



Ouko & another v Inspector General of Police & 8 others (Petition E028 of 2024) [2026] KEHC 6223 (KLR) (8 May 2026) (Judgment)

Neutral citation: [2026] KEHC 6223 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
PETITION E028 OF 2024**

A MSHILA, J

MAY 8, 2026

**IN THE MATTER OF THE ALLEGED CONTRAVENTION OF ARTICLES
27, 28, 29, 31, 39, 40,48,49,50, 51 OF THE CONSTITUTION OF KENYA 2010**

BETWEEN

OMONDI DICK OUKO 1ST PETITIONER

SHENAZI IBRAHIM ABDALLA 2ND PETITIONER

AND

THE INSPECTOR GENERAL OF POLICE 1ST RESPONDENT

OCS KIKUYU POLICE STATION 2ND RESPONDENT

INSPECTOR FRANCIS NGANGA 3RD RESPONDENT

PC ABSOLOM GITONGA 4TH RESPONDENT

PC GILBERT TALLAM 5TH RESPONDENT

PC JOSEPHINE WANJOHI 6TH RESPONDENT

IPOA 7TH RESPONDENT

GRACE MUTUKU 8TH RESPONDENT

THE ATTORNEY GENERAL 9TH RESPONDENT

JUDGMENT

1. Before this Court for determination is the Petition dated 9th April, 2024 in which the Petitioners allege that in June, 2023 the 1st Petitioner took up tenancy in a house in Kikuyu. On 8th November, 2023, the 3rd, 4th and 5th Respondents arrested the 1st Respondent in response to a complaint made by the one EvAH RIUNGU, the landlady to Kikuyu Police Station alleging non-payment of rent. In the process



of arrest, the 3rd, 4th and 5th Respondents confiscated property and items belonging to the Petitioners without preparing any inventory of the items taken at the scene.

2. The 1st Petitioner was detained in Kikuyu Police Station on a holding charge of “possession of pornographic materials”. He was released a day later on bail and a court date was scheduled for 4th December. The 1st Petitioner’s house keys were confiscated by the 3rd Respondent and were not returned to him rendering him homeless. The refusal to return the house keys was reported to the 6th Respondent who was in charge of the complaints desk at the said police station but he refused to record the complaint.
3. The 1st Petitioner was not charged but neither his bail nor confiscated items were returned. The 1st Petitioner reported the incident to the Independent Policing Oversight Authority (IPOA), the 7th Respondent herein.
4. The Petitioners seek multifarious orders including:-
 - a. A declaration that the arrest and subsequent detention of the 1st Petitioner was illegal;
 - b. a declaration that the Respondents violated the constitutional rights of the 1st Petitioner and in particular Articles 27 (1) and 4, 28, 29(a), 31(a) and (b), 39 (3), 40(1), 47(1), 48,49(1)(a), 50(n) and 51(1) of *the Constitution*.
 - c. A declaration that the Respondents violated the constitutional rights of the 2nd Petitioner and in particular Articles 31(a) and (b) and Articles 40(1) of *the Constitution*.
 - d. A declaration that the 4th, 5th and 6th Respondents acted ultra vires in arresting the 1st Petitioner for tenancy related offences.
 - e. A declaration that prior to making an arrest, a police officer has to be able to articulate the exact section and act that they suspect the person of contravening.
 - f. A declaration stipulating that whenever it is suspected that evidence of an offence is contained within a computer, a police officer must obtain a search warrant prior to confiscating the computer.
 - g. A declaration that any police officer who arrests a suspect without a warrant, except under the special circumstances permitted in Section 60 of the *National Police Service Act*, is guilty of police misconduct.
 - h. A declaration affirming that confiscating a computer to access its information without a search warrant constitutes a criminal offence.
 - i. A declaration that the Independent Police Oversight Authority has an obligation to investigate any criminal offence committed by the police and to recommend prosecution.
 - j. A declaration that legally obtained property confiscated from a suspect ought not be held indefinitely by the police under the pretext that investigations are ongoing, but instead a clear and reasonable timeline ought to be given by which investigations should be complete.
 - k. An order of Mandamus compelling the Independent Police Oversight Authority to investigate the contravention of the Standing Orders by the 3rd, 4th, 5th and 6th Respondents and recommend disciplinary actions.
 - l. An order to compel the 1st and 2nd Respondent and/or subordinates to release all the confiscated items belonging to the Petitioners to court.



