

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MOMBASA**  
**CONSTITUTIONAL, HUMAN RIGHTS & JUDICIAL REVIEW**  
**DIVISION**  
**PETITION NO. E061 OF 2024**

**JAMES KARUGIA NJOGU.....1<sup>ST</sup> PETITIONER**  
**GRACE MALILA.....2<sup>ND</sup> PETITIONER**  
**-VERSUS-**  
**DHANJAL INVESTMENTS LIMITED T/A**  
**TRAVELLERS BEACH HOTEL.....RESPONDENT**

**JUDGMENT**

1. The petitioners in this petition have sued the respondent for “*a declaration that the respondent has violated article 27(4) of the Constitution of Kenya*” and “*general damages for mental torture, distress, inhumane treatment and breach of constitutional rights*”.
2. According to the petitioners, on 1 September 2024, they sought to access the respondent’s hotel known as Travellers Beach Hotel in Mombasa for “*food and other leisure and entertainment activity*” within the hotel.
3. The petitioners were stopped at the entrance and asked to identify themselves. Other visitors, in particular people of European, American and Asian descent, were allowed into the hotel without much ado and were not asked to identify themselves.
4. It is the petitioner’s case that by singling them out for identification, the respondent discriminated against them and, further, the respondent’s conduct towards the petitioners amounted to humiliation, harassment and

degrading treatment. They have averred that their right to equal treatment under article 27(4) of the Constitution was thereby violated.

5. The 1<sup>st</sup> petitioner has sworn an affidavit in support of the petition in which he has stated that he saw other visitors to the hotel being given free access without being asked for identification. The petitioners were eventually asked to leave.
6. The 1<sup>st</sup> petitioner lodged a complaint with the management of the hotel. By an email dated 4 September 2024, the respondent responded apologising for the distressing experience the petitioners had gone through and regretted that the petitioners were humiliated. The respondent assured the petitioners that it was investigating the incident and that whatever happened would not be repeated in future. The respondent also informed the petitioners that it had taken up the matter with the staff involved.
7. In conclusion the respondent wrote:

***“Please be assured that your concerns are a priority, and we are committed to resolving this matter. If you would like to discuss this further we are available to meet at your convenience. I apologise for the inconvenience and distress caused, and I appreciate your understanding as we work to resolve the issue.”***

8. Daniel Muthini swore a replying affidavit on behalf of the respondent opposing the petition. He identified himself in the affidavit as the head of security of the respondent.
9. The respondent denied the petitioner's allegations and, in particular, Muthini swore that the respondent was not privy to the petitioners' travel arrangements or plans as the petitioners had not made any reservations with the respondent.
10. As far as identification of the petitioners is concerned, it has been sworn that there is a sign post at the entrance of the hotel to the effect that all visitors must stop at the entrance for security checks. Visitors, whether pedestrians or coming to the hotel in vehicles are subjected to security checks. Pedestrians, in particular, surrender identification documents after which they are given gate passes. Where a pedestrian visitor does not have an identification document, they fill a gate pass to gain access. Visitors driving in are equally checked and their vehicles thoroughly screened.
11. Security checks also serve to protect the hotel since all its services are post-paid; apparently, some visitors tend to disappear without settling bills after services are rendered. Security checks helps track down such clients.
12. It has also been sworn that the main gate is designed in such a way that every person entering the hotel, including members of staff, is subjected

to a search at the entrance and that one can only access the reception if they pass through a security scan.

13. When the 1<sup>st</sup> petitioner was asked for identification, he rudely responded that he is a lawyer who is well conversant with the law and there is no law requiring him to produce any identification for him to spend his own money at a hotel. Upon being informed that it is the hotel policy that visitors should be identified and checked 1<sup>st</sup> petitioner retorted that the policy was contrary to his constitutional rights and he would not allow any one search him as this infringed his privacy.

14. It is then that the petitioners were asked to step aside and allow other people behind get served as well. The 1<sup>st</sup> petitioner started yelling at the security personnel telling him that he would sue him and the hotel for subjecting him to degrading treatment in the presence of the 2<sup>nd</sup> petitioner. As other security guards were clearing the other visitors, the 1<sup>st</sup> and 2<sup>nd</sup> petitioners were hurling insults at the security guard and saying they would not be subjected to a search whatsoever.

15. Muthini personally informed the petitioners that the security requirements were for their own safety but they told him that they would rather leave than be subjected to a search yet the society holds them so highly. He also confirmed that the respondent received the petitioners' email but rather than call him as advised, the petitioners opted to file the instant suit. It is, therefore, the respondent's case that the suit is in bad faith.

16. The petitioners swore further affidavits in response to the respondent's replying affidavit. They have both sworn that they arrived at the hotel in an auto rickshaw (popularly known as tuktuk) but since the respondent does not allow such vehicle into the hotel, the petitioners alighted and made their way to the entrance where they filled a visitor's book.

