



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI

PETITION NO. 81 OF 2018

(Formerly High Court Petition No. 529 of 2017)

Before Hon. Lady Justice Maureen Onyango

**IN THE MATTER OF ARTICLES 19, 20, 21 (1), 22 (1), 23 (1) & (3) AND 165 (3), (9), (B) (D) (I) (II), (6), (7) OF THE
CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF THE CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER SECTIONS 70(A)
AND 74(I) OF THE FORMER CONSTITUTION – EQUIVALENT ARTICLES (1), (2) AND 28 OF THE CONSTITUTION OF
KENYA**

AND

**IN THE MATTER OF THE SERVICE COMMISSION ACT – (JUDICIAL SERVICE COMMISSION REGULATIONS) CAP 185
– LAWS OF KENYA, ARTICLES 50 (1), 172 (1) (C) AND 2 A OF THE CONSTITUTION OF KENYA 2010 AND SECTIONS 68
AND 69 OF THE FORMER CONSTITUTION**

AND

**IN THE MATTER OF THE CONTRAVENTION OF REGULATIONS 24, 25, 26 AND 28 A OF THE JUDICIAL COMMISSION
REGULATIONS (LEGAL NOTICE NO. 163 OF 1966)**

BETWEEN

CHARLES OYOO KANYANGI.....1ST PETITIONER

SOLOMON WAMWAYI.....2ND PETITIONER

JULIUS MUSHELLE..... 3RD PETITIONER

PAUL NDUNGU.....4TH PETITIONER

FATUMA WANJIKU..... 5TH PETITIONER

KARU SIRO OMBAYE..... 6TH PETITIONER

KENNEDY ACHIENG OWUOR.... 7TH PETITIONER

ANN WAMBUI NGUGI.....8TH PETITIONER

GREGORY OMBITO.....9TH PETITIONER

JUSTINE S. KABURU..... 10TH PETITIONER

MARGARET RUNGARE.....11TH PETITIONER
ERIC NJUGUNA KIMANI.....12TH PETITIONER
MARGARET O. OPONDO..... 13TH PETITIONER
GLADYS NDENDA.....14TH PETITIONER
ALICE GATHOGO.....15TH PETITIONER
CLAIRE NAMENGE SIFUNA..... 16TH PETITIONER
CHARLES OYUKE MOITUL..... 17TH PETITIONER
ROBERT NDUMBI.....18TH PETITIONER
NICHOLAS NYAMATE GANDAH..19TH PETITIONER
BENJAAMIN F. ODHIAMBO.....20TH PETITIONER
CLEVELAND MWEBI.....21ST PETITIONER
NJERU ITHIGA.....22ND PETITIONER
PAUL SIMEKI ONDIEKI.....23RD PETITIONER
BETTY A.O. ASUNAH.....24TH PETITIONER
MARY KIPTOO.....25TH PETITIONER
JACQUILINE WANJALA.....26TH PETITIONER
NICHOLAS OPELE ATEYA.....27TH PETITIONER
KENNEDY ORUKA OGOLA.....28TH PETITIONER
NAFTALI MASARA.....29TH PETITIONER
PETER MUTEKI MUTANI.....30TH PETITIONER
CELYN ODEMBO.....31ST PETITIONER
HUMPHREY NYAGA NJIRU..... 32ND PETITIONER
SHEM KEBONGO.....33RD PETITIONER
GRACE NGARI.....34TH PETITIONER
ALOIS KARIUKI MWANIKI.....35TH PETITIONER
DANIEL K. GICHUKI.....36TH PETITIONER
WILLIAM KAHINDI.....37TH PETITIONER
FRANCIS MBUGUA.....38TH PETITIONER
JOEL OKEROSI OCHAKO.....39TH PETITIONER
WYCLIFFE OUMA OKUTTA..... 40TH PETITIONER

BERTY MALOBA.....41ST PETITIONER

GEORGE ABURILI..... 42ND PETITIONER

BETTY RASHID.....43RD PETITIONER

STEPHEN ONGECHE OMWEGA.....44TH PETITIONER

VERSUS

JUDICIAL SERVICE COMMISSION.....RESPONDENT

JUDGMENT

The Petitioners were employed by the Respondent on diverse dates and served as magistrates until their retirement on public interest. On diverse dates in August 2003, the Petitioners received show cause letters from the then Chief Justice, Evans Gicheru, informing them of the complaints that had been made against them in the report submitted to him by the Integrity and Anti-Corruption Committee of the Judiciary (Ringera Report).

