



**Maiyo & another v Attorney General & 6 others (Constitutional Petition
17 of 2022) [2025] KEHC 19093 (KLR) (19 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 19093 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CONSTITUTIONAL PETITION 17 OF 2022**

E OMINDE, J

DECEMBER 19, 2025

BETWEEN

ROSE JEPKEMBOI MAIYO 1ST PETITIONER

PERIS JELIMO MAIYO 2ND PETITIONER

AND

THE ATTORNEY GENERAL 1ST RESPONDENT

NATIONAL POLICE SERVICE COMMISSION 2ND RESPONDENT

PUBLIC SERVICE COMMISSION 3RD RESPONDENT

DCIO ELDORET EAST 4TH RESPONDENT

CORPORAL FLORENCE KAMERI PC (W) 5TH RESPONDENT

VERONICA MUNAMI 6TH RESPONDENT

CLINICAL OFFICER ISAAC MISOI 7TH RESPONDENT

JUDGMENT

1. By way of Petition dated 13th June 2022, the Petitioners seek the following orders;
 - a. A declaration that the Respondents violated the 1st Petitioners Constitutional rights contrary to Article 21, 25(a), 26(3), 49(1) (q), 50(2) (a) and 51(1) and (3) (a) of *the Constitution*.
 - b. A declaration that the 4th, 5th and 6th Respondents violated the 1st Petitioner's rights by trying to compel her to enter into an illegal agreement/ confession contrary to Article 49(1) (d) of *the Constitution* of Kenya.
 - c. A declaration that the Respondents violated the 2nd Petitioner's rights contrary to Article 53 (1) (d) of *the Constitution*.



- d. A declaration that the 4th, 5th and 6th Respondents violated the 1st Petitioner's rights by granting her unreasonable bond terms and treating her as "guilty till proven innocent" contrary to Article 49(1) (g) and 50 (2)(a) of *the Constitution* of Kenya.
- e. A declaration that the 4th, 5th and 6th Respondents violated the 1st Petitioner's rights by unlawfully retaining her National ID Card No. 20519671 to date.
- f. A declaration that the Respondent violated the 1st Petitioner's right and held her incommunicado contrary to Article 49(1) (c) of *the Constitution*.
- g. A declaration that the Respondents violated the 1st and 2nd Petitioners' rights to be treated with dignity respected and protected contrary to Article 28 of Constitution.
- h. A declaration that the Respondents conspired in an attempt to deny the 1st and 2nd Petitioners access to Justice contrary to Article 48 of *the Constitution*.
- i. A declaration that the 1st, 2nd and 3rd Respondents are vicariously liable for the omissions and commissions of the state officers under their supervision and should be held liable in damages, for violation of their fundamental rights and freedoms contrary to Article 21 of *the Constitution* of Kenya.
- j. A declaration that the 4th, 5th and 6th Respondents violated the 1st Petitioner's right by unlawfully retaining her National ID Card to date contrary to Article 12(1), 9(b) and (2) of *the Constitution*.
- k. An order for General and Special damages for the 1st and 2nd Petitioners by the Respondents jointly and severally.
- l. Exemplary damages for 1st and 2nd Petitioners.
- m. Release of the 1st Petitioner's original National Identification Card No. 20519671 for surrender to the National Bureau on Registration of persons.
- n. Costs of this suit
- o. Interest on (k), (l) and (n) above.
- p. Any such other orders as this honourable court shall deem just to grant.

The Petition

2. The Petitioner filed the Petition, notably without the Supporting Affidavit.
3. The brief facts underlying the Petition is that the Petitioners, mother and daughter, contend that on or about 14th June 2021 the 1st Petitioner was going about her duties as a village elder. At around 12 noon or thereabouts, she was with one Kennedy at Kerio Valley Development Authority Building waiting for a lady whom Kennedy had introduced to her earlier and who needed to be shown the Office of the Registrar of Marriages (ORM). On arrival of the said lady, some ladies and gentlemen in civilian clothes accompanied her and arrested the 1st Petitioner and Kennedy, and frog marched them to a waiting motor vehicle labelling them as "conman" and "conwoman".
4. She later learnt that they were Police Officers in plain clothes from the Directorate of Criminal Investigation Eldoret East, where the motor vehicle was driven to. When she tried to enquire whether it was a case of mistaken identity, she was slapped by the 5th respondent and told to shut up. The petitioner contend that this was the start of a long interrogation where it emerged that the said Kennedy



- and another person had obtained Kshs. 250,000/- from a complainant. She mentioned this to the 1st Petitioner since it was Kennedy who introduced the lady in question to the 1st Petitioner.
5. The petitioners contend that during the interrogation, the 5th and 6th Respondents mistreated her and took her to an inner chamber where they produced a pliers and pinched her continuously on the back with it while compelling her to admit the allegation causing her a lot of physical injury and psychological trauma, but she maintained her innocence. Further, that the said officers asked for her SIM CARD and M-PESA PIN Number and unlawfully obtained her data and information from the provider without her consent, but through threats of further harm. That despite the Safaricom M-pesa data showing she had not received any monies from the complainant or Kennedy, the said Police Officers continued to hold her unlawfully and even ensured she was placed in the cells at Eldoret Police Station for one night in a bid to break her down and compel her to accept the accusation.
 6. The Petitioners averred that when the 2nd Petitioner, aged 17 years then, visited her mother on 14/6/2021 after learning of her arrest, the 5th Respondent slapped her on the face and chased her away while calling her names and even pushed her against a chair where she sustained injuries on her left leg and was scared and traumatized. Further, that the 6th Respondent further threatened to shoot the 1st Petitioner with a pistol that was visible in her open drawer if she continued being stubborn or tried to flee. She urged that thus threat against her life was a violation of the right to life.
 7. The Petitioners averred that, the said investigators obtained the services of an Advocate by the name “Wainaina” to compel the Petitioner to write an agreement under duress on repayment to the complainant. That the investigators further insulted the Petitioner and that Kennedy then entered into an agreement for repayment since he admitted liability. The Petitioners averred that the DCIO placed bond terms of an unreasonable amount of Kshs. 50,000 cash bail which the Petitioner could not afford. It took the efforts of the 2nd Petitioner who appealed to a higher authority within the station to have the 1st Petitioner released on a cash bail of Kshs. 10,000.
 8. The Petitioners contended that the said investigators, before releasing her on bond confiscated her National Identification Card No. 20519671 and have retained it to date. That she underwent a lot of stress and loss in transacting her day to day business especially and suffered further until she decided to obtain a new National Identification card. That upon the release of the 1st Petitioner, the petitioners attended Hospital and reported the torture they had gone through at the hands of the Police Officers to the Independent Policing Oversight Authority (IPOA) -Eldoret office. They further stated that when the 1st petitioner reported back to the DCIO as ordered on 22/06/2021, 10/07/2021 and finally on 14/07/2021, the 4th to 6th Respondents continued to traumatize her emotionally and psychologically for reporting their misdeeds to IPOA. That the 6th Petitioner outrightly told her she will only compensate her when on a wheelchair.
 9. The Petitioners urged that they reported the assault to the OCS Eldoret Central Police Station vide O/B No’s 80/22/6/2021 and No. 101/22/6/2021 and were issued with P3 forms for filling at the Uasin Gishu County Hospital. They were escorted on 23/06/2021 by one PC (W) Chelimo who talked to the Clinical officer, the 7th respondent who turned hostile towards the Petitioners. He demanded an illegal fee of Kshs. 1000 from them and it was not until 1/7/2021 that they were able to raise the amount.
 10. Further, that on the said date PC Chelimo insisted on escorting them. They contended that the 7th Respondent treated the Petitioners without dignity and respect which is unconstitutional and additionally, conspired with the 4th-6th Respondents to attempt and defeat justice for the Petitioners which is an illegal act by a Public Officer and breach of Medical Professional Ethics.



