



REPUBLIC OF KENYA



KENYA LAW
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**Chebor v Karuri, Chief Inspector OCS Mochongoi Police Station & another;
National Police Service Commission & another (Interested Parties) (Petition
E003 of 2024) [2025] KEHC 5485 (KLR) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5485 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KABARNET

PETITION E003 OF 2024

RB NGETICH, J

APRIL 30, 2025

JUDGMENT

**IN THE MATTER OF: ARTICLES 2, 3, 10, 19, 20, 21,22,23,24,
CONSTITUTION OF THE REPUBLIC OFKENYA, 2010.**

AND

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS
AND FREEDOMS UNDER ARTICLES 27, 29, 39, 47 AND 49 OF THE CONSTITUTION
OF KENYA, 2010.**

AND

**IN THE MATTER OF: THE PERSONS DEPRIVED OF
LIBERTY ACT (ACTS NO.23 OF 2014) LAWS OF KENYA**

AND

**IN THE MATTER OF: THE NATIONAL POLICE SERVICE ACT
(CAP. 84) LAWS OF KENYA.**

AND

**IN THE MATTER OF: INDEPENDENT POLICING OVERSIGHT
AUTHORITY ACT(ACTS. NO.35 OF 2011) LAWS OF KENYA.**

AND

IN THE MATTER OF: THE CRIMINAL PROCEDURE CODE (CAP. 75) LAWS OF KENYA.

AND

**IN THE MATTER OF: INTERNATIONAL
COVENANT ON CIVIL AND POLITICAL RIGHTS**

AND



**IN THE MATTER OF: UNLAWFUL ARREST, HARASSMENT AND INCARCERATION
OF THE PETITIONER HEREIN ON THE NIGHTS& DAYS OF 16TH/17TH
& 18TH JUNE, 2022 WITHIN MARIGAT TOWN OF BARINGO COUNTY,
BY KNOWN POLICE OFFICERS BASED AT MARIGAT POLICE STATION**

BETWEEN

HELLEN CHEBOR ALIAS ZIPPORAH KEIRTTANY SOGOME PETITIONER

AND

**SIMON KARURI, CHIEF INSPECTOR OCS MOCHONGOI POLICE
STATION 1ST RESPONDENT**

**HUSSEIN HATIB POLICE CORPORAL MOCHONGOI POLICE
STATION 2ND RESPONDENT**

AND

NATIONAL POLICE SERVICE COMMISSION INTERESTED PARTY

DIRECTOR OF PUBLIC PROSECUTION INTERESTED PARTY

JUDGMENT

1. The Petitioner has moved this court vide a petition dated 18th May, 2024 seeking for the following orders:-
 - a. A Declaration that the conducts of the Respondents are contrary to and inconsistent with the provisions of Articles 10 of *the Constitution* of Kenya, 2010.
 - b. A Declaration that the Respondents violated the Constitutional rights of the Petitioner and in particular Articles 20 (1) and (2), 24 (1), 25 (a) & (c), 27 (4), 29, 39, 47, 49, 50 (1) and 51 of *the Constitution* of Kenya, 2010.
 - c. A Declaration that no person should be arbitrary held in remand or custody for any offence for any amount of time, hours and or period without conducting prior investigations and without intentions of being brought before a Magistrate during any days and any such incarcerations are unconstitutional.
 - d. An order that the arrest, incarceration and detention of the Petitioner for a period of over 8 hours by the Respondents from 9:00 a.m. to 5:30 p.m. Tuesday 26th March, 2024 without informing the Petitioner the reason for her arrest and her rights as an arrested person was unconstitutional and therefore the Petitioner be set free forthwith from the obligations of the Form 52 (1) issued to her.
 - e. An order that the arrest, incarceration and detention of the Petitioner for a period of over 8 hours on 26th March, 2024 by the Respondents was unconstitutional.
 - f. An order for adequate compensation for damages for unlawful arrest, incarceration detention and inhuman treatment in (c), (d) and (e) above for deprivation of the petitioner's constitutional rights to freedom of movement, dignity and her liberty by the Respondents.



