



**Njoroge v Inspector General of Police & another; Independent Medico  
 Legal Unit (Interested Party) (Constitutional Petition E486 of 2023)  
 [2025] KEHC 4141 (KLR) (Constitutional and Human Rights) (28 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 4141 (KLR)

**REPUBLIC OF KENYA  
 IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
 CONSTITUTIONAL AND HUMAN RIGHTS  
 CONSTITUTIONAL PETITION E486 OF 2023**

**EC MWITA, J  
 MARCH 28, 2025**

**BETWEEN**

**MARY MUGURE NJOROGE ..... PETITIONER**

**AND**

**INSPECTOR GENERAL OF POLICE ..... 1<sup>ST</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**INDEPENDENT MEDICO LEGAL UNIT ..... INTERESTED PARTY**

**JUDGMENT**

1. The petitioner filed this petition against the respondents, claiming a violation of her rights and fundamental freedoms. The petition is supported by affidavits and written submissions.
2. The petitioner’s case is that on 7<sup>th</sup> February 2015 at Ole Kasasi trading centre in Ongata Rongai, they were driving home with her driver. They were stopped by three police officers; Gasper Mwaisaka, Nicholas Kiplagat and Anne Mueni. The officers asked to inspect the motor vehicle. PC Gasper Mwaisaka, had earlier in the day been to her club and had alcohol but refused to pay.
3. The officers asked them to alight from the vehicle. The officers had a confrontation with the driver and another person. She tried to stop to intervene but the police officers pounced on her, and started beating her, kicking her on the ribs, head, face, chest and other parts of her body and severely injured her. One of the officers referred her to the incident when she demanded payment for the alcohol he had taken earlier that day.



4. The petitioner was bundled into a police vehicle and taken to Ongata Rongai police station where the police officers repeatedly beat her up. She was locked up in the cells without being taken to hospital for medical treatment.
5. The next day she was charged in Criminal case No. 601 of 2015 at Kibera Magistrate's Court with the offence of assaulting a police officer contrary to section 254 of *Penal Code* and the second count of cause actual bodily harm contrary to section 251 of the *Penal Code*. After trial, she was acquitted on 1<sup>st</sup> January 2020. She reported the complaint of being tortured by police officers (OB 07/07/02/2015) but no action was taken. She was later treated and had a P3 form filled.
6. It is the petitioner's case that the police officers' actions violated Articles 10, 25, 28, 29, 47 and 50 of *the Constitution* while carrying out their mandate.

#### ***Petitioner's submissions***

7. The petitioner relied on The Equality and Human Rights Commission and Article 1 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the UN General Assembly in 1984 on the definition of torture.
8. The petitioner argued that the definition of torture means intentional infliction of severe physical or mental pain or suffering and not necessarily injuries. The petitioner relied on the decisions in Harun Thungu Wakaba v Attorney General [2010] KEHC 4101 (KLR); Jennifer Muthoni Njoroge & 10 others [2012] eKLR; David Gitau Njau & 9 others v Attorney General [2013] eKLR; Peter Mauki Kaijenja & 9 others v Chief of Defence Forces & another [2019] eKLR and Denish Gumbe Osire v Cabinet Secretary, Ministry of Defence & another [2017] KEHC 9164 (KLR) to support her case.
9. The petitioner again relied on Samwel Rukenya Mburu & others v Castle Brewing Kenya Limited & another [2006] eKLR and Harun Thungu Wakaba v Attorney General (supra) on what amounts to torture, cruel and degrading treatment.
10. The petitioner asserted that degrading treatment depends on several factors, namely; duration of treatment, its physical or mental effect, the sex age, vulnerability and health of the victim. She maintained that she was subjected to physical and psychological torture when the officers inflicted intense, serious and cruel pain; was subjected to degrading treatment when she was forcefully dragged by male police officers without caring that she was a woman exposing her to extreme humiliation to those around.
11. The petitioner relied on Articles 25 and 29 (c) (d) and (e) of *the Constitution* and articles 4 and 7 of the International Covenant on Civil and Political Rights (ICCPR), article 2 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), article 5 of the United Nations Universal Declaration of Human Rights (UDHR) and the decision in Margaret Wanjiru Ndirangu & 4 others v Attorney General [2015] eKLR that torture is prohibited in all its forms.
12. The petitioner again cited Articles 10 (b) and 28 of *the Constitution*, article 5 of the Banjul Charter, article 3(1) of the Maputo Protocol and the decisions in Dawood and another v Minister of Home Affairs and others; Shalabi and Another v Minister of Home Affairs and Others; Thomas and Another v Minister of Home Affairs and Others (CCT35/99) [2000] ZACC8 and Charles Mwenda v Inspector General of Police, National Police Service & 2 others; Law Society of Kenya, Interested Party & 3 others (Interested parties) [2021] eKLR for the position that her right to human dignity was violated.
13. On freedom and Security of the person, the petitioner submitted that the conduct of the police officers was inherently inhumane, and amounted to a degrading assault on her physical, emotional and



psychological integrity. She relies on the decision in *MWK v another v Attorney General & 3 other* [2017] eKLR.