- m. An order compelling the 1st and 2nd Respondent to release the 1st Petitioner's bail money to the court.
 - n. An order for adequate compensation to the 1st Petitioner for false detention and wrongful arrest.
 - o. An order for compensatory special damages amounting to Kshs. 6,445,000 for loss of profit as a result of the confiscated computers and computer system.
 - p. An order for compensatory general damages for loss of opportunity as a result of confiscation of computers.
5. In response to the petition, the 7th Respondent filed Grounds of Opposition dated 12th March, 2025 and a Replying Affidavit dated 13th March, 2025. In the said Grounds of Opposition, the 7th Respondent stated that the Petitioners have not demonstrated the violation or threatened violation of their fundamental rights and freedoms and the manner in which their rights have been violated or threatened by the 7th Respondent. With the Petition having been filed by the Petitioners, the 7th Respondent is statutorily barred from dealing with the issues raised in the Petition.
6. In the replying affidavit, the 7th Respondent averred the following;-
- a. The 7th Respondent received five complaints by way of phone calls from the 1st Petitioner alleging police unlawful entry and search, extortion, blackmail, illegal arrest and withholding of cash bail, assault of the 1st Petitioner and his child.
 - b. With regard to the first complaint on unlawful entry, search and confiscation of computers by the police, the 7th Respondent informed the 1st Petitioner that the matter was being investigated by the DCI headquarters.
 - c. On extortion, blackmail, illegal arrest and withholding of cash bail, the 7th Respondent completed its inquiry and recommended that the complaint be closed upon establishing that cash bail was refunded to the 1st Petitioner and that the Petitioner's electronic equipments were returned to him.
 - d. The 7th Respondent is still investigating the complaint on assault of the 1st Petitioner and his child.
7. The parties were directed to canvass the Petition by way of written submission. The counsel for respective parties made the following submissions;-

The Petitioners' Submissions

8. The Petitioners submitted that they seek redress for egregious violations of their constitutional rights by the officers of the National Police Service and the failure of the Independent Policing Oversight Authority to fulfill its statutory mandate. The 1st Petitioner's landlady visited Kenya on 7th November, 2023 and requested to view the house. The 1st Petitioner suggested that the landlady could visit on 8th November, 2023 at 5pm. She insisted that she wanted to view the house at 10am, a time when the 1st Petitioner would ordinarily be at work.
9. When the landlady went to the house on 8th November, 2023 and found the house locked, she reported the matter at Kikuyu Police Station and falsely informed the police that the tenant was in rent arrears of six months. The police tracked the Petitioner, arrested him and escorted him to his house. They seized the 1st Petitioner's computers, phones, books and other personal property. They booked



and detained him on a baseless allegation of possession of pornographic material. He was released the following day without any charges. He reported the incident to the IPOA.

