



REPUBLIC OF KENYA



**Odongo v Attorney General (Petition E468 of 2023) [2026] KEHC 556 (KLR)
(Constitutional and Human Rights) (29 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 556 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS**

PETITION E468 OF 2023

LN MUGAMBI, J

JANUARY 29, 2026

BETWEEN

MICHAEL OBIERO ODONGO PETITIONER

AND

ATTORNEY GENERAL RESPONDENT

JUDGMENT

Introduction

1. The Petition dated 26th October 2023 is supported by the Petitioner's Verifying Affidavit of similar date.
2. The Petition is founded on the claim that, the Respondent through the Kenya Police, unlawfully arrested, detained and maliciously prosecuted the Petitioner on the allegations that he participated in the 1982 coup d'état thereby violating his constitutional rights.
3. Consequently, the Petitioner seeks the following reliefs against the Respondent:
 - i. This Court be pleased to make a declaration that the Petitioner's fundamental rights were violated.
 - ii. A declaration that the Petitioner is entitled to payment of damages and compensation for the violation of his rights.
 - iii. General damages, exemplary damages and moral damages for torture for the Petitioner.
 - iv. Any further orders, writs, directions as the court may deem fit and appropriate.
 - v. Costs of the suit.



Petitioner's Case

4. The Petitioner depones that in 1979, aged 22 years, he worked as a General Service Officer in the RECCE Unit, a department of the Kenya Police. He was a constable, force No.35108. He adds that he had passed his examinations for inspectorate and thus had the prospects of rising to the rank of police inspector in the future.
5. He depones that on 9th November 1982, he was arrested on the allegation that he was involved in the coup d'état that occurred that year. He alleges that during his arrest, he was subjected to inhuman treatment at Nyayo House, Ngong and Karura forests. Particularly, he avers that he was put on electric shocks, hang by his hands for several hours, hit by batons and gun bats at the elbows, knees and head and subjected to mental torture.
6. He contends that he underwent this unlawful detention before being charged before the Kiambu Magistrate's Court in Criminal Case No.170 of 1982. He was subsequently acquitted.
7. He depones that he was thereafter dismissed from service. He decries that this was an unlawful dismissal and saw him lose his employment at the Kenya Police aged 25 years. He also lost all his employment benefits. He contends that apart from dismissal, he had been arrested and detained unlawfully and also underwent malicious prosecution.
8. He asserts that he and his family have suffered a lot owing to this. He depones that an examination by Dr. J. Bodo in the Report dated 21st June 1983 established that both his hands had lost power.
9. Furthermore, the Petitioner avers that he had filed Nairobi Civil Case No.2705 of 1983, which he did not prosecute as fled the Country fearing for his life due to threats he was receiving from senior police officers.
10. To this end, he alleges that he is still aggrieved by violation of his fundamental rights thus seeks the reliefs sought herein.

Respondents' Case

11. In response to the Petitioner's case, the Respondent filed Grounds of Opposition dated 18th March 2024 on the basis that:
 - i. The Petition is unwarranted, devoid of merit and therefore an abuse of the process of this Court as the Petitioner had already instituted a suit with the same facts and abated.
 - ii. The Application and the Petition herein do not provide evidence of the alleged life threats from the senior police officers that led to him leaving the Country.
 - iii. The intent of the Applicant in the Application is to extort money from the government and comes as an afterthought.
 - iv. The Applicant coming to Court more than 40 years later after abating his first suit is malicious and an attempt to discredit the competency of the whole police department and damage their reputation.
 - v. The Applicant has not demonstrated any records of any attempt to notify the courts of the alleged threats that made him flee from the country.
 - vi. The Application is premised on an implausible presumptuous notion that both the judicial and police departments are incompetent.



- vii. This Court has no jurisdiction to hear and determine issues of dismissal from employment.
- viii. The orders sought in the instant Application and Petition are untenable in the circumstances of the case.
- ix. The Application is unwarranted and ought to be dismissed with costs to the Respondent.

