



**Matanta v Old Boma Limited t/a Saruni Basecamp (Constitutional Petition
E006 of 2024) [2026] KEHC 3053 (KLR) (10 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 3053 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
CONSTITUTIONAL PETITION E006 OF 2024**

CM KARIUKI, J

MARCH 10, 2026

**IN THE MATTER OF ARTICLES 2,3,19,20,22,23,24,31,259
& 260 OF THE CONSTITUTION OF KENYA, 2010**

**AND IN THE MATTER OF UNLAWFUL, ILLEGAL, UNCONSTITUTIONAL
USE AND PUBLISHING OF IMAGES OF ANTONY RISANCHO
MATANTA ON SOCIAL MEDIA WITHOUT HIS CONSENT**

AND

**IN THE MATTER OF INFRINGEMENT OF THE RIGHT
TO PRIVACY OF ANTONY RISANCHO MATANTA**

BETWEEN

ANTONY RISANCHO MATANTA PETITIONER

AND

OLD BOMA LIMITED T/A SARUNI BASECAMP RESPONDENT

JUDGMENT

The petition

1. This is a constitutional petition dated 27th May 2024 filed by the Petitioner, Antony Risancho Matanta, against the Respondent, Old Boma Limited, a company operating a hotel business under the name Saruni Basecamp in Narok County.
2. The Petition is brought pursuant to Articles 2, 3, 19, 20, 22, 23, 24, 31, 33, 35, 259, and 260 of *the Constitution* of Kenya, 2010. The Petitioner contends that on diverse dates in the recent past, the Respondent published his photographs on its social media platforms, particularly its Facebook pages, without his knowledge or consent, and used the same in its advertisements.



3. According to the Petitioner, the impugned publications amounted to an unlawful and unconstitutional use of his image and constituted a violation of his right to privacy as guaranteed under Article 31 of *the Constitution*. He further alleges that the Respondent's actions infringed Articles 33(3) and 35(2) of *the Constitution* by failing to respect his rights and by publishing information affecting him without consent. The Petitioner avers that the Respondent's conduct was inconsistent with the spirit and letter of *the Constitution* and violated the Bill of Rights, which binds all persons under Article 20.
4. The Petitioner states that upon discovering the publications, he issued a demand letter dated 13th March 2024 to the Respondent. The Respondent replied by a letter dated 20th March 2024, declining to admit liability but deleting some of the images. The Petitioner maintains that the deletion did not cure the constitutional violations already occasioned.
5. It is the Petitioner's case that the publication of his images without consent unnecessarily revealed information relating to his private affairs and injured his dignity and privacy rights. He therefore seeks, inter alia: a declaration that the publication of his images without consent is unlawful and unconstitutional; a declaration that the said publication infringed his right to privacy; an order of injunction restraining the Respondent from further publishing his images without consent; an award of damages for violation of his constitutional rights; costs of the Petition; and such further relief as the Court may deem just and expedient.

The supporting affidavit

6. In support of the Petition, the Petitioner, Antony Risancho Matanta, swore an affidavit dated 27th May 2024 setting out the factual basis of his claim against Old Boma Limited.
7. He deposes that he was previously employed by the Respondent under two fixed-term contracts: a two-month contract commencing on 25th June 2014 and a six-month contract commencing on 1st June 2016. He avers that during the subsistence of those contracts, he neither consented to the use of his images for advertising or promotional purposes nor was there any clause in the employment contracts authorising such use. His employment with the Respondent came to an end in December 2016.
8. The Petitioner further states that several years after the termination of his employment, specifically on 8th July 2022, 31st March 2023, 5th September 2023, and 27th December 2023, the Respondent published his images on its social media platforms, mainly Facebook, without his knowledge or consent. He avers that the said images were accompanied by captions inviting members of the public to visit the Respondent's lodge, thereby using his likeness to advertise and promote the Respondent's business for commercial gain.
9. He contends that the impugned publications infringed his constitutional right to privacy and dignity. He deposes that as a result of the continued use of his images, he has been subjected to ridicule and derision, with members of the public perceiving him as the "face" of the Respondent's camp without any benefit accruing to him. He further avers that the publications have adversely affected his employment prospects, as the presence of his images in the Respondent's advertisements raises questions when he seeks alternative employment.
10. The Petitioner states that he issued a demand letter dated 13th March 2024 to the Respondent, to which the Respondent replied by a letter dated 20th March 2024. He maintains that unless the Court intervenes and grants the orders sought in the Petition, the violation of his constitutional rights and fundamental freedoms will continue unabated. He therefore urges the Court to grant the reliefs sought in the Petition.