11. The Petitioners further raised a complaint with IPOA again and the Medical Officer of Health, Uasin Gishu County Hospital who supervises the 7th Respondent and requested for a second opinion on the filling of fresh P3 Forms by an impartial Clinical Officer. The IPOA and the Medical Officer of Health were able to avail fresh P3 Forms for the Petitioners which were subsequently filled by the Medical Superintendents at Huruma and Pioneer Health Centres on 26/7/2021 and 3/8/2021 respectively.
12. The Petitioners laid down the particulars of the violations, urging that Respondents wrongly arrested the 1st Petitioner, and wrongfully held her in Police custody and deprived her of her liberty for over 24 hours, after exposing her to torture, cruel, in humane and degrading treatment and holding her incommunicado from her family and lawyer contrary to Article 49 of *the Constitution*. Further, that the 4th - 6th Respondents arrested and held the 1st Petitioner in custody without informing her clearly on what the charge was for which she was being arrested, except on her cash bail receipt which indicated “obtaining” which does not exist in the penal code.
13. No section of the law was quoted as required by Article 49(1) (a) (i) of *the Constitution*. They averred that the 4th - 6th Respondents, during interrogation threatened the 1st Petitioner’s life contrary to Article 26(1) and (3) of *the Constitution*. Further, that the 4th - 6th Respondents violated the 1st Petitioner’s rights in attempting to compel her to enter into an illegal agreement/ confession contrary to Article 49(1) (d) of *the Constitution* of Kenya.
14. The petitioners averred that the 4th – 6th Respondents acted unlawfully towards the 2nd Petitioner by treating her with cruelty and inhumanly contrary to Article 53(1) of *the Constitution* yet she was just a child hence causing her trauma. Further, that the 4th – 6th Respondents wronged the 1st Petitioner by confiscating her National ID Card illegally contrary to Article 121(1) (b) and (2) of *the Constitution* of Kenya. That the 4th – 7th Respondents acted illegally by colluding and conspiring to defeat justice by interfering with their Police Medical report form (P3s) and collecting an unlawful levy of Kshs 2,000/- and not issuing a valid receipt.
15. The Petitioners listed the particulars of injuries as follows for the 1st Petitioner; Severe Psychological Trauma/Depression; Blunt injury to the left ear; Blunt injury to the face; Bruises to the right upper scapular area; Blunt injury to both upper limbs. Further they listed the Particulars of injuries for 2nd petitioner as; Severe psychological trauma/depression; Blunt injury to the head; Blunt injury to the face; Blunt injury to the left thigh.
16. The petitioners also set out the Particulars of special damages as follows;
 1. Kshs 2000/- for filling two P3 Forms for 1st and 2nd Petitioners
 2. Doctor’s consultation fees Kshs 6,000/- x 2= Kshs 12,000/-
 3. Doctors court attendance fees Kshs 5,000/- X 2= 10,000/- for 2 doctors)

Urgent medical intervention costs
 - 1 Psychological counselling and psychiatric treatment for 1st and 2nd Petitioners at approximately Kshs 200,000/- each totalling to Kshs 400,000/-
17. The Petitioners additionally claimed exemplary damages and urged the court to allow the prayers sought. The court needs to point out that even though the Petitioner’s in their Supplementary and further Affidavit referred to depositions made by the Respondents in a Replying Affidavit, despite the court’s diligent efforts to trace the said Replying Affidavit in the court file after it retired to prepare this judgement, the same could not be traced. It is therefore highly probable in the circumstances that the same could have been served upon the Petitioners but not filed



18. However, the court notes that the depositions that were therein raised were not only reiterated in the submissions filed on behalf of the Respondents by their Counsel, but were also referred to by the Petitioner's in their further depositions and in the interest of justice and for purposes of the expeditious disposal of this case, the court will rely on the what is on record as referenced to the said Replying Affidavit in reaching its determination

