



**ASA & 4 others v Noorani; Anti-Terrorism Police Unit & another  
(Interested Parties) (Petition E121 of 2024) [2025] KEHC 3911 (KLR)  
(Constitutional and Human Rights) (27 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3911 (KLR)

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

**PETITION E121 OF 2024**

**LN MUGAMBI, J**

**MARCH 27, 2025**

**BETWEEN**

**ASA ..... 1<sup>ST</sup> PETITIONER**

**PS ..... 2<sup>ND</sup> PETITIONER**

**IA (MINOR SUIING THROUGH THE NEXT FRIEND AND FATHER,  
ASA) ..... 3<sup>RD</sup> PETITIONER**

**IP (MINOR SUIING THROUGH THE NEXT FRIEND AND FATHER,  
ASA) ..... 4<sup>TH</sup> PETITIONER**

**IP (MINOR SUIING THROUGH THE NEXT FRIEND AND FATHER,  
ASA) ..... 5<sup>TH</sup> PETITIONER**

**AND**

**KANEEZ ZEHRA MOHAMED NOORANI ..... RESPONDENT**

**AND**

**ANTI-TERRORISM POLICE UNIT ..... INTERESTED PARTY**

**ATTORNEY GENERAL ..... INTERESTED PARTY**

**JUDGMENT**

**Introduction**

1. The petition dated 6<sup>th</sup> March 2024 is supported by the petitioner’s supporting affidavit and further supplementary affidavits dated 17<sup>th</sup> May 2024, 25<sup>th</sup> June 2024 and 1<sup>st</sup> July 2024.



2. The gist of this petition revolves around the contention that the respondent is unlawfully detaining the petitioners' passports in violation of their constitutional rights. The petitioners as a result seek the following reliefs against the respondent:
  - i. An order compelling the respondent to release their passports within 24 hours of the court order.
  - ii. A declaration that the respondent contravened the petitioner's rights and freedoms under Articles 28, 29, 32, 33, 35, 47 and 49 of *the Constitution*.
  - iii. An award of general damages for violating and/or breaching the petitioners' constitutional rights.
  - iv. Interest on all the above at court rates.
  - v. Costs of the suit on a full indemnity basis and interest at court rates from the date of judgment until payment in full.
  - vi. Any other relief that the court may deem fit to grant or fashion, in the circumstances.

### **Petitioners' Case**

3. The 1<sup>st</sup> petitioner alleges that he, his wife, the 2<sup>nd</sup> petitioner and children (3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> petitioners), are Indian nationals residing in Kenya. He states that he was employed by the respondent and her late husband, Mohamed Noorani in October 2006 to act in various capacities. Predominantly his role was to act as the general manager. In addition, his role also saw him act as the finance officer, site manager, quality inspection expert and director in a number of the respondent's and her late husband's companies. He as well did work for the two jointly and severally.
4. Some of the companies that he was to work at, for the respondent and her late husband were: Esteem Electronics Ltd, Impulse the Shoe Shop Ltd, Anam Collections Ltd, Richman Ventures Ltd, Venture Holdings Ltd, Gitanga Place Ltd, Diani Dunes Ltd, Riverside Gardens Ltd, Casa Di Vacanza International Ltd, Silveredge Apartment Ltd, Silverstone Apartment Ltd, Milestone Hotels and Apartments Ltd, Sonado Ceramics Ltd, Stiles Ceramics Ltd, Sonavit Ceramics Ltd, Eleganza Ceramics Ltd, and Square Valley Ltd.
5. Moreover, he depones that the late Noorani Mohammed Hussien also appointed him as his authorized agent for his I&M bank account as well as Eleganza Ceramics Limited. In line with his role, he was also issued with an Agents identity Card by Standard Chartered for Esteem Electronics.
6. He asserts that to demonstrate his loyalty to his job, the respondent and her late husband required that he deposit, his family's passports to them. These passports were to be returned when they were returning to India. This condition was also applicable to all their other employees.
7. As compensation, he earned a monthly salary of 100,000 Indian Rupees. He was additionally entitled to other benefits including: bringing his family from India; a house; payment of his children school fees at Springdale Junior School; at least two holidays in India yearly and cash handouts on a need basis.
8. Correspondingly, he informs that from 2016, he was paid in various ways. He notes that sometimes he was paid at a forex bureau, other times the money was deposited in his bank accounts in India, on other occasions the payment would come from the respondent's contacts in India and other times he would be paid in a hotel.



