



Kimathi v Inspector General of the Police Service & 5 others (Constitutional Petition E007 of 2024) [2026] KEHC 2918 (KLR) (25 February 2026) (Judgment)

Neutral citation: [2026] KEHC 2918 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CONSTITUTIONAL PETITION E007 OF 2024
HM NYAGA, J
FEBRUARY 25, 2026**

BETWEEN

PATRICK KIMATHI PETITIONER

AND

THE INSPECTOR GENERAL OF THE POLICE SERVICE 1ST RESPONDENT

THE DIRECTORATE OF CRIMINAL INVESTIGATIONS 2ND RESPONDENT

THE DIRECTOR OF PUBLIC PROSECUTIONS 3RD RESPONDENT

THE OCS TIGANIA POLICE STATION 4TH RESPONDENT

THE EXECUTIVE OFFICER, TIGANIA LAW COURTS 5TH RESPONDENT

THE ATTORNEY GENERAL 6TH RESPONDENT

JUDGMENT

1. The petitioner brought a petition dated 18th June 2024 in which he sought the following reliefs: -
 - a. A declaration to the effect that the initial entry and the twenty-year retention of the petitioner's name, fingerprints and other personal data in the criminal records register is a gross violation of the petitioner's rights under Articles 28, 29, 35(2), 39(2), 41, 43, 47 and 50(1) and 50 2 (e) of the *Constitution*.
 - b. An order directing the 2nd respondent to expunge the petitioner's name, fingerprints and other personal data from the criminal records register;
 - c. An order directing the 1st and 2nd respondents to issue the petitioner with a certificate of good conduct that does not contain a reference to any criminal offence -
 - i. For which a court of competent jurisdiction has never convicted the petitioner; or



- ii. Committed or allegedly committed while the petitioner was a child of tender years or below the age of discretion
 - d. General damages for infringement/violation of the petitioner's rights under Articles 28, 29, 35(2), 39(2), 41, 43, 47 and 50(1) and 50 2 (e) of the Constitution.
 - e. Costs of and incidental to this petition.
2. In his petition the petitioner states that he brings the same in the hope of putting to an end the extreme suffering and hardship attributable to the unconstitutional and illegal 20 year inclusion and retention of his name, fingerprints and other personal data in the criminal record registers on account of alleged criminal acts committed in 2004 while the petitioner was a child of tender years and below the age of discretion as prescribed under section 14(2) of the Penal Code.
 3. The petitioner's case is that he was born on 10th April 1995. That having grown up in abject poverty, he resulted to menial child labour within Meru county. That in 2004 an employer falsely and maliciously accused him of various criminal offences designed to evade his obligation to pay the petitioner's wages. That the petitioner was subsequently arrested and charged before Tigania law courts with breaking and stealing.
 4. The petitioner further states that despite being a child of tender years, the police illegally took and entered his fingerprints into the criminal records register maintained by the 2nd respondent. That the State failed to prosecute the case against him. That the court file in the stated criminal case was subsequently misplaced as was the police tile at Nchiru police station.
 5. The petitioner further avers that in 2013 he attained the age of majority and having secured modest education through well well-wishers he sought employment but failed to do so because his name appears in the criminal records register maintained by the 2nd respondent.
 6. The petitioner avers that the continued presence of his name in the said register is a violation of the Constitution and the law for the following reasons:
 - a. The alleged crime was committed at a time when the petitioner was below the age of criminal culpability and responsibility.
 - b. The state has failed to prosecute the case against the petitioner for 20 years and with little to no prospect of proof given for this, the petitioner's constitutional rights have been violated.
 7. The petitioner particularized the violations as follows:
 - i. Dignity contrary to Article 28 of the Constitution to the extent that the criminal records permanently condemn the petitioner to social stigma on account of acts allegedly committed while he was a child of tender years and for which he has never been convicted.
 - ii. Not to be treated or punished in a cruel, inhuman or degrading manner contrary to Article 29 of the Constitution to the extent that the petitioner's name, finger prints and other personal data should not have been entered in the criminal records register in the first place, yet they continue to haunt and condemn him twenty years later as if they were legally recorded and as if they were an accurate reflection of the petitioner's character.
 - iii. The correction or deletion of untrue or misleading information that affects the petitioner contrary to Article 35 (2) of the Constitution on the extent that the 2nd respondent, despite the admission of the 4th respondent, that the petitioner's name, fingerprints and other personal



data were erroneously submitted to the criminal record office, has refused to delete the said erroneous criminal record of the petitioner.