They were required to show cause why they should not be retired in the public interest. The Petitioners responded to the letter but the Respondent resolved to have them retired in the public interest, in accordance with Regulation 28 of the Judicial Service Regulations.

The Petitioners filed this petition in the High Court on 27th November 2017 seeking the following reliefs against the Respondent-

1. A declaration that the retirement of the Petitioners in public interest was unconstitutional as it violated the Petitioners' fundamental rights to equal protection of the law, human dignity, security and integrity to the person guaranteed by Sections 70(a) and 74(1) of the former Constitution of Kenya equivalent to Articles 27(1), (2) and 28 of the Constitution of Kenya 2010.
2. A declaration that the retirement of the Petitioners in the public interest without according them a proper opportunity to defend themselves against the allegations made against them constituted violations of the rules of natural justice and clear provisions of regulations 24, 25, 26 and 28 of the Judicial Service Commission Regulations.
3. A declaration that the condemnation of the Petitioners through public acclamation by calling them to quit the Judiciary on the basis of mere allegations made against them portrayed the Petitioners as being corrupt and unethical thereby occasioning them humiliation, mental torture, spite, embarrassment and public disgrace.
4. A declaration that in retiring the Petitioners in public interest in the way the Respondent did it, the Respondent acted with utter impunity.
5. An order of certiorari to remove into the High Court, the Report of the Integrity and Anti-Corruption Committee for the Judiciary of Kenya 2003 and quash the findings, remarks and decisions therein relating to the Petitioners.
6. An order of Certiorari to remove into the High Court for purposes of quashing the letters by the Respondent retiring the Petitioners in public interest.
7. An order for reinstatement of all eligible Petitioners to the positions held before their unlawful and unconstitutional retirement in public interest by the Respondent with no loss to seniority.
8. In the alternative and without prejudice to prayer 7, an order that the Petitioners be fully compensated for the unlawful retirement in public interest.
9. General and exemplary damages consequential to the declarations of violations of fundamental rights and freedoms of the Petitioners in prayers 1 to 4 above as may be assessed by this Honourable Court.
10. Costs of the Petition.
11. Interest on all monetary awards.
12. Any other relief that this Honourable Court may deem fit and just in the circumstances.

Vide a ruling of Mwita J. delivered on 15th August 2018, the matter was transferred to this Court for hearing and determination hence this judgment. The petition was disposed of by way of written submissions.

The Petitioners' Case

In their respective Supporting Affidavits, the Petitioners aver that they did not have access to the substance and details of the allegations

made against them hence they were unable to adequately respond to their show cause letters. Further, they were not given the Committee's report or any other evidence against them which was a breach of regulation 24 of the Judicial Service Commission Regulations.

The Petitioners aver that they did not take part in the proceedings before the Integrity and Anti-Corruption Committee that formed the basis of the show cause letters, which were held in camera. As such, they did not get the opportunity to be heard or to cross examine their accusers.

The Petitioners aver that the manner in which their retirement was publicized degraded them and created the impression that they were criminals. That this curbed their chances to get employment in the public service. It is their position that the Respondent's actions were unlawful, biased and breached the principles of natural justice.

They aver that the delay in filing the petition was occasioned by the Respondent's delay in furnishing them with the Committee's report.

The Respondent's Case

In the Respondent's response filed on 27th December 2017 and the Replying Affidavit of the Chief Registrar, Anne A. Amadi sworn on 20th December 2017, it is averred that the Repealed Constitution bestowed upon the Respondent powers to exercise disciplinary control over judicial officers, such as removing them from office.

The Respondent avers that the Integrity and Anti-Corruption Committee of the Judiciary was appointed to investigate and report the magnitude of corruption on the performance of the judiciary as well as identify the corrupt members and make recommendations on what action was to be taken against them. This was due to the Judiciary's ranking as the 6th most corrupt public institution in Kenya in 2002.

The Committee conducted investigations by receiving memoranda and through hearings conducted in camera to protect the members of the public from intimidation as well as the members of the Judiciary that had been implicated. Thereafter, a report was issued to the Chief Justice highlighting the allegations against the Petitioner. That it had considered, the report and reached a verdict to recommend disciplinary action against those implicated as well as their counselling.

It is averred that the charges against those implicated were outlined in their respective letters to show cause. It is further averred that the decision to retire the Petitioners in public interest was communicated to them and the 7th, 19th and 26th Petitioners appealed against the decision but their appeals were dismissed upon consideration by the Respondent. It is the Respondent's position that the Petitioners were granted an opportunity to make their representations.