9. The 1<sup>st</sup> petitioner depones that he got his work permit which he renewed regularly as required. He worked for the respondent up until November 2023 when his employment was terminated. He depones that one day in November 2023, he was directed by the respondent not to go to work and that his salary and other benefits would be paid in December 2023.
10. He is grieved that in spite of following this instruction, the respondent has withheld his salary and family's passports. He decries that despite his pleas for the same to be returned the respondent has refused to issue the passports. He notes that other respondent's employees are in the same predicament however are afraid to testify in this matter as dread reprisal or loss of employment.
11. As a consequence, he asserts that the family does not have identification documents, he is not able to secure employment nor can renew the work permits, he cannot conduct transactions, they cannot travel owing to the lack of the relevant documents.
12. Furthermore, he contends that the respondent has retorted to using the 1<sup>st</sup> interested party to intimidate him on allegations of suspected terrorism. It is noted that the 1<sup>st</sup> petitioner was even summoned by the 1<sup>st</sup> interested party.
13. He adds that the respondent has threatened to have him deported out of the Country. He notes that the respondent in another instance stated that she would only return the passports on the condition that he returns to India with his family. He informs that he reported the matter to the police.
14. In view of the foregoing, he urges this Court to intervene as the respondent has violated their rights under Articles 27, 28, 29 and 31 of [the Constitution](#).

### **Respondent's Case**

15. In reaction to the petition, the respondent filed her replying affidavit sworn on 20<sup>th</sup> April 2024.
16. The respondent depones that the 1<sup>st</sup> petitioner has never been her employee but that he was her late husband's business associate. She informs that the 1<sup>st</sup> petitioner has a Class G- specific trade Permit as can be seen from his foreigner certificate. She notes further that the certificate was issued in Nyeri. She avers that she does not have any business or relationship there.
17. She further depones that the 1<sup>st</sup> petitioner has never issued her with his passport and those of his family. The respondent contends that she is not privy to the actions of the 1<sup>st</sup> interested party as alleged and neither does she have the capacity to influence its function.
18. It is alleged that the on 22<sup>nd</sup> March 2024, the 1<sup>st</sup> and 2<sup>nd</sup> petitioner trespassed into her home and accosted her and her son who is a minor. As a consequence, she reported the matter to the police at Parklands Police Station. She avers that the 1<sup>st</sup> and 2<sup>nd</sup> petitioners were on the same day summoned to the police station however refused to avail themselves.
19. She acknowledges the 1<sup>st</sup> and 2<sup>nd</sup> petitioner's complaint at Parklands Police Station made on 4<sup>th</sup> March 2024 however states that she was never summoned to the police station.
20. The respondent nevertheless depones that she was summoned to the DCI headquarters on 22<sup>nd</sup> April 2024 to record a statement concerning the allegation of withholding passports. She appeared before the DCI on 25<sup>th</sup> April 2024. She was notified that the claim had been forwarded by the Ministry of Foreign Affairs following an inquiry by the High Commission of India in Kenya. She also informed them that she did not have the passports.



21. It is contended that the petitioners are taking the Court on a wild goose chase as the case seems to be an instance of misplaced passports which they can apply for at the High Commission of India in Kenya. On this basis, the respondent argues that the petition is misconceived, vexatious and frivolous.

### **1<sup>st</sup> and 2<sup>nd</sup> Interested Parties Case**

22. The interested parties in rejoinder to the petition filed grounds of opposition dated 25<sup>th</sup> April 2024 on the basis that:
- i. This petition does not meet the test of a constitutional petition laid down in the case of *Anarita Karimi Njeru v Republic (No.1)* [1979] KLR 154 and emphasized in the case of *Mumo Matemu v Trusted Society of Human Rights Alliance* [2014] eKLR, and on that ground alone, we urge that this petition should fail. That apart from citing omnibus provisions of *the Constitution*, the petition has provided neither particulars of the alleged complaints, nor the manner of alleged infringements.
  - ii. The petitioners are unable to sufficiently prove the nature and manner in which the interested parties have allegedly violated their rights or any of the provisions of *the Constitution*.
  - iii. In response to paragraphs 9 to 20 of the petition, the interested parties have no knowledge of the agreement between the petitioners and the respondent.
  - iv. In response to paragraphs 21 to 34 of the petition the petitioners have merely set out the Constitutional provisions and Treaties they believe have been violated but do not set out the manner in which the interested parties have violated the said provisions.
  - v. In response to paragraph 35 of the petition, the petitioners are not seeking any orders against the interested parties and or enforcement of any orders sought by the interested parties, thus the Interested Parties are not necessary parties to the petition and ought to be discharged.
  - vi. Further, the supporting affidavit to the petition sworn by the 1<sup>st</sup> petitioner does not disclose a cause of action against the interested parties or raise any allegations of wrongdoing on the part of the interested parties.
  - vii. This petition is an abuse of the Court Process and ought to be dismissed as against the interested parties.

