



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYANDARUA
CONSTITUTIONAL PETITION NO. E004 OF 2025

BETWEEN

MILKA WANGARI..... PETITIONER/APPLICANT

AND

JOSEPH GATHUITA KIRUTHI.....1ST RESPONDENT

SUB COUNTY POLICE COMMANDER, NYANDARUA..... 2ND RESPONDENT

COUNTY POLICE COMMANDER, NYANDARUA 3RD RESPONDENT

REGIONAL POLICE COMMANDER, NYANDARUA 4TH RESPONDENT

OFFICER COMMANDING RWANYAMBO POLICE POST.....5TH RESPONDENT

THE INSPECTOR GENERAL OF POLICE..... 6TH RESPONDENT

DIRECTOR OF PUBLIC PROSECUTIONS 7TH RESPONDENT

THE ATTORNEY GENERAL..... 8TH RESPONDENT

AND

INDEPENDENT POLICING

OVERSIGHT AUTHORITY INTENDED INTERESTED PARTY

RULING

1. The petitioner/applicant herein moved the court by Notice of Motion dated 12 August 2025. This application was brought under Articles 20, 21, 22, 23, 25, 28, 29, 43, 49, 51, 258 and 259 of the Constitution of Kenya. The applicant seeks the following orders:
 - a) This Application be certified as urgent and heard ex parte in the first instance. [Spent]
 - b) Pending the hearing and determination of this application and petition, a conservatory order be issued restraining the respondents, their agents or any person acting under their direction from harassing, intimidating, arresting, detaining, threatening or otherwise interfering with the petitioner in any manner whatsoever.
 - c) Pending the hearing and determination of this application and petition, a mandatory interim order shall issue directing the interested party to immediately release to the

petitioner the post-mortem report on the deceased infant conducted by or on behalf of the police or government pathologist.

- d) Pending the hearing and determination of this application and petition, a conservatory order be issued compelling the respondents to ensure the dignified release and burial of the deceased infant, whose body remains at Engineer District Hospital mortuary, at the cost of the State.
 - e) Pending the hearing and determination of this application and petition, an interim order shall issue directing the 2nd and 4th respondents to facilitate immediate access to comprehensive medical care and counselling services to the petitioner at a public health facility of her choice at the State's expense.
 - f) A conservatory order be issued restraining the respondents from subjecting the Petitioner to any further inhuman or degrading treatment or any act in violation of her constitutional rights. pending the hearing and determination of the petition.
 - g) This honourable court be pleased to issue an order compelling the respondents to provide the petitioner with a certified copy of the Occurrence Book entries and custody records relating to her arrest and detention on 10th June 2025 and 11th June 2025.
 - h) This Honourable Court be pleased to issue such further orders and directions as it may deem just and appropriate in the circumstances and in the interest of justice.
 - i) Costs of this Application be provided for.
2. The application was premised on the following grounds:
- a) The petitioner was arrested on 10th June 2025 following an allegation by her former employer herein the 1st respondent that she had made a way with Kenya Shillings Eighteen Thousand (Kshs.18,000) which were proceeds of sales.
 - b) While in custody, the petitioner unfortunately suffered a miscarriage of a 5-month pregnancy after she was denied access to medical treatment, which is an infringement of Articles 28, 29, 43 and 51 of the Constitution.
 - c) The continued detention and mistreatment of the petitioner without timely and adequate medical attention resulted in grave violations of the petitioner's constitutional rights to dignity, freedom from cruel and inhuman treatment. inhuman or degrading treatment and the right to emergency medical treatment under Article 43(2) of the Constitution.

- d) The petitioner's life, health, and well-being remain at risk unless the orders sought herein are granted as a matter of urgency.
 - e) This application is urgent, and unless heard and determined immediately, the petitioner will suffer irreparable harm, rendering the petition and the enforcement of her rights futile.
3. The interested party filed a response through John Maranya, an investigator and opposed the application on the following grounds:
- a) The Interested Party is a State Agency established under and in accordance with Section 3 of the Independent Policing Oversight Authority Act, CAP 86 Laws of Kenya (hereinafter referred to as the IPOA Act within the primary objective of providing civilian oversight over the work of the National Service and its members.
 - b) The interested party admits that on 12th June 2025, the Interested Party received a complaint from the Honourable Senator for Nyandarua County, John Methu Muhia, raising serious allegations of violations of the Constitutional and Health rights of a female suspect, Milka Wangari, by Police Officers attached to Rwanyambo Police Post.
 - c) The interested party went ahead to register the complaint as IPOA/CMU/OOI 924-2025 on 12th June 2025. (Annexed herein marked as 'JM-1' is the Complaint).
 - d) Upon registration of the aforementioned complaint, the interested party commenced investigations into the matter in execution of its mandate under Section 7 (1) (a) (iv) of the IPOA Act.
 - e) The investigations into the matter are underway and are at an advanced stage.
 - f) During the course of the investigation, the interested party obtained a copy of the post-mortem and other related documents related to the post-mortem of the fetal part of the subject matter before the Court.
 - g) The petitioner has failed to produce an iota of evidence to demonstrate that she requested the interested party to provide her with a copy of the post mortem, but was denied, warranting her to move this honourable Court for orders of mandamus as prayed against the interested party.
 - h) Otherwise, the interested party is open and willing to consider any request of the petitioner made procedurally for the provision of the same.

4. After reviewing the application, supporting affidavit, and submissions, the applicant has shown that her rights were violated by respondents 2 to 6. Orders for prayers (b) to (g) will be granted.
5. However, there is no evidence that the interested party violated any of the applicant's rights. Consequently, the application against IPOA is dismissed with no order for costs.

Delivered and signed at Nyandarua, this 12th day of March 2026

KIARIE WAWERU KIARIE

JUDGE