Petitioner's Submissions

12. K.A Nyachoti and Company Advocates for the Petitioner filed submissions dated 9th December 2024.
13. To commence with, Counsel submitted that the Petition is not res judicata as Nairobi HCCC No.2705 of 1983 was not heard on merit.
14. It is noted that later on it was dismissed for want of prosecution.
15. Counsel referring to the Respondent's response submitted that no replying affidavit was filed to rebut the Petitioner's averments.
16. Counsel stressed that the Petitioner had indeed discharged his burden of proof as required under Section 107 of the Evidence Act as is evident from the Petitioner's annextures.
17. Counsel further submitted that the Petitioner's delay in filing this suit had been explained in that the Petitioner left the Country in fear for his life. Nonetheless, Counsel submitted that the Constitution does not set a time limit for seeking constitutional remedies. As such, Counsel submitted that the Petition is properly placed before this Court.
18. Equally, Counsel argued that the Petitioner had not sought any remedy as an employee thus assertion that this Court lacks jurisdiction is unfounded and a misapprehension of the Petition and applicable law.
19. Counsel relied in a similar matter, in High Court Constitutional Petition No.300 of 2015 Rev.Jamlik Muchangi Miano v Attorney General where it was held that it was incumbent upon the Respondent to avail records or evidence disputing arrest or detention. Counsel stressed that the Respondent in this case had not brought any such evidence. Counsel noted that this matter had been filed 35 years later.
20. In conclusion, Counsel prayed that the Petitioner be awarded Ksh.7,000,000 as the same would be adequate compensation.

Respondent's Submissions

21. State Counsel, Dan Weche Macheso filed submissions dated 24th February 2025 and highlighted the issues for discussion as:whether there was inordinate delay in filing the Petition and whether the Petitioner's constitutional rights were violated.
22. On the first issue, Counsel submitted that the Petitioner had filed this Petition 41 years later. Counsel stated that this prolonged delay in expressing one's rights is captured in two equity maxims 'delay defeats equity' and 'equity aids the vigilant and not the indolent'. Counsel argued that these maxims assert that a person who unreasonably delays in seeking a remedy for violation of his right is presumed to have acquiesced, for failing to exercise reasonable diligence. Equally, Counsel argued that the delay is prejudicial to the Respondent as the witnesses versed with these facts may no longer be available or have reliable recollection of the events, thus their testimony is compromised.
23. Counsel noted that while there is no limitation of time in matters alleging violation of fundamental rights, the same is only applicable where there is sufficient justification for the delay. Counsel relied in



James Kanyiita Nderitu v Attorney General & Director of Public Prosecutions (20191 KECA 1006 (KLR)).

24. Counsel submitted that the Petitioner had not given a reasonable explanation why this Petition was filed 41 years later. On the premise of inordinate delay, Counsel urged that the Petition be dismissed.
25. On the second issue, Counsel submitted that the Petitioner had failed to disclose the alleged violation of their fundamental rights and freedoms had neither adduced evidence to substantiate his allegations. Counsel contended thus that the Petitioner's burden of proof had not been discharged in this case and thus not entitled to the relief sought.
26. Reliance was placed in Mumo Matemu vs Trusted Society of Human Rights Alliance and 5 others (2013) eKLR where it was held that:

“We cannot but emphasize the importance of precise claims in due process, substantive justice, and the exercise of jurisdiction by a court. In essence, due process, substantive justice and the exercise of jurisdiction are a function of precise legal and factual claims. However, we also note that precision is not coterminous with exactitude. Restated, although precision must remain a requirement as it is important, it demands neither formulaic prescription of the factual claims nor formalistic utterance of the constitutional provisions alleged to have been violated. We speak particularly knowing that the whole function of pleadings, hearings, submissions and the judicial decision is to define issues in litigation and adjudication, and to demand exactitude ex ante is to miss the point.”

27. Similar reliance was placed on Anarita Karimi Njeru vs. Republic (1979) eKLR and Mohamed Felsal & 19 Others vs. Henry Kahdle, Chief Inspector of Police, OCS, Ongata Rongai Police Station & 7 Others; National Police Service Commission & another (Interested Party) (2018) eKLR.