### **Petitioners' Submissions**

23. The petitioners through CM Advocates LLP filed submissions dated 21<sup>st</sup> May 2024 and underscored the issues for determination as: whether the respondent's affidavit constitutes perjury; whether the respondent violated the petitioner's constitutional rights by withholding their passports and whether the petitioners are entitled to the relief.
24. Counsel reiterating and relying on the 1<sup>st</sup> petitioner's supplementary affidavit submitted that the respondent had outrightly lied about never having employed the 1<sup>st</sup> petitioner. Counsel stressed that it was clear as per the 1<sup>st</sup> petitioner's annexures that he had worked for both the respondent and her late husband including on a personal level. Counsel asserted that the lie was indicative of concealment of truth which strikes at the heart of the justice system. Counsel as such urged the Court not to consider



the untruthful statements. Reliance was placed in *In re MWO (Minor)* [2021] eKLR where it was held that:

“An Affidavit is a sworn statement which contains matters of evidence deponed on oath and as such legal consequences such as perjury would attend if one is found to have sworn a false affidavit.”

25. On the second issue, Counsel was certain that the respondent had violated the petitioners’ constitutional rights under Article 27, 28, 30, 35 and 39 of *the Constitution* by withholding their passports. Counsel emphasized that the 1<sup>st</sup> petitioner as seen in his affidavit had been offered the job on the condition that he would surrender their passports to the respondent and her late husband.
26. Counsel submitted that even after unlawfully terminating the 1<sup>st</sup> petitioner’s employment, the respondent withheld his dues causing him to file ELRCPET/E028/2024: ASA VS Kaneez Zehra Mohamed Noorani AND Esteem Electronics Ltd and 17 others and withholding his family’s passports. Counsel added that the respondent had equally engaged the 1<sup>st</sup> interested party to intimidate the 1<sup>st</sup> petitioner.
27. It was asserted thus that the respondent’s conduct had violated the petitioners’ dignity. Reliance was placed in *Wanjiru v Machakos University* [2022] KEHC 10599 where it was held that:

“Dignity is a founding value of our Constitution. It informs most if not all of the rights in the Bill of Rights and for that reason is of central significance in the limitations analysis. The value of dignity in our Constitutional framework cannot therefore be doubted. *The Constitution* asserts dignity to contradict our past in which human dignity was routinely and cruelly denied. It asserts it too to inform the future, to invest in our democracy respect for the intrinsic worth of all human beings.”

28. Counsel noted that the respondent’s conduct had also violated the petitioners right to movement. Reliance was placed in *University Academic Staff Union (UASU) v Attorney General & Chief of Staff & another* [2018] eKLR where it was held that:

“The right of movement is one of those fundamental rights and freedoms guaranteed by *the Constitution*. It is not a right granted or grantable by the state. The state’s duty is to respect, protect and promote fundamental rights and freedoms in the Bill of Rights. Article 20(1) of *the Constitution* provides that every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedoms.

Article 39 provides with regard to freedoms of movement that every person has the right to freedom of movement and the right to leave Kenya. The right to movement is thus recognized and guaranteed by *the Constitution* to all persons without exception and or conditions. Article 12.3 of the ICCPR also provides that freedom of movement shall not be subject to any restriction except those which are provided by law, are necessary to protect national security, public health or morals or the right to freedom of others and are consistent with other rights recognized in the convention.”

