

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL AND TAX DIVISION**  
**HCCOMMPET NO. E001 OF 2023**

(Formerly Milimani Constitutional & Human Rights Petition No. E471 of 2022)

IN THE MATTER OF: ARTICLES 2, 20, 22, 23, 27, 28, 40, 46, & 47 OF  
THE CONSTITUTION OF KENYA, 2010

-AND-

IN THE MATTER OF: CONTRAVENTION OF FUNDAMENTAL RIGHTS  
AND FREEDOMS UNDER THE CONSTITUTION  
OF KENYA

-AND-

IN THE MATTER OF: THE UNLAWFUL AND ILLEGAL  
ENFORCENMENT OF ECONOMIC AND TRADE  
SANCTIONS ISSUED BY THE OFFICE OF  
FOREIGN ASSETS CONTROL OF THE US  
DEPARTMENT OF TREASURY

-AND-

IN THE MATTER OF: THE BANKING ACT

-AND-

IN THE MATTER OF: THE CENTRAL BANK OF KENYA ACT

-AND-

IN THE MATTER OF: THE FAIR ADMINSTRATIVE ACTION ACT, 2015

-BETWEEN-

DR. MARTIN ELIA LOMURO.....PETITIONER

-VERSUS-

THE CO-OPERATIVE BANK OF KENYA LIMITED.....RESPONDENT

## **JUDGMENT**

1. The petition against the respondent is dated 6<sup>th</sup> October 2022. It was subsequently amended on 28<sup>th</sup> June 2024. The petitioner seeks several declaratory and consequential orders against the respondent arising from the closure and restriction of his bank accounts based on alleged sanctions issued by the Office of Foreign Assets Control (OFAC). He contended that the respondent's decision to compel him to close his US dollar account and to block two transactions amounting to Kshs.1,000,000/= and Kshs.2,250,000/= from his Kenya Shillings account was unconstitutional and violated his fundamental rights under Articles 27, 28, 40, 46 and 47 of the Constitution of Kenya. He contended that the sanctions, Rules and Regulations issued by the OFAC, a body under the United States Department of the Treasury, have no legal application in Kenya and should not govern the operation of his bank accounts held with the respondent.
2. The petitioner further seeks a declaration that the respondent's refusal to provide reasons for blocking the transactions and its continued withholding of the sums in question infringed his constitutional rights, including his right to property and fair administrative action. He also seeks a declaration that the operation of his bank accounts is governed solely by Kenyan law and the regulatory framework of the Central Bank of Kenya, and not by the laws or administrative decisions of the United States Government or the OFAC. Additionally, he prays for a declaration that the respondent's implementation of OFAC directives is both unconstitutional and a breach of the contractual relationship between the parties herein.
3. The petitioner also prays for an order of judicial review in the nature of mandamus, compelling the respondent to reimburse the withheld sums of Kshs.1,000,000/= and Kshs.2,250,000/= by crediting them into his account. He also seeks an order for compensation, for damages occasioned by the

alleged embarrassment and inconvenience caused by the denial of access to his funds, the forced closure of his US dollar account, and the unexplained blocking and withholding of the transactions and interest on the awarded sums at Court rates from 22<sup>nd</sup> December 2020 until payment in full.

4. The petition herein is premised on the grounds on the face of it, and it is supported by an affidavit sworn on 6<sup>th</sup> October 2022 by Dr. Martin Elia Lomuro, the petitioner herein. Dr. Lomuro averred that he served as the Minister for Cabinet Affairs in the Government of South Sudan, having been appointed in July 2013 by the President of South Sudan, Salva Kiir Mayardit. Dr. Lomuro further stated that he is a Member of Parliament representing Lainya County, the Chairman of the South Sudan Democratic Forum Party and the Principal of the National Agenda Group of political parties.
5. Dr. Lomuro deposed that in 2017, he temporarily relocated his family to Nairobi, Kenya, to enable his wife, Rejah Keji Ladu Kenyi, to undergo specialized medical treatment and attend follow-up care at the Nairobi Hospital. He averred that since his official duties required him to remain in South Sudan, he opened two bank accounts in September 2017, a US dollar account and a Kenya Shillings account with the Co-operative Bank of Kenya Limited (respondent), to facilitate financial support for his family and for his personal use when visiting Kenya.
6. He further averred that he also maintained accounts with the Co-operative Bank of South Sudan in Juba, an affiliate of the respondent. He asserted that the said accounts were operated without difficulty until December 2019 when the Office of Foreign Assets Control (OFAC) of the United States Department of the Treasury imposed sanctions against him and General Kuol Manyang Juuk, alleging their involvement in activities that prolonged the conflict in South Sudan.