- g. Any other or further reliefs that this Honourable Court shall deem fit by dint of Article 23 (3) of *the Constitution* of Kenya, 2010 and are just to grant in the circumstances.
- h. Costs of this Petition.
2. The petitioner by describing the parties herein as per pleadings and their roles as provided in *the constitution* and avers that there is no other suit pending and that there has been no proceedings in any court between the parties herein over the same subject matter.
 3. The Petitioner herein brings this petition under Articles 22 (1) and 258 (1) of *the Constitution* of Kenya in her own interest and on behalf of all persons whose rights have been violated or infringed or threatened and avers that this Honorable Court has jurisdiction over all the claim for relief sought herein under Article 22 and 23 of *the Constitution*.
 4. The Petitioner in her petition avers that she is a law abiding citizen of this country and on the morning of 26th March, 2024 at around 9:00 a.m. just before the arrest, she was at home going about her daily chores when she went to fetch for milk at Mr. Kipkebut's homestead within when she was accosted and arrested by the 2nd respondent and bungled into a police land cruiser motor vehicle and driven all the way to Kabel Police Post.
 5. That once at Kabel Police Post and while still hand cuffed, the 2nd respondent, locked her into a small dark room without ventilation, a make shift police cell and left her languishing in the said makeshift cell room from around 9:00AM 26th March, 2024 without telling her the reasons for her arrest until at around 5:30 p.m. same day when she was released by the 2nd respondent under Form 52. (1) and told to report back to him on the 29th March, 2024.
 6. The Petitioner avers that for the entire time she was locked, incarcerated and detained in the said makeshift police cell at Kabel Police Post for a period of approximately over 8 hours was not supplied or provided with any food or even water to drink, and that she was not allowed to go outside to relieve herself but was instead told and forced to relieve herself inside the said makeshift police cell room which she indignantly did.
 7. That even after persistently asking the Respondents to tell her the reasons why they were arresting her, they answered her that she will know the reasons of her arrest in front (utajua sababu uko mbele).
 8. That the Respondents who are bestowed with the noble duty of maintaining peace and order for tranquility among citizens and besides being paid salary by the citizens through taxes, are callously perpetrating illegal actions and unless restrained by this Honorable Court from so doing, they are determined to continue with the breach of the Constitutional Rights of the Petitioner herein and the Public at large.
 9. The petitioner avers that the Police officers at Mochongoi Police station and Kapel Police Post, have the audacity of arbitrarily arresting citizens specially on Fridays and Saturdays, solely with the intention of exploiting the 24 hours rule of keeping arrestees in the police cells for long hours, with the sole purpose and intention of subjecting the arrestees part with heavy police cash bails/bonds, and without the intention of arraigning them in a court of law' and during such arrests, the arrested citizens are subjected to heavy Police cash bails/bonds which forces them languish in the police cells while their relatives rush up and down looking for the demanded cash bail/bond. After the relatives secure the cash bails, the victims are released and told to come back between Monday and Wednesday for review of their cases and upon them going back on the said days, they are coerced into parting with the cash bail for exchange of their freedom. That this is a matter that can be proved by doing an audit of the daily Occurrences Book at the station and post especially on the aforementioned days.



10. THAT on the 22nd April, 2024, the Petitioner through the firm of Boiwo& Co. Advocates lodged a complaint with the Respondents and copied to their Sub-County Police Commander, the 1st interested party through the Inspector General and the 2nd Interested Party noting her grievances and the intended action.
11. The Petitioner contends that by the Respondents deliberate actions of arbitrarily arresting and detaining her at the Kabel police post and incarcerating her in the Police makeshift cell room in Kabel Police post for over 8 hours, without being told of the reasons of her arrest and of her rights as an arrested person and also not being charged before a Magistrate court, was in total and blatant breach of her rights to be brought before a Magistrate within 24 hours of being arrested and freedom of movement. The Petitioner had, among others, the following legitimate expectations;
 - a. That the Respondents would not act contrary to the provisions of *the Constitution* of Kenya, 2010, the *Persons Deprived of Liberty Act*, 2014 Laws of Kenya, the *National Police Service Act* (Cap. 84) Laws of Kenya, the *Criminal Procedure Code* (Cap. 75) laws of Kenya, Universal Declaration of Human Rights, International Covenant on Civil & Political Rights amongst other related Laws in addition to the Principles of Public Policy and rules of natural justice.
 - b. THAT the Respondents would exercise their powers strictly in compliance with the provisions of Articles 10, 49 and 51 of *the Constitution* before acting in the manners they did.
 - c. THAT the Respondents would treat all citizens and people within the Republic of Kenya fairly and not abuse the rights guaranteed under *the Constitution* of Kenya.
12. The Petitioner further contends that, on account of the foregoing actions and omissions on the part of the Respondents, that she was;
 - a. Deprived, threatened and or Interfered with her freedom and rights guaranteed under Articles 20 (1) and (2), 24(1), 25(a) &(c), 29, 39(1), 49, 50 (1), 51 of *the Constitution* of Kenya, 2010.
 - b. Discriminated against contrary to Article 27 of *the Constitution* of Kenya, 2010.
 - c. Violation of the right to an administrative action that is efficient, lawful, reasonable and procedurally fair guaranteed under Article 47 of Constitution of Kenya 2010.
13. THAT the afore mentioned acts and the consequences arising from the Respondents negates the rights and values as enshrined in Chapter IV of *the Constitution* under which the Petitioner is entitled to protection.
14. The Petition is support by an affidavit sworn by the petitioner where he restated the grounds of the petition captured above. He further stated that while in the makeshift cell, he was asked to record statement but he declined saying that Mr. Chepsoi is supposed to record the statement why he was arrested and that he had lived in the land for long and he wondered why he was being arrested yet he was not the one who did any demolition of a house structure and fence. That after recording the statement, the 2nd Respondent released him under Form 52(1) telling him to go back to report to him on 29th March, 2024 at 6:35 but he was not issued with any OB.
15. THAT she was forced to walk back to her home a distant of over 15 km barefooted because when they arrested her she had no shoes and of which she reached her home at around 8:30 p.m. at night to be received by her hungry young children.