29. In view of the foregoing, Counsel submitted that this Court has the power to grant appropriate remedies to enforce fundamental rights under Article 23(3) of *the Constitution* and an award of damages owing to the violation of the petitioners’ rights. Reliance was placed in *Reuben Njuguna*



Gachukia & another v Inspector General of the National Police Service & 4 others [2019] eKLR where it was held that:

“... appropriate relief will in essence be relief that is required to protect and enforce the Constitution. Depending on the circumstances of each particular case, the relief may be a declaration of rights, an interdict, a mandamus, or such other relief as may be required to ensure that the rights enshrined in the Constitution are protected and enforced. If it is necessary to do so, the court may even have to fashion new remedies to secure the protection and enforcement of these important rights ... the courts have a particular responsibility in this regard and are obliged to “forge new tools and shape innovative remedies, if need be to achieve this goal.”

30. Equal dependence was placed in Peter Ndegwa Kiai t/a Perna Wines & Spirits v Attorney General & 2 others [2021] KECA 328 (KLR).

### Respondent’s Submissions

31. On 22<sup>nd</sup> July 2024, Wanjiku Kariuki and Company Advocates filed submissions for the respondent. Counsel outlined the issues for determination as: whether the respondent has committed perjury; whether the petition raises issues triable in this Court; whether the respondent is withholding the petitioners' passports and whether the petitioners deserve the relief sought.
32. Counsel in the first issue submitted that the respondent had not made false averments as asserted by the petitioners. Counsel stressed that the 1<sup>st</sup> petitioner had not demonstrated in his evidence that the respondent employed him. It is argued that instead the 1<sup>st</sup> petitioner only issued numerous work permits.
33. Further it was stated that the petitioner was an employee of a company known as Impulse the Shoe Shop Limited from 2014 to 2016 as an investor when he applied of his Class G investor Permit. Counsel maintained that the 1<sup>st</sup> petitioner was linked to the respondent’s husband not the respondent.
34. Reliance was placed in Alice Wanjiru Ruhiu v Messiac Assembly of Yahweh [2021] eKLR where it was held that:

“It is a principle of law that whoever lays a claim before the court against another has the burden to prove it. Sections 107 and 108 of the Evidence Act... The legal burden is the burden of proof which remains constant throughout a trial; it is the burden of establishing the facts and contentions which will support a party’s case. If at the conclusion of the trial he has failed to establish these to the appropriate standard, he will lose. The legal burden of proof normally rests upon the party desiring the court to take action; thus a claimant must satisfy the court or tribunal that the conditions which entitle him to an award have been satisfied. In respect of a particular allegation, the burden lies upon the party for whom substantiation of that particular allegation is an essential of his case. There may therefore be separate burdens in a case with separate issues.”

- (16) The legal burden is discharged by way of evidence, with the opposing party having a corresponding duty of adducing evidence in rebuttal. This constitutes evidential burden. Therefore, while both the legal and evidential burdens initially rested upon the appellant, the evidential burden may shift in the course of trial, depending on the evidence adduced. As the weight of evidence



given by either side during the trial varies, so will the evidential burden shift to the party who would fail without further evidence?"

35. Moving to the second issue, Counsel submitted that the petitioners' claims do not raise constitutional issues but revolve around an alleged employer and employee relationship which ought to be raised before the Employment and Labour Relations Court. Reliance was placed in *Benson Makori Makworo vs Metropolitan Services & 2 others* [2022] eKLR where it was held that:

"This Honourable Court is charged with the fundamental duty to "observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights" in terms of Article 21 (1) of *the Constitution* of the Republic of Kenya, 2010 [*the Constitution*']. The High Court has jurisdiction to "hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights" in terms of Article 23(1) of *the Constitution*. The High Court also has the jurisdiction to interpret *the Constitution* including the question as to whether any law is consistent with or in contravention of *the Constitution* in terms of Article 165(3)(d)."

36. On the third issue, Counsel submitted that since it had been established that the 1<sup>st</sup> petitioner was an investor not the respondent's employee, it was certain that the respondent had not violated the petitioners' rights as alleged. Further emphasized that no passports were ever issued to the respondent and her late husband. Counsel stressed that no evidence had been adduced to prove the communication leading to the issuance of the passports or the date the passports were issued to them.
37. In conclusion, Counsel submitted that the relief sought was not merited as the petitioners had not demonstrated the alleged withholding of passports nor violation of constitutional rights.