7. He denied the allegations and contended that the sanctions were politically motivated and intended to influence the governance of South Sudan. He stated that following the imposition of the said sanctions, he was unable to operate his US dollar account at the respondent's Cooperative House branch in Nairobi and he was informed by bank officials that he could only transact through his Kenya Shillings account. He stated that he was further advised that the only way to access the funds in the US dollar account was to close it and transfer the funds into the Kenya Shillings account.
8. Dr. Lomuro averred that as a consequence thereof, he was compelled to close the US dollar account in December 2019, and he continued to operate the Kenya Shillings account until December 2020, when he initiated two transactions; being a transfer of Kshs.1,000,000/= to Nigeria through Western Union for the purchase of Christmas gifts, and a transfer of Kshs.2,250,000/= to Rev. Dr. Elizabeth Ann King in Ghana for the benefit of his daughter, Nyarju Lemi Lomuro. He further averred that although the said sums were debited from his account, the transactions were blocked without explanation and the funds were not credited back into his account.
9. He claimed that in February 2021, he was informed that he could not withdraw funds from the account due to an Order issued by the High Court of Kenya at the instance of the Assets Recovery Agency, freezing the account on allegations that the funds were proceeds of money laundering. The petitioner deposed that he challenged the said Order and that a consent recorded on 15<sup>th</sup> September 2021 confirmed that the Agency was satisfied with the legitimacy of the funds and lifted the freezing Order.
10. He stated that subsequently, his Advocates demanded that the respondent provides an explanation for the cancellation or failure to complete the two transfers, and to immediately credit the equivalent sums back into his account, but the respondent maintained that the transactions had been

blocked by Western Union and its correspondent bank pursuant to OFAC Rules and that the funds had been placed in a blocked account pending authorization from the relevant regulatory agency before they could be released. Dr. Lomuro disputed this explanation, noting that only one of the transactions had been conducted through the Western Union, while the other was processed directly through the respondent bank to Zenith Bank (Ghana) Limited. He maintained that he was never informed of the reasons for the blocking or the procedure for the recovery of the funds, although a bank officer informed him that he was not authorized to carry out cross-border payments because he had been sanctioned by the United States Government.

11. Dr. Lomuro contended that the respondent's actions contravened several provisions of the Constitution of Kenya, including Articles 2, 27, 28, 40, 46 and 47. He asserted that compelling him to close his US dollar account, blocking the transactions without explanation and withholding the debited funds on the basis of OFAC sanctions amounted to unconstitutional conduct, discrimination and an infringement of his dignity, property rights and consumer rights, as well as a violation of his right to fair administrative action. He further contended that the respondent's actions contravened the Banking Act, which requires banks operating in Kenya to conduct their business in accordance with the laws of Kenya and under the regulatory authority of the Central Bank of Kenya.
12. Dr. Lomuro averred that the respondent's reliance on OFAC sanctions and its refusal to release his funds without authorization from a foreign regulatory body, effectively subjected the operation of his Kenyan bank accounts to foreign regulations that have no legal application in Kenya.
13. In opposition to the petition, the respondent filed a replying affidavit sworn on 5<sup>th</sup> November 2022 by Mr. Lewis Mbae, a Branch Manager at the respondent's Lavington Mall Branch. Mr. Mbae confirmed that the petitioner

opened two accounts with the respondent on 7<sup>th</sup> September 2017 at the Cooperative House Branch in Nairobi, namely a US dollar account and a Kenya Shillings account. He averred that on 24<sup>th</sup> December 2019, the petitioner issued written instructions requesting for the closure of the US dollar account and for transfer of the proceeds therein to the Kenya Shillings account, which instructions the respondent executed. That thereafter, the petitioner continued to operate the Kenya Shillings account without difficulty. He stated that on or about 22<sup>nd</sup> December 2020, the respondent while acting on the petitioner's instructions, initiated two international transfers of Kshs.1,000,000/= to Nigeria through Western Union for the purchase of Christmas gifts, and Kshs.2,250,000/= to Rev. Dr. Elizabeth Ann King in Ghana.

14. He explained that on 8<sup>th</sup> January 2021, the Western Union informed the respondent that it was required to comply with regulations issued by the Office of Foreign Assets Control of the United States Department of the Treasury, and that the petitioner's name matched that of an individual on a sanctions-list, necessitating further verification and the temporary blocking of the transactions until authorization could be obtained from the regulatory authority.
15. He stated that the petitioner had acknowledged in his affidavit that sanctions had been imposed against him by the OFAC, which led to his US dollar account being flagged and may have prompted his decision to close that account. Mr. Mbae asserted that the respondent informed the petitioner of the position communicated by the Western Union and advised him to apply for an exemption license from the OFAC, so that the funds could be released and the transactions completed, but the petitioner declined to follow the said advice and instead threatened litigation against the respondent.