It is averred that 14 years have passed since the cause of action arose and no reasonable explanation has been made for the inordinate delay. It is further averred that the Report was made available to the Petitioners and they have not adduced any evidence to prove that they asked for the report and were denied the same.

The Respondent contends that the petition does not meet the threshold set by the Court of Appeal in the case of **Anarita Karimi Njeru v Republic [1976-1980] KLR 1272**. The Petitioners have not outlined with reasonable precision the alleged constitutional violations and the manner in which they were violated. For instance, they have not outlined the specific articles that were infringed and the manner in which they were infringed.

It is posited that regulations 24, 25 and 26 of the Judicial Service Commission Regulations relied upon by the Petitioners were not in force at the time the decision to retire them was made. The Respondent contends that the action taken against the Petitioners was lawful, fair and justified and that due process was followed.

In the Supplementary Affidavit of the Chief Registrar, Anne A. Amadi sworn on 22nd July 2019, it is averred that regulation 28 of the Judicial Service Regulations provided for retirement of judicial officers in public interest and which the respondent complied with.

She contends that the Petitioners were given the opportunity to respond to the complaints made against them before the decision was made, as none of them has stated that they did not understand the complaints raised against them.

She further contends that the decision to retire the Petitioners was made after considering their responses which were found not to have exculpated them. That the appeals were dismissed because no new grounds were advanced by the appellants.

It is contended that the Committee's report was based on evidence collected from the public countrywide in camera and it would have been impractical for the Petitioners to cross examine them. It is averred that the Committee's report was only meant for the Chief Justice and the Respondent.

The affiant avers that regulation 26 of the Judicial Service Commission Regulations was only applicable where the Chief Justice instituted disciplinary proceedings against an officer on account of gross misconduct with a view of punishing them if found guilty. It is contended that the regulation did not apply to the process leading to the Petitioners' retirement.

The Affiant avers that the Respondent is not responsible for the publicity of the proceedings flowing from the media reports and if the Petitioners are aggrieved from such publicity, they should claim against the media houses which published the reports.

It is contended that the terms of reference of the Committee did not envisage a situation where the Petitioners would be called upon to make representations before the Committee. They had the opportunity to rebut the findings of the report at the time they were issued with the notice to show cause.

The Rejoinder

On 17th January 2018, the Petitioners filed a rejoinder to the Respondent's response. They contend that the Repealed Employment Act was inapplicable to them as there existed a contract of service. Further, the provisions of Regulations 26, 27 and 28 of the Repealed Judicial Service Commission Regulations ought to have been undertaken before their services could be terminated through retirement in the public interest. The Respondent therefore acted *ultra vires* its own regulations thereby infringing on the petitioner's constitutional rights and fundamental freedoms.

The Petitioners contend that the report which formed the basis of their termination does not contain the particulars of the individuals who made the allegations against them. It is further contended that the allegations are general in nature and that there is no indication on whether the Petitioners were given the opportunity to interrogate them, given the gravity of the allegations raised.

The Petitioners' Submissions

The Petitioners submit that the Respondent's actions violated their rights under Section 70 (a) and 74(1) of the Repealed Constitution for failing to take into account the constitutional and legal principles that governed the retirement of judicial officers.

The Respondent did not issue the Petitioners with a copy of the report as required by regulation 24. The Respondent therefore acted unconstitutionally and illegally by denying the Petitioners access to the Ringera Report. It is their position that Part A of the report ought to have been availed to them for their appreciation of the allegations and the evidence against them.

The Petitioners submit that they were not given an opportunity to interrogate the report, yet they had only been implicated and not found culpable of corruption. It is their position that their response to their respective show cause letters were not a response to the allegations against them.

It is submitted that the Respondent has not demonstrated how the decision to retire the Petitioners in the interest of the public was driven by public policy as well as justifiable. They rely on the case of **D. K. Njagi Marete v Teachers Service Commission [2013] eKLR** where the Court held that an employer must show that its decision was driven by public objectives and that the decision is legitimate and justifiable.

The Petitioners submit that the Chief Justice has adduced evidence to prove that he did not submit his report, their responses to their show cause letters or his recommendation, to the Respondent; yet they were crucial documents in decision making by dint of regulation 28 (2). They further submit that the Chief Justice ought not to have chaired the session that made the decision to retire them as he was conflicted.