#### **Interested Parties Submissions**

38. State Counsel, Stephen Terrell filed submissions on behalf of these parties dated 31<sup>st</sup> July 2024. Counsel highlighted the issues for discussion as: whether the petition meets the threshold of a constitutional petition and whether the interested parties have violated the petitioners' rights.
39. Counsel on the first issue, submitted that the petition does not meet the test of a constitutional petition as set out under *Anarita Karimi Njeru v Republic (No.1)* [1979] KLR 154 as emphasized in *Mumo Matemu v Trusted Society of Human Rights alliance* [2014] eKLR.
40. Counsel submitted that the petitioner had merely referred to various constitutional provisions without providing any particulars and the manner of the alleged infringements. Considering this, Counsel submitted that the petitioners had failed to sufficiently prove how the interested parties had violated their rights. Counsel as such argued that the petitioners had not established any cause of action against the interested parties.
41. Reliance was placed in *Matiba v Attorney General* H C Misc Appl 666 of 1990 where it was held that:
- "An applicant in an application under s 84(1) of *the constitution* is obliged to state his complaint the provision of *the Constitution* he considers has been infringed in relation to him and the manner in which he believes they have been infringed. Those allegations are the ones which if pleaded with particularity invoke the jurisdiction of this court under the section. It is not enough to allege infringement without particularizing the details and the manner of infringement."



42. Equally dependence was placed in *Kenya Bus Services Ltd & 2 others v Attorney General & 2 others* [2005] eKLR and *Cyprian Kubai V Stanley Kanyonga Mwenda – Nairobi – HC MISC 612 of 2002*.
43. Relying on the interested party’s grounds of opposition, Counsel submitted that the petitioners had not demonstrated how the respondents had violated their rights and nonetheless did not seek any orders against the interested parties. Considering this, Counsel argued that the interested parties were unnecessary parties in this suit and hence this suit ought to be struck out against them. Reliance was placed in *Kiriro Wa Ngugi & 19 Others vs Attorney General & 2 Others (2020) eKLR* where it was held that:

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Courts should therefore frown upon disputes that are hypothetical, premature or academic which have not fully matured into justiciable controversies.”

### **Analysis and Determination**

44. Having considered the pleadings and submissions by the parties; I opine the following to be the issues for determination in this Petition:
- i. Whether the respondent confiscated the petitioners’ passports and by this action violated the constitutional rights of the petitioners.
  - ii. Whether or not the petition raises any cause of action against the interested parties.
  - iii. Whether the petitioners are entitled to the relief sought.

### **Whether the respondent impounded the petitioners’ passports and by this feat violated the constitutional rights of the petitioners**

45. The gravamen of this petition is the petitioners claim that the Respondent has unlawfully confiscated their passports. This has been vehemently opposed by the respondent who denies the claim insisting that the 1<sup>st</sup> to 5<sup>th</sup> Petitioners have never surrendered their passports to her and that Petitioner has never been at any time her employee but was her late husband’s business associate. She denied the allegation that she is withholding the passports belonging to the Petitioners.
46. Article 39(1) of *the Constitution* guarantees every person the freedom of movement and residence in the following terms:

“Every person has the right to freedom of movement”

47. Further, Article 39 (2) provides that ‘every person has a right to leave Kenya.’
48. The Court of Appeal in the case of *ATTORNEY GENERAL VS. KITUO CHA SHERIA & 7 OTHERS* [2017] KECA 773 (KLR) elaborated on the freedom of movement when it stated thus:

“On the face of the constitutional text, it is clear that freedom of movement is a right that belongs to every person without any distinction based on citizenship. Equally applicable to all is the right to leave Kenya, meaning that no person should be compelled to remain in the country. With regard to entry into Kenya and remaining in Kenya or residing in any part of it, however, there is a clear distinction between citizens and non-citizens. A citizen needs no permission to enter Kenya. Nor can a citizen be expelled from the country and indeed is at liberty to reside anywhere in Kenya. The question that arises is whether the express application of entry, remaining and residence rights to citizens means that non-





citizens cannot enter, remain or reside anywhere in Kenya. We think at once that such a conclusion would on the face of it be absurd and is not borne out by the text itself.”