16. Mr. Mbae averred that before the issue could be resolved, the respondent was served on 4<sup>th</sup> June 2021 with an Order issued by the High Court of Kenya, Anti-Corruption and Economic Crimes Division, in proceedings initiated by the Assets Recovery Agency, freezing the petitioner's Kenya Shillings account on allegations that the funds were proceeds of a complex international money laundering scheme. He stated that the bank complied with the Order and froze the account until 17<sup>th</sup> September 2021, when a consent Order recorded before the Court lifted the freezing Order, which the respondent also complied with.
17. Mr. Mbae further averred that the petitioner's Advocates later issued a demand for the refund of USD 28,000.00 and damages for breach of contract, to which the respondent responded by clarifying that the USD 20,000.00 transaction had been processed through the Society for Worldwide Interbank Financial Telecommunication (SWIFT) system and had been blocked by the respondent's correspondent bank pursuant to OFAC Regulations.
18. Mr. Mbae asserted that international money transfers involve intermediary institutions such as correspondent banks and money transfer platforms that are subject to international compliance obligations, including OFAC screening requirements. He maintained that the respondent repeatedly informed the petitioner that the transactions were blocked by the Western Union and the respondent's correspondent bank due to OFAC sanctions, and that the relevant regulations require blocked funds to be held in a designated account until authorization is obtained from the regulatory authority.
19. Mr. Mbae maintained that the respondent acted lawfully, in good faith and in compliance with its legal and regulatory obligations, and that it cannot determine the legality or applicability of OFAC sanctions. He stated that the petitioner declined to obtain the exemption license that would have enabled

the transactions to proceed, despite being advised to do so. He contended that the instant petition raises no valid constitutional issues and amounts to an abuse of the Court process.

20. The petition herein was canvassed by way of written submissions that were highlighted on 22<sup>nd</sup> September 2025 and 10<sup>th</sup> November 2025. The petitioner's submissions were filed by the law firm of Kogweno & Bubi Advocates LLP on 18<sup>th</sup> January 2025 & 10<sup>th</sup> April 2025, whereas the respondent's submissions were filed on 6<sup>th</sup> March 2025 by the law firm of Waweru Gatonye & Company Advocates.
21. Ms Bubi, learned Counsel for the petitioner submitted that the petitioner's principal complaint is that the respondent unlawfully applied the sanctions regime administered by the OFAC of the United States Department of the Treasury to regulate its banker-customer relationship with him, in Kenya. She argued that the OFAC administers economic and trade sanctions pursuant to United States legislation, including the International Emergency Economic Powers Act and the Trading with the Enemy Act, and through executive actions such as Executive Order 13664 issued by Barack Obama. She confirmed that sanctions were imposed against the petitioner by OFAC on 16<sup>th</sup> December 2019, pursuant to that Executive Order. Counsel asserted that the aforesaid instruments are neither rules of international law nor treaties ratified by Kenya within the meaning of Articles 2(5) & (6) of the Constitution, and as such, they cannot have legal force within Kenya. To buttress these submissions, Counsel relied on the Supreme Court case of **Ingang'a & 6 others v James Finlay (Kenya) Limited** [2023] KESC 22 (KLR).
22. Ms Bubi contended that the respondent's reliance on OFAC sanctions to compel him to close his US dollar account and to block certain transactions was unconstitutional and contrary to Kenyan law governing banking

operations. She submitted that the respondent's actions violated several provisions of the Constitution including his right to equality and freedom from discrimination under Article 27, and his right to dignity under Article 28, arguing that after the OFAC sanctions were issued, officers of the respondent declined to engage with him, compelled him to close his US dollar account, and denied him the ability to conduct cross-border transactions solely on account of the sanctions imposed by the United States Government. She cited the case of **Mutuku Ndambuki Matingi v Rafiki Microfinance Bank Limited** [2021] KEHC 9059 (KLR), and stated that the said restrictions were not imposed on other customers, and that their imposition against the petitioner, amounted to discriminatory treatment.