The Response.

11. In response to the Petition dated 27th May 2024, the Respondent filed a Replying Affidavit sworn by Jeremiah Mutisya on 7th August 2024, the Chief Executive Officer of Old Boma Limited.
12. The deponent avers that he has read and understood the Petition and supporting affidavit and opposes the same in its entirety. He contends, on advice of counsel, that constitutional petitions must be pleaded with precision, clearly setting out the alleged violations and the manner of infringement. It is the Respondent's position that the present Petition is imprecise, discloses no constitutional violation, and amounts to an abuse of the court process. The Respondent further asserts that the Petitioner's claim, if any, lies in tort and ought to have been pursued through ordinary civil proceedings rather than by way of a constitutional petition.
13. On the merits, the Respondent acknowledges that the Petitioner was employed as a waiter for two months in 2014 and again for six months in 2016. It avers that the photographs complained of were taken during a professional photoshoot conducted in 2016 while the Petitioner was still in employment. According to the Respondent, the Petitioner did not object to the taking of the photographs at the time, and it was therefore understood that he had consented to being photographed. The Respondent further states that for several years thereafter, no complaint was raised regarding the use of the images.
14. The Respondent denies that it unlawfully exploited the Petitioner's image for commercial gain. It avers that its business requires a strong social media presence to promote tourism in the Maasai Mara and that its Facebook page contains hundreds of thousands of images depicting wildlife, landscapes, visitors, and staff. It contends that the Petitioner's image appears only in a few posts and forms an insignificant fraction of the Respondent's overall content. The Respondent further asserts that in the impugned photographs, the focus is on the natural landscape and that the Petitioner's image is blurred and incapable of conferring any commercial benefit.
15. The Respondent also denies the allegations that the Petitioner has suffered ridicule, derision, or loss of employment opportunities as a result of the publications. It maintains that no evidence has been adduced to establish any nexus between the social media posts and the alleged harm. In any event, the Respondent states that upon receipt of the Petitioner's demand, it removed the photographs from its Facebook page out of respect for the Petitioner's concerns.
16. The Respondent therefore urges the Court to find that no constitutional violation has been demonstrated and to dismiss the Petition with costs.

Directions of the court.

17. The petition was canvassed by way of written submissions.

Petitioner's Submissions

18. The Petitioner filed written submissions in support of the Petition dated 27th May 2024 seeking declaratory reliefs, injunctive orders, damages for violation of constitutional rights, and costs against the Respondent, Old Boma Limited.
19. Counsel for the Petitioner identified three issues for determination: whether the Petitioner's constitutional rights were violated; whether he is entitled to damages; and who should bear costs.



