

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
CONSTITUTIONAL & HUMAN RIGHTS DIVISION
PETITION E019 OF 2025

JOSEPHAT DOE OKIRIA
PETITIONER

VERSUS

THE CHIEF EXECUTIVE OF
NATIONAL HEROES COUNCIL **1ST**
RESPONDENT

CABINET SECRETARY DEPARTMENT OF GENDER,
YOUTHS,
CULTURE & NATIONAL HERITAGE **2ND**
RESPONDENT

JUDGMENT

1. The petitioner, is a journalist and member of the ATEKER Peace Community, an initiative responsible for arms proliferation and disarmament, the introduction of farming, education, livestock vaccination, and the digging of water dams, whose mandate covered 4 countries of Kenya, Ethiopia, Uganda and Southern Sudan, testified that he discharged his duties from 5/1/2019 to 20/1/2019. In his petition, he avers that under his stewardship,

the initiative duly contributed towards peace-making achievements and castle rustling issues, and thus he waited for the official communication and/or his enlistment in the gazette notice of persons to be declared as National Heroes, but later learnt that he was left out of the nomination.

2. That the 1st respondent, in total disregard of the Kenyan Heroic Act No. 5 of 2014, failed to consider the petitioner despite discharging his duties. That, being from the marginalised Iteso community, he was marginalised by the failure to be listed as a National Hero, and thus the office of the 2nd respondent ought not to have proceeded with the approval of the listed heroes. That due diligence was never conducted by the 1st respondent to enable him to be listed as a hero, and thus the public participation set for 16/9/2025 ought to have been stayed.
3. The petitioner seeks the following orders.

a) That an order be issued granting leave to the petitioner to play video & links of the ATEKER peace initiative caravan services.

b) That a declaration order that the petitioner be and is hereby declared a hero nominee and his name be included in the lists of the proposed person to be declared as the Heroes by the president in Gazette notice by the 1st respondent and furthermore, the

same is submitted it be recalled by lawful orders of this court and be quashed.

c) That a declaration order that failure to list the petitioner as a hero despite the service rendered contravened Heroic Act 5 of 2014 thereto hence null and void ab initio.

d) A declaratory order be issued suspending and quashing the 2nd respondent for nomination of suitable person to be recommended for declaration thereof.

e) That a declaratory order be issued to the 1st & 2nd respondent to issues the petitioner and recognize him under the price making award which is slated on the 20/10/2025 as per the Gazette Notice or National Heroes Council Website.

4. The petition was opposed vide the replying affidavit sworn by Dr. Charles O. Wambia, the CEO/Director of the National Heroes Council, on 22/9/2025. Dr. Wambia deposed that the National Heroes Council conducted the identification and selection process for proposed persons and issued a call for nominations through official channels, including its website, on 1/7/2025, with the deadline set for 21/7/2025 but later extended to 31/7/2025. The approved list of proposed persons was released in accordance with sections 5(b), 22, 23 and 24 of the Kenya Heroes Act, and the call for public participation was published on 16/9/2025.

5. That the petitioner never made any formal submission, application or nomination under the prescribed procedures of the Kenya Heroes Act to be considered for declaration as a national hero. That the petition was not based on law, thus misconceived and not warranting intervention by the court.
6. In rejoinder, the petitioner swore a further affidavit on 3/10/2025, in which he stated that the court ought to weigh the matter and quash the advertisement published only on the 1st respondent's website, as it violated the law on public violation and discriminated against other people. He further stated that the respondents' failure to circulate information to all Kenyans regarding the application violated the requirements of fairness and constitutionalism, and that their actions ought to be quashed.
7. The petition was canvassed by way of written submissions. The petitioner submitted that the selection was marred by irregularities, as evidenced by complaints by Kenyans that the court must take judicial notice of, and that, consequently, the entire process was null and void. That public participation was not duly considered by the respondents, thus prejudicing the petitioner. That failure to consider the petitioner amounted to a violation of his human rights. That, consequently, the petition was merited.
8. The respondents submitted that the petition failed to meet the threshold for filing constitutional petitions, as the petitioner failed

to state with reasonable precision the articles of the Constitution allegedly violated, nor to specify the nature of the violation. That the petitioner merely cited omnibus provisions of the Constitution in the heading. That the petitioner failed to follow the nomination procedure provided for under section 22 of the Act and further failed to demonstrate any section of the Kenya Heroes Act that was contravened by the 1st respondent. That the fact that the petitioner's name was not on the list of proposed heroes was not evidence of a violation of his constitutional rights. That the petitioner was thus not entitled to the reliefs sought, and granting the same would prejudice all who were recognised as heroes on 20/10/2025, as their recognition would be recalled without giving them an opportunity to be heard.