Petitioners' Supplementary Affidavit

19. The 1st Petitioner filed a Supplementary Affidavit dated 5th April 2023. She deponed that she had the authority to deponed on behalf of the 2nd Petitioner. She averred that in response to paragraph 3 of the Respondents' Replying Affidavit, the Constitutional Petition is lawful and properly before this Court as provided by *the constitution* of Kenya (Protection of Rights and Fundamental freedoms) Practices and Procedure Rules and not a waste of judicial time as alleged by the respondent.
20. Further, that the annexed documents to the said Petition are nothing but the truth, and sources clearly indicated as will be further proved during the hearing of this Petition contrary to the allegations of the respondent. She deponed that in response to the Paragraph 6 of the Replying Affidavit the respondent has no right to speak for 3rd or 7th respondents as counsel served both respondents and further, that the respondent inquired of the 3rd respondent for instructions to defend them as per the annexure RJM-1 but neither they nor the 7th respondent filed any memorandum of appearances or objections in court. She urged the court to expunge the said paragraph.
21. She urged that the said 4th – 6th respondents labelled them 'conman' and conwoman' as rightly admitted in paragraph 10 of her Replying Affidavit, which was unlawful and derogatory. Further, that obtaining money by false pretences was never recorded on her cash bail receipt at all as per annexure 6 to the petition, clearly showing she was arrested for a specified offence under the law, contrary to article 49{a} of *the constitution*. She additionally stated that paragraph 12 of the Replying Affidavit is contradictory to paragraph 10. She reiterated the contents of the petition and urged that the OCS was reluctant to record their complaints in the occurrence Book hence the general details on Part 1 of their P3 forms Exh. 11 and Exh. 12- to the Petition.
22. With regard to non-recording in the Occurrence book upon release on 15/5/2021, annexure "FK1 to the replying affidavit she averred that she was never asked about any complaint she may have heard. In response to Paragraph 29 and 30 of the said Replying Affidavit, she urged that she was not privy to the statements recorded by witnesses and the investigations are still ongoing with the said independent body (IPOA), referring to annexure RJM-2 and urging that the 4th – 6th respondents have no right at all to have the said statements or make conclusions at all. She further deponed that Kennedy Murage, her co-suspect, had been compromised by the 4th – 6th Respondents and he turned against them after they filed a report to IPOA.
23. She deponed further, that their complaints are truthful, genuine, bonafide and sustainable in law. She reiterated that her identity card was confiscated and urged that the Replying affidavit should be dismissed.

Petitioners' Supplementary Affidavit

24. Counsel for the Petitioners filed a supplementary affidavit dated 9th October 2023. She deponed that on 26th September 2023, she was granted leave by the deputy registrar, HON. Rosemary S C ONKOBA to file this Supplementary Affidavit. Further, that she swore the Affidavit in further response to the Replying Affidavit sworn by Corporal Florence Kameri on 22nd March 2023. She averred that the



Supplementary Affidavit reinforces the 1st Petitioner's Supplementary Affidavit sworn on 5th April 2023 and filed and served on the same day.

25. The deponent averred that the criminal investigations were ongoing in the complaint the Petitioners had filed with the IPOA who forwarded their findings to the Office of the Director of Public Prosecutions (ODPP), and who finally gave consent to charge the 5th and 6th Respondents herein with Assault causing actual bodily harm to the Petitioners. She referred the court to annexures marked as M.C.C.-1 (a.) and 1 (b.) 6. Additionally, that the parties were granted a chance to pursue an out-of-court settlement via the ODPP guidelines on Diversion, and the Principal Prosecuting Counsel, Uasin Gishu County, invited the 5th & 6th Respondents and 1st & 2nd Petitioners for a Diversion Meeting on 22/9/2023.
26. She referred the court to the annexure marked as MCCC (2). She urged that the parties had their first meeting on 22/9/2023 at the office of the ODPP Prosecutions Office in Uasin Gishu but the 5th and 6th Respondents stonewalled by adamantly refusing to compensate the petitioner adequately, although they apologised for violating the Petitioners' Rights. She referred the court to annexure MCC (3) in this regard. She further stated that the complaints against the 4th and 7th Respondents are still pending before the OCS Eldoret Police station and she has raised concerns with the authorities on the expediting of the criminal investigations. She referred to annexures marked as MCC 4(a) and 4(b) in this regard.

Petitioners' Submissions

27. Counsel for the petitioner laid down the details pertaining to the petition including a summary of the pleadings and the responses thereto. She then went into the issues for determination and urged that there were two issues as follows;
 1. Whether the Petitioners have proved 100% on a balance of probability that their Constitutional Rights as per Paragraph 30 of their Petition were violated by the respondents, jointly and severally and
 2. Whether the Petitioners are entitled to the orders and damages sought in their Petition.
28. Counsel cited the case of Michael Rotich v Republic [2016] eKLR and the Indian Supreme Court Case, Neeru Yadav v State of U.P & Another Criminal Appeal NO. 2587 of 2014 on the duty of the court and the right to liberty. She urged that the 1st Petitioner was clearly arrested in a primitive manner and frog-marched to Eldoret DCI Office where her Liberty was taken away unlawfully, for over 24hrs.
29. However, even if the case was still pending under investigation the respondents should have given her favourable bond terms and further, that granting her bond terms beyond her ability, without compelling reasons, yet Kennedy had accepted to refund the complainants money was a gross violation of the 1st Petitioners' right to liberty. It shows clearly that the respondents did not care to apply the guidelines to Bail/Bond as provided by the National Council on the Administration of Justice, the provisions of which she reproduced. Further, that the Police Officers being the 4th – 6th Respondents violated the law.
30. Counsel cited Article 29 of *the Constitution* and urged that the 1st Petitioner has placed evidence before this Court to confirm she was arbitrarily arrested, by the 5th and 6th Respondents who did not even identify themselves, and upon inquiring if there was mistaken identity, the said 5th and 6th Respondents herein, started torturing her through slaps, pinching her with pliers and verbal insults, causing her untold trauma.



