



**Kanu (Suing on behalf of and Representing the Subject Nwannekaenvi Nnamdi Kenny Okwu-Kanu) v Cabinet Secretary, Ministry of Interior and Coordination of National Government & 4 others (Constitutional Petition E359 of 2021) [2025] KEHC 8967 (KLR) (Constitutional and Human Rights) (24 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8967 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CONSTITUTIONAL AND HUMAN RIGHTS  
CONSTITUTIONAL PETITION E359 OF 2021**

**EC MWITA, J  
JUNE 24, 2025**

**BETWEEN**

**KINGSLEY KANU ..... PETITIONER  
SUING ON BEHALF OF AND REPRESENTING THE SUBJECT  
NWANNEKAENVI NNAMDI KENNY OKWU-KANU**

**AND**

**CABINET SECRETARY, MINISTRY OF INTERIOR AND COORDINATION OF  
NATIONAL GOVERNMENT ..... 1<sup>ST</sup> RESPONDENT  
DIRECTOR OF IMMIGRATION SERVICES ..... 2<sup>ND</sup> RESPONDENT  
DIRECTOR OF CRIMINAL INVESTIGATIONS ..... 3<sup>RD</sup> RESPONDENT  
OFFICER COMMANDING POLICE DIVISION JOMO KENYATTA  
INTERNATIONAL AIRPORT ..... 4<sup>TH</sup> RESPONDENT  
ATTORNEY GENERAL ..... 5<sup>TH</sup> RESPONDENT**

**JUDGMENT**

**Introduction**

1. Kingsley Kanu (the petitioner) filed this petition on behalf of his brother, Mr. Nwannekaenvi Nnamdi Kenny Okwu-Kanu (Mr. Nnamdi Kanu), for violation of his rights and fundamental freedoms. He sought declarations of violation of the rights, an order compelling the respondents to provide information regarding the arrest, detention and rendition of the Mr. Nnamdi Kanu from Kenyan and an order for compensation. The petition is supported by two affidavits, one by the petitioner and



another by Prince Emmanuel Kanu, (Prince Kanu) another brother to Nnamdi Kanu and written submissions.

### **Petitioner's case**

2. The petitioner stated that Mr. Nnamdi Kanu, the leader of a Biafra group calling for self-determination for Biafra Land, is a British citizen who formerly held Nigerian citizenship but renounced the Nigerian citizenship and his Nigerian passport was taken away by the Nigerian authorities.
3. On 14<sup>th</sup> October 2015, Mr. Nnamdi Kanu was charged with terrorism related offences and incitement and detained for two years but was released on bail in 2017. Following an attack by the military of the Federal Government of Nigerian that killed several members of the Biafra Party, Mr. Nnamdi Kanu fled into exile.
4. On 12<sup>th</sup> May 2021, Mr. Nnamdi Kanu flew to Kenya from Kigali, Rwanda and arrived at Jomo Kenyatta International Airport (JKIA) on an East African Tourist Visa and stayed at Purple Haze Apartments, Kitale Lane, Nairobi intending to spend a few days in the country before travelling to the United Kingdom.
5. On 13<sup>th</sup> May 2021, Mr. Nnamdi Kanu was admitted at the Nairobi Hospital due to a heart condition and was discharged on 14<sup>th</sup> May 2021. On 19<sup>th</sup> June 2021, he drove to JKIA to pick someone, but did not return to the place he was staying. This information was relayed to the petitioner by Mr. Nnamdi Kanu's secretary, Ms. Erina Notala Gitau who also confirmed that Mr. Nnamdi Kanu's passport was still at the place he was staying.
6. According to the petitioner, on 29<sup>th</sup> June 2021, the Attorney General of the Federal Republic of Nigeria addressed a press conference revealing that Mr. Nnamdi Kanu had been extradited to Nigeria cooperation between Nigerian intelligence Services and Interpol.
7. The petitioners' case is that Mr. Nnamdi Kanu was taken to Nigeria contrary to the procedure set out in the *Extradition (Contiguous and Foreign Countries) Act*. He was not shown a warrant of arrest; was not allowed to speak to his legal counsel; intermediary or family member. Mr. Nnamdi Kanu was also not allowed to challenge the lawfulness of his detention and subsequent removal from Kenya and had never been classified as a prohibited immigrant in Kenya.
8. The petitioner asserted that there were concerns that Mr. Nnamdi Kanu was being tortured while in detention in Nigeria given the history of being tortured by the Nigerian authorities thus, putting his life in danger.
9. The petitioner asserted that Mr. Nnamdi Kanu's arrest, detention and removal from Kenya was done in violation of the *Constitution* of Kenya, the *Fair Administrative Actions Act*, 2015, The *Extradition (Contiguous and Foreign Countries) Act* and the *Public Officers Ethics Act*, 2003.
10. Prince Emmanuel Kanu, (Prince Kanu), swore an affidavit stating that he had been authorised by Mr. Nnamdi Kanu to swear the affidavit because Mr. Nnamdi Kanu could not swear one since he was in detention and was prohibited from swearing an affidavit. Prince Kanu stated he had met Mr. Nnamdi Kanu on 27<sup>th</sup> July 2021 at about 3pm at the Headquarters of the State Security Services in Abuja, Nigeria and he believed the facts given to him by Mr. Nnamdi Kanu to be true.
11. Prince Kanu deposed that on 12<sup>th</sup> May 2021, Mr. Nnamdi Kanu entered Kenya legally as a British citizen and settled at a temporary location in Nairobi. On 19<sup>th</sup> June 2021, Mr. Nnamdi Kanu drove to JKIA on a personal errand. As soon as he parked the vehicle and alighted, several agents of the Nigerian government accosted and abducted him; handcuffed him; bundled him into a vehicle and sped away.