16. THAT the respondents subjected her to cruel and inhuman treatment by refusing to allow her to go out and relieve herself and forcing her to relieve herself in the same makeshift cell room she was being held and detained in.
17. She stated that she went back to report to the respondents on 29th March, 2024 as it had been indicated in the Form P.52(1) and the 2nd respondent instructed another police officer in the police post to extent her going back to seeing him to 19th April, 2024.
18. She further stated that on this 19th April, 2024 she reported back to Kapel Police Post and found the 2nd respondent absent, was made to wait until 4:30 p.m. from 10:00 a.m. for him but never arrived and was told to go back home never to go back again to date.
19. THAT she felt psychologically tortured by being arbitrarily and wrongly arrested and not being told the reasons of her arrest then being physically tortured when she was hauled into and detained in a dark room without ventilations and being forced to relieve herself in the same dark room makeshift police cell and without being told the reasons of her arrest and her rights as an arrested person.
20. THAT when she pressed further to be informed why was she was being arrested and yet she knew she had done nothing wrong, she was informed that "yours was not even an arrest but a move to remove you from the ground for the sake of Mr. Chepsoi to be able to plant the maize seeds in Mr. Chemelil's farm which he is claiming ownership, and that with your presence you would cause a commotion, chaos and scene whereby people will show up and gang up against Mr. Chepsoi making him unable to plant the farm".
21. The Petitioner states that she is aware that there is every reason why an arrested person and persons in custody whether released on police cash bail or bond, should be presented before a magistrate's court for a plea taking. But the Respondents in this case arrested her without telling her the reasons of her arrest, her rights as an arrestee, placed her in custody/detention in a deplorable condition for over 9 hours of a working day being a Tuesday 26th March, 2024 from 9:00 a.m. to 5:30 p.m. and forcing her to urinate on herself in the makeshift cell room and proceeded to release her at their own pleasure without charging her before a magistrate court was such an abuse of public office and her constitutional rights.
22. THAT she avers that the police in pursuance of their duties are supposed to first investigate a person (suspect) before arresting her/him, then after investigating and gathering enough information that informs the charging of the suspect, then move in to arrest the suspect and charge her/him before a court of law but never to arrest first and then investigation to follow. This will be tantamount to putting the horse before the cart, an abuse of office act and a cross violation of citizen Constitutional rights.
23. THAT from the records in the P.52 (1) Form that she was released on to report back on 29th March, 2024, she was shocked to see in it that the reason indicated for her arrest was a crime of an alleged trespassing an offence she was never informed of and as to whose land she indeed trespassed on and on when did she trespassed on it, if it is not a trump up charges to satisfy Mr. Chepsoi's mission as told her by the respondents "so that Mr. Chepsoi to plant the maize seeds on Mr. Chemelil's farm".
24. That on 22nd April, 2024, through her advocates on record she lodged a complaint with the Respondents and copied to the 1st interested party through the Inspector General and the 2nd interested party noting her grievances and the intended action.
25. THAT the law does not envisage a situation where an arrested person whether she or he is released on police cash bail or bond should never be produced in court of law, hence the Respondents actions are in negation of the rule of law and are tantamount to abuse of office and avoidance of any doubt,



she is not seeking to be discharged of any legal charges/proceeding intended to be preferred against her before any court of law (if any).