- iv. Freedom of movement, particularly outside Kenya, contrary to Article 39(2) of the *Constitution* to the extent that the petitioner cannot obtain a visa to travel out of Kenya
 - v. Fair labour practices contrary to Article 41 of the *Constitution* to the extent that the criminal records permanently condemn the petitioner to unemployability.
 - vi. Economic and social rights contrary to Article 43 of the *Constitution* to the event that the criminal records permanently foreclose any opportunity for the petitioner to obtain meaningful employment.
 - vii. For administrative action contrary to Article 47 of the *Constitution* to the extent that the criminal records continue to haunt and condemn the petitioner permanently, yet the state has failed to prosecute the criminal proceedings subject of the said records to their logical conclusion for almost twenty (20) years and in any event, even if the state was intent to proceed with the prosecution, such proceedings have little to no prospect of proof given the unreasonable 20 year delay and inaction and the misplacement of the court file and the police file; and
 - viii. Fair trial contrary to Article 50(1) and 50(2) (e) of the *Constitution* by failing to ensure the timely and expeditious conclusion of investigations and the criminal proceedings instituted against the petitioner twenty years ago.
8. The petitioner further avers that the retention of his name, fingerprints and other personal data in the criminal records register violates the provisions of section 55(4) of the *National Police Service Act*.
 9. The petitioner further states that Tigania Police Station has written to the 2nd respondent affirming that the petitioner's name and other data were erroneously submitted.
 10. It is the petitioner's case that he has formally requested the 2nd respondent along with 3rd, 4th and 5th respondent to remedy the situation but the 2nd respondent has disregarded the request.
 11. Contemporaneously with the petition, the petitioner filed an application of even date. The application was compromised when the court allowed the 2nd prayer and ordered that the petitioner be issued with a temporary certificate of good conduct.
 12. The court then gave direction that the petition proceeds for determination.
 13. The 1st, 2nd, 4th, 5th and 6th respondents filed grounds of opposition to the application and petition dated 15th October 2024. They set out the following grounds:
 - a. That the Notice of Motion Application and the Petition are misconceived and bad in law since the *Criminal Procedure Act*, the *Penal Code* and other relevant criminal laws in Kenya do not have legal provisions and/or a basis for expunging criminal records in Kenya.
 - b. That it is therefore evident that there is a lacuna in law in Kenya criminal law since there is no regulatory framework to guide and stipulate the procedures and conditions to guide the 1st and 2nd respondents herein on the procedure to expunge and/or amend erroneous criminal records.
 - c. That the petitioner is seeking final orders in the application stage since the issuance of a temporary certificate of good conduct to the petitioner shall ultimately confirm that at the time its issued the petitioner did not have any criminal record which is not the case herein.



- d. That the National Police Service and the directorate of criminal investigation issue certificates of good conduct in strict compliance with the provisions of the law which at the moment do not allow for the revision and/or amendment of criminal records.
 - e. That section 55 of the *National Police Service Act* states that the 1st respondent is the custodian of figure prints as well as proof of convictions. The records can only be changed whereby the appeal and /or revision quashes the charge.
 - f. That the 1st respondent cannot omit information from the clearance certificate as the same would be misrepresentation of facts and breach of constitutional duty.
 - g. That the issuance of a police clearance certificate is the mandate of the 1st respondent meaning that this honourable court has no legal basis to direct the 2nd respondent to omit any information as that would be an offence in law.
 - h. That the petitioner/applicant is improperly seeking to compel the 1st and 2nd respondents to omit factual and lawful information, which was gathered and recorded in accordance with the law and in the discharge of the respondents' constitutional and statutory mandate.
 - i. That the petition and the Notice of Motion is otherwise incompetent, misconceived, misplaced and is an abuse of the process of this Honourable Court.
14. The 3rd respondent, despite service of the petition did not file a response.

Petitioner's submissions

15. Counsel for the petitioner submitted that he has approached this court as it is the last bastion of hope in order to put an end to an ongoing injustice occasioned upon him.
16. Citing the decisions in *Masafu vs Inspector General of Police and 2 Others* (2024) KEHC 10152 (KLR) and *PMK vs Inspector General of Police and 2 Others* (2019) KEHC 486 (KLR), the advocate for the petitioner submitted that it is now settled law that the consolidating, retention and archiving permanent records for crimes committed when an offender is a minor violates the minor offender's constitutional and human rights to privacy and a child's best interest.
17. It was submitted that the fears expressed by the 1st, 2nd, 4th, 5th and 6th respondents have already been addressed by the High court in the two cited cases.
18. It was further submitted that the petitioner was entitled to an award of compensation for the deliberate violation of his constitutional rights. To this end the petitioner cited the following authorities to support that submissions;
 - a. *Radul Shab vs State of Bibah and Another* (1983) 4SCC 141,
 - b. *Stanley Munga Githungiri -vs Republic* (1986) KEHC 44 (KLR)
 - c. *Imanyara and 2 Others vs Attorney General* (2022) KESO 78 (KLR)
 - d. *Musembi and 13 Others vs Moi Educational Centre and 3 Others* (2021) KESC for (KLR).
19. The petitioner sought an award of damages for a global sum of Kshs.10,000,000/= as general damages, Kshs.5,000,000/= as exemplary damages which to him is adequate compensation that will not only vindicate the gross violation of his rights but also mitigate the risk the states refusal to expunge erroneous criminal records in respect to him.