23. Counsel relied on the case of **Allianz Savings v Attorney General & 2 others** [2022] KEHC 13239 (KLR), and submitted that the respondent's continued withholding of the sums of Kshs.1,000,000/= and Kshs.2,250,000/= violated his right to property protected under Article 40 of the Constitution. She maintained that the respondent cannot rely on foreign sanctions' laws to justify depriving the petitioner of access to his funds, particularly, where no Kenyan statute authorizes such action.
24. Ms Bubi argued that the respondent violated the petitioner's consumer rights under Article 46 of the Constitution and breached the contractual terms governing the banking relationship. She further submitted that the respondent's General Terms and Conditions expressly provide that the relationship between the respondent and its customers is governed by the laws of Kenya, and that Kenyan law prevails in the event of any conflict.
25. She referred to the Court of Appeal case of **National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & another** [2001] KECA 362 (KLR), and contended that reliance on the OFAC Rules constituted both a breach of contract and a violation of the consumer's right to information and

protection of economic interests. Ms Bubi stated that the respondent violated the petitioner's rights to fair administrative action under Article 47 of the Constitution and the Fair Administrative Action Act. She argued that the respondent made several administrative decisions including compelling the closure of the petitioner's US dollar account, blocking two international transactions, and withholding the funds in issue without prior notice, without giving him an opportunity to be heard, and without providing written reasons as required by law.

26. Counsel urged this Court to find that the petitioner's constitutional rights were violated and to grant the reliefs sought in the amended petition. In support of an award for damages for constitutional violations, Counsel referred to the cases of **Moses Kipkoech Rotich v Kenya National Highways Authority & 7 others** [2018] KEHC 2767 (KLR) and **Eunice Nganga v Higher Education Loans Board & 2 others** [2020] KEHC 2471 (KLR).
27. Mr. Wang, learned Counsel for the respondent submitted that the petitioner's grievance essentially arises from sanctions imposed on him by the OFAC of the United States Department of the Treasury on 16<sup>th</sup> December 2019. He stated that the sanctions were issued against the petitioner and Kuol Manyang Juuk, a former Defence Minister for South Sudan, for allegedly being responsible for, or being complicit to actions that prolonged the conflict in South Sudan or obstructed peace and reconciliation efforts. He asserted that the said sanctions had consequences for international financial transfers involving institutions subject to OFAC Regulations, which explains the challenges encountered in the two cross-border transactions that form the subject of this petition. Counsel denied that the respondent violated the petitioner's rights under Article 2(4) of the Constitution or acted in contravention of any constitutional provisions.

28. He argued that the circumstances must be viewed within the context of the OFAC sanctions admitted by the petitioner, which resulted in his US dollar account being flagged by the OFAC and being rendered inoperable. Mr. Wanga maintained that the respondent acted strictly in accordance with the petitioner's instructions by initiating two international transfers being Kshs.1,000,000/= to Nigeria through Western Union, and Kshs.2,250,000/= to Ghana through a SWIFT transfer. He submitted that these transactions involved international banking systems and intermediary institutions, including the correspondent bank Citibank N.A. Counsel explained that international funds transfers typically involve correspondent banking relationships and intermediary institutions and may be governed by multiple legal regimes. He stated that the cross-border payments are transmitted through SWIFT, a global messaging network used by banks to communicate payment instructions.
29. Mr. Wanga contended that the bank did not apply or enforce OFAC Regulations against the petitioner, as the transfers were blocked by intermediary institutions, namely the Western Union and the correspondent bank, Citibank, whose operations are governed by the United States law and OFAC Regulations. He asserted that the Western Union notified the respondent that the funds had been blocked in compliance with the OFAC Rules and that the petitioner could recover the funds by applying for an OFAC license, authorizing the release of the blocked funds. He stated that the respondent relayed this information to the petitioner, but he declined to follow the prescribed procedure and instead elected to pursue litigation.
30. Counsel submitted that the above mentioned intermediaries have legal obligations under international financial regulations to prevent transactions involving sanctioned individuals and to hold such funds in blocked accounts until regulatory authorization is obtained. He cited the case of **B v Attorney**

**General** [2004] KEHC 2605 (KLR), and argued that Kenyan banks rely on such institutions to facilitate cross-border payments, and that declaring the OFAC Regulations unconstitutional would be futile because Kenyan Courts cannot compel foreign institutions governed by foreign laws to act contrary to those laws.