14. The petitioner further relied on Articles 24, 21, 22, 23, and 165 of *the Constitution* and the decisions in *Peter Ngari Kagume & 7 others v Attorney General* [2009] eKLR; *Denish Gumbe Osire v Cabinet Secretary, Ministry of Defence & Another* (supra); *Captain (Rtd) Frank Mbugua Munuku v Kenya Defence Forces & another* [2013] eKLR; *David Gitau Njau & 9 Others v Attorney General* (supra), among others and urged the court to make a global award for the violation of her rights. She prayed that the petition be allowed with costs.

### **Respondents' case**

15. The respondents opposed the petition through grounds of opposition and a replying affidavit sworn on 2<sup>nd</sup> June 2024 by PC Mwaisaka.
16. The respondents contended in the grounds of opposition that the petitioner had not demonstrated how the respondents violated her constitutional rights in terms of the decision in *Anarita Karimi Njeru v Republic* [1979] eKLR.
17. They stated that the power to prosecute is vested on the Office of the Public Prosecution under Article 157 of *the Constitution*; that office is an independent constitutional office that is not subject to the control of any person or authority and its actions can only be challenged in court on the principles of illegality, irrationality and procedural impropriety.
18. The respondents maintained that the petition seeks to curtail the authority and exercise of constitutional and statutory powers and functions of the 1<sup>st</sup> respondent provided for under Articles 244 & 245 of *the Constitution* and sections 24, 27 and 35 of the *National Police Service Act* (Cap 84). That mandate can only be interfered with where the 1<sup>st</sup> respondent has acted arbitrarily and contrary to that mandate.
19. The respondents argued that arrest and detention are actions sanctioned by law. According to the respondents, under Article 245 (4) (a) and (b) of *the Constitution*, this court is estopped from issuing any order against the 1<sup>st</sup> respondent with regard to investigation of any offences or enforcement of the law.
20. The respondents relied on *James Karuga Kiiru v Joseph Mwamburi & 2 others* [2001] eKLR to contend that the officers acted within their mandate. They maintained that the petitioner did not discharge the burden of proof as required by sections 106 and 107 of the *Evidence Act* (Cap 80).

### **Replying affidavit**

21. In the replying affidavit, PC Mwaisaka confirmed that the petitioner was arrested on 7<sup>th</sup> February 2015 for assaulting him and Nicholas Kiplangat who had stopped to inquire why the petitioner was creating disturbance.
22. PC Mwaisaka deposed that they were on patrol along Maasai Lodge near Nazarene University, with Sgt Ann Mueni together and P.C. Geoffrey Mwandiko. Motor vehicle registration No. KBM 418M was being driven in manner that was likely to cause an accident along that road.
23. Sgt Mueni who was in charge stopped the vehicle. They then approached the vehicle to inquire why the driver was not complying with road safety protocols. As they approached, the driver started shouting at them acting unruly. The petitioner was seated at the co-driver's seat and was drunk. She opened the door quickly and started to assault both Nicholas Kiplangat and him causing deep bite marks on their



- necks and forefaces. Sgt Mueni called the Area Chief who on arrival, was also attacked by the petitioner. They arrested both the petitioner and the driver and taken to the Police Station. The petitioner was charged in court.
24. The respondents relied on Articles 243 and 244 of *the Constitution* and sections 24, 54 and 58 of the *National Police Service Act* that police officers acted within their mandate. They argued that the petitioner's acquittal is not a sufficient ground to succeed in suit for malicious prosecution and the petitioner has not proved malice on their part. Reliance was placed on *George Masinde Murunga v The Attorney General* [1979] eKLR; *Chrispine Otieno Caleb v Attorney General* [2014] eKLR and *Gitau v Attorney General* [1990] KLR 13.
  25. The respondents further relied on Salmond in the book *Salmond on the Law of Torts* and the decisions in *Hicks v Faulkner* [1878] 8 Q.B.D. 167; *James Karuga Kiiru v Joseph Mwamburi & 2 others* [2001] eKLR and *Simba v Wambari* [1987] KLR 601 for the position that there was reasonable and probable cause for the petitioner's arrest as she contravened the law (sections 30, 44, 47 and 49 of the *Traffic Act*) and assaulted police officers while performing their duties.
  26. The respondents relied on the decisions in *Evans Nyakwana v Cleophas Bwana Ongaro* [2015] eKLR; *Daniel Toroitich Arap Moi v Mwangi Stephen Muriithi & Another* [2014] eKLR and *Hassan Ahmed Ibrahim v Kenya National Bureau of Statistics & 2 others* [2019] eKLR to argue that the petitioner did not adduced evidence that can assist the court grant the prayers sought in the petition, including general and special damages
  27. The respondents further rely on the decisions in *Palace Investment Ltd v Geoffrey Kariuki Mwenda & Another* [2015] eKLR; *Richard Okuku Oloo v South Nyanza Sugar Co. Ltd* [2013] eKLR; *Hahn v Singh* [1985] eKLR and urged the court to dismiss the petition with costs.
  28. The interested party did not file a response and did not take part in the proceedings.