20. In support of this claim the petitioner cited to following cases:
- a. [*Eunice Nganga vs Higher Education Loans board and 2 Others*](#) (2022) KEHC 247 (KLR).
 - b. [*Muchelule and 5 Others vs Attorney General, Judicial Service Commission*](#) (2024) KEHC 12116 (KLR).
 - c. [*Peter M. Kariuki vs Attorney General*](#) (*supra*)

Submissions by the 1st, 2nd, 4th, 5th respondents

21. The respondents fronted two issues for determination namely;
- a. Whether the petitioner's rights have been violated,
 - b. Whether the directorate of criminal investigations has the discretion to expunge criminal records.
22. It was submitted that the petitioner's request to omit his criminal record is akin to asking the 1st respondent to defy Article 35 of the [*Constitution*](#) which relates to the right to access to information. That the 1st respondent's obligation ends at availing the information upon request and not withholding the same.
23. It was further submitted that the 1st respondent is operating within the confines of section 55 of the [*National Police Service Act*](#) in maintaining record which can only be changed upon a successful appeal or revision that quashed the charge facing the petitioner.
24. It was also submitted that there is a lacuna in the law or regulatory framework to guide the 1st and 2nd respondents an expunging the petitioner's records would be acting ultra vires. Cited in support of this submission was [*Njoki vs Director of Criminal Investigations and 2 Others*](#) (2023) KEHC 17924 (KLR).

Analysis and determination

25. Having considered the matter, I find that the following issues arise:
- a. Whether the petition meets the threshold of a constitutional petition.
 - b. Whether the entry and subsequent retention of the petitioner's name and data violated his constitutional right.
 - c. Whether this court can direct that the record in respect of the petitioner be expunged.
 - d. Whether the petitioner is entitled to damages for violation of his rights.
 - e. Who shall bear the costs of this petition
26. Looking at the petition, there is no doubt that it meets the threshold of what constitutes a constitutional petition as set out in [*Anarita Karimi Njeru -vs Republic*](#) (1979) KLR 154 and reiterated in [*Mumo Matemtu vs Trusted Society of Human rights and 3 Others*](#) (2013) e KLR.
27. There is no dispute that the petitioner was born on 10th April 1995. His identity card annexed to his affidavit has not been challenged.
28. It is apparent that the petitioner was arraigned in Tigania court some time in 2004, charged with the offence of house breaking and stealing.



29. There are no details of the case provided by the petitioner or the police clearance certificate issued to him on 20th December 2022, which is annexed to his affidavit.
30. Therefore, at the time the petitioner was arraigned in court in 2004, he was only 9 years old or younger depending on the month that he was arraigned in court. It is also clear that the case was not determined since the police clearance certificate states that the case is outstanding.
31. It was argued that the petitioner was below the age of criminal responsibility.
32. Section 14 of the Penal Code deals with criminal responsibility of a child. It provides as follows:
14. Immature age
- (1) A person under the age of eight years is not criminally responsible for any act or omission.
- (2) A person under the age of twelve years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission he had capacity to know that he ought not to do the act or make the omission.
- (3) A male person under the age of twelve years is presumed to be incapable of having carnal knowledge.
33. Without proof that the case against the petitioner was finalized and that there was a finding under subsection (2) above that he had the capacity to know that he ought not to have done the act or make the omission, then the petitioner ought to have been presumed to be not criminally responsible for any such act or omission.
34. I have seen the letter dated 3/7/2022 by the station commander Tigania addressed to Criminal Records Officer. It is to the effect that there does not exist in any criminal register the offence that the petitioner was charged with. The official further states that the fingerprints were erroneously submitted to that office.
35. That letter was not disputed by any of the respondents.
36. Therefore, I take it that there is an acknowledgement of the error in the submission of the petitioner's name and data to the criminal records office.
37. From the authorities submitted by the petitioner, it is clear that even where a child has been found guilty of an offence it is undesirable that record of such a finding be kept into his/her adulthood. That child offenders ought not to be treated like adult offenders. In P.M.K. vs Inspector General of Police and 2 Others (*supra*) G.V. Odunga, J. (as he then was) had this to state:-

“I therefore agree with the petitioner that our juvenile justice system recognizes that criminal offences committed by children are to be handled in a totally different way from crimes committed by adults. They therefore cannot be subjected to the harsh punishment of permanent criminal records, publishable on demand because children are different. ... Keeping permanent records of juvenile offenders presupposes that such offenders are incapable of reforming since the said decision by the DCI does not provide for mechanisms through which such records can be expunged. I agree with the petitioner that by issuing



permanent criminal records to juveniles, the Respondents will extinguish the Petitioner's potential and by extension, her life to be a productive, vibrant part of society.”