31. She urged that the 2nd Petitioner, arriving to plead her mother's (1st Petitioner's) cause, was slapped, pushed against a chair, insulted and threatened with dire consequences if she did not leave the station. The 1st Petitioner was neither allowed to call her Advocate nor family member and only managed to call the 2nd Petitioner by chance. She urged that Article 49 of *the Constitution* protects the rights of arrested persons and referred to sub article (1) (c) specifically. She stated that from the 1st Petitioners' statements, it is clear the respondents intended to hold her incommunicado, against the law.
32. The Petitioners have clearly explained the trauma they went through not only in the hands of the 4th, 5th and 6th Respondents, but also at the hands of their fellow conspirator the 7th Respondent, a clinical Officer, employed at the Uasin-Gishu County Hospital. She reproduced the facts pertaining to this allegation as stated in the petition and urged the Court to ignore the irrelevant averments in the Replying Affidavit of the 5th Respondent in a bid to sanitize their violations against the Petitioners.
33. Further, that by the time of writing these submissions, the Petitioners' advocate, had been served with a copy of the Charge sheet and summons to attend Court for "Plea" on 8th April 2024 and also served on the 5th and 6th Respondents in Eldoret CM.CR Case NO. MCCR NO. E664/24 wherein the 1st and 2nd Petitioners are the complainants. She urged that this proves on a balance of Probability 100% that the respondents are liable for violating the Petitioners Constitutional and Human Rights and should therefore take full responsibility.
34. On whether the petitioners are entitled to the orders and damages, Article 22 of *the Constitution* allows any person who feels their fundamental freedoms and rights have been violated to institute Court proceedings. Hence, these proceedings are properly before this Constitutional Court and the 1st Petitioner has rightly brought this Petition on behalf of herself and her daughter, the 2nd Petitioner who was a minor at the time her rights were violated. The violation complained of was carried out in the same transaction, time and place and would be a waste of Courts time and resources to file a multiplicity of Petitions for a same cause by a same class of persons.
35. Counsel cited Article 9 of the International Covenant on Civil and Political Rights which provides: -
9 (5) "Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation"
36. Further, that this is also respected under our Kenyan Constitution at Article 2 (5) which provides: -
"The General rules of International law shall form part of the law of Kenya"
6). Any treaty or convention ratified by Kenya shall form part of the law of Kenya under *the Constitution*.
37. Counsel urged that the 1st Petitioner's rights against arbitrary arrest and arbitrary detention were violated contrary to Article 29 (1) of *the Constitution* and she ought to be compensated. She cited the case of Kajiado High Court Constitutional Petition No. 14 of 2017-Mohammed Faisal and 19 others v Henry Kandie, Chief Inspector of Police Station (OCS) Ongata Rongai Police Station and 7 others in this regard. She urged the Court to find that the Petitioners have proved their Petition on a balance of probability at the ratio of 100% against the Respondents jointly and severally and award them Damages as guided by the law and legal precedents.
38. She additionally placed reliance on the case of Daniel Waweru Njoroge & 17 Others v Attorney General Civil Appeal No. 89 of 2010 [2015] eKLR. She urged the Court to be guided by the unique facts of the Petition at hand, the Physical, emotional and psychological injuries suffered by the 1st & 2nd



- Petitioners, the injury to the character and reputation of the 1st Petitioner who is a respectable Village Elder also serving as such within the Eldoret Police Station area.
39. With regard to general damages for violation of petitioners rights she referred the court to the decision above, pointing out that the judge proceeded to award the 1st to 19th Petitioners, Kshs. 100,000/= (One Hundred Thousand Shillings Only) in General Damages and a similar amount in Exemplary Damages amounting to Kshs 200,000/= (Two Hundred Thousand Shillings Only) each. That however this was in the year 2017 and she proposed an award of Kshs. 400,000/= (Four Hundred Thousand Shillings Only) for each and Kshs.800.000/= (Eight Hundred Thousand Shillings Only) for both Petitioners.
40. She urged that the 1st Petitioner suffered soft tissue injuries at the hands of the respondents namely: - a) Blunt Injury to the left ear; b) Blunt Injury to the face; c) Blunt injury to the right upper scapular area d) Blunt Injury to both upper limbs. She proposed an award of Kshs. 350,000/= in general damages for Pain, Suffering and Loss of Amenities, in view of the current inflation rates, high cost of living and the dropping value of the Kenyan Shilling, vis-a-vis, the American Dollar globally.
41. She placed reliance on Poa Link Services Company Limited & Another v Sin Dand Boaz Bonzemo HCCA NO 17 OF 2019 wherein Riechi J. upheld general damages of KSH 350, 000/= in this regard. She additionally stated that the 2nd Petitioner also suffered soft tissue injuries, at the hands of the Respondents namely: -a) Blunt injury to the head b) Blunt injury to the face c) Blunt injury to left thigh. She suggested a modest award of Kshs. 300,000/=in general damages for Pain, Suffering and Loss of Amenities. She relied on the Authority of Anthony Nyamwaya- (Appellant) v Jackline Moraa Nyandemo-(Respondent), Nyamira High Court Civil Appeal NO. E046 OF 2021 in this regard.
42. On Special Damages, she urged that the Petitioners have proved expenditure of Kshs. 6000/= (Six Thousand Shillings Only) each for preparation of the Medical Report by Dr. Sokobe, totalling KSH12, 000 (Two Thousand Shillings Only). That they also paid Ksh 1000/= (One Thousand Shillings Only) each illegally to the 7th Respondent amounting to Ksh 2000/= (Two Thousand Shillings Only) each in total. They also paid KSH 50/= (Fifty Shillings Only) each at Uasin Gishu County Hospital totalling KSH100/-. She urged that the total Special Damages were Kshs. 14,010/=. According to Dr. Sokobe, both the 1st and 2nd Petitioners suffered Severe Psychological trauma/Depression and need urgent Medical intervention for Psychological Counselling and Psychiatric treatment costing approximately Kshs. 200,000/= each totalling Kshs. 400,000/- each.
43. Counsel submitted that they further pray that the 5th Respondent be ordered to search for and return the 1st Petitioners' Original National Identification Card NO. 20519571, to her for surrender to the department of Registration of Persons for safekeeping. She urged the court to allow the Petition as prayed.

Respondents' Submissions

44. On whether the petition is defective having not been supported by an affidavit, counsel pointed out that the petitioner filed petition dated 13th June, 2022 alongside an authority to act, list of witnesses and list of documents. There is no Supporting Affidavit in support of factual allegations set out in the petition against the respondents and properly introduce into the record of the court the documents or evidence upon which the petitioners rely on. She urged that the petition is fatally defective, as the allegations set out are without a sworn affidavit from the petitioner but are merely statements that cannot be relied in court as testimony. Admitting into evidence the allegations set out will tantamount to accepting evidence presented from the bar by counsel for the petitioner.



45. Counsel submitted that *the Constitution* of Kenya {Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 rule 11 thereof provides as follows:

“(1) the petition filed under these rules may be supported by an affidavit (2) if a party wishes to rely on any document, the document shall be annexed to the supporting affidavit or the petition where there is no supporting affidavit”

46. In addition to the above provisions, the rules of evidence are clear. Evidence can only be brought to court through sworn statements by the parties. She placed reliance on the case of Maureen Nyambura Ngigi Warui v Board of Directors, Kenya Power & Lighting Company limited & 2 others F2020] eKLR wherein Justice Maureen Odero struck out a petition in similar circumstances. She urged that the petitioners filed supplementary affidavits in response to the 1st, 4th, 5th and 6th respondents’ Replying Affidavit. The affidavit clearly just responds to the facts raised In the Replying affidavit. It does not breathe life to the allegations or documents filed alongside the petition. She maintained that such omission is fatal to the petition and the same ought to be struck out.