20. On the alleged violation of rights, it was submitted that the Respondent published the Petitioner's images on its social media platforms for commercial advertising without his consent, thereby infringing Articles 28 and 31 of *the Constitution* on human dignity and privacy. The Petitioner argued that no written consent was ever obtained and that the Respondent failed to produce any documentary evidence of such consent, contrary to Sections 107–109 and 112 of the *Evidence Act*, which place the burden of proof upon the party asserting a fact.
21. Reliance was placed on *T O. S v Maseno University & 3 others* [2016] eKLR, where the Court held that publication or use of an individual's image without consent violates the right to privacy. The Petitioner also cited *Jessicar Clarise Wanjiru vs Davinci Aesthetics & Reconstruction Centre & 2 Others* [2017]eKLR, where Mativo J. (as he then was) elaborated on the right to privacy as encompassing protection against unauthorized publication of private photographs and recognised the tort of misappropriation of personality. Comparative jurisprudence was invoked, including *Grutter vs. Lombard and Another* 2007 (4) SA 89 (SCA), *Angella Wells vs. Atoll Media (PTY) Ltd & Anor*, Western Cape High Court Case No. 11961/2006, for the proposition that appropriation of a person's image for commercial gain without consent is legally actionable.
22. The Petitioner further relied on *Coalition for Reform and Democracy (CORD) & 2 others v Republic of Kenya & 10 Others* [2015] eKLR to underscore the constitutional centrality of the right to privacy, as well as *Kennedy v Ireland* and *Brooker v The Police*, which emphasised the link between privacy and human dignity. On the burden-shifting principle in constitutional litigation, counsel cited *Karugaba v Attorney General* and *Lyomoki & Others v Attorney General*, submitting that once a prima facie violation is shown, the burden shifts to the respondent to justify the limitation.
23. On human dignity, the Petitioner cited *Ahmed Issack Hassan v Auditor General* and comparative South African jurisprudence, including *Dawood v Minister of Home Affairs* and *Mayelane v Ngwenyama*, to argue that autonomy and control over one's image are integral components of dignity.
24. With respect to damages, counsel submitted that monetary compensation is an established public law remedy for constitutional violations. Reliance was placed on *MWK & Another v Attorney General & 3 Others*, which discussed compensatory and aggravated damages for constitutional breaches. Additional guidance was drawn from *NWR & Another v Green Sports Africa Limited & 4 Others*, *Joel Mutuma Kirimi & Another v National Hospital Insurance Fund (NHIF)*, and *Wangechi Waweru Mwende v Tecno Mobile Limited & Another*, where courts awarded damages for unlawful use of an image and violation of privacy.
25. On costs, the Petitioner invoked Section 27 of the *Civil Procedure Act* and cited *Supermarine Handling Services Ltd v Kenya Revenue Authority* for the principle that costs follow the event unless the court orders otherwise for good reason. Reference was also made to *Matende & Another v Ogendo* on the exercise of judicial discretion.
26. In conclusion, the Petitioner submitted that the Respondent's publication of his images without consent constituted an unjustified violation of his constitutional rights to privacy and dignity, and urged the Court to grant the declaratory, injunctive, and compensatory reliefs sought, together with costs.

Respondent's Submissions

27. The Respondent, Old Boma Limited, filed written submissions opposing the Petition dated 27th May 2024 in which the Petitioner alleges violation of his right to privacy under Article 31 of *the Constitution* arising from the publication of his images on the Respondent's Facebook platform without consent.



28. The Respondent contends that the Petition is misconceived, unmeritorious, and an abuse of the court process. It submits that the Petitioner was its employee in 2016 when a professional photoshoot was conducted as part of routine publicity for its hospitality business. According to the Respondent, the Petitioner participated in the photoshoot without objection, and the images were subsequently uploaded onto its social media platforms in the ordinary course of business. The Petitioner did not raise any complaint until March 2024, approximately seven years later. Upon receipt of a demand letter, the Respondent removed the images and ceased further use.
29. On whether Article 31 was violated, the Respondent argues that the right to privacy is not absolute and must be balanced against legitimate business interests. It submits that the Petitioner has failed to meet the precision threshold required in constitutional litigation as set out in *Anarita Karimi Njeru v Republic*, which requires a petitioner to clearly identify the constitutional provisions infringed and the manner of infringement. It is contended that the Petition merely cites constitutional provisions without demonstrating how the Respondent's actions amounted to an unlawful intrusion into the Petitioner's private affairs.
30. The Respondent maintains that the Petitioner gave implied consent by voluntarily participating in the photoshoot during his employment and by failing to object to publication for several years. In support of the elements necessary to establish unlawful use of an image, reliance is placed on *N W R & another v Green Sports Africa Ltd & 4 others*, where the Court outlined the requirements of use of a protected attribute, exploitative purpose, and absence of consent. The Respondent submits that the Petitioner has not demonstrated commercial exploitation of his image nor a lack of consent.
31. It is further argued that the images were taken in a professional employment setting, were not private or intimate in nature, and did not disclose sensitive personal information. The Respondent contends that the Petition discloses, at best, a private law claim in tort rather than a constitutional issue. In that regard, reliance is placed on *Francis Gathungu Waithaka v Kenyatta University*, where the Court cautioned against converting ordinary civil disputes into constitutional petitions, and on *Teitinnang v Ariong*, which emphasized that constitutional rights are primarily enforceable against the State.
32. The Respondent also raises the doctrine of exhaustion, submitting that any complaint relating to the misuse of personal data ought to have been lodged with the Data Protection Commissioner under the *Data Protection Act, 2019*. Reliance is placed on *Kweri v Beehive Media Limited; Capwell Industries Limited (Interested Party)*, where the Court held that claims arising from alleged infringement of Article 31(c) and (d) should first be addressed by the Data Protection Commissioner. Further support is drawn from *William Odhiambo Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties)*, on the rationale of the exhaustion doctrine.
33. On proof of violation and injury, the Respondent submits that the Petitioner has not demonstrated any humiliation, ridicule, reputational damage, or loss of employment prospects. Reliance is placed on *AM v Premier Academy*, where the Court held that a claimant must demonstrate the manner and extent of infringement and injury suffered. The Respondent also cites *Josphat Koli Nanok & another v Ethics and Anti-Corruption Commission*, emphasizing that constitutional violations must be proved through cogent evidence showing real and concrete loss.
34. Regarding damages, the Respondent argues that general damages for constitutional violations are not automatic and must be supported by evidence of actual harm. In addition to *AM v Premier Academy* (supra), the Respondent relies on *Ministry of Defence v Cannock* for the principle that injury to feelings must be proved, and on *Wanjiru v Davinci Aesthetics & Reconstruction Centre & 2 others*, where the Court declined to award damages in the absence of proof of loss or absence of consent.