26. The Respondents though served never entered appearance and or filed a response to the petition and as it stands, the petition herein stands an opposed.

SUBMISSIONS BY THE PETITIONER

27. The Petitioner identified the following as issues for determination:-

- a. Whether the impugned arrest and detention violates the Petitioner's Constitutional Rights as alleged or at all.
- b. What are the appropriate reliefs the Petitioner is entitled to?

28. The petitioner cited the case of Independent Electoral and Boundaries Commission –v- Maina Kiai & 5 Others [2017] eKLR, where the court of appeal stated as follows:-

When the people of Kenya adopted, enacted, and gifted themselves and their future generations the 2010 Constitution, it was not an ordinary, common- place act. Nor was it an empty ritual. Rather, it was an epochal moment, pregnant with meaning and significance, and speaking to the indomitable will of the people to take charge of their destiny and bend the arc of history to align with their most cherished aspirations and ideals as to how they wished to be governed, and to organize their affairs. Theirs was doubtless the most momentous act of sovereignty and self-determination since Independence, and in *the Constitution*, they declared the birth of a new dispensation founded on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law [emphasis].

29. Counsel submit that it is for the foregoing momentous act of sovereignty that *the Constitution* of Kenya 2010 developed national values and principles of governance [Article 10 Directives] and declared the same to be binding on all state organs, state officers, public officers and all persons. That Key among Article 10 Directives and relevant to this case include the rule of law, human dignity, equality, human rights, non-discrimination, transparency and accountability. In order to attain these aspirations, *the Constitution* has developed key institutions charged with the responsibility of realization of these values. In the province of criminal justice system, *the Constitution* has created inter alia the National Police Service under Article 243 and the Office of the Director of Public Prosecution under Article 257 of *the Constitution* of Kenya 2010.
30. That the Petitioner herein is alive to the fact that in execution of the respective mandates of the National Police Service and that of the Office of the Director of Public prosecutions, the said institutions are directed to act independent of and without control of any person and only act within the whims of *the Constitution*.
31. That the foregoing disposition resonates with the commitment by Kenyans are espoused in the preamble in which the People recognize the aspirations of all Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law.
32. On whether the impugned arrest and detention violates the Petitioner's Constitutional Rights as alleged or at all, counsel submit that they are alive to the fact that a Petitioner seeking judicial redress for violation and or infringement of rights and fundamental freedoms bears a tripartite obligation viz; to prove existence of a right; violation and or infringement, and three injury suffered as a result of such violation, infringement and or denial.