31. Mr. Wanga relied on the case of **Jacqueline Okeyo Manani & 5 others v Attorney General & another** [2018] KEHC 9395 (KLR), and submitted that the petitioner's claims of discrimination and violation of dignity under Articles 27 & 28 of the Constitution are unfounded, since the petitioner voluntarily instructed the respondent vide a letter dated 24<sup>th</sup> December 2019, to close his US dollar account and transfer the funds to his Kenya Shillings account. In regard to the alleged violation of the right to property under Article 40 and the rights under Articles 46 & 47 of the Constitution, Mr. Wanga submitted that the respondent did not freeze the petitioner's account or unlawfully withhold his funds. He submitted that the funds were blocked by intermediary institutions due to OFAC sanctions, and the petitioner was duly informed of the procedure required to recover the money.
32. He argued that the case of **Allianz Savings v Attorney General & 2 others** (supra), cited by the petitioner is distinguishable from this case, since in that case, the accounts had been frozen by Kenyan authorities despite the completion of investigations, whereas in this case the respondent merely initiated the transactions and the blockage occurred outside its control.
33. Mr. Wanga emphasized that international cooperation in combating money laundering and terrorism financing is recognized under Kenyan law, including the Proceeds of Crime and Anti-Money Laundering Act, which provides for international assistance in investigations and proceedings.

34. On the issue of fair administrative action under Article 47 of the Constitution, Counsel maintained that no administrative decision was taken against the petitioner, as it acted on the petitioner's instructions and communicated promptly with him when intermediary institutions indicated that the transfers had been blocked. In submitting that fairness under Article 47 of the Constitution must be considered within the context of the applicable statutory and institutional framework, Mr. Wanga relied on the case of **Dry Associates Limited v Capital Markets Authority & another; Crown Berger (K) Ltd** [2012] KEHC 5568 (KLR) and the Court of Appeal case of **Judicial Service Commission v Mutava & another** [2015] KECA 741 (KLR).
35. In a rejoinder, Ms Bubi submitted that the relationship between the parties herein is purely contractual and governed by the General Terms and Conditions issued at the time the petitioner opened the bank accounts in question. She argued that those terms do not provide that the respondent's intermediaries would be parties to the contract, and they do not entitle the petitioner to pursue such intermediaries in the event of breach. She asserted that the obligations arising from the banker-customer relationship rest solely between the parties herein. Relying on the doctrine of privity of contract and the Court of Appeal case of **Savings & Loan (K) Limited v Kanyenje Karangaita Gakombe & another** [2015] KECA 784 (KLR), Counsel stated that a contract affects only the parties to it and cannot be enforced by or against a non-party.
36. Ms Bubi submitted that the respondent's reliance on intermediary institutions does not alter the contractual position, as such a relationship exists strictly between financial institutions and not between an individual customer and a correspondent bank. She contended that the relationship between the respondent and its intermediaries is based on separate and

independent contracts to which the petitioner was not a party, and in respect of which he has no enforcement rights. She further argued that even if the respondent's intermediaries are bound by the laws and regulations of the OFAC of the United States Department of the Treasury, such laws cannot automatically apply to the contractual relationship between the respondent and its customers unless expressly incorporated into their Agreement. She asserted that the respondent's reliance on foreign regulations to justify withholding the petitioner's funds merely to preserve business relationships with international intermediaries, amounts to the unconstitutional application of foreign law.

37. Ms Bubi referred to Part XII of the Proceeds of Crime and Anti-Money Laundering Act relied on by the respondent, and submitted that those provisions merely outline procedures for mutual legal assistance between Kenya and foreign states in the investigation of offences and do not incorporate or apply the laws of the United States of America or the OFAC regulatory regime. She further submitted that the OFAC framework was not established to combat global money laundering, but to enforce economic and trade sanctions in support of United States national security and foreign policy objectives.

#### **ANALYSIS AND DETERMINATION.**

38. I have carefully considered the petition herein, and the affidavit filed in support thereof. I have also considered the replying affidavit filed by the respondent and the written submissions by Counsel for the parties. The issues that arise for determination are –

- i) Whether the respondent's actions in closing the petitioner's US dollar account, its alleged blocking of two international transactions amounting to Kshs.3,250,000/=, and withholding the said funds violated the petitioner's constitutional rights**

**under Articles 27, 28, 40, 46 and 47, including the requirement for fair administrative action;**

- ii) Whether the respondent was entitled to rely on OFAC sanctions issued by the United States Department of the Treasury in regulating its banking relationship with the petitioner in Kenya, and whether Part XII of the Proceeds of Crime and Anti-Money Laundering Act has any bearing in the application of such foreign sanctions;**
- iii) Whether the respondent acted in accordance with Kenyan banking law and the regulatory framework of the Central Bank of Kenya in handling the petitioner's accounts and international transactions, including consideration of prior freezing orders by the Assets Recovery Agency; and**
- iv) Whether the petitioner is entitled to the reliefs sought.**

**Whether the respondent's alleged actions in closing the petitioner's US dollar account, its alleged blocking of two international transactions amounting Kshs.3,250,000/=, and withholding the said funds violated the petitioner's constitutional rights under Articles 27, 28, 40, 46 and 47, including the requirement for fair administrative action.**

39. The petitioner contended that the respondent's actions amounted to discrimination, infringement of his right to dignity and property, and a violation of his right to fair administrative action. The respondent on the other hand averred that the actions complained of were undertaken in compliance with the petitioner's own instructions and in accordance with lawful obligations imposed by intermediary institutions involved in the transactions, without any independent decision on its part to deny the petitioner his rights or to discriminate against him.

