfit to hold public office.

Even though the petition was against all the five Respondents jointly and severally it is apparent that save the Fifth Respondent [Hon. Attorney General] the remaining Four Respondents were not served with the Petition. This was a serious omission as each and every Respondent was entitled to know the complaint against them and be given an opportunity to be heard before any decision is made against them by the court in keeping with the principles of natural justice, particularly the principle that no man shall be condemned unheard.

7. It is notable that the petition was filed on the 25th June 2024, yet the alleged unconstitutional acts were committed against the Petitioner in the years 2021/2021 prior to the acquittal of the Petitioner on 26th April 2023 in Kapsabet Magistrate's Court Criminal Case No. E02759 of 2021.

It was obvious that the petition was prompted by the Petitioner's acquittal.

8. Be that as it may, the need for a constitutional petition such as the present petition arises when a person believes that a public authority has acted unlawfully or has violated his/her constitutional rights.

Herein, the Petitioner, alleges that the Respondents individually and collectively violated his constitutional rights under Articles 27[1] and 47[1] of the Constitution i.e. Rights to equal protection and equal benefits of the law as well as to fair administrative action.

9. A constitutional petition therefore serves as one way for holding public bodies accountable apart from rectifying injustice and ensuring that the principles enshrined in the Constitution are adhered to and upheld. Not every legal grievance requires remedy through a constitutional petition as it is mostly based on an alleged violation, threat on infringement of a right of fundamental freedom protected in the Bill of rights [Chapter four [4] of the Constitution].



10. The general Rule is that a petition should be filed without an unreasonable delay depending on the nature and circumstances of each particular case and once it is filed it must be served on all the specified Respondents at least within fifteen [15] days and proof of service must be filed in court. This is indeed the rule of the thumb.
11. In the enforcement of the Bill of Rights, Article 22[1] of the *Constitution* provides for the right of every person to institute court proceedings claiming that a right of fundamental freedom in the Bill of Rights has been denied, violated or infringed or is threatened. This is exactly what the Petitioner has done by way of this petition.

The procedural law for purpose of the petition is Legal Notice No. 117 of 2013 i.e. *The Constitution of Kenya [Protection of Rights and Fundamental Freedom] Practice and Procedure Rules 2013*.

12. The scope and objectives of the Rules are spelt out in Section 3 of the *Rules* and under Section 6 of the *Rules*, a party to proceedings commenced under the Rules is obliged to assist the court to further the overriding objectives of the *Rules* by participating in the court process and complying with the direction and order of the court. However, under Section 8 of the *Rules*, nothing in the *Rules* limits or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse the process of the court.
13. Service of petition is provided for under Section 14 of the Rules. The Petitioner was thus required to serve the Respondent with the petition and all supporting documents within fifteen [15] days of filing and to prove service by way of an affidavit of service in the prescribed form.

These are mandatory requirements for which the Petitioner was expected to comply. Under Rule 15 upon service the Respondents were expected to Respond to the Petition by way of a replying affidavit within fourteen [14] days, but for fourth [4] Respondent who was sued in both his official and personal capacities the response at least within seven [7] days of service.

14. The factors foregoing clearly suggest that the competence and propriety of this petition on account of time and service would be the first issue for determination.

In that regard, the alleged violation of the Petitioner's fundamental rights occurred while he was being subjected to a criminal justice process instigated by a complaint of forgery and related matters made against him by a fellow citizen. This is not disputed even though there was a minor error in the charge sheet on the relevant O/B reference number.

15. The Criminal Justice Process culminated in the year 2023 with the acquittal of the Petitioner on the 26th April of the year. The alleged unconstitutional acts attributed to the Respondents actually occurred in the years 2020/2021. It would therefore be construed that there was unreasonable delay in the filing of the present petition. However, the *Constitution* did not set a time limit within which a party could file a claim for violation of constitutional rights [See, Peter N. Kariuki vs. Attorney General [2014] eKLR].

In Dominic Arony Amolo Vs. Attorney General [2010] eKLR, the court held that the element of time cannot be used to protect the state or any person from claims of enforcement of fundamental rights.

16. It would therefore follow that this petition cannot be invalidated or rendered improper and incompetence on account of having been filed belatedly.

With regard to service of the petition, there is proof by way of the affidavit of services and notices that the petition may have been served upon the Fifth Respondent [A.G.], but not the rest of the Respondents. This explains why the fifth Respondent was the only person who Responded to the petition by way of the replying affidavit dated 5th November 2024 deponed by a Chief Inspector Robert Githinji.



