

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT VOI

PETITION CASE NO. E012 OF 2024

JANE MWIKYA (Suing as the Widow and legal representative of the Estate of the late PETER MUMO CHUMA NYAMAI.....PETITIONER

-VERSUS-

THE OFFICER COMMANDING STATION

**VOI POLICE STATION, TAITA TAVETA.....1ST
RESPONDENT**

**UNCLAIMED FINANCIAL ASSETS AUTHORITY (UFAA)...2ND
RESPONDENT**

THE HON. CABINET SECRETARY FOR INTERIOR AND

**NATIONAL ADMINISTRATION.....3RD
RESPONDENT**

**THE HON. ATTORNEY GENERAL.....4TH
RESPONDENT**

RULING

1. The 4th Respondent filed a Notice of Preliminary Objection dated 22nd September 2025 as follows:-

(i) That the suit contravene Section 3(1) of the Public Authorities Limitation Act which states:

“No proceedings founded on tort shall be brought against the government or local authority after the end of 12 months from the date on which the cause of action accrued.”

2. The parties filed written submissions as follows:- The respondents in Petition No. E012 of 2024 at the High Court of Kenya in Voi filed a notice of preliminary objection dated 22nd September 2025, arguing that the suit is time-barred under section 3(1) of the Public Authorities Limitation Act and that it is therefore incompetent and should be struck out with costs.
3. They rely on the well-known **Mukisa Biscuits** case to confirm that a preliminary objection raises a pure point of law.
4. The respondents further state that although section 63(2) of the National Police Service Act was complied with, the petitioner failed to appear within the time prescribed by section 63(3), noting that a notice was issued on 10th January 2023.
5. In addition, the respondents contend that the petition does not meet the required thresholds for a constitutional petition

as set out in **Anarita Karimi Njeru and Mumo Matemu**, because the petitioner has not disclosed with reasonable precision which constitutional rights have been infringed or how they were infringed.

6. They argue that apart from citing omnibus provisions such as Articles 22, 23, 47, 48, 50 and 165, the petitioner provided no particulars of the alleged complaints or the manner of infringement.
7. The list of documents filed on 19th March 2025, including photographs of a motor vehicle, does not show how the material violates the cited constitutional provisions.
8. The respondents assert that the petition lacks an affidavit in support and is an abuse of court process, and they urge the court to dismiss it with costs.
9. The Petitioner, Jane Mwikya, opposed a Preliminary Objection raised by the Respondents which claims her constitutional petition is statutorily time-barred under the twelve-month limitation period for tortious claims.
10. She argues that her case is not a tortious claim but a constitutional petition grounded in the violation of her rights under Articles 40, 47, and 50 of the Constitution, specifically

challenging the unfair administrative action and unlawful limitation of her proprietary rights after the police auctioned her late husband's motor vehicle without adequate notice or justification.

11. Relying on the Supreme Court decision in **Wamwere & 5 others v Attorney General**, the Petitioner submits that there is no limitation period for claims alleging violation of constitutional rights, and the Limitation of Actions Act does not apply to such causes.
12. She contends that her petition raises serious, triable constitutional issues, including the illegal auctioning of the vehicle while it was in police custody, and that she has exhausted all other avenues to recover the vehicle without success.
13. The Petitioner further argues that the Respondents are attempting to hide behind statutory provisions to benefit from their own wrongdoing, which equity forbids, and that justice demands the Court hear the petition on its merits.
14. She also notes that the Respondents have not denied the alleged constitutional violations but have only raised the preliminary objection.

15. Citing the equitable principle that no wrong should be without a remedy and the Court's power under Article 23 to grant appropriate relief, including compensation for constitutional violations, the Petitioner urges the Court to dismiss the Preliminary Objection and allow the main petition to proceed.
16. I have carefully considered the Notice of Preliminary Objection dated 22nd September 2025, the submissions by both parties, and the relevant legal authorities, this court proceeds to render its final decision.
17. The objection is premised on Section 3(1) of the Public Authorities Limitation Act, which provides that proceedings founded on tort against the government shall be brought within twelve months from the date the cause of action accrued.
18. The Respondents argue that the Petitioner's claim, which arises from the alleged illegal auctioning of a motor vehicle by police, is tortious in nature, was filed outside this statutory window, and is therefore time-barred.
19. The Petitioner, however, contends that her case is not a tortious claim but a constitutional petition grounded in the

violation of her rights under Articles 40, 47, and 50 of the Constitution.

20. She argues that there is no limitation period for claims alleging violations of constitutional rights and that the court should hear the petition on its merits.

21. This submission finds firm support in Kenyan jurisprudence. The courts have consistently held that whereas constitutional petitions generally do not have a prescribed limitation period, the delay in filing them must not be inordinate and must be reasonably explained.

22. However, the law is settled that the limitation periods set out in statutes such as the Public Authorities Limitation Act and the Limitation of Actions Act do not automatically bar a constitutional petition where the primary grievance is the infringement of fundamental rights and freedoms.

23. The court has jurisdiction under Article 22 of the Constitution to enforce the Bill of Rights.

24. The Respondents' attempt to re-characterize the Petitioner's claim as purely tortious is a misdirection.

25. While the actions complained of, the auctioning of the vehicle, could potentially give rise to a tortious claim for

detinue or conversion, the Petitioner has explicitly pleaded that her constitutional rights to property, fair administrative action, and a fair hearing have been violated.

26. Courts ought to be particularly sensitive to claims of historical injustices and I find that there is no automatic limitation period for constitutional claims, especially where the delay is explained by the circumstances of the case.

27. In the instant matter, the Petitioner has averred that she exhausted all other avenues to recover the vehicle without success before resorting to the constitutional court, which provides a reasonable explanation for the timeline of her filing.

28. A wrongdoer should not be permitted to benefit from their own wrongdoing by hiding behind statutory limitation provisions.

29. On the issue of the petition's competence regarding the precision of its pleadings, which the Respondents raised in their submissions even though it was not formally included as a ground in the Notice of Preliminary Objection, the Petitioner has cited specific constitutional provisions, Articles 40, 47, and 50, and has provided factual particulars

regarding the police auction of her late husband's motor vehicle while it was in their custody, allegedly without adequate notice or justification.

30. This court is satisfied that the petition meets this substantive test, as the Respondents have not demonstrated that they are unable to understand or respond to the allegations of constitutional violations.
31. A preliminary objection must be on a pure point of law, and the Respondent's objection erroneously conflates issues of fact and law.
32. Whether the dispute is fundamentally a constitutional one or a tortious one, and whether the delay in filing is inordinate and inexcusable, are matters that require the court to examine the pleadings and evidence on record.
33. This cannot be done summarily through a preliminary objection. As was held in the celebrated case of **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA 696**, a preliminary objection must not be founded on disputed facts.
34. The present objection purports to dispose of the matter based on a limitation period, but in doing so, it asks the

court to make a finding that the claim is purely tortious, which is a finding of fact that this court is not prepared to make without a full hearing.

35. Consequently, this court finds that the Notice of Preliminary Objection is unmerited.

36. Accordingly, the respondents' preliminary objection dated 22nd September 2025 is hereby dismissed with costs to the Petitioner, and the main Petition shall proceed to full hearing on its merits.

37. Orders to issue accordingly.

Dated, signed and delivered this 29th day of April, 2026 in open court at Voi High Court.

**ASENATH ONGERI
JUDGE**

In the presence of:-

Court Assistant: Mabishi/Millicent

..... **for Petitioner**

..... **for the 4th Respondent**