40. In instances where a bank acts in accordance with the express instructions of its customer, such conduct cannot amount to a violation of constitutional rights. Upon perusal of the evidence annexed to the respondent's replying affidavit, the respondent produced a letter dated 24<sup>th</sup> December 2019 written by the petitioner instructing the respondent to close his US dollar account with immediate effect, and transfer all the proceeds therein, to his local currency account.
41. This Court notes that apart from alleging that he was coerced into closing his US dollar account, the petitioner has not adduced any evidence in support of the said assertion. Furthermore, the petitioner has neither disowned the letter dated 24<sup>th</sup> December 2019 nor alleged that the signature appearing on it, is not his. The petitioner has also not claimed that the funds held in the said account were not transferred to his Kenya Shillings account. In the absence of such evidence, the respondent's actions in closing the petitioner's US dollar account were plainly undertaken in compliance with the petitioner's own instructions, and not at the whims of the respondent.
42. On the question of whether the respondent blocked two international transactions amounting to Kshs.3,250,000/= and withheld the funds, the said amounts were cross-border transactions involving international banking systems and intermediary institutions. Such transactions are ordinarily governed by multiple legal regimes. It is common knowledge that in international cross-border transactions, payments are transmitted through the SWIFT system, and the role of the local bank is generally limited to initiating the transfer, which the respondent duly performed in this case.
43. A review of the annexures to the respondent's replying affidavit reveals an email dated 8<sup>th</sup> January 2021 from the Western Union addressed to the respondent. In that email, the Western Union informed the respondent that upon reviewing the transfer of Kshs.1,000,000/= to Nigeria, the transaction

had to be placed on hold in accordance with the regulations of the Office of Foreign Assets Control. The Western Union further indicated that the applicable regulations required the funds to be blocked and deposited into a designated regulatory account. The Western Union also stated that it would notify the petitioner of the blockage and provide guidance on the procedure to be followed for the release of the funds. In their operations, financial institutions are required to comply with applicable regulatory obligations, including international sanctions and anti-money laundering requirements.

44. The evidence adduced by the respondent demonstrates that it communicated the information received from the Western Union to the petitioner. The petitioner however opted to pursue this matter before the Court. Under Article 47 of the Constitution of Kenya, the right to fair administrative action is not breached where an entity acts in accordance with statutory or contractual obligations and provides reasonable notice and information regarding the circumstances giving rise to the impugned action, as was done in this case.
45. This Court is therefore satisfied that the respondent did not independently or arbitrarily deny the petitioner access to his funds or discriminate against him. While this Court acknowledges that the petitioner may have experienced inconvenience arising from the hold placed on the transactions in issue, there is no evidence demonstrating that the respondent acted in contravention of the Constitution. The requirements for fair administrative action under Article 47 of the Constitution, including the obligation to provide reasons and relevant information, were not breached. To the contrary, the petitioner was advised of the circumstances surrounding the transactions and the available avenues for addressing the matter, but opted to proceed to Court.
46. Consequently, this Court is of the finding that the petitioner's grievance arises not from any unlawful conduct by the respondent, but from

compliance obligations imposed by third-party institutions within international financial systems.

47. Given the said circumstances, this Court finds that the respondent acted in accordance with the petitioner's own instructions in closing the US dollar account and did not independently block the international transactions amounting Kshs.3,250,000/=, as the hold placed on the said funds arose from regulatory compliance by intermediary institutions involved in the cross-border transactions.
48. The petitioner also invoked Articles 2, 20, 22, 23, 27, 28, 40 & 46 of the Constitution. This Court notes that Article 2 establishes the supremacy of the Constitution and provides that any law inconsistent with the Constitution is void to the extent of the inconsistency. Articles 20, 22 & 23 set out the framework for the enforcement of the Bill of Rights, including the obligation of Courts to apply and interpret the Bill of Rights in a manner that promotes the values of an open and democratic society. It is however noteworthy that while these provisions confer jurisdiction on the Court and facilitate access to constitutional remedies, they do not in themselves, create independent substantive rights capable of being violated in the absence of conduct that infringes the specific rights protected under the Bill of Rights. In this case, the petitioner has properly invoked the Court's jurisdiction under those provisions, but the determination of the dispute ultimately turns on whether the respondent's conduct violated the substantive rights alleged.
49. In respect to Article 27 of the Constitution, which guarantees equality and freedom from discrimination, the record shows that the petitioner has not demonstrated that he was treated differently from other customers in similar circumstances or that the respondent acted on the basis of any prohibited ground of discrimination. The evidence adduced by the respondent shows that the closure of the petitioner's US dollar account was undertaken