It is their submissions that the minutes of the meeting to retire them did not contain the reason for such decision and they rely on the case of **John Benson Githinji v The Attorney General [2014] eKLR** where the Court observed that an employer ought to give a reason for retiring an employee.

The Petitioners submit that the publicity accorded to them traumatized and demeaned them. It is their position that the Respondent ought to have handled the matter with the confidentiality that the Committee had handled it with.

They submit that they have clearly outlined the constitutional and statutory breaches committed in retiring them hence the petition has met the threshold set out in the case of **Anarita Karimi Njeru v Republic [Infra]**.

It is the Petitioners' case that they have made a case for the grant of the orders sought and the same should be awarded. They urge that in the event an order for reinstatement cannot be issued, they should be compensated for their unlawful retirement or 12 months' compensation for unfair termination.

The Respondent's Submissions

Mr. Kubai, counsel for the Respondent submitted that the 5th, 20th, 23rd, 32nd and 40th Petitioners have anchored their claim in the cause of action yet the documents on record show that they were dismissed for other reasons. As such, their claims should be struck out.

It was his submissions that the delay in filing the petition after 16 years from the date the cause of action arose, had not been explained. He urged this Court to adopt the decision of **Priscilla Mwaura Kimani & 2 Others v Attorney General [2019] eKLR** where the Court of Appeal rejected a petition that had been filed 20 years from the date the cause of action arose.

Counsel urged this Court to consider regulation 28 of the JSC Regulations as the only basis for which the retirement of the Petitioners in the public interest was provided for. He relied on the decision of **Judicial Service Commission v Gilbert Mwangi [2019] eKLR** where the court was of the opinion that the power to elect which regulation to follow when dismissing an employee on account of public interest, vested in the Chief Justice. He also urged this Court to decline granting the prayers sought as they were not merited.

Analysis and Determination

I have carefully considered the pleadings filed by the parties, the evidence adduced as well as their submissions. The issues for determination before this Court are –

1. Whether the Petitioners are guilty of undue laches.

2. Whether the petition has met the threshold required of a constitutional petition.
3. Whether the claim of the 5th, 20th, 23rd, 32nd and 40th Petitioners should be struck out.
4. Whether the process followed in retiring the Petitioners in the interest of the public breached the Petitioners' fundamental rights and freedom.
5. Whether the Petitioners are entitled to the reliefs sought.

Whether the Petitioners are Guilty of Undue Laches

The Respondent's counsel submitted that the Petitioners' undue delay in filing the petition has not been explained. On their part, the Petitioners submitted that they were entitled to a free copy of the evidence relied upon by the Respondent; by dint of Regulation 24(1) of the Judicial Service Commission Regulations. As such, it was the Respondent's duty to supply them with the same and that its position that they did not ask for it was contrary to the requirements of the law.

The Respondent has not controverted the Petitioners' evidence that they were never issued with the Ringera Report at the time they were required to show cause, and even thereafter. Additionally, I have perused the Petitioners supporting affidavits and the annexures thereto and it emerges that the Petitioners did not explain the undue delay in filing their petition 14 years after the cause of action arose, neither did they annex evidence showing that they had requested for the reports but were denied the same.

It is trite law that there is no limitation of time in filing a constitutional petition, the delay must not be inordinate and there must be a plausible explanation for the delay. A question therefore arises as to what amounts to inordinate delay. The Court in **Utalii Transport Company Limited & 3 Others v NIC Bank & Another [2014] eKLR** made the following observation regarding what amounts to inordinate delay-

“Whereas there is no precise measure of what amounts to inordinate delay. And whereas what amounts to inordinate delay will differ from case to case depending on the circumstances of each case; the subject matter of the case; the nature of the case; the explanation given for the delay; and so on and so forth. Nevertheless, inordinate delay should not be difficult to ascertain once it occurs; the litmus test being that it should be an amount of delay which leads the court to an inescapable conclusion that it is inordinate and therefore, inexcusable. On applying court's mind on the delay, caution is advised for courts not to take the word 'inordinate' in its dictionary meaning, but in the sense of excessive as compared to normality.”

The Petitioners were sent on retirement on 12th March 2004 on account of public interest. No explanation was given for the 14-year delay to guide this Court in establishing whether such a delay was justifiable in the circumstances. An attempt was made to explain the delay in the Petitioners' submissions. However, written submissions are mere arguments which cannot pass for proven facts.

Further, all the Petitioners served the Respondent as Judicial Officers and swore in their Supporting Affidavits that they were Advocates of the High Court of Kenya. As such, they must have known or ought to have known the consequences of inordinate delay in court proceedings.