ANALYSIS AND DETERMINATION

9. Having considered this Petition, the response thereto, and submissions by both parties. In my view, the issues for determination are as follows;

a) Whether this court has jurisdiction to grant the reliefs sought in the petition?

b) Whether the petitioner proved a violation of his constitutional rights?

c) Whether the petitioner merits the grant of the orders sought?

d) ***Who bears the costs of this petition?***

10. It is well established that the Court's jurisdiction is the authority vested in the court of law to handle matters brought before it for adjudication. That jurisdiction may be general or specific, and limited or unlimited. This jurisdiction may be conferred by the Constitution, by statute, or by both.
11. The Supreme Court has in Samuel Kamau Macharia & Another v Kenya Commercial Bank Ltd & Another (2012) eKLR held that;
- “A court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.”***
12. In this case, the Petitioner has invoked the jurisdiction of this court to remedy what he considers to be breaches of his fundamental rights and freedoms under Articles 10 and Schedule 22 (1), (2), (3), (4), 23 (1), (2), 2(c) & 4 of the Constitution of Kenya, 2010. Therefore, this court is well clothed with jurisdiction to entertain this petition.
13. As to whether the Petitioner proved a violation of his constitutional rights, it is trite that a petitioner must identify the

constitutional entitlement that was threatened, infringed or violated and demonstrate, with some level of precision, the manner of the violation, so that the respondent can mount a defence.

14. In Miscellaneous Criminal Application 4 of 1979, *Anarita Karimi Njeru v Republic* [1979] eKLR, the court held as follows:

“... 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...”

15. The precedent above has been cited with approval by various courts of superior jurisdiction. In *Kenyan Medical Practitioners, Pharmacists and Dentists’ Union v University of Nairobi & another* [2021] eKLR, the court stated as follows:

87. The foregoing finding (Anarita Karimi case) received endorsement from the court of Appeal in Nairobi Civil Appeal No 290 of 2012, Mumo Matemu v Trusted Society of Human Rights Alliance when the Learned Judges remarked on the importance of compliance with procedure under article 159 of

the Constitution, the overriding objective principle under section 1A and 1B of the Civil Procedure Act and need for precision in framing issues in constitutional petitions. It was observed thus: -

16. The Supreme Court set out the standard of proof in Constitutional Petitions in the case of ***Communications Commission of Kenya & 5 Others v Royal Media Services Limited supra***, where the court stated as follows: -

“Although article 22(1) of the Constitution gives every person the right to initiate proceedings claiming that a fundamental right or freedom has been denied, violated or infringed or threatened, a party invoking this article has to show the rights said to be infringed, as well as the basis of his or her grievance. This principle emerges clearly from the High Court decision in Anarita Karimi Njeru v Republic, (1979) KLR 154: the necessity of a link between the aggrieved party, the provisions of the Constitution alleged to have been contravened, and the manifestation of contravention or infringement. Such principle plays a positive role, as a foundation of conviction and good faith, in engaging the constitutional process of dispute settlement.”

17. Accordingly, it is not enough for the petitioner herein to allege a violation or infringement of his constitutional right; there must be a link between the alleged contravention of the Constitution and its manifestation.

18. Article 165(1) establishes this court and confers jurisdiction on it under Article 165(3). The Petitioner purports to bring his Petition under Article 165(3)(b), which reads as follows:

“subject to clause (5), the High Court shall have -

b) jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;”

19. It is the Petitioner’s allegation that his human rights were violated because he was not listed as a proposed national hero under the Kenya Heroes Act No. 5 of 2014.

20. On the other hand, the respondent submitted that it followed the correct procedure set out in the Kenya Heroes Act by notifying the public of the nomination period and subsequently providing the list of proposed persons for public participation prior to nomination. It further submitted that the petitioner failed to nominate himself as provided in section 22 of the Kenya Heroes Act.

21. The Petitioner’s contention that the opening of the nomination period, as advertised on the 1st Respondent’s

website, infringed his right and that of other Kenyans, because not everyone could access it, falls short in light of the 1st Respondent's evidence that this was done through all official avenues. I agree with the Respondents that the Petitioner has not proved his case by showing that his alleged constitutional rights have been violated or infringed in any way, and consequently does not merit the grant of the orders sought.

22. The Petitioner ought to have complied with Section 22 of the Kenya Heroes Act, which sets out the procedure for recognition as a hero. By failing to do so, he cannot now turn and blame the 1st respondent for failing to nominate him.

23. I find that the Petitioner has failed to prove his case against the Respondents. The Petitioner failed to show how his constitutional rights were infringed by the Respondents. Having failed to prove his case, the Petitioner does not merit the grant of the orders sought.

24. Consequently, I find that this Petition lacks merit. I dismiss it with no orders as to costs.

**Dated, signed and delivered virtually this 16th day of April
2026.**

R.E. OUGO

JUDGE

PETITION NO.E019 OF 2025-JUDGMENT

In the presence of:

Josephat Doe Okiria/ Petitioner - Absent

1st & 2nd Respondents- Absent

Filister/ Adan - C/A

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