pursuant to his own written instructions, whereas the hold placed on the international transfers arose from compliance measures taken by intermediary institutions involved in the cross-border payment process. Therefore, in the absence of proof that the respondent singled out the petitioner for adverse treatment on any prohibited ground, the claim of discrimination against him cannot be sustained.

50. On perusal of the petition herein, it is evident that the petitioner alleged a violation of his right to dignity enshrined under Article 28 of the Constitution. However, upon examination of the material placed before this Court, it is manifest that it does not disclose conduct on the part of the respondent that can reasonably be construed as degrading, humiliating, or injurious to the petitioner's inherent dignity. To the contrary, this Court is persuaded that the respondent merely executed the petitioner's instructions regarding the closure of his account and initiated the requested international transfers through the appropriate banking channels. Any inconvenience experienced by the petitioner arose from regulatory compliance measures imposed by third-party institutions and not from any conduct by the respondent, which would amount to an affront to the petitioner's dignity.
51. The petitioner also invoked the provisions of Article 40 of the Constitution which protects the right to property. As explained hereinbefore, the evidence adduced by the parties herein does not demonstrate that the respondent arbitrarily deprived the petitioner of his property or unlawfully interfered with his proprietary interests. The respondent processed the petitioner's transfer instructions and communicated the reasons why the funds could not be immediately released following the hold imposed by intermediary institutions as advised by them. It is not disputed that the funds in question were neither appropriated by the respondent nor applied for its benefit. The petitioner was informed of the procedure through which the blocked funds

could be recovered. In the circumstances, this Court finds that the petitioner has not established the essential elements of violation by the respondent, of his right to property guaranteed by the provisions of Article 40 of the Constitution.

52. The petitioner in support of this petition also relied on the provisions of Article 46 of the Constitution relating to consumer rights, including the right to goods and services of reasonable quality and the right to information necessary to gain full benefit from those services. This Court has already found that the respondent communicated to the petitioner the information received from the Western Union and its correspondent bank regarding the blockage of the transactions and the regulatory steps required for the potential release of the withheld funds. As a result, this Court finds that the respondent did not deny the petitioner material information regarding the status of the blocked transactions. Accordingly, I am persuaded that the petitioner has not demonstrated violation by the respondent, of his consumer rights protected under Article 46 of the Constitution.
53. It is now well settled that a party alleging violation of constitutional rights must plead and prove with reasonable precision, the provisions allegedly infringed and the manner of such infringement. The test for reasonable precision in constitutional pleadings was set out by the Court in the case of **Anarita Karimi Njeru v Republic** [1979] KEHC 30 (KLR), where the Court held as follows-

*We would, however, again stress that if a person is seeking 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*

54. The above principle was elaborated further by the Court of Appeal in **Matemu v Trusted Society of Human Rights Alliance & 5 others** [2013] KECA 445 (KLR), as follows –

*The principle in Anarita Karimi Njeru (supra) underscores the importance of defining the dispute to be decided by the court. In our view, it is a misconception to claim as it has been in recent times with increased frequency that compliance with rules of procedure is antithetical to Article 159 of the Constitution and the overriding objective. Principle under section 1A and 1B of the Civil Procedure Act (Cap 21) and Section 3A and 3B of the Appellate Jurisdiction Act Cap 9.*

*Procedure is also a hand maiden 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 extract of this principle*

55. In light of the foregoing decisions, the petitioner has failed to establish that the respondent violated his constitutional rights under Articles 27, 28, 40, 46 & 47 of the Constitution, including the right to fair administrative action.