10. The Petitioners alleged that the police did not return his house keys hence unlawfully evicted him. The 1st Petitioner was locked out of his house for a week and as a result his German shepherd dog starved to death. He remained locked out until 14th November 2023 when the police gave the keys to the landlady's agents who threw out the Petitioners' property. The matter was reported to the police but no action was taken.
11. The 1st Petitioner has not been charged with any offence but the police continue to withhold his seized property. The police also still withhold the 1st Petitioner's Kshs.10,000 provided as cash bail. IPOA has not taken any meaningful investigation into the matter despite a formal complaint being lodged. Apart from the 7th and 8th Respondents, none of the other Respondents have filled a response to the Petition.
12. The Petitioners averred that the conduct of the 1st to 6th Respondents, officers of the National Police Service, amounted to gross violations of *the Constitution* of Kenya, 2010. In response to a false complaint by the landlady, the police immediately arrested the 1st Petitioner within an hour. The police however refused to take any action against the landlady when the 1st Petitioner reported her for several offences including breaking and entering, stealing and giving false information to police officers.
13. The arrest of the 1st Petitioner was illegal and without any legal justification. The Petitioners relied on *James Kahindi Simba v Director Of Public Prosecution & 2 Others* [2020]eKLR and *Constitutional Petition 336 Of 2019 Anthony Murimi Waigwe v The Attorney General*.
14. The police seized the Petitioners' computers without a warrant. The items taken were not illegal and could not be used in commission of a crime. The Occurrence Book indicated that the arrest was prompted by a complaint that the 1st Petitioner was in rent arrears. The bail receipts state that the alleged offence was "possession of pornographic material". None is an offence known to law. The Petitioners cited *Mohamed Feisal & 19 Others v Henry Kandie, Chief Inspector Of Police, Ocs, Ongata Rongai Police Station & 7 Others; National Police Service Commission & Another (Interested Party)* [2018] KEHC 627 (KLR).
15. The Petitioners reported the matter to IPOA who had a statutory duty to investigate the complaint and take appropriate action. Failure by IPOA to take any action warrants for an order of Mandamus to compel them to discharge their statutory duty. The Petitioners cited *Republic v Principal Secretary Ministry Of Internal Security & Another Ex-parte Schon Noorani & Another*[2018] KEHC 9433 (KLR).

The 7th and 8th Respondents' Submissions

16. The 7th and 8th Respondent submitted under Section 26 of the IPOA Act, the 7th Respondent is barred from investigating matters that are subject to court proceedings. The Respondents relied on *Mape Building & Genereal Engineering V Attorney General & Others* [2016]eKLR to support their position that they cannot dictate to institutions with investigative mandate the form, extent and preferred outcome of investigations.
17. The 7th Respondent conducted a preliminary investigation as defined in *Johanne Edward B. Labay V Sandiganbayan, Third Division And People Of The Philippines G.R NOS. 235937-40 (Unreported)*. The purpose of the preliminary investigation was to unearth any wrongdoing and to inform whether or not further action was to be taken. The preliminary investigation did not reveal any wrongdoing on the part of the police and hence further action was deemed unnecessary.



18. It is not the duty of the 7th Respondent to investigate all activities of police officers. Not all actions of the police including receiving complaints are illegal. The police have a duty to maintain law and order, prevent commission of offences and investigate crimes under Section 57 (1) of the *National Police Service Act*.
19. The order of Mandamus sought in the Petition cannot be availed because the Petitioners have not demonstrated any failure by the 7th Respondent to perform its statutory duties of investigating the impugned acts of the subject police offices. The 7th Respondent conducted a preliminary investigation and the outcome was communicated to the Petitioner by way of email. The Respondents cited Republic V Kenya National Examinations Council Ex-parte Gathenji & Others (1997) eKLR.
20. On general and special damages claimed, the Petitioners bear the burden of demonstrating the rights that were violated and the manner in which search rights were violated by the 7th and 8th Respondents. The Petitioners have failed to prove the rights they allege were violated by the 7th and 8th Respondents, the extent of the violation of the rights and the gravity of the injury occasioned by the Respondents. The Respondents cited Attorney General v Zinj Ltd, SC Petition 1 OF 2020 [2021]KESC 23 where it was held that the quantum of damages to be awarded depends on the nature of the right that is proven to have been violated, the extent of the violation and the gravity of the injury caused.
21. The Petitioners have enjoined a member of staff of the 7th Respondent, the 8th Respondent in the Petition yet Section 36 (1) of the IPOA Act grants any member of staff immunity from any claim or actions for acts done in good faith in execution of their functions. The Petition against the 7th and 8th Respondents is premature, misconceived and devoid of merit. The Respondents urged this court to dismiss it.