12. The abductors took Mr. Nnamdi Kanu to a house within Nairobi and chained him. They did not show him an arrest warrant issued by a court in Kenya or an extradition order. He was also not informed that there was a warrant or extradition order. Prince Kanu stated that the abductors beat Mr. Nnamdi Kanu in turns and tortured him while in chains until he fainted. Mr. Nnamdi Kanu was kept in detention for 8 days; was not allowed to bath and was fed on stale bread once a day and given non-sanitary water to drink. His plea to be given medications for hypertension and heart condition were ignored. The abductors did not produce him before a court of law in Kenya or other law enforcement facility. He was also not allowed to contact an advocate or make a phone call to anyone.
13. Prince Kanu stated that on 27<sup>th</sup> June 2021, Mr. Nnamdi Kanu was taken out of the house, put in car and driven to JKIA where the abductors forcibly bundled him into a private jet that departed JKIA at about 12 noon and arrived in Abuja, Nigeria in the evening of the same day and was detained at the Nigerian National Intelligence Agency Headquarters. On 29<sup>th</sup> June 2021, Nigeria's Attorney General addressed a press conference, stating that Mr. Nnamdi Kanu had been rearrested through the collaborative efforts of Nigerian intelligence and other security services to continue with the trial he was facing before disappearing while on bail.
14. Prince Kanu further deposed that on 22<sup>nd</sup> July 2022, the Working Group of the United Nations Human Rights Council issued a statement condemning the abduction, detention, disappearance, torture and expulsion and called for Mr. Nnamdi Kanu's unconditional release and payment of reparations. The statement termed his transfer from Kenya an act of extraordinary rendition and required both Kenya and Nigeria to fulfil obligations to recompense him.
15. Prince Kanu again stated that on 13<sup>th</sup> October 2022, the Court of Appeal of Nigeria termed the subject's expulsion from Kenya to Nigeria as an act of extraordinary rendition and discharged him of all criminal charges. The Court of Appeal also barred any Nigerian court from trying Mr. Nnamdi Kanu on any crime.
16. It was again stated that on 26<sup>th</sup> October 2022, the Federal High Court of Nigeria also held that the abduction, detention, disappearance, torture and expulsion from Kenya to Nigeria was an act of brazen violation of Mr. Nnamdi Kanu's fundamental rights and awarded him compensation. The continued detention in Nigeria was also declared unconstitutional.
17. Mr. Prince Kanu asserted that Mr. Nnamdi Kanu believes that the government of Kenya had a duty to protect him as a British citizen having been allowed to enter the country and being lawfully in the country.

## **Response**

18. The respondents opposed the petition through grounds of opposition, a replying affidavit sworn by Dr. (Eng). Karanja Kibicho, CBS and written submissions.

## **Grounds of opposition**

19. In the grounds of opposition, the respondents contended that the petitioner had not satisfied the constitutional threshold in *Anarita Karimi Njeru v Republic* [1979] eKLR; there were no extradition proceedings to show that the government of Kenya was responsible for the extradition and there is no OB record from any police station within the country to show that Mr. Nnamdi Kanu was lawfully arrested and detained for purposes of commencing extradition proceedings.



20. The respondents maintained that the petitioner had failed to demonstrate with precision that Mr. Nnamdi Kanu was a person of interest by law enforcements agents in Kenya. They asserted that some of the issues in the petition are on actions that took place outside the territorial jurisdiction of Kenya.
21. It was the respondents' view, that the petition is premised on hearsay because there is no evidence to show that Mr. Nnamdi Kanu was declared a prohibited immigrant under section 33 of the [Kenya Citizenship and Immigration Act](#) 2011, or that a deportation order was issued under section 43 of the [Act](#).
22. The respondents stated that the East African Tourist Visa issued in Kigali, Rwanda was valid from 13<sup>th</sup> March 2021 to 11<sup>th</sup> June 2021. It was not possible for Mr. Nnamdi Kanu to be in the country on the same visa on 19<sup>th</sup> June 2021. It is the respondents' position that the petitioner had failed to demonstrate that it was police officers who arrested Nnamdi Kanu or that he was in custody of the Kenya authority thus, the petition does not raise a cause of action against the respondents.