17. After they filled the visitor's book, one security personnel remarked in Swahili as follows:

***“Hamkai kama mnaweza kula kwa hii hoteli... endeni kwingine ama mpititie mlango wa nyuma huku twakubali wazungu na wahindi na warabu”***

18. Paraphrased in English, the petitioners appeared to the security personnel as people who could not afford meals at the respondent's hotel and, therefore, they were asked to pass through the backdoor since the front entrance was reserved for Whites, Indians and Arabs. According to the petitioners, this statement was discriminatory; to be precise, they were discriminated against based on the colour of their skin.

19. Looking at the affidavits sworn by the petitioners and the respondents, the facts material to the petition are highly contested. It is the petitioners' word against the respondent's, so to speak.

20. Nonetheless, the burden is on the petitioners to prove their allegations particularly on what they claim to be the respondent's discriminatory conduct.

21. As far as I gather from the respondent, all their visitors patronising their facility or visiting for some other purpose are subjected to security checks. As part of the security check protocol, the visitors may be required to identify themselves irrespective of their race or stature in society. Like the rest of the visitors, the petitioners were asked to identify themselves.

22. It is apparent from the petitioners' pleadings and affidavit they did not identify themselves; instead, they contested this requirement as humiliating and an affront to their dignity. According to them, other visitors, particularly those of European, American and Indian descent were given free access to the hotel without being asked to identify themselves and, therefore, there was no rational basis for subjecting the petitioners to this requirement.

23. My problem with the petitioners' allegation is there is no proof that, unlike the rest of the visitors to the respondent's hotel, the petitioners were singled out for a specific scrutiny or a security check that is not ordinarily applied to the rest of the visitors. There is no evidence of any policy, either in theory or practice, that the respondent targets a particular class of people in society for specific security checks.

24. That said, identifying oneself or submitting to the laid down security protocol for entry to any establishment, whether private or public, does not appeal to me to be a discriminatory or a humiliating exercise. Security checks in both private and public spaces are commonplace and they are for the security of life and property; they serve to protect the establishment or institution to which a visitor seeks access and, more importantly, they serve to protect from any sort of harm, those who find themselves in that establishment for one reason or the other.

25. It does not require much for one identify oneself and I cannot understand why the need for the petitioners to identify themselves raised so much dust. Further, the petitioners' position on this issue is not that consistent.

26. In their petition and initial affidavits in support of the petition, all they complained about was that they were asked to identify themselves when the rest of the visitors accessed the hotel without identifying themselves.

This is what the 1<sup>st</sup> petitioner swore in his affidavit:

***“7. That at the entrance of the Travelers Beach Hotel, we were stopped were stopped by the security personnel for no reason at all, and subsequently asked to show our identity cards.***

***8. That while this was happening I could see many other individuals being allowed to go in without being asked to identify***

*themselves and without any question, harassment or scrutiny which we were being subjected to.*

*9. That the security personnel asked us questions and subsequently harassed and ridiculed us, declined to allow us to enter the hotel premises and ultimately rudely and unceremoniously ordered us to leave.”*

27. When the respondent filed its replying affidavit confirming that the petitioners declined to identify themselves, the petitioners filed further affidavits introducing what in my view, are material allegations which, if true, would have been a basis for some sort of action against the respondent. As earlier noted the petitioners swore in the further affidavits that:

*“Hamkai kama mnaweza kula kwa hii hoteli...endeni kwingine ama mpititie mlango wa nyuma huku twakubali wazungu na wahindi na warabu”*

28. Considering their materiality, no reason has been given why these allegations were neither raised in the petition as facts upon which the appeal was based nor in the affidavits in support of the petition. Rule 10. (2) (b) of the Constitution of Kenya (Protection of Rights and Freedoms) Practice and Procedure Rules, 2013 states that a constitutional petition must disclose among other information, the facts relied upon.

29. It follows that the material information on the 1<sup>st</sup> respondent's security officer's utterances could not be introduced by way of a further affidavit if it was within the petitioners' knowledge from the very beginning. That such information was introduced in a further affidavit can only mean that the information is not true but an afterthought to cover for the inherent weaknesses in the petitioners' case, if all they are basing their claim on is the respondent's insistence on their identification.

30. Assuming that the petitioners have any cause of action against the respondent, probably based on the respondent's response to their complaint, such an action cannot amount to a constitutional petition. What appears to have been largely an altercation between petitioners and the respondent's sentry or sentries does not merit the status of a constitutional petition, assuming the altercation is actionable.

31. Constitutional petitions should not be trivialised. The right to apply to this Honourable Court for redress on account of violation or threatened violation of any human right or fundamental freedom is an important safeguard of those rights and freedoms. But the value of this right is diminished if it is allowed to resolve mere vituperations or if it is misused as a general substitute for proceedings that ought to be filed in the ordinary manner.

32. The petitioners' petition is hereby dismissed with costs. It is so ordered.

**Signed, dated and delivered on 10 April 2026**

Ngaah Jairus

**JUDGE**