33. That once these three elements are proved, then the court is obliged to give appropriate redress as by law required and this was the holding in *Satrose Ayuma & 11 Others –v- Registered Trustees of the Kenya Railways Staff Retirement Benefits Scheme & 3 Others* [2013] eKLR, Pet. No. 65 of 2010. That in the instant Petition, the Petitioner has not only laid a claim of violation of his constitutional rights, but also violation of the constitutional provisions in general.
34. On violations suffered by the Petitioner, counsel submit that the Respondents conducts are a Violation of Article 49 of *the Constitution*. That the Respondents unlawfully arrested, harassed and incarcerated the petitioner herein on the morning of 26th March, 2024 at around 9:00 a.m. within Kamailel Sub location in Mochongoi Baringo County.
35. On violations suffered by the Petitioner, they submit that the Respondents conducts are a Violation of Article 49 of *the Constitution* by unlawfully arresting, harassed and incarcerated the petitioner herein on 20th March, 2024 at around 11:30 a.m. and the officers who arrested him failed to inform the Petitioner of the reasons for his arrest and his rights as an arrested person therefore violating the right to be informed promptly of the reasons for arrest and to be treated humanely as provided by Article 49 of *the constitution*. He relied on the case of *Satrose Ayuma & 11 Others -vs- Registered Trustees of the Kenya Railways Staff Retirement Benefits Scheme & 3 Others* (2013) eKLR where it was held that a person seeking redress of violation and or infringement of human rights and fundamental freedoms must prove existence of a right, its violation and the injury suffered as a result for being detained over 7 hours from around 11:30 a.m. to 6:35 p.m. while handcuffed in inhumane conditions without any justification. That his arbitrary detention violated his right to personal liberty and dignity, as enshrined in Articles 28 and 29 of *the Constitution*, they rely in *Nzioka & 2 others v Mutuku* (Environmental and Land Originating Summons E003 of 2021) [2024] KEELC 13703 (KLR).
36. That the Respondents conduct amounted to an Abuse of Police Powers. That the pattern of arbitrary arrests and extortion practiced by the police officers at Mochongoi Police Station and Kabel Police Post constitutes an abuse of police powers and this Honourable Court has the duty to protect citizens from such systemic abuse and ensure the rule of law is upheld; that the Respondents’ action contravene the principles of fair administrative action as provided under Article 47 of *the Constitution* and the *Fair Administrative Action Act*, 2015 and relied on the case of *Ngugi v Republic* [1984] eKLR, where the court underscored the need for accountability and transparency in the conduct of police officers to maintain the rule of law by holding that arbitrary actions by police officers erode public trust and violate the fundamental rights of citizens.
37. Counsel restated averments of the petition on arrest and detention and relied on the case of *R vs Secretary of State for Home Department, ex p Doody* [1994] 1 AC 531, where the House of Lords emphasized the importance of informing an arrestee of the reasons for their detention as a fundamental aspect of the rule of law. He cited provisions of Article 28 and 29 of *the constitution* and argued that the Petitioner’s detention in a small, dark room without ventilation, food, or water, and hands handcuffed behind his back for over 7 hours in a dirty makeshift cell, are clear and gross violations of these constitutional protections.
38. That the Petitioner’s arbitrary detention and the systemic practice of extorting cash bails from detainees demonstrate the urgent need for judicial intervention to protect citizens’ rights and uphold the rule of law.
39. That the judicial reasoning in cases of violation of constitutional rights is that where a party succeeds in demonstrating violation of rights and fundamental freedoms, such party is entitled to reliefs in exercise of constitutional jurisdiction as a matter of course. See *Tinyefuze –v- Attorney General of Uganda* [1997] UGCC3. That the purpose of compensation is not to return the party to position prior to the



infringement and or violation of the rights and fundamental freedom complained of but to act as a deterrent to future similar violation.

40. That the reason for awarding compensation is also to live up to the fact there should be no right without a remedy and to remind the state and its agents that rights have inherent value, must be respected, enhanced and protected; and that their violation will attract substantial compensation. That in determining the appropriate award, the Court will consider factors such as the torture inflicted on the Petitioner, the length of time the Petitioner was held in custody, the decided cases on the subject matter and what would be fair and reasonable in the circumstances of the case.
41. Counsel submit that taking into considerations the pleadings before this Honorable Court, the relevant case law cited in the instant submissions and the law in general, they entertain no doubt and thereby invite this Honorable Court to an inescapable conclusion and finding that Respondents violated the Petitioners rights and in particular the rights guaranteed under Articles 20 (1) and (2), 24(1), 25(a) &(c), 27,2829, 39(1), 47, 49, 50 (1), 51 of *the Constitution* of Kenya, 2010.and 49(1) (f) of *the Constitution* of Kenya, 2010 and a consequence thereof, the Petitioner suffered injury and is therefore entitled to the reliefs sought in the instant Petition.

ANALYSIS AND DETERMINATION

42. I have considered the Petition and the submissions by the petitioner. The issues for determination in this Petition are:-
 - a. Whether the Petitioner’s constitutional rights were violated.
 - b. Whether the Petitioner is entitled to the reliefs sought.

DIVISION - (a) whether the petitioner’s rights were violated

- 43 Article 49 basically protects the interests of the arrested person. The said article embodies rules which have always been regarded as vital and fundamental for safeguarding personal liberty in almost all legal systems where the Rule of law prevails. Article 49 of *the constitution* provides as follows: -

“ 49. RIGHTS OF ARRESTED PERSONS

- (1) An arrested person has the right—
 - a. to be informed promptly, in language that the person understands, of (i) the reason for the arrest; (ii) the right to remain silent; and (iii) the consequences of not remaining silent;
 - (b) to remain silent;
 - c. to communicate with an advocate, and other persons whose assistance is necessary;
 - d. not to be compelled to make any confession or admission that could be used in evidence against the person;
 - e. to be held separately from persons who are serving a sentence;



- f. to be brought before a court as soon as reasonably possible, but not later than— (i) twenty-four hours after being arrested; or (ii) if the twenty-four hours ends outside ordinary court hours, or on a day that is not an ordinary court day, the end of the next court day;
- g. at the first court appearance, to be charged or informed of the reason for the detention continuing, or to be released; and
- h. to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.