### **Determination**

29. I have considered the petition the response and submissions by counsel for the parties. I have also considered the decisions relied on. The issue for determination is whether the petitioner's rights were violated and, if so, whether she is entitled to compensation and what is the quantum.
30. The petitioner's case is that she was arrested by police officers who, in the process, violated her rights and fundamental freedoms. This was after the officers assaulted her, dragged her and injured her. They later took her to the police station where she was again assaulted and spent the night. She was later charged in court but the criminal case was determined in her favour in 2020 when she was acquitted. The petitioner filed this petition seeking declarations on violation of her rights and fundamental freedoms and compensation.
31. The respondents denied that the petitioners' rights and fundamental freedoms were violated. The respondents, while admitting that the petitioner was arrested, maintained that the arrest was lawful because the petitioner violated the law and assaulted police officers while discharging their duties.
32. Article 244 of *the Constitution* on the objects and functions of the National Police service, requires the National Police Service to strive for, among others, the highest standard of professionalism and discipline among its members and compliance with constitutional standards of human rights and fundamental freedoms. These are virtues police officers must strive for in the performance of their duties.



33. In that respect, police officers have no lawful and legitimate reason for assaulting anyone they arrest or book in their stations. Any assault would not only be intrusive and an uncalled-for, but also unlawful and a violation of the victim's fundamental rights and dignity. This is because police officers are under duty to treat anyone they arrest with highest regard for the person's human rights and fundamental freedoms as required of them by *the Constitution* and the law for which they are held to account.
34. In the present petition as can be seen from the pleadings and submissions, the petitioner stated her position while the respondents stated their own. Whereas the petitioner stated that she was assaulted by police officers, PC Mwaisaka stated in the replying affidavit that it was the petitioner who assaulted him (PC Mwaisaka and a Mr. Nicholas Kiplangat. That was why the petitioner was arrested and charged in court for the offence.
35. In a constitutional petition, precision in pleadings is important as it enable parties respond to the issues at hand so that the court can make the correct determination on those issues. That is, a petitioner must plead with as much precision as possible the Articles of *the Constitution* said to have been violated and the manner of the alleged violation.
36. This position was stated by the Constitutional Court of South Africa in *Phillips & others v National Director of Public Prosecutions* [2005] ZACC 15 that the constitutional challenge should be explicit, with due notice to all affected as it ensures that all interested parties have an opportunity to make representations; that the relevant evidence, if necessary, be led, and that the requirement of separation of powers be respected.
37. The Supreme Court reiterated this position in *Communication Commission of Kenya & 5 others v Royal Media Services Limited & 5 others* [2014] eKLR, stating that "...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....plays a positive role, as a foundation of conviction and good faith, in engaging the constitutional process of dispute settlement."
38. The decisions emphasise the fact that a party claiming violation of rights and fundamental freedoms should plead with precision the constitutional rights violated and the manner of violation so as to establish a link between the alleged violation, the rights infringed and the constitutional provisions violated so that the respondent is put on notice over the petitioner's claim in order to respond appropriately. The petitioner must also lead credible evidence to prove the alleged violations to the satisfaction of the court so that he discharges the burden of proof placed on him by the law.
39. In this petition, while the petitioner made her own claims that she was assaulted by police officers, the respondents claimed that it was in fact the petitioner who assaulted police officers and that was why she was arrested, charged and prosecuted. The petitioner attached documents to show that she was injured due to the assault. The respondents also attached documents to show that the petitioner assaulted and injured the officers.
40. This petition was disposed of through written submissions without leading evidence by either side despite the contradictory positions in the parties' cases. Where factual matters are disputed, the dispute can only be resolved by calling evidence and subjecting it to cross examination. did not do so, opting to rely on written submissions with brief oral highlights. This could not assist the court determine who, between the petitioner and the respondents, was telling the truth.
41. It is also important to note that some issues, such as drinking beer without paying which was said to have been one of the reasons for arresting the petitioner was also evidential based touched on an individual officer who was not made a party to the proceedings so that the person could respond to



that issue as an individual. It must also be clear that acquittal in a criminal case is not proof that one's rights were violated.

42. In the circumstances, having considered the pleadings and arguments by the parties, the conclusion I come to, is that the petition left a lot to be desired. In short, the petitioner did not discharge the burden of proof required by law. Consequently, the petition fails and is dismissed. Costs being discretionary, each party shall bear their own costs.

**DATED AND DELIVERED AT NAIROBI THIS 28<sup>TH</sup> DAY OF MARCH 2025**

**E C MWITA**

**JUDGE**