35. On costs, the Respondent submits that costs follow the event and urges the Court to dismiss the Petition with costs.
36. In conclusion, the Respondent maintains that the Petitioner has failed to demonstrate a violation of his constitutional right to privacy, failed to prove injury or loss, and failed to exhaust alternative statutory remedies. It accordingly prays that the Petition be dismissed with costs.

ISSUES FOR DETERMINATION

37. Having considered the pleadings, affidavits, and rival submissions, the following issues arise for determination:
 - i. Whether the Petition meets the constitutional threshold for precision and justiciability.
 - ii. Whether the publication of the Petitioner's images without his consent violated his constitutional rights under Articles 28 and 31 of *the Constitution*.
 - iii. Whether the doctrine of exhaustion applies in light of the *Data Protection Act, 2019*.
 - iv. Whether the Petitioner is entitled to the reliefs sought, including declaratory orders, injunction, damages, and costs.

ANALYSIS AND DETERMINATION

1. Whether the Petition meets the constitutional threshold

38. The Respondent contends that the Petition is imprecise and offends the principle laid down in *Anarita Karimi Njeru v Republic (No. 1) [1979] KLR 154*, where the Court held that a constitutional petition must set out with reasonable precision the constitutional provisions allegedly infringed and the manner of infringement.
39. The precision requirement was later affirmed by the Court of Appeal in *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] eKLR (Court of Appeal)*, which emphasized that while pleadings must be precise, courts should not elevate form over substance.
40. In the present Petition, the Petitioner has specifically pleaded violation of Articles 28 and 31, identified the impugned social media publications, provided dates of publication, and annexed copies of the posts. He has further explained how the alleged publication without consent infringed his privacy and dignity. In this Court's view, the Petition satisfies the constitutional threshold of precision and properly invokes this Court's jurisdiction under Articles 22 and 23 of *the Constitution*.
41. Accordingly, this objection fails.

2. Whether the publication violated Articles 28 and 31

42. Article 31 guarantees every person the right to privacy, including the right not to have information relating to their private affairs unnecessarily required or revealed.
43. The constitutional centrality of privacy was underscored in *Coalition for Reform and Democracy (CORD) & 2 others v Republic of Kenya & 10 others [2015] eKLR*, where the Court held that privacy safeguards human dignity and autonomy.
44. Similarly, in *T O S v Maseno University & 3 others [2016] eKLR*, the Court held that publication of a person's image without consent may amount to a violation of the right to privacy, particularly where it involves unauthorized exposure.