**Whether the respondent was entitled to rely on OFAC sanctions issued by the United States Department of the Treasury in regulating its banking relationship with the petitioner in Kenya, and whether Part XII of the Proceeds of Crime and Anti-Money Laundering Act has any bearing on the application of such foreign sanctions.**

56. The petitioner argued that the sanctions imposed by the United States Office of Foreign Assets Control, have no direct legal application within Kenya and that the respondent could not rely on them to restrict the operation of Kenyan bank accounts. The respondent however explained that it did not independently apply the OFAC Rules and that the restrictions complained of, arose from intermediary institutions involved in international transfers, which are legally obligated to comply with the United States Sanctions Regulations. The respondent further submitted that although Part XII of the Proceeds of Crime and Anti-Money Laundering Act provides for mutual legal assistance between jurisdictions, it does not impose upon Kenyan financial institutions a duty to enforce foreign sanctions in respect of domestic accounts.
57. From the evidence adduced by the respondent through his averments, which were not rebutted by the petitioner by way of affidavit evidence, the respondent's conduct in relation to the petitioner's accounts was governed by Kenyan law and the contractual relationship between the parties, particularly, in regard to the closure of the petitioner's US dollar account. The evidence further demonstrates that the reliance on the OFAC Regulations arose from intermediary institutions involved in the cross-border payment process and was external to the respondent's own legal obligations. In the circumstances, the petitioner cannot hold the respondent directly responsible for compliance measures undertaken by third-party intermediaries acting under their own regulatory regimes. This is particularly so, in light of the fact that the respondent communicated the circumstances surrounding the transactions to the petitioner and advised him on the appropriate channels through which his grievance could be addressed and have the funds that had been put on hold released.

58. This Court therefore finds that the respondent cannot be held liable to the petitioner for the application of the OFAC sanctions by foreign intermediary institutions, as the respondent had duly discharged its role by initiating the transfer of the subject funds, in accordance with the petitioner's instructions and the applicable banking procedures.

**Whether the respondent acted in accordance with Kenyan banking law and the regulatory framework of the Central Bank of Kenya in handling the petitioner's accounts and international transactions, including consideration of prior freezing orders by the Assets Recovery Agency.**

59. The petitioner asserted that the respondent unlawfully applied the sanctions regime administered by the Office of Foreign Assets Control of the United States Department of the Treasury to regulate its banker–customer relationship with him in Kenya. He submitted that OFAC administers economic and trade sanctions pursuant to United States legislation, including the International Emergency Economic Powers Act and the Trading with the Enemy Act, as well as through executive actions such as Executive Order 13664 issued by the former United States President Barack Obama.

60. Earlier in this Ruling, this Court found that the respondent in closing the petitioner's US dollar account, acted pursuant to the petitioner's own instructions. The respondent therefore acted in compliance with the Banking Act and the regulatory framework of the Central Bank of Kenya. It is further not disputed that the prior freezing of the petitioner's Kenya Shillings account by the Assets Recovery Agency was lawfully implemented and subsequently lifted by consent of the parties. Subsequently, the petitioner attempted to transfer money from his account held with the respondent to Nigeria and Ghana, but this was not successful since the funds were held by intermediary or recipient financial institutions involved in the transfer process in light of the OFAC sanctions.

61. In regard to the international cross-border transactions, this Court has already found that the respondent did not independently or arbitrarily deny the petitioner access to his funds or discriminate against him. Rather, the hold placed on the funds arose from actions taken by international third-party intermediary institutions, and the petitioner was duly advised on the appropriate channels through which his grievances could be addressed to have the funds potentially released to him.
62. In the circumstances, this Court finds that the respondent properly executed the petitioner's instructions, communicated promptly regarding the blocked transactions, and advised the petitioner on the available remedial measures in accordance with both domestic law and applicable banking practices. This Court further finds that no evidence has been placed before it to demonstrate any contravention of the applicable Kenyan banking laws.
63. In the end, this Court finds that the respondent acted in accordance with Kenyan banking law and the regulatory framework administered by the Central Bank of Kenya in handling the petitioner's accounts and the international transactions in question.

**Whether the petitioner is entitled to the reliefs sought.**

64. In light of the findings I have made here before, the petitioner's constitutional and contractual claims are without merits. The blocking of transactions was due to external compliance obligations of intermediaries and not due to any unlawful action by the respondent. As a result, no compensable loss and/or breach of rights by the respondent have been established.
65. Consequently, I find that the reliefs sought by the petitioner, including reimbursement, damages, and declarations, cannot be granted.

66. In the result, the petition herein is not merited. It is hereby dismissed with costs to the respondent.

It is so ordered.

**DATED, SIGNED and DELIVERED at NAIROBI on this 13<sup>th</sup> day of March 2026. Judgment delivered through Microsoft Teams Online Platform.**

**NJOKI MWANGI**

**JUDGE**

**In presence of:-**

Ms Bubi for the petitioner

Ms Andenyi h/b for Mr. Wanga for the respondent

Ms B. Wokabi – Court Assistant.