17. Considering the mandatory nature of Rule 14 of the Practice and Procedure Rules, 2013 the failure by the Petitioner to serve the First, Second, Third and Fourth Respondents with the petition constituted on error which may be termed fatal because the affected Respondents were unaware of the claim made against them in which case they were denied the opportunity to be heard in defence of the claim. And if the matter were to proceed in their absence and a decision rendered against them, then they would have been condemned without being heard and that would be injustice.
18. The Petitioner made a fatal mistake in assuming that service upon the fifth Respondent translated into service upon all the Respondents. So the non-service of the petition upon the First, Second, Third and Fourth Respondent's rendered it invalid and incompetent against them. The petition must and is hereby dismissed as against the First, Second, Third and Fourth Respondents for want of service, but is hereby sustained as against the Fifth Respondent.
19. In that regard, the Second issue for determination would be whether the Petitioner has provided sufficient grounds and evidence to establish and prove the alleged violation of his rights under Articles 27[1] and 47[1] of the *Constitution*. As noted hereinabove this petition germinated from or was prompted or jumpstarted by the Petitioner's acquittal in a criminal case brought against him at the Kapsabet Chief Magistrate's Court, being Criminal Case No. E2759 of 2021.
20. A copy of the court's judgment annexed to the Petitioner's supporting affidavit dated 24th June 2024 shows that the Petitioner was subjected to a full criminal trial which ended in his acquittal after a consideration of the evidence in its totality by the trial court which stated in conclusion that: -
- “Based on the evidence adduced by both parties, the authorities cited above and the law, I find the accused not guilty of the offence of forgery Contrary to Section 349 [a] of the Penal code and not guilty of the offence of making a document without authority Contrary to Section 357 [a] of the Penal Code and not guilty of the offence of making a false document Contrary to Section 367 of the Penal Code.”
21. Clearly, the acquittal arose from a regular and lawful criminal justice process whose genesis was a complaint made against the Petitioner to the police.
- It cannot be gainsaid that the mandate of the police service extends to carrying out investigations into suspected criminal acts such as those made against the Petitioner. Therefore, the investigations carried out on the complaint or complaints made against the Appellant were lawful in as much as they led to his arrest and arraignment in a criminal court.
22. The Petitioners' prosecution was informed by the outcome of the police investigations, but was conducted by the office of the Director of Public Prosecution which exercises the states power of prosecution of criminal cases.
- Both the police and the Director of Public Prosecution in the exercise of their respective mandates are always required to adhere to the provisions of the *Constitution* to which they are subject to in Particular Chapter Four [4] of the *Constitution* i.e. the Bill of Rights.
23. The High Court as the custodian of the Bill of Rights would intervene where the facts disclose a violation of the right and fundamental freedom guaranteed under the *Constitution*.
- It was therefore incumbent upon the Petitioner to establish and prove violation of his constitutional rights under Articles 27 and 47 of the *Constitution* during Police Investigations on the complaint made against him, his arrest and arraignment in court and his prosecution in court prior to being declared not guilty and acquitted of all the charges by the court.



24. The facts of this case as emerges from the Petitioner’s averments in the supporting affidavit dated 24th June 2024 showed that the police and the office of the director of public prosecution acted within their lawful mandate in investigating the complaint, arresting and charging the Petitioner with criminal offences and prosecuting him accordingly. Whether the investigations were shoddy, inchoate or scanty was a matter to be raised at the trial and be determined by the trial court. And so, to, whether there is any violation of the constitutional rights to equal protection and equal benefit of the Law or to fair administrative action.
25. The fact that the Petitioner was acquitted of all the charges preferred against him did not impute that the lawful mandates of the investigating and prosecuting agencies were exercised without adherence to constitutional principles. There is nothing in the evidence availed by the Petitioner herein which demonstrated violation of any of the Petitioner’s Constitutional Rights. The fact that the Petitioner’s Reputation was punctured by being charged with a criminal offence and being prosecuted for it and the fact that he lost his job as a result of the Criminal case did not amount to a violation of the Petitioner’s Constitutional Rights.
26. If anything, the remedy for any damage or loss suffered by the Petitioner as a result of actions against him by state agencies lay in a civil claim rather than a constitutional petition.
- In any event, the Petitioner did not raise any issue pertaining to violation of his constitutional rights at the trial and the evidence he provided herein did not establish that the criminal justice process he underwent was unfair and not in lime with constitutional standards.
27. A person acquitted in a criminal trial cannot later bring a constitutional petitioner alleging violation of his rights under Articles 27 and 47 of the Constitution if the issue was not raised during trial or appeal or if there are other alternative remedies available such as an appeal or a civil suit for loss and damages [See Anwar Vs. Attorney General [2016] eKLR and Evans Kidero Vs. Attorney General [2016] eKLR].
28. Indeed, under the principle of constitutional avoidance this petition would fall on its tracks. In the case of Communications Commission of Kenya & 5 Others Vs. Royal Media Services & 5 Others [2014] eKLR, the Supreme Court, defined the doctrine of Constitutional avoidance as follows: -

“The Appellants in this case all seeking to invoke the “principle of avoidance,” also known as “Constitutional avoidance.” The principle of avoidance entails that a court will not determine a constitutional issue, when a matter may properly be decided on ather basis. In South Africa in S - Vs. Mhlungu 1995 [3] SA 867[CC] the Constitutional Court Kentridge AJ, articulated the principles of avoidance in his minority judgment as follows [at paragraph 50].”

“I would lay it down as a general principle that where it is possible to decide any case, Civil or Criminal, without reaching a Constitutional issue, that is the course which should be followed.”

29. The High Court in KKB Vs. SCM and 5 Others [2022] KEHC 289[KLR] stated that: -

“In summation, the doctrines of ripeness and constitutional avoidance shun to deal with a constitutional issue where there exists another legal course which can give the litigant the relief he seeks. In other words, a constitutional issue is not ripe for determination until the determination of the Constitution issue is the only course that can give the litigant the remedy he seeks. Both constitutional avoidance, and ripeness avert the determination of the



Constitutional issues until it becomes very necessary to the extent that it is the only course available to assist the litigant's cause.”

From the facts of this case and the evidence availed it is quite apparent that other than deploying this petition against the Respondents for the lawful actions undertaken against him, the Petitioner had an alternative remedy in the form of a civil claim for damages for false arrest or imprisonment, malicious prosecution, loss of employment and income, among other possible claims of a non-constitutional nature.

30. A part from the Constitutional Principle of avoidance this petition must also fail on account of or is defeated by lack of sufficient grounds and evidence to establish and prove the alleged violation of the Petitioner's Constitutional Rights.

In sum, the petition is without merit, an abuse of the court process suitable only for dismissal.

Accordingly, the petition stands dismissed with each party bearing their own costs.

DELIVERED AND DATED THIS 4TH DAY OF DECEMBER 2025

HON. J. R. KARANJAH,

JUDGE