45. The High Court in *Jessica Clarise Wanjiru v Davinci Aesthetics & Reconstruction Centre & 2 others* [2017] eKLR, recognized that unauthorized commercial use of a person's image may amount to infringement of both privacy and dignity.
46. The facts herein are largely uncontested:
47. The photographs were taken during the Petitioner's employment in 2016.
48. The images were later published on the Respondent's Facebook platform in 2022 and 2023.
49. There is no written consent authorizing continued post-employment commercial use.
50. The Respondent argues implied consent. However, consent to being photographed in the course of employment does not automatically extend to indefinite commercial use years after termination, absent clear authorization. Under Sections 107–109 of the *Evidence Act*, the burden of proving consent rests upon the party asserting it. No documentary or contractual clause was produced demonstrating express consent for post-employment commercial exploitation.
51. While the images were taken in a professional setting and not of an intimate nature, the right to privacy is not confined to intimate images alone. It encompasses control over the commercial use of one's likeness as an aspect of autonomy and dignity.
52. This Court finds that continued use of the Petitioner's image for promotional purposes without clear consent constituted an unjustified intrusion into his autonomy and amounted to a violation of Articles 28 and 31.

3. Whether the doctrine of exhaustion applies

53. The Respondent urges that the Petitioner ought to have lodged his complaint before the Data Protection Commissioner under the *Data Protection Act, 2019*, relying on *Kweri v Beehive Media Limited; Capwell Industries Limited (Interested Party)* [2021] eKLR.
54. The doctrine of exhaustion was authoritatively restated in *William Odhiambo Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights (MUHURI) & 2 others (Interested Parties)* [2020] eKLR, where the Court held that where a statute provides a clear dispute resolution mechanism, it should ordinarily be invoked first.
55. However, exhaustion is not absolute. Courts retain jurisdiction where the dispute raises pure constitutional questions or where the alternative forum is inadequate. The present Petition is not framed purely as a data protection complaint but as a violation of constitutional rights to dignity and privacy. The reliefs sought—constitutional declarations and damages for breach of the Bill of Rights—fall squarely within Article 23 jurisdiction.
56. Accordingly, this Court finds that the doctrine of exhaustion does not bar the Petition.

4. Whether the Petitioner is entitled to reliefs

Declaratory and Injunctive Relief

57. Having found a violation of Articles 28 and 31, the Petitioner is entitled to a declaration to that effect.
58. However, the Respondent has already removed the impugned images and undertaken not to republish them. An injunction shall issue restraining future publication without consent.



Damages

59. Damages for constitutional violations are discretionary and not automatic. In *N W R & another v Green Sports Africa Limited & 4 others* [2020] eKLR, the Court awarded damages for unauthorized use of an image where commercial exploitation was demonstrated.
60. Conversely, in *AM v Premier Academy* [2018] eKLR, the Court emphasized that a claimant must prove the nature and extent of injury suffered.
61. In the present case, while the Petitioner alleges ridicule and loss of employment prospects, no concrete evidence was tendered to demonstrate quantifiable harm. Nonetheless, constitutional damages serve not only a compensatory but also a vindicatory function.
62. Taking into account that the images were not intimate, were limited in number, and were removed upon demand, this Court finds that a modest award of general damages is appropriate to vindicate the Petitioner's rights.
63. The Petitioner is awarded Kshs. 300,000 as general damages for violation of Articles 28 and 31.

Costs

64. Under Section 27 of the *Civil Procedure Act*, costs follow the event unless the Court orders otherwise. As the Petition substantially succeeds, the Petitioner is entitled to costs.

Disposition

65. Accordingly, the Court makes the following orders:
 - i. A declaration is hereby issued that the publication of the Petitioner's images by the Respondent without his consent violated his rights under Articles 28 and 31 of *the Constitution*.
 - ii. An order of permanent injunction is hereby issued restraining the Respondent from publishing or using the Petitioner's image without his express consent.
 - iii. The Petitioner is awarded general damages in the sum of Kshs. 300,000.
 - iv. The Respondent shall bear the costs of the Petition.
66. It is so ordered.

**DATED, SIGNED, AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION, THIS
10TH DAY OF MARCH 2026**

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CHARLES KARIUKI

JUDGE