### Replying affidavit

23. It was deposed in the replying affidavit that the allegations on Mr. Nnamdi Kanu's arrest, detention and extradition were facts not within the petitioner's own knowledge. According to the respondents, since 17<sup>th</sup> July 2019 Mr. Nnamdi Kanu had visited and departed Kenya on several occasions. His last date of arrival was 12<sup>th</sup> May 2021 and there is no evidence that he left the country.
24. The respondents asserted that the persons who allegedly arrested Mr. Nnamdi Kanu had not been disclosed in the petition; neither had the place of his detention. The corporation between the Kenyan and Nigerian Governments as well as alleged extradition had not been demonstrated and proved. They urged the court to dismiss the petition with costs.

### Submissions

25. The petition was disposed of through written submissions with brief oral highlights.

### Petitioner's submissions

26. The petitioner's counsel submitted relying on the decision in [Kituo Cha Sheria & 8 others v Attorney General](#) [2013] eKLR that the subject having been within the territory of Kenya at the time, was entitled to constitutional protection under the [Constitution](#) of Kenya.
27. It was argued that the circumstances under which Mr. Nnamdi Kanu was removed from Kenya constituted a violation of his rights and fundamental freedoms guaranteed by the [Constitution](#) of Kenya; a breach of due process on extradition provided for in the [Extradition \(Commonwealth Countries\) Act](#) and the [Extradition \(Contiguous and Foreign Countries\) Act](#). It also violated international law.
28. The petitioner cited article 21(1) of the [Constitution](#) and the decision in [C. K. \(A Child\) through Ripples International as her guardian & Next friend & 11 others v Commissioner of Police/ Inspector General of the National Police Service & 3 others](#) [2013] eKLR and [Rosbanali Karmali Khimji Pradhan v Attorney General](#) [2004] eKLR for the argument article 21(1) places a duty on the State and its organs to promote, protect and fulfil the rights and fundamental freedoms in the Bill of rights.
29. It was submitted, that Mr. Nnamdi Kanu having lawfully entered Kenya, was entitled to the protections and privileges afforded by the [Constitution](#) of Kenya despite not being a citizen of Kenya. Reliance was placed on the decision in [S N v Cabinet Secretary for the Ministry of Interior and Co-](#)



ordination of National Management Services, Director General, Kenya Citizens & Foreign National Management Services & Attorney General [2016] eKLR.

30. The petitioner again submitted that the conduct of the respondents and their agents in the disappearance of Mr. Nnamdi Kanu from Kenya fell outside their constitutional mandate and duty as envisaged under Executive Order No. 1 of 2023 and sections 24, 28 and 35 of the National Police Service Act because the 1<sup>st</sup> and 2<sup>nd</sup> respondents could not account for Mr. Nnamdi Kanu's removal from Kenya after his lawful entry into the country. The 3<sup>rd</sup> respondent was complicit in the carrying out of an act of rendition in violation of the Constitution and laws of Kenya.
31. The petitioner relied on articles 10, 24 and 29 of the Constitution; article 12(4) of the African Charter on Human and People's Rights and article 13 of the International Convention on Civil and Political Rights for the contention that these provisions require strict adherence to the laws of Kenya pertaining to the process of removing a person from the territory of Kenya and submitting him to the authority and jurisdiction of another state.
32. The petitioner relied on sections 11(1) and 12 of Extradition (Foreign and Contiguous Countries) Act Cap 76 and the decision in Gunter Grochowski v Attorney General & Commissioner of Prisons [2009] KEHC 1738 (KLR), to argue that due process on extradition was not followed. There was no warrant of arrest issued by a Nigerian court and endorsed by a magistrate in Kenya. Additionally, there was disregard of, and non-compliance with, sections 3, 5, 6, 7, 8, and 9 of the Extradition (Commonwealth Countries) Act. The court was urged to allowed as prayed.

### **Respondents' submissions**

33. The respondents submitted that the petition did not meet the threshold in Anarita Karimi Njeru v Republic [1979] eKLR. They also argued relying on rule 10 (2) (c) of the Protection of Rights and Fundamental Freedoms, Practice and Procedure Rules, 2013, (Mutunga Rules), that the basis of the petitioner's allegations was hearsay information from Mr. Nnamdi Kanu's personal secretary and Nigeria's Attorney General thus, of no probative value.
34. The respondents further submitted that the affidavits sworn on 10<sup>th</sup> September 2021 and