Analysis and Determination

28. It is my considered view that the issues that arise for determination are:
 - i. Whether there was inordinate delay in filing the Petition.
 - ii. Whether the Petitioner's constitutional rights were violated by the Respondent.
 - iii. Whether the Petitioner is entitled to the relief sought.

Whether there was inordinate delay in filing the Petition.

29. Undue delay in pursuing legal remedies is frowned upon by the Court, particularly where it impedes the opponent's ability to defend the allegations against it and is apparent that there is no credible justification for the delay. The maxims of equity, 'equity aids the vigilant, not the indolent and 'delay defeats equity' capture the principle that justice abhors unexplained protracted inertia, which can in fact, extinguish a legal remedy.
30. Where delay is demonstrated or is profoundly evident, the Court has duty to assess its impact against the totality of circumstances of a particular case. Where the Court is satisfied that there is excessive delay and is inexcusable, and prejudice has been occasioned to the opponent, the particular claim fails on that ground only.
31. The Court of Appeal in James Kanyiita Nderitu v Attorney General & Director of Public Prosecution [2019] KECA 1006 (KLR) while acknowledging that there is no limitation of time in constitutional petitions, nevertheless held that unexplained inordinate delay that causes injustice to the adverse party



could also defeat a constitutional claim on grounds that it is an abuse of the court process. The Court stated thus:

- “28. We have considered the appellant’s submission and the learned judge’s finding that there was inordinate delay in the filing of the petition. In this context, the learned judge invoked the principle of laches. Laches means the failure or neglect, for an unreasonable length of time, to do that which by exercising due diligence could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time. (See Republic of Phillipines vs. Court of Appeals, G.R. No. 116111, January 21, 1999, 301 SCRA 366, 378-379).
29. We are alive to the decision of this Court in Peter N. Kariuki vs. Attorney General [2014] eKLR, Civil Appeal No. 79 of 2012, where it was held that there is no time limit within which a party can file a claim for violation of constitutional rights. We have considered the persuasive dicta from the High Court in Kamlesh Mansuklal Damji Pattni & Another vs. Republic 2013] eKLR where it was noted that *the Constitution* did not set a time limit within which applications for enforcement of fundamental rights should be brought. Nevertheless, it is an accepted principle that a claimant who unreasonably delays his proceedings or otherwise misconducts himself regarding those proceedings may have his claim denied as an abuse of the court process. (See Metal Box Co Ltd vs. Currys Ltd, (1988) 1 All ER 341.
30. We appreciate that in Kariuki Kiboi vs. Attorney General [2017] eKLR, Nairobi Civil Appeal No. 90 of 2015, this Court heard and determined a claim which arose in the mid-1980s and was lodged by a petition dated 26th August 2010. This Court stated:
- “Kariuki Kiboi (the appellant) was among six other persons who filed Constitutional petitions against the Attorney General (the respondent), who was sued on behalf of the Government of Kenya at the Constitutional and Human Rights Division of the High Court at Milimani Law Courts in Nairobi. The petitions were based on events that took place in this country in the mid-1980s and 90s, a period which some historians like to refer to as the dark days of the Moi era.
- The appellants were claiming in the main that some of their Constitutional rights, guaranteed them by the retired, and not so robust Constitution of Kenya, had been violated. It is not evident, why they did not sue earlier, but one can only surmise that they felt encouraged by the promulgation of the new Constitution on 27th August, 2010, which came with broader democratic space, an expanded Bill of rights, and a more vibrant and seemingly impartial judiciary.”
31. In our view, subject to the limitations in Article 24 of the 2010 Constitution, fundamental rights and freedoms cannot be tied to the shackles of *Limitation of Actions Act*. However, each case is to be decided on its own merits and a caveat need to be stated as correctly observed in Johnstone Ogechi –v- The National Police Service [2017] eKLR, where the learned judge correctly expressed:



“While making the above findings the court holds that clear statutory provisions that set time of limitation or impose clear conditions to be met before the court can grant specified remedies are substantive provisions that set boundaries for the jurisdiction of the court and their application is clearly within the provisions of Article 20(4) of *the Constitution*; whether the proceeding before the court is an ordinary action or a petition or other proceedings. In the opinion of the court, once the root of the right or freedom is established and the applicable statutory provisions are established to apply, moving the court by way of a constitutional petition will not suddenly render the statutory provisions inapplicable in so far as such provisions of time of limitation or conditions to granting a given remedy are interpreted to be promotional of the matters in Article 20(4) of *the Constitution*.”

32. In *Lt. Col. Peter Ngari Karume & Others vs. Attorney General, Nairobi Constitutional Application No. 128 of 2006 [2009] eKLR*, Justice Nyamu aptly expressed:

“The petitioners had all the time to file their claim under the ordinary law and the jurisdiction of the court but they never did and are now counting on *the constitution*. None of the petitioners has given any explanation as to the delay for 24 years. In my view, the petitioners are guilty of inordinate delay and in the absence of any explanation on the delay, this instant petition is a gross abuse of the court process...In view of the specified time limitation in other jurisdictions, the court is in a position to determine what a reasonable period would be for an applicant to file a constitutional application to enforce his or her violated fundamental rights. I do not wish to give a specific time frame, but in my mind, there can be no justification for the petitioner’s delay for 24 years....”

33. In the instant matter, the appellant asserts that the delay of over 26 years was explained. We remind ourselves as was aptly stated in *David Gitau Njau & 10 Others vs. the AG Petition No. 340 of 2012* that there is no limitation period imposed by *the constitution* in seeking redress for violation of fundamental rights and freedoms. In this matter, we have examined the record of appeal and more particularly the affidavit in support of the petition. We are unable to discern any specific paragraph which explains the delay in filing the petition. All the appellant submitted on this issue is rehashing the background facts from the date of his arrest to the date when the High Court quashed his conviction. In his written submission, it is urged that by the time the appellant was lodging the petition in 2011, it was shortly after the promulgation of the new 2010 Constitution that ushered in a new regime in the protection and enforcement of the Bill of Rights.

34. Promulgation of the 2010 Constitution is not an act that extends or revives old causes of action. Promulgation neither founds a cause of action nor is it an absolute excuse for each and every delay in instituting proceedings for causes of action which arose and were known to exist. Delay in filing a petition or any cause of action must be explained independently of the promulgation of the 2010 Constitution.



35. A constitutional petition, or for that matter judicial review proceedings, is not meant to circumvent the law on limitation of actions. Consequently, constitutional petitions filed in delay alleging violation of the Bill of Rights is to be considered on a case by case basis taking into account the explanation and merits of delay...”
32. Comparatively, in *Hezron Ndarera Onchiri v Attorney General* [2020] KEHC 9453 (KLR), the Court opined as follows:
- “ 14. Even assuming that the explanation offered in the submissions was to be accepted by the court, I would still find the explanation unconvincing. As correctly submitted by the Respondent, the late President Moi left power in 2003 and this petition was filed thirteen years later. The democratic space was greatly expanded after the promulgation of the 2010 Constitution. The Petitioner did not explain why it took him over five years from 2010 to file his petition.... An unexplained delay in filing a constitutional petition can be a ground for the dismissal of the petition. A plethora of authorities speak to that point. Apart from the authorities cited by the Respondent, other decisions on the issue are *Lt. Col. Peter Ngari Kagume & 7 others v Attorney General* [2009] eKLR; *Kanyitta Nderitu v Attorney General & another* [2013] eKLR; *Joseph Migere Onoo v Attorney General* [2015] eKLR; and *Nairobi High Court Petition No. 16 of 2018 Alphonse Kipkemoi Somongi v The Hon. Attorney General*.
17. In the circumstances of this case, I find myself in agreement with the Respondent that there has been unexplained inordinate delay in this matter thereby denying the Respondent an opportunity to put up a plausible defence. For that reason alone the petition should be dismissed.”
33. In *Eliud Wefwafwa Luucho & 3 others v Attorney General* [2017] KEHC 3511 (KLR), the Court held:
- “ 29. My understanding of the jurisprudence on the issue of limitation is that courts will be reluctant to shut out a litigant on account of limitation of time unless there are obvious reasons to do so. In considering such delays, the court cannot avoid taking judicial notice of the immense difficulties which prevailed at the period of the alleged violations making it impossible for aggrieved persons to file cases of this nature against the government. In fact it is the promulgation of *the constitution* of Kenya 2010 that opened the doors of justice thereby making it possible for aggrieved persons to institute cases of this nature.”
34. The Respondent contended that the Petitioner it took a whooping 41 years for the Petitioner to institute this Petition against the Respondent. The Respondent argued the prolonged delay is prejudicial because witnesses who are well versed with the facts complained of are no longer available or if available, may not provide reliable recollection of the events hence their testimony is compromised.
35. The Petitioner, in response, contended that he had in fact filed Nairobi Civil Case No.2705 of 1983 immediately after his acquittal in Kiambu Criminal Case No. 170 of 1982 but could not prosecute it to its conclusion as he was forced to flee the Country for fear of his life due to threats, he was receiving from senior police officers at the time.