In the Court of Appeal decision of **Daniel Kibet Mutai & 9 others v Attorney General [2019] eKLR** it was observed as follows-

“...Unlike the petitioners in the above quoted case, who provided explanation for the delay in filing their petition, the appellants herein did not give any reasons in their affidavits, for the delay in filing their petition. Instead, an attempt was made by the appellants' advocate to explain the delay in the written submissions. But of course, written submissions are mere arguments postulated by counsel, which cannot pass for proven facts. Moreover, assuming that we were to take judicial notice of the fact that the appellants could not bring their claim during President Moi's regime, there is no explanation given as to why the claim was not filed immediately after the impugned President Moi left power after the 2002 elections.

We reiterate the position that where there has been inordinate delay in bringing an action for violation of fundamental rights, appropriate facts must be placed before the court to enable the court exercise its discretion judicially, in accepting or rejecting the explanation for the delay, with the benefit of all information regarding the particular circumstances before it.

Delay is an anathema to fair trial which is one of the key fundamental rights provided to all litigants under Article 50 of the Constitution. Furthermore, it would be an abuse of the court process and contrary to the constitutional principles espoused in Article 159 that requires justice to be administered without delay, to allow a party who alleges violation of constitutional rights, to bring their action after undue inordinate delay, without any justifiable reason. For this reason we find that the appellants' action was properly dismissed.

In the decision in **Wellington Nzioka Kioko v Attorney General [2018] eKLR** the Court made the following observation in dismissing a petition which had been filed after a 30 years' delay, with no explanation for the delay-

“The Court is obliged to consider whether justice will be served by permitting a respondent, whether an individual or the State in any of its manifestations, should be vexed by an otherwise stale claim. Just as a petitioner is entitled to enforce its fundamental rights and freedoms, a respondent must have a reasonable expectation that such claims are prosecuted within a reasonable time.”

I am not persuaded by the Petitioners' assertion that it was the Respondent's duty to issue them with the report. This is because the

Respondent had no way of knowing that they intended to rely on the report to file a petition, without being informed of the same. Since the petition herein seeks to challenge the procedure followed by the Respondent for failing to issue them with the Ringera Report among others, the same was vital and they ought to have requested for the same. They also had the option of filing the petition without the report and thereafter seeking court orders to compel the Respondent to issue them with the same.

I thus find that there was inordinate delay in filing this petition which has not been satisfactorily explained by the petitioners.

Whether the Petition meet the Threshold required of a Constitutional Petition

It is the Respondent's case that the petition fails the test set out in **Anarita Karimi Njeru v Republic [Supra]** for failing to outline with reasonable precision the constitutional violations and the manner in which they were violated. On the other hand, the Petitioners submitted that the Respondent's actions violated their rights under Sections 70(a) and 74(1) of the Repealed Constitution for failing to take into account the constitutional and legal principles that governed the retirement of judicial officers.

The Court of Appeal in **Anarita Karimi Njeru v Republic [Supra]** observed 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.”

I have perused the petition and I note that other than seeking an order for a declaration that the Petitioners' retirement was unconstitutional for violating Sections 70(a) and 74(1) of the former Constitution, the Petitioners did not outline the constitutional provisions that had been violated or the manner in which they had been violated. From their Supporting Affidavits, it emerges that the Petitioners were seeking to challenge the procedure followed and the Respondent's failure to adhere to regulations 24, 25, 26 and 28 of the Judicial Service Commission Regulations.

This notwithstanding, it is difficult for this Court to establish the Constitutional violations that the Petitioners seek to be redressed as they have failed to specify the violated constitutional provisions or demonstrate how the Respondent's actions violated their rights under Sections 70(a) and 74(1) of the Repealed Constitution.

This Court is not tasked with deciphering from the Petitioners' prayers, which violations they sought to have redressed thus the requirement that the violated provisions and the manner of violation be outlined with precision in the body of the petition. The petitioners are guilty of undue latches. I find that the petition does not meet the threshold as set out in the case of **Anarita Karimi**

Njeru v Republic as cited above.

The foregoing reasons are sufficient to dismiss the petition. The judgment would however be incomplete without the court looking into the remaining issues.