The Issue For Determination

22. Having cautiously considered the Petition, the Affidavits in support and in opposition, the Grounds of Opposition, the attendant submissions filed together with the authorities relied upon in support thereof, the critical issue that arises for consideration can be summed up as follows;
 - i. Whether the Petitioners have demonstrated any constitutional infractions that warrant the grant of the prayers sought in the Petition.

Analysis

23. It is noteworthy from the outset that the threshold of precision in a constitutional Petition is non-negotiable. A Petitioner has to cite the provisions of *the Constitution* that are alleged to have been violated and give a descriptive account of the said violation. A blanket citation of the constitutional provisions with general complaints will not suffice.
24. The Supreme Court in Communications Commission Of Kenya & 5 Others v Royal Media Services Limited & 5 Others[2014] held:

“ 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 the 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.”

25. The issue before Court is whether the Petitioners’ constitutional rights under Articles 27, 29, 31, 39, 40, 48, 49, 50 and 51 of *the Constitution* were violated by the Respondents.
26. The crux of the Petition is that following a false report by the 1st Petitioner’s landlady to the police, the police arrested him and seized his computers, phones and other personal property. The police booked and detained him on a baseless allegation of pornographic material and released him the following day without any charges. His house keys were not returned and that he became homeless for a week. The incident was reported to IPOA which failed to take any action on the police officers.
27. Although properly served with the Petition, the Inspector General of Police and the mentioned police officers did not file any responses to the Petition. The 7th Respondent, IPOA and its member of staff, 8th Respondent, strongly contested the Petition. The 7th and 8th Respondent stated that upon receipt of the 1st Petitioner’s complaint, it conducted a preliminary investigation and found no wrongdoing necessitating any further investigation into the matter.
28. The 7th Respondent’s affidavit dated 13th March, 2025 indeed confirms that the Petitioners’ complaints were received and acted upon. IPOA conducted a preliminary inquiry on the 1st Petitioner’s allegations of arbitrary arrest to ascertain the validity of the allegations and establish whether the police acted within the law. They interviewed the Petitioner and the police officer and perused the police records.
29. IPOA’s preliminary report confirmed that the 1st Petitioner was arrested with seven other ladies and was later released on cash bail. They were not arraigned in court and the cash bail receipts indicate that the cash bail was returned. What purpose would an order for Mandamus to compel the 7th respondent to initiate or continue investigation serve in the circumstances? This court sees none.
30. It is evident from the record that the gravamen of the matter is a landlady and tenant dispute. The landlady complained of rent arrears and other issues and the tenant claimed harassment by the landlady. The landlady and her agents were eventually struck out of the Petition as parties for mis-joinder by a consent recorded in this court on 17th July, 2025. What was left of the Petitioners’ claim?
31. The remaining Respondents in this Petition, IPOA and the police officers are only peripherally linked to the substance of the Petitioners’ claim. IPOA discharged its duty by looking into the alleged complaints by the 1st Petitioners. The police officers clearly operated within the ordinary police business. They arrested a suspect and processed him within their statutory mandate.
32. Although the Petitioners have cited numerous provisions of *the Constitution*, they have failed to show how those provisions were contravened when the police were in the process of discharging their duties. Neither have they shown how IPOA abdicated its duty even after conducting a preliminary investigation and filing of a report.

Findings And Determinations

33. For the forgoing reasons the Petition is therefore found to be devoid of merit and it is hereby dismissed accordingly, Each party to bear their own costs of the Petition.

Orders Accordingly.

DATED SIGNED AND DELIVERED VIA TEAMS AT VOI THIS 8TH DAY OF MAY, 2026.

A.MSHILA



JUDGE

In the presence of;

Sanja/Millicent - Court Assistants

Omondi Ouko - The Petitioners present acting in person

Waiganjo – for the 7th and 8th Respondents