47. On whether the petition meets the threshold set out in the case of Anarita Karimi Counsel urged that *the Constitution* of Kenya Protection of Rights and Fundamental Freedoms Practice and Procedure Rules 2013 (“Mutunga Rules”) lays down the procedure to move the court in a constitutional petition. That Rule 10 of the Rules provides thus:

“The petition shall disclose the petitioner’s name and address; the facts relied upon; the constitutional provision violated; 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; the petition shall be signed by the petitioner or the advocate of the petitioner; and the relief sought by the petitioner.”

48. She urged that the principles of drafting a constitutional petition were well established in the court in the case of Anarita Karimi Njeru v Attorney General (1979) KLR 154/ (1976-1980) KLR 1272) and further, that in Mumo Matemvu v Trusted Society of Human Rights Alliance and 5 Others (2013) eKLR, the Court of Appeal drove home the import of the principle as to the precision in constitutional litigation and had the following to say:

Procedure is also a handmaiden of just determination of cases. Cases cannot be dealt with justly unless the parties and the court know the issues in controversy... The principle in Anarita Karimi Njeru that established the rule that requires reasonable precision in framing of issues in constitutional petitions is an extension of this principle.”

49. Counsel submitted that it therefore follows that a matter falls within the confines of a constitutional petition only if; a. It raises constitutional issues and questions for determination by the court; b. It outlines the constitutional provisions violated; c. It outlines the nature of injury caused or is likely to be caused to the petitioner; d. It is drafted with sufficient specificity as to enable the Respondents clearly identify the alleged violation to enable them respond to the allegations.

50. In light of the requirements of precision and specificity as set out in Anarita Karimi as well as Mumo Matemvu cases, counsel posited, the Petitioner has not pleaded with specificity and precision as to how the 4th to 6th Respondents have breached their fundamental rights and freedoms under *the Constitution*. Further, that the petitioner has not stated which articles of *the constitution* were violated and how so. She urged that it is not clear how the allegation on violation of Article 49 is said to have been breached. In paragraph 34 of the petition, the petitioner claims that the 4th, 5th and 6th respondents treated them with cruelty and inhumanely contrary to Article 53(1) of *the Constitution*. Article 53 of



the Constitution is about the rights of children. The petitioners are not minors neither are they alleging infringement of the enunciated therein.

51. Counsel urged that the Petitioners claim under paragraph 35 of the constitution that her National Identity card was taken from her contrary to Article 121(1) (a) and (b) of the Constitution yet the Constitution does not have Article 121(1) but only Article 121 which talks about the quorum of Parliament. She stated that in respect of the 2nd and 3rd respondents there is no allegation of violation of the constitution that has been set against them. They had no role at all in allegations set out in the petition. Counsel reiterated that the petition does not meet the set threshold and should thus be struck out.
52. On whether the 1st, 4th, 5th and 6th respondents violated the constitution as alleged counsel pointed out that the petitioners allege that their rights under Articles; 49, 49(1) (a)(i), 26(1) and (3); 49(1) (d); 53(1) and 121 (1). They also seek for declarations that articles 51, 28 and 48 were violated. She urged that it is trite law that it is the onus of the petitioner to specifically allege and further proof a violation of Constitutional rights. That the Petitioners have not demonstrated any unlawfulness in their arrest and subsequent investigations. They have also not demonstrated any threat and/or infringement and/or violation of their rights as alleged. The 4th, 5th and 6th Respondents on their part have demonstrated that all actions undertaken were well within the law, in good faith and in execution of their statutory duty.
53. Counsel urged that the petitioner claims to have been arrested without being informed of the reasons for arrest, held in custody for a period of over 24 hours. As stated above, the said averments are not supported by any proof in a detailed in a sworn statement. They are hollow statements incapable of being substantiated. The documents attached cannot hold any evidentiary proof before the court since the same have not been properly brought to the court through sworn affidavit and or statements.
54. Counsel submitted that there is no compelling evidence on record showing that the 4th and 6th Respondents did not adhere to the provisions of Article 49 of the Constitution and there is also no evidence of any illegality. She urged that they rely on “FKT- Copy of OB Abstract dated 15/6/2022 to demonstrate to this Court that the Petitioners on the date of release indicated in the record that there was no physical or emotional harm/torture suffered at the time spent in custody.
55. That as per the copy of the Inventory (FKT4I) of Items recovered from the Petitioner does not indicate the Petitioner’s Identity Card. Further, the Petitioner’s allegations that the 6th Respondent threatened to shoot her have been negated by the Copy of Arms Movement Book (FK.4) which shows that the 6th Respondent had not been issued with any gun during the month on June or the day of arrest of the Petitioner Further, as per the statement recorded by Kenneth Murage with IPOA (FK-5), indicates that no harm was ever occasioned on the Petitioners.
56. Counsel pointed out that the petitioner relied on further supplementary affidavits sworn by Mary Goretti Chepseba and Rose Jepkemboi Maiyo. That in the affidavit of Mary Goretti Chepseba, it is alleged that the Independent Policing Oversight Authority (IPOA) conducted investigations and recommended that 5th and 6th respondents be charged. There is no nexus between the petition and the said affidavit, no proof that the said police officers referred to in the letter attached as MCC1(a), MCC1(b), MCCC2 and MCCC3 were indeed the 5th and 6th respondents and if so that they were charged over issues raised herein. The petitioner also relied on the supplementary affidavit of Rose Jepkemboi Maiyo wherein they were mainly refuting the averments by the 1st, 4th, 5th and 6th respondents,