36. The fact that the Petitioner was prepared to assert his legal rights that early is thus firmly established. He demonstrated that he was not an indolent litigant. He had in fact been even examined medically and obtained a medical report dated 21st June, 1983 - annexure MOO 3 that was in support of claims of torture. Besides, he had also then served the Attorney General with the Notice of Intention to sue – annexure MOO 4.
37. The Petitioner explains that despite the desire to pursue justice for the torture he underwent as early as 1983, he had to suddenly abandon the legal process after he faced threats by Senior Police Officers and flee from the Country for fear of his life.
38. In my view, the explanation offered strikes me as credible. It is inexplicable that a man so eager to seek pursue justice should suddenly drop his quest for justice suddenly and run out of the country abandoning his case mid-way. When he says this was triggered by threats and fear for his life directed at him, it is hard to doubt him. It was definitely not a sudden disinterest in his case as the Respondent would like this Court to believe. The Petitioner has demonstrated that he had a strong desire and took action to vindicate a clear violation of his rights. He filed a civil suit against the violators and had it backed by medical evidence. He abandoned the legal proceedings abruptly with sudden flight to another country in what he claims were threats directed at him by senior police officers. Given the contextual background obtaining in this Country years back, of which I take judicial notice, the Petitioner’s contention is not an idle one. The explanation by the Petitioner to abandon the suit only to revive it many years later seems to me plausible, and I accept it. I cannot blame him for the delay having regard to the totality of these facts. If anything, it is my very strong view that the Respondents actions and conduct was the reason why the initial suit was left hanging.
39. The contention that there is unexplained delay therefore fails.

Whether the Petitioner’s constitutional rights were violated by the Respondent.

40. A Constitutional Petition must meet the threshold of specificity and further, the allegations put forth must also be established by evidence,
41. This principle was affirmed by the Supreme Court in Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others [2014] KESC 53 (KLR) as follows:

“(349) Although Article 22(1) of *the Constitution* gives every person the right to initiate proceedings claiming that a fundamental right or freedom has been denied, violated or infringed or threatened, a party invoking this Article has to show the rights said to be infringed, as well as the basis of his or her grievance. This principle emerges clearly from the High Court decision in Anarita Karimi Njeru v. Republic, (1979) KLR 154: the necessity of a link between the aggrieved party, the provisions of *the Constitution* alleged to have been contravened, and the manifestation of contravention or infringement. Such a principle plays a positive role, as a foundation of conviction and good faith, in engaging the constitutional process of dispute settlement...”
42. According to the Petitioner, he was a serving police constable with the General Service Unit when on 9th November, 1982 he was falsely and unlawfully implicated for participating in 1982 coup. He was subsequently arrested, held incommunicado at Nyayo House Torture Chambers, Ngong and Karura Forest, subjected to physical violence that included electric shocks, hanging by hands for several hours, hit by batons, gun bats at the elbows, knees and head and in addition, was unlawfully detained. He was



subsequently charged in Kiambu Criminal Case No. 170 of 1982 of which he was eventually acquitted – per annexure MOO 1.