(2) A person shall not be remanded in custody for an offence if the offence

44. The rights are also protected under Article 9 of the International Covenant on Civil and Political Rights. It states as follows:

“ Article 9

- 1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
- 2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
- 3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
- 4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
- 5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.”

45. In light of the above, it is important to mention that the expression of the right to liberty in Article 3 of the Universal Declaration of Human Rights reflects the inalienable nature of that right. The common conception of liberty formed the basis for the later articulation of the right to liberty in Article 9 of the ICCPR.

46. Article 9(1) of the ICCPR prohibits arbitrary arrest and detention and the use of the term, “arbitrary” simply covers unjustifiable deprivation of liberty rather than seeking to list exhaustively all permissible causes of deprivation of liberty. As regards arbitrary arrest, Article 49(1) of *the constitution* which is



equivalent to Article 9(2) of ICCPR comes into play. These provisions are often referred to following a well-known United States Supreme Court Case of *Miranda-v-Arizona*.

47. The petitioner herein alleged that her right was violated on the account of her not being informed of the reason for her arrest. It is noteworthy that the existence of the power to arrest is one thing. The justification for the exercise of it is quite another thing. The law demands that whenever an arrest is made, the accused person has a right to be informed not only that he is being arrested but also of the reasons or grounds for the arrest. Thus the police officer must be able to justify the arrest apart from his power to do so. He does that by communicating to the arrested person the full particulars of the offence for which he is arrested or other grounds for such arrest at the time of the arrest. Thus it is incumbent upon those who deprive other persons of liberty in the discharge of what they conceive to be their duty to strictly and scrupulously observe the forms and rules of law.
48. The prohibition of “arbitrary” detention in Article 9(1) aforesaid acknowledges that administrative detention will be occasionally be permissible in order to achieve particular aims. However, owing to the importance of the right to liberty, any restriction must be necessary to achieve a particular legitimate aim, and the degree to which the right to liberty is infringed must be proportionate to achieving that aim. This involves consideration of whether there are less evasive means of achieving the same aim.
49. It follows therefore that the detention of an individual is justified only as a last resort where other, less severe measures have been considered and found to be insufficient to safeguard the end or public interest which might require that the person concerned be detained.
50. The United Nations Human Rights Committee in its General Comment No.35, Article 9 (Liberty and security of person), UN Doc CCPR/C/GC/35 (16 December 2014) at [15] has taken the view that detention not in contemplation of prosecution on a criminal charge presents 'severe risks' of arbitrary deprivation of liberty.
51. From the pleadings, the Petitioner was arrested on the morning of 20th March, 2024 at around 1.30 a.m. and was detained in the police cells at Kabel Police Station up to 6:35 p.m. when he heard a voice from outside the makeshift cells inquiring who and why the person in the cells was arrested. The petitioner avers that the voice outside the ordered for his release and he was released by the 2nd Respondent under Form 52(1) and told to report back to the 2nd Respondent on 29th March, 2024. The Petitioner avers that for the entire period of time he was locked at the makeshift police cells at Kabel police post, he was not informed the reasons for his arrest neither was he informed of his rights as an arrested person pursuant to Article 49 of *the Constitution*. The Petitioner contend that when he inquired from the 2nd Respondent why he was arresting, incarcerating and detaining him, he casually answered, “utajulia mbele” that he was not informed of the reasons for his arrest and only came to know of the reasons for his arrest upon perusing the contents of Form P.52(1) that the reason indicated for his arrest was a crime of an alleged trespass.
52. From the record, it comes out clearly that the Respondents though properly served did not enter appearance and or file any response to the Petition to enable this court know/hear their part of the story.
53. Section 29 of the *Criminal Procedure Code* provides for an arrest without warrant by a police officer in the following terms:

“ 29. Arrest by police officer without warrant

A police officer may, without an order from a magistrate and without a warrant, arrest—



- a. any person whom he suspects upon reasonable grounds of having committed a cognizable offence;
- b. any person who commits a breach of the peace in his presence;
- (c) ...
- (d) ...
- (e) ...
- (f) ...
- (g) any person whom he finds in a street or public place during the hours of darkness and whom he suspects upon reasonable grounds of being there for an illegal or disorderly purpose, or who is unable to give a satisfactory account of himself;”

54. Section 36 of the [Criminal Procedure Code](#) as it relates to detention after an arrest without warrant provides:

“ 36. Detention of persons arrested without warrant.