49. It follows therefore that any person who unjustifiably restricts another’s freedom to exercise their right of movement is in violation or contravention of Article 39.
50. Withholding of another’s passport to deny a person the right to leave Kenya through unjustifiable seizure of the passport is a violation of the freedom of movement.
51. The question thus becomes, have the Petitioners proved on a balance of probabilities that the Respondent is responsible for withholding their passports?
52. Proof is necessary for the Petition to succeed because of the general rule of evidence that whoever alleges must prove. The *Evidence Act* Cap 80 provides as follows:

107. Burden of proof

1. Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
2. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

108. Incidence of burden

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

109. Proof of particular fact

The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

53. Explaining the principle of the burden of proof, the Court in *Sagala v Sagala* [2024] KEHC 5573 (KLR) stated as follows:

“the burden of proof is a legal doctrine which principally deals with the duty of a party or parties to adduce evidence in a matter in proof of a certain fact. The standard of proof relates to the evidential threshold required for a claim to be considered as having been proved.

58. The issue of the burden of proof has two facets. There are the legal burden of proof and the evidential burden of proof...

- 62 ... This legal principle was discussed in *Bungoma High Court Election Petition No. 2 of 2017 Suleiman Kasuti Murunga v IEBC & 2 Others* [2018] eKLR as under: -

26. The Petitioner on whom the legal burden of proof lies may or may not adduce sufficient and admissible evidence in proof of any of the allegations in the Petition. On one hand, if no sufficient evidence is adduced to the required standard, then the allegation(s) fail and it all ends there. On the other hand, if evidence is adduced to the satisfaction of the Court that an election ought to be impugned, then it becomes the burden of the Respondent(s) to adduce evidence rebutting the allegations



and to demonstrate that the law was complied with and/or that the irregularities did not affect the result of the election. At that point the burden is said to shift to the Respondents. That is the evidential burden of proof.

27. The principle of ‘evidential burden of proof’ is hence anchored on the rebuttable presumption of validity of election results. That, until and unless a Petitioner discharges the evidential burden of proof an election is presumed valid...”

54. On the standard of proof in constitutional petitions; the Court in *Matendechele v Sunstar Hotel Nairobi* [2023] KEHC 1921 (KLR) citing the decision of the Supreme Court explained:

“37. The Supreme Court in Presidential Petition No. 1 of 2017 *Raila Amolo Odinga & another v Independent Electoral and Boundaries Commission & 2 others* [2017] eKLR discussed the applicable standard of proof in election petitions. In that decision, the Apex Court declined the invitation to find that election petitions were just like the normal conventional Petitions and that the standard of proof ought to be that applicable in constitutional petitions which was ‘on the balance of probabilities. The Court found that the applicable standard of proof electoral matters was the intermediate one, that is ‘beyond balance of probabilities, but below proof beyond reasonable doubt’.

38. This is how the Supreme Court, rightly so, argued: -

(152) We maintain that, in electoral disputes, the standard of proof remains higher than the balance of probabilities but lower than beyond reasonable doubt and where allegations of criminal or quasi criminal nature are made, it is proof beyond reasonable doubt. Consequently, we dismiss the petitioners’ submissions that the Court should reconsider the now established legal principle, as discussed above, and find that the standard of proof in election petitions is on a balance of probabilities.

(153) We recognize that some have criticized this higher standard of proof as unreasonable, however, as we have stated, electoral disputes are not ordinary civil proceedings hence reference to them as *sui generis*. It must be ascertainable, based on the evidence on record, that the allegations made are more probable to have occurred than not.

39. Returning to the matter at hand, this Court hereby settles that the Petitioner bore the legal and evidential burden of proof unless the evidential burden of proof shifted to the Respondent.

40. The Court also settles that the applicable standard of proof in this matter, just like in any other Constitutional Petitions, shall be on a balance of probabilities.”

55. In this case therefore, it was incumbent upon the Petitioners to adduce admissible factual evidence that the respondent is withholding their passports and has refused to give or return them to the Petitioners. Have the Petitioners discharged that burden?



56. From what can be garnered from the rival affidavits, it is Petitioners word against the respondent; the petitioners affirming their allegations while the respondent denies. No corroborative material was placed before this Court to solidify the petitioner’s claim that the respondent confiscated or is withholding their passport. There is no correspondence or anything evidencing surrender of the documents to the respondent.
57. In my view, the Petitioners allegations are bare. There is no evidence at all that was tendered to substantiate this fact. In my humble view, this is matter which probably required an in-depth inquiry to be conducted by an investigative agency instead of rushing the matter to Court without even an iota of proof.
58. The upshot of my findings above is that this Petition lacks merit and is hereby dismissed with no orders as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 27<sup>TH</sup> MARCH, 2025.**

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**L N MUGAMBI**

**JUDGE**