38. In *Evans Masafu case* (*supra*) the court (D. Chepkwony J.) agreed with the decision in *PMK* (*supra*) and held as follows: -

‘In this case, it is not disputed that at the time of commission of the offence the Petitioner was a minor who ought to have been treated differently from an adult. It is the court's finding that although the Petitioner was convicted to the offence of manslaughter, the keeping of permanent criminal record violates his constitutional rights particularly since he was a minor which has now affected his adult hood particularly his employment which is discriminatory and amounts to double punishment.’

39. It is also my opinion that a child offender is a special child of the law. All proceedings concerning that child as geared towards the child's reformation and not retribution even where they are found guilty of an offence. It follows that the maintenance of a record of such a person is against the spirit of the *Constitution* at Article 53 (2) which states that:

A child's best interests are of paramount importance in every matter concerning the child.

40. It is thus my opinion that by maintaining the record of the petitioner, is not in his best interest and his fundamental rights as set out in this petition have been violated.

41. Can this court order that the record be expunged?

42. The respondents suggest that there is no law that allows for such act an that in doing so, the 1st respondent will be acting ultra vires.

43. As was noted by H. Ongudi J. (as she then was) in *Ibrahim Kingori Njoki* (*supra*) where there is a lacuna in law, then a court especially that with powers to deal with violation of constitutional rights ought to make judge laws that meet the ends of justice.

44. Section 55(4) of the *NPS Act* provides as follows regarding destruction of records;

Subject to subsection (1), if a person is not charged with an offence punishable by imprisonment or is discharged or acquitted by a court, and has not previously been convicted of an offence so punishable, all records of such measurements, photographs, footprints and casts thereof, palm-prints and fingerprints and any negatives and copies of such photographs or of photographs of such footprints, palm-prints and finger-prints shall immediately be destroyed or handed over to such person.

45. From my reading of the said section, there is no provision covering the situation of the petitioner. His case is marked as outstanding, which must mean it's still pending, twenty years down the line.

46. I agree with the petitioner that without any records available at the court or the police station there is no justification for the record in the first place.

47. The lack of a law on expunging such records should not be a ground to deny the petitioner the orders that he seeks. Just like in *Masafu* and *P.K.M. cases* (*supra*), I find that this court as the last bastion of human rights, has the powers to grant the orders sought.

48. Should the petitioner be awarded damages?

49. The advocate for the petitioner seems to think so and has proposed a total award of Kshs.15,000,000/=



50. I have considered the circumstances under which the record came to be. Without any evidence that the petitioner has been charged as an adult all indicators are to the effect that the record arose out of the criminal case at Tigania in 2004 when the petitioner was still a child of tender years.
51. Having to carry the burden into his adult life is definitely not a situation that any citizen should undergo.
52. The records retention means that the petitioner is unlikely to ever get into formal employment. As is common today, all potential employers, local or foreign, ask for a police clearance certificate from job seekers. Any negative content thereon is a sure way to be rejected by such an employer.
53. I am thus satisfied that the petitioner has made out a case for an award of damages.
54. I find that the proposed award to be excessive. I would settle for a modest figure of Kshs.500,000/= which I do award.
55. The prayer for exemplary damages is rejected as the general damages, to me, are sufficient.
56. In conclusion, I find that the petitioner succeeds in this petition and the following orders do issue;
 - a. A declaration is issued to the effect that the initial entry and the twenty-year retention of the petitioner's name, fingerprints and other personal data in the criminal records register is a gross violation of the petitioner's rights under Articles 28, 29, 35(2), 39(2), 41, 43, 47 and 50(1) and 50 2 (e) of the Constitution.
 - b. An order is issued directing the 2nd respondent to expunge the petitioner's name, fingerprints and other personal data from the criminal records register;
 - c. An order is issued directing the 1st and 2nd respondents to issue the petitioner with a certificate of good conduct that does not contain a reference to any criminal offence.
 - d. General damages are assessed at Ksh. 500,000/= for infringement/violation of the petitioner's rights under Articles 28, 29, 35(2), 39(2), 41, 43, 47 and 50(1) and 50 2 (e)of the Constitution.
 - e. Costs of this petition are awarded to the Petitioner.

DATED SIGNED AND DELIVERED AT MERU THIS 25TH DAY OF FEBRUARY 2026.

H.M. NYAGA

JUDGE