When a person has been taken into custody without a warrant for an offence other than murder, treason, robbery with violence and attempted robbery with violence the officer in charge of the police station to which the person has been brought may in any case and shall, if it does not appear practicable to bring that person before an appropriate subordinate court within twenty-four hours after he has been so taken into custody, inquire into the case, and, unless the offence appears to the officer to be of a serious nature, release the person on his executing a bond, with or without sureties, for a reasonable amount to appear before a subordinate court at a time and place to be named in the bond, but where a person is retained in custody he shall be brought before a subordinate court as soon as practicable:

Provided that an officer in charge of a police station may release a person arrested on suspicion on a charge of committing an offence, when, after due police inquiry, insufficient evidence is, in his opinion, disclosed on which to proceed with the charge.”

55. Section 58 of the [National Police Service Act](#) gives a police officer power to arrest without warrant in these terms:

“ 58. Power to arrest without a warrant

Subject to Article 49 of [the Constitution](#), a police officer may without a warrant, arrest a person—

- (a) ...
- (b) ...
- c. whom the police officer suspects on reasonable grounds of having committed a cognizable offence;



- d. who commits a breach of the peace in the presence of the police officer;”

56. Upon looking at the above provisions on arrest, I wish to consider whether the respondents acted within the parameters of the law. False arrest is defined in the case of Daniel Waweru Njoroge & 17 Others v Attorney General Civil Appeal No. 89 of 2010 [2015] eKLR as hereunder:-

“ False arrest which is a civil wrong consists of an unlawful restraint of an individual’s personal liberty or freedom of movement by another person purporting to act according to the law. The term false arrest is sometimes used interchangeably with the tort of false imprisonment, and a false arrest is one method of committing a false imprisonment. A false arrest must be perpetuated by one who asserts that he or she is acting pursuant to legal authority, whereas a false imprisonment is any unlawful confinement. Thus, where a police officer arrests a person without probable cause or reasonable basis, the officer is said to have committed a tort of false arrest and confinement. Thus, false imprisonment may be defined as an act of the defendant which causes the unlawful confinement of the plaintiff. False imprisonment is an intentional tort.”

57. From averments while admittedly the Petitioner may have been arrested on suspicion of committing a cognizable offence, I find it difficult to accept that this arrest was made by police officers acting with reasonable cause. To arrest, detain or investigate must be carried out within constitutionally permissible parameters. Therefore, any system of law which keeps in mind the constitutional provisions must ask the fundamental question whether in order to fight crime its necessary to derogate from the bill of rights entitlements by denying a suspect of misdemeanors right to liberty, freedom, dignity, equality, freedom from torture, degrading and inhuman treatment.

58. The act of apprehending a person without notice/giving information even if it’s for a short period has far reaching effect on his or her rights to human dignity. I have in view the harm done to the individual and his or her family before the investigations are carried out and a decision is made of charging him or her before a court of law. First, being on suspicion the right to liberty and security of person under Article 29 of *the constitution* should not be interfered with arbitrarily to confine the individual to a police station or detention facility. Mumbi J In the case of Antony Njenga Mbuli and 5 others v Attorney General held inter alia on this legal position as follows:

“ That the conduct by law enforcement officers profiling suspects on mere suspicion, arresting and detaining them with no evidence of crime committed is arbitrary and discriminatory guaranteed in our constitution.”

59. It must be emphasized that reasonableness and rationality of the decision to arrest where deprivation of individual liberty of a person is concerned should be consistent with *the constitution* and international standards in upholding the rights of the individual. There is no doubt that the police have a right to arrest but they must comply with Article 49 of *the constitution*. While exercising statutory powers of arrest the respondents must act reasonably and should not be oppressive or punitive. In the pleadings and submissions herein, the Petitioners’ seek redress for violation of their rights under Articles 20(1) and (2), 24(1), 25, 27, 29, 39, 47, 49, 50 and 51 of *the Constitution*. The Petitioner submitted that his rights to human dignity, freedom from cruel treatment, physical and psychological torture as guaranteed under Articles 25, 28 and 29 were violated.