57. Counsel submitted that the Petitioner was arrested and taken to court as per Article 49 (f) (li) of *the Constitution*, and that additionally, under Chapter 8 of the National Police Service Standing Orders the OCS is in charge of prevention and detection of crime, apprehension of offenders in the area and organizing Special Police Operations. Further, Police Officers can arrest a person on reasonable grounds that they either committed or are about to commit a cognizable offence.
58. That the Petitioners failed to demonstrate that the Officers acted maliciously or outside their powers or that the arrests in question were commenced without proper or reasonable foundation. Further, that the 4th, 5th and 6th Respondents acted on the basis of Section 24 of the *National Police Service Act* which mandates the Police to detect and prevent crimes. Moreover, criminal charges being preferred against the Petitioners was not a violation of their Constitutional rights as the actions complained of by the Petitioners fell within the mandate of the Respondents. On this basis, the Petition is deficient and discloses no justifiable cause to warrant the intervention by the Court and the same ought to be dismissed with costs.
59. Counsel submitted that the arrest of the Petitioner was as per Section 58 of the *National Police Service Act* which gives a police officer power to arrest without warrant. Further, that contrary to the Petitioner's allegations of unlawful arrest and detention the Petitioner was lawfully arrested for a cognizable offence, placing reliance on the case of Henry Kandie. Chief Inspector of Police. PCS, Ongata Rongai Police Station & 7 others; National Police Service Commission & another [2017] eKLR. Counsel urged that she had addressed the allegations of violation of Articles 53(1) and 212 (1) of *the Constitution* under paragraphs 15 and 16 above.
60. Counsel submitted that the petitioner is also seeking for declarations that provisions of Article 50, 51(1), 28 and 48 of *the constitution* but has not explained how the same were violated. One cannot pray for orders which have not been supported by any evidence and or married to any factual allegation.
61. Counsel urged the court to find that the allegations of violations of the Petitioner's right cannot be substantiated and thus the prayers both general and special damages are not warranted. Based on this, the award of damages is not the primary consideration of a constitutional Court. She cited the decision of the Court of Appeal in *Gitobu Imanyara & 2 others v Attorney General Civil Appeal No. 98 of 2014 (2016) eKLR*. Counsel urged that in *Siewchand Ramanoop v The AG of T&T, PC Appeal No 13 of 2004*, the Privy Council held that a monetary award for constitutional violations was not confined to an award of compensatory damages in the traditional sense.
62. Counsel urged that a similar position was established by the Constitutional Court of South Africa in *Dendy v University of Witwatersrand, Johannesburg & Others - {2006} 1 LRC 291* and submitted that the petitioners ought not to be awarded any damages. Further, that it is the petitioner's assertion that they have already sought recourse at IPOA and a recommendation has been made for them to charge and the same is in the process of being diverted.
63. The petitioner further stated under paragraph 7 in the supplementary affidavit sworn by Mary Goretti Chepseba that they are yet to agree on compensation. In the circumstances, the petitioner has already received Constitutional reprieve and as such needn't belabour coming to this court. It is clear that the monetary compensation that they seek before this honourable court in in progress of being agreed upon in the terms of diversion before the Office of the Director of Public Prosecutions. This petition is thus the petitioner's attempt of a second bite of the cherry and damages shouldn't be awarded.
64. Counsel submitted that should this court be of the contrary view and decide to award damages, it may apply the guidelines set in the case of *Daniel Waweru Njoroge & 17 Others v Attorney General Civil Appeal No. 89 of 2010 (2015) eKLR*. Further, that the Petitioner particularized the injuries that she



allegedly suffered in the petition at paragraphs 37 and 38 thereof. She has not adduced any medical report or any evidence to demonstrate the said injuries. There is no admissible evidence on record or any credible witness that has attested to the said injuries. Counsel urged that due to lack of evidence thereof the prayer for general damages ought to be dismissed.

65. In respect to special damages counsel urged that it is trite law that the same must be specifically pleaded and proved. The petitioner ought to have provided receipts particularizing each expense. The same was not done and thus the prayer for special damages should be dismissed. However, should the court be inclined to grant any damages it should consider that the petitioner are already negotiating on compensation, has received other remedies guaranteed by *the Constitution* and that the injuries were not proved and award a sum of Kshs. 5,000/-
66. Counsel submitted that the petition was not properly drafted, the particulars thereof not specifically articulated, the allegations not substantiated and proved and further, that the petitioners have not discharged their onus bestowed upon them of proving the petition to a balance of probability. She urged the court to dismiss the application with costs.

Analysis & Determination

67. The following issues arise for determination;
- i. Whether the Petition is fatally defective for failure to file supporting affidavit and if not;
 - ii. Whether the Petition meets the threshold for a constitutional Petition
 - iii. Whether the Petitioners Constitutional Rights were violated by the Respondents and therefore merit an award of damages

SUBDIVISION - Whether the Petition is defective for failure to file a supporting affidavit

68. Rule 10(1) and (2) of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (hereinafter referred to as ‘the Mutunga Rules’) provides seven key contents of a Petition. They are as follows: -

Form of petition.

10. (1) An application under rule 4 shall be made by way of a petition as set out in Form A in the Schedule with such alterations as may be necessary.
- (2) The petition shall disclose the following—
 - (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.



69. Sub-rules (3) and (4) further provide as follows:
- (3) Subject to rules 9 and 10, the Court may accept an oral application, a letter or any other informal documentation which discloses denial, violation, infringement or threat to a right or fundamental freedom.
 - (4) An oral application entertained under sub rule (3) shall be reduced into writing by the Court.
70. Rule 11 of the Mutunga Rules state as follows: -
- (1) The Petition filed under these rules may be supported by an affidavit.
 - (2) If a party wishes to rely on any document, the document shall be annexed to the supporting affidavit or the petition where there is no supporting affidavit.
71. In considering the above cited provisions of the law and more particularly Sb-Rule 4, it is abundantly clear that under the Mutunga Rules, it is envisaged that applications such as the one before the court can even be made orally. This in my considered opinion underscores the fact that contrary to the submissions made by Counsel for the Respondents on the need by any such Petitioner to strictly comply with the Rules of procedure in the filing of these kind of Petitions, the contrary is the case and that noncompliance with these rules does not in any way render such a Petition fatally defective. Further, the Court also takes note of the fact that under the provisions of Rule 11 of the same said Rules, it is not mandatory that such a Petition be supported by an Affidavit by dint of the fact that the operative word as herein underscored is may which then renders the application of the same not mandatory.
72. Moreover, under the same said Rule, it is clearly stated that if a party wishes to rely on any document, the document is to be annexed to the supporting affidavit or the petition itself where there is no supporting affidavit which to my understanding only goes to underscore the provision that an affidavit in support of this kind of petition is not a mandatory requirement and so failure to annexe the same does not render a Petitioner's petition fatal. For the above reasons, I am satisfied that the Petition is properly before the court notwithstanding the failure by the Petitioners to file an Affidavit in support of their Petition but instead filing all the documentation that they seek to rely on to the Petition itself for reasons that the Mutunga Rules herein cited provides for such a scenario.