43. He stated that he was examined by a Doctor for the injuries sustained where as per the findings in the medical report dated 21st June 1983 (annexure MOO 3) by Dr. J. Bodo, it is confirmed that he lost total power of both hands and had to undergo physiotherapy treatment at his own expense.
44. On the basis of the above, I would have no hesitation in finding that this Petition satisfies the foundational threshold of a constitutional petition.
45. Furthermore, given that there was no replying affidavit filed by the Respondents contesting the allegations of fact deponed to by the Petitioner or in way that explains or absolves the actions of the Respondent against the Petitioner. I do find that the Petitioner has established the claim of torture, unlawful detention and malicious prosecution. Taken together, these violations infringed the Petitioner’s rights and fundamental freedoms under the retired Constitution, in particular, Section 72 (1) which provided that ‘No person shall be deprived of his personal liberty save as may be authorized by law’ and, Section 74 (1) which provided that ‘No person shall be subject to torture or inhuman or unlawful or degrading punishment or other treatment.’

Whether the Petitioner is entitled to the relief sought.

46. Having come to the conclusion that the Petitioner’s rights were violated, it is obvious that the Petitioner is entitled to legal remedies for the determine the treatment he was subjected by the Respondent which violated his constitutional rights.
47. Compensation is one of the reliefs the Petitioner is seeking and which in the circumstances of this case I find to be deserved. In considering the scope of compensation, I shall be guided by the following dicta of the Supreme Court in the case of Charles Muturi Macharia & 6 Others v Standard-Group & 4 Others (SC Petition No.13 (E015) of 2022) which opined as follows:

“(94) To answer directly the question posed by this issue, under common law principles, it is settled that an injured party is entitled to damages for the loss and injury suffered under private law causes of action, like in tortious claims. In situations like those, compensation for personal loss depends on proof of such loss or damage. However, arising out of the violation of constitutional rights and fundamental freedoms of an individual under public law, the nature of the damages awardable are broadly compensatory or vindicatory, as should be apparent from the list of examples of reliefs in Article 23. While it is not necessary to prove loss or damage in cases of constitutional rights violations, the court may consider the extent, nature, gravity and immensity of harm suffered by the aggrieved party when determining the appropriate remedy. In deserving cases, the redress may be in the form of an award of damages to compensate the victim. In some cases, a suitable declaration, an injunctive or conservatory order, or an order of judicial review will suffice to vindicate the right.

(95) In assessing the appropriate sum to be awarded as compensation, the court must feel satisfied that the sum will afford the victim adequate redress to vindicate the victim’s constitutional right. Assessment of the right quantum for compensation will take into account all the relevant facts and circumstances of the violation and the victim in the particular case, bearing



in mind any aggravating features. We stress that the purpose of constitutional relief of an award of compensation is not necessarily intended to punish the violator, but only to vindicate the right of the victim.

....

Therefore, once a petitioner has presented proof on a balance of probabilities that his or her rights were violated, the court must vindicate and affirm the significance of the violated rights, even though the petitioner may not present evidence of any loss or damage suffered as a result of the violation. For these reasons, it can be said that the approach in awarding damages or compensation in constitutional rights violation cases is different from that in tortious claims....”

48. In the instant case, considering the indignity the Petitioner was subjected to in the hands of the agents of the State, extreme physical and psychological torture coupled with threats when he attempted to seek justice from the Court for the violations he underwent causing him to flee from the country, I am of the considered view that compensation to the tune of Kshs.5,000,000/- (Five Million Shillings) is fair and reasonable in the circumstances of this case.

49. I also award the costs of this Petition.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 29TH JANUARY, 2026.

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L N MUGAMBI

JUDGE