60. In the case of *Moses Tengeya Omweno v Commissioner of Police & another Civil Appeal 243 of 2011* [2018] eKLR where it was held that:

“39. As regards violation of the right to human dignity, the East African Court of Justice in *Samuel Mukira Mohochi -v- Attorney General of Uganda*, EACJ Reference No. 5 of 2011 expressed that detention is indeed deprivation of liberty. When it is illegal, it is not only an infringement of the freedom of movement, but also an act that undermines one’s dignity. In the instant appeal, the appellant contended that his detention at Embakasi Police Station in Nairobi Kenya and subsequent detention in Amsterdam and Kosovo were a violation of his fundamental rights.”

61. No explanation for the arrest and condition of arrest was given. It therefore follows that the arrest was in contravention of Article 29(1) which protects the Petitioners from being deprived of their freedom without just cause. Similarly, the detention deprived the Petitioner of his freedom of movement guaranteed under Article 39(1). Additionally, I find the actions of the police officers to have subjected the Petitioner to inhuman and degrading treatment.

62. No response was filed by the Respondents despite being served by the petitioner. The petitioner’s allegations are therefore uncontroverted therefore proceed to find that the petitioner has proved that his right to liberty and to be informed reason for arrest were violated.

(b) Whether the petitioner is entitled to reliefs sought

63. On whether the petitioner is entitled to general, exemplary and punitive damages, this court has discretion on assessment of damages on violation of constitutional rights and freedoms by the state or its agents.

6. The petitioner herein alleged that he was arrested and detained in a makeshift cell which had no ventilation 11:30 a.m. up to 6:30 p.m., Time of 6 hours and that he suffered emotional and psycho traumatic experience. The respondent did not respond on allegation of arbitrary arrest and detention in inhuman condition. There is no explanation as to why Article 49(2) of *the constitution* applied to the petitioner. The Respondent’s by failing to file response did not give the court the benefit of knowing whether a complaint was made to the police station. The respondents did not avail explanation for the arrest.

64. While addressing itself to the question of damages, the Court of Appeal in *Gitobu Imanyara & 2 others v Attorney General Civil Appeal No. 98 of 2014* [2016] eKLR had this to say:

“...It seems to us that the award of damages for constitutional violations of an individual’s right by state or the government are reliefs under public law remedies within the discretion of a trial court, however, the court’s discretion for award of damages in Constitutional violation cases though is limited by what is “appropriate and just” according to the facts and circumstances of a particular case. As stated above the primary purpose of a constitutional remedy is not compensatory or punitive but is to vindicate the rights violated and to prevent or deter any future infringements. (Emphasis supplied) The appropriate determination is an exercise in rationality and proportionality. In some cases, a declaration only will be appropriate to meet the justice of the case, being itself a powerful statement which can go a long way in effecting reparation of the breach, if not doing so altogether. In others, an award of reasonable damages may be called for in addition to the declaration...”



65. On the question of damages for false imprisonment, Mativo J in the Daniel Waweru Njoroge case (supra) held as follows:

“On quantum of damages the court has to bear in mind the following cardinal principles in the assessment of damages namely:

- i. Damages should not be inordinately too high or too low.
- ii. Should be commensurate to the injury suffered.
- iii. Should not be aimed at enriching the victim but should be aimed at trying to restore the victim to the position he was in before the damage was suffered.
- iv. Awards in past decisions are mere guides and each case depends on its own facts.

This court has applied the above principles to the facts herein and it makes a finding that the action of the defendant was high handed and an award of Kshs.100,000/= will be an adequate compensation for each of the plaintiff herein as general damages for unlawful arrest and false imprisonment.”

66. In the case of Daniel Waweru Njoroge case (supra), finding in favour of the Plaintiffs in a tort for unlawful arrest, the Honorable judge awarded each Plaintiff a sum of Ksh.100,000/-I have considered circumstances of this case and the authorities cited and find that an award of Ksh.100,000/- will be sufficient to compensate the petitioner.

67. Judgement is hereby entered for the Petitioner as against all the Respondents, jointly and severally in the following terms:

- a. I hereby declare that the arrest and detention of the Petitioner for a period of over 8 hours by the Respondents on Tuesday 26th March, 2024 without informing the Petitioner the reason for her arrest was unconstitutional
- b. The Petitioner is awarded general damages of Kshs.100,000/-
- c. Costs of the suit be borne by the respondents.

JUDGMENT DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 30TH DAY OF APRIL, 2025.

.....

RACHEL NGETICH

JUDGE

In the presence of:

* Mr. Boiywo for Petitioner.

* Petitioner – absent.

* Respondent – absent.

* Court Assistant - Elvis.