Whether the Petition meets the threshold for a constitutional petition

73. In the case of *Anarita Karimi Njeru v Republic* (No 1) [1979] KLR 154 it was held as follows;
- “If a person is seeking a redress from the High Court on a matter which involves a reference to *the Constitution*, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed and the manner in which they are alleged to be infringed”
74. In *Mumo Matemo v Trusted Society of Human Rights Alliance* [2014] eKLR. the Court of Appeal held: -
- “... the principle in *Anarita Karimi Njeru* (supra) underscore the importance of defining dispute to be decided by the Court ... Procedure is also a handmaiden of just determination of cases. Cases cannot be dealt with justly unless the parties and the Court know the issues in controversy. Pleadings assist in that regard and are a tenet of substantive justice, as they give fair notice to the other party. The principle in *Anarita Karimi Njeru* (supra) that established



the rule that requires reasonable precision in framing of issues in Constitutional Petitions is an extension of this principle.”

75. In *Khen Kharis Mburu v Inspector General of Police Service & 3 Others* [2019] eKLR the Court held: -

“One of the cardinal principles in Constitutional litigation is that a party who claims that a right or fundamental freedom has been violated, is being violated or is threatened, must plead with accuracy and precision demonstrating the right violated or infringed, the article of *the constitution* violated and the jurisdictional basis for it. That is, it is now an established principle of law that anyone who wishes the Court to grant a relief for violation of a right or fundamental freedom must plead in a precise manner the constitutional provisions said to have been violated or infringed, the manner of infringement and the jurisdictional basis for it.”

76. In the instant case, in applying my mind to the submissions made on behalf of the 4th-6th Respondents, that by dint of the fact that the applicants failed to file with their Petition an Affidavit in support thereof, but instead annexed all the documentation that they seek to rely on directly to the Petition which then renders their application deficient of proof of the allegations made against the said Respondents, and have in that respect failed to set out with a reasonable degree of precision the actions that they allege resulted in the violation of their rights as envisaged in the celebrated case of *Anarita Kirimi Njeru*. That further, in light of this omission, their Petition is incompetent for want of substantiation. However, because the court has already herein above made a finding against this line of submission, it is my finding that this submission is inconsequential in the circumstances.

77. Consequently, having applied my mind to the Petition vis-à-vis the requirements as set out in the in the *Anarita Karimi Njeru* case as well as the other cases cited, and having ruminated upon the same at length, I am very well satisfied that the Petitioners have indeed set out and with a reasonable degree of precision the actions that resulted in the violation of their rights as provided under *the Constitution*. I therefore find that the Petition does meet the required threshold for a Constitutional Petition

Whether the Petitioners Constitutional Rights were Violated by the Respondents and are therefore merit an award of damages

78. The above said, upon a careful consideration of the allegations made as against the 4th-6th Respondents in the Petition and in applying my mind to all the documents availed in support of the said allegations, and in juxtaposing these allegations against the denials made by the defendants, the court notes that the substance of these allegations as well as the contents of the documents annexed in support have not been sufficiently and/or substantially rebutted and/or controverted by the Respondents. I also find the evidence proffered in support of the Petitioner’s case to be cogent, comprehensible, coherent, consistent, truthful and honest and is more believable than that of the Respondents.

79. Further to the above, I also note that the Respondents do not dispute the fact that the matter was reported by the Petitioners to IPOA and that investigations were conducted and they were found to be culpable and were in actual fact charged in court and that they are currently negotiating an out of court settlement with the Petitioners through the diversion policy under the ODPP. In this regard it is my very well considered opinion the evidence proffered by the Respondent are comprised of mere denials that have not in any way substantially eroded the allegations made by the Petitioners. Further to the above said and in considering the evidence in its totality the court is satisfied that 1st and 2nd Petitioner’s rights against arbitrary arrest and arbitrary detention were violated contrary to Article 29 (1) of *the Constitution*.



80. Counsel for an award of Ks. 400,000/- for each petitioner, Counsel cited the case of Kajjado High Court Constitutional Petition No. 14 of 2017 Mohammed Faisal and 19 others v Henry Kandie, Chief Inspector of Police Station (OCS) Ongata Rongai Police Station and 7 others and Daniel Waweru Njoroge & 17 Others v Attorney General Civil Appeal No. 89 of 2010 [2015] eKLR.
81. Counsel submitted that even though awards of Ks. 100,000/- and 200,000/- respectively were made in these cases, it is urged that the Court be guided by the unique facts of the Petition at hand, the physical, emotional and psychological injuries and trauma suffered by the 1st & 2nd Petitioners herein, the injury to the character and reputation of the 1st Petitioner who is a respectable Village Elder who also serves as such within the Eldoret Police Station area. Counsel further urged that these awards were made in the year 2017 and so the issue of effluxion of time and the current inflationary rates should be taken into consideration.
82. On the injuries sustained, Counsel urged that the 1st Petitioner suffered soft tissue injuries at the hands of the respondents namely: - a) Blunt Injury to the left ear; b) Blunt Injury to the face; c) Blunt injury to the right upper scapular area d) Blunt Injury to both upper limbs. She additionally stated that the 2nd Petitioner also suffered soft tissue injuries, at the hands of the Respondents namely: -a) Blunt injury to the head b) Blunt injury to the face c) Blunt injury to left thigh. Counsel placed reliance on Poa Link Services Company Limited & Another v Sin Dand Boaz Bonzemo HCCA No. 17 of 2019 wherein Riechi J. upheld general damages of KSH 350, 000/= in this regard. She therefore suggested what she referred to as a modest award of Kshs. 300,000/=in general damages for Pain, Suffering and Loss of Amenities to each of the Petitioners citing the current inflationary rates, high cost of living and the dropping value of the Kenyan Shilling, vis-a-vis, the American Dollar globally.
83. On Special Damages, she urged that the Petitioners have proved expenditure of Kshs. 6000/= (Six Thousand Shillings Only) each for preparation of the Medical Report by Dr. Sokobe, totalling Ksh 12, 000/- (Twelve Thousand Shillings Only). That they also paid Ksh 1000/= (One Thousand Shillings Only) each illegally to the 7th Respondent amounting to Ksh 2000/= (Two Thousand Shillings Only) and also paid Ksh 50/= (Fifty Shillings Only) each at Uasin Gishu County Hospital totalling Ksh. 100/-
84. She urged that the total Special Damages be awarded at Ksh. 14,010/=. Further that according to Dr. Sokobe, both the 1st and 2nd Petitioners suffered Severe Psychological trauma/Depression and need urgent Medical intervention for Psychological Counselling and Psychiatric treatment costing approximately Kshs. 200,000/= each totalling Kshs. 400,000/- each.
85. In response to the damages sought, on behalf of the Respondent, Counsel submitted that an award of damages is not the primary consideration of a constitutional Court and cited the decision of the Court of Appeal in Gitobu lmanyara & 2 others v Attorney General Civil Appeal No. 98 of 2014 (2016) eKLR. And also urged that in Siewchand Ramanoop v The AG of T&T, PC Appeal No 13 of 2004, the Privy Council held that a monetary award for constitutional violations was not confined to an award of compensatory damages in the traditional sense.
86. Counsel further urged that a similar position was established by the Constitutional Court of South Africa in Dendy v University of Witwatersrand, Johannesburg &. Others [2006] 1 LRC 291and submitted that the petitioners ought not to be awarded any damages. Further, that it is the petitioner's assertion that they have already sought recourse at IPOA and a decision to charge them has been made and the same is in the process of being diverted. The petitioner further stated that under paragraph 7 in the supplementary affidavit sworn by Mary Goretti Chepseba she states that they are yet to agree on compensation.