The respondent submitted that Petitioners No. 15, 20, 23, 32 and 40 were not retired in public interest pursuant to the Report of the Committee that is the subject to this petition. That there is no evidence of retirement in public interest of the 15th petitioner; that the 20th Petitioner was retired two months before the report was released; that the 23rd Petitioner was also retired in public interest two months before release of the report together with the 40th petitioner. That the 32nd Petitioner has not produced any letter to prove that he was retired under public interest. These averments are not contested. I have perused the record and confirm that indeed the said Petitioners were not retired in public interest as a result of the “*Ringera Report*” together with the rest of the petitioners. They have therefore been wrongly joined in this petition.

On the validity of the procedure, Regulation 28 of the Judicial Service Regulations provide for retirement on grounds of public interest as follows –

28. Retirement on grounds of public interest.

1. If the Chief Justice, after having considered every report in his possession made with regard to an officer, is of the opinion that it is desirable in the public interest that the service of such officer should be terminated on grounds which cannot suitably be dealt with under any other provision of these Regulations, he shall notify the officer, in writing, specifying the complaints by reason of which his retirement is contemplated together with the substance of any report or part thereof that is detrimental to the officer.

2. If, after giving the officer an opportunity of showing cause why he should not be retired in the public interest, the Chief Justice is satisfied that the officer should be required to retire in the public interest, he shall lay before the Commission a report on the case, the officer's reply and his own recommendation, and the Commission shall decide whether the officer should be required to retire in the public interest.

3. When an officer is retired in the public interest, the Pensions Branch of the Treasury shall be furnished with full details of the case by the Chief Justice.

As submitted by the Petitioners, the allegations that led to their retirement in public interest are contained in the Report of the Integrity and Anti-Corruption Committee of the Judiciary of Kenya commonly referred to as the “*Ringera Report*”.

I have perused the affidavits filed by the petitioners. Each of the notices to show cause specified the allegations against them with specificity and each of them were able to respond in great detail. The averments that the charges were not clear are thus not supported by the evidence in the petition.

I have further noted from the affidavits and annexures thereto that none of the petitioners requested for further particulars or evidence.

From the foregoing I find that the respondent complied with Regulation 28 of the Judicial Service Regulations that were in place at the material time.

Whether the respondent breached fundamental rights and freedoms of the petitioners

The petition is expressed to be in the matter of the contravention of the fundamental rights and freedoms under Sections 70(A) and 74(1) of the former Constitution. In the prayers the petitioners pray for –

A declaration that the retirement of the Petitioners in public interest was unconstitutional as it violated the Petitioners' fundamental rights to equal protection of the law, human dignity, security and integrity to the person guaranteed by Sections 70(a) and 74(1) of the former Constitution of Kenya equivalent to Articles 27(1), (2) and 28 of the Constitution of Kenya 2010.

Section 70 and 74(1) of the repealed constitution provides as follows –

70. Fundamental rights and freedoms of the individual

Whereas every person in Kenya is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, tribe, place of origin or residence or other local connexion, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely -

a. life, liberty, security of the person and the protection of the law;

b. freedom of conscience, of expression and of assembly and association; and

c. protection for the privacy of his home and other property and from deprivation of property without compensation, the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of those rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

74. Protection from inhuman treatment.

(1) No person shall be subject to torture or to inhuman or degrading punishment or other treatment.

In the submissions it is submitted at paragraph 22 that –

“This being the case, while exercising its disciplinary powers of control over the petitioners, the respondent was under a constitutional duty to ensure that the petitioners' right to the Protection of the Law under Section 70(a) and right to Protection from all forms of inhuman treatment under Section 74(1) of the former constitution was adhered to.”

No details have been given of acts that constituted such breaches as are referred to by the petitioners. Making reference to Sections of the Constitution is not enough. A person alleging breach must specify the acts that constitute the breach. Section 70(1) provides for the protection to life, liberty, security and the protection of the law while Section 74(1) provides for protection from torture, inhuman or degrading punishments or other treatment. The petitioners have not stated which of these rights were violated and by what acts of the respondents. All that is pleaded in all the affidavits is that as a result of the actions and inactions of the respondent, the petitioners have suffered humiliating mental torture, spite, embarrassment and disgrace and they had been looked down upon by members of society as being corrupt and unethical and in a way unfit to hold public or private office. None of these averments were demonstrated by any of the petitioners.

I find that the petitioners have not proved that their rights under Section 70(a) and 74(1) of the repealed Constitution were violated by the respondent.

The petition is accordingly dismissed. Each party shall bear their own costs.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 12TH DAY OF JUNE 2020

MAUREEN ONYANGO

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020, that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

MAUREEN ONYANGO

JUDGE