87. That in the circumstances, the petitioner has already received a Constitutional reprieve and as such needn't belabour coming to this court for reasons that it is clear that the monetary compensation that they seek before this honourable court in in progress of being agreed upon in the terms of diversion before the Office of the Director of Public Prosecutions and that what they are seeking now is a second bite of the cheery.
88. To the submission, that an award of damages is not warranted, the court will simply point out that it is cognisant of the fact that Article 23(3)(e) provides for an order of compensation as one of the reliefs that a court may grant in upholding and enforcing the Bill of Rights and in this regard, this submission has no basis in law.
89. The court further notes that the Respondents themselves have admitted that they are pursuing an out of court settlement wherein they are in negotiations to compensate the Petitioners which means that they too know that compensation is a relief provided for in law and are submitting along these lines merely for the sake of submissions.
90. In this regard, I am well satisfied that the Petitioners have sufficiently demonstrated to the court that their rights under the said Constitution were violated and infringed by the 4th-6th Respondent as has been averred. In this regard, I am satisfied that the Petitioners have on a balance of probabilities proved their case against the Respondents as alleged.
91. However, it is my finding that the case against the 7th Respondent has not been sufficiently proved on a balance of probabilities and the court therefore finds that the said Respondent is not culpable on the allegations of the violations of the Petitioners Constitutional and fundamental rights.
92. On the awards sought by the Petitioners, the court notes that the Respondents did not offer any alternative awards. I have considered the injuries sustained and in my considered opinion, I find that they are basically soft tissue injuries and in light of the fact that general damages for such injuries ordinarily do not exceed Ks. 150,000/-. Accordingly, therefore, I now hereby award to each Petitioner General Damages for Pain Suffering and Loss of Amenities an amount of Ks. 150,000/-.
93. Having considered the authorities cited in support of the award sought for exemplary damages, I am satisfied that they are relevant and it is safe for the court to rely on them in determining a fair and just award. In this regard, taking into account the current high inflationary rates and cost of living, I award each of the Petitioners exemplary damages if Ks. 300,000/- and Special Damages as pleaded and proved at a total of Ks. 14,010/- to both Petitioners.
94. The upshot therefore is that judgement is entered for the 1st and 2nd Petitioner and against the 1st-6th Defendants jointly and severally as hereunder;
- a. A declaration be and is now hereby issued that the Respondents violated the 1st Petitioners Constitutional rights contrary to Article 21, 25(a), 26(3), 49(1) (q), 50(2) (a) and 51(1) and (3) (a) of *the Constitution*.
 - b. A declaration be and is now hereby issued that the 4th, 5th and 6th Respondents violated the 1st Petitioner's rights by trying to compel her to enter into an illegal agreement/ confession contrary to Article 49(1) (d) of *the Constitution* of Kenya.
 - c. A declaration be and is now hereby issued that the Respondents violated the 2nd Petitioner's rights contrary to Article 53 (1) (d) of *the Constitution*.



- d. A declaration be and is now hereby issued that the 4th, 5th and 6th Respondents violated the 1st Petitioner’s rights by granting her unreasonable bond terms and treating her as “guilty till proven innocent” contrary to Article 49(1) (g) and 50 (2)(a) of *the Constitution* of Kenya.
- e. A declaration be and is now hereby issued that the 4th, 5th and 6th Respondents violated the 1st Petitioner’s rights by unlawfully retaining her National ID Card No. 20519671 to date contrary to Article 12(1), 9(b) and (2) of *the Constitution*.
- f. A declaration be and is now hereby issued that the Respondent violated the 1st Petitioner’s right and held her incommunicado contrary to Article 49(1) (c) of *the Constitution*
- g. A declaration be and is now hereby issued that the Respondents violated the 1st and 2nd Petitioners’ rights to be treated with dignity respected and protected contrary to Article 28 of Constitution.
- h. A declaration be and is now hereby issued that the Respondents conspired in an attempt to deny the 1st and 2nd Petitioners access to Justice contrary to Article 48 of *the Constitution*.
- i. A declaration be and is now hereby issued that the 1st, 2nd and 3rd Respondents are vicariously liable for the omissions and commissions of the state officers under their supervision and are therefore now hereby held liable to pay damages, for the violation of the Petitioner’s fundamental rights and freedoms contrary to Article 21 of *the Constitution* of Kenya
- j. A declaration be and is now hereby issued that the 4th, 5th and 6th Respondents are jointly and severally liable to compensate the 1st and 2nd Petitioner in damages, for the violation of the Petitioner’s fundamental rights and freedoms contrary to Article 21 of *the Constitution* of Kenya which damages the court awards as here below;
 - i. Exemplary Damages - Ks. 300,000/- to each of the 1st and 2nd Petitioners
 - ii. General Damages for Pain, Suffering and Loss of Amenities - Ks. 150, 000/- to each of the 1st and 2nd Petitioners
 - iii. Special Damages - Ks. 14, 010/- to both Petitioners
- k. The Respondents are now hereby directed to forthwith release to the 1st Petitioner’s her original National Identification Card No. 20519671.
- l. The costs of the Petition shall be in the cause

READ DATED AND SIGNED AT ELDORET ON 19TH DECEMBER 2025.

E. OMINDE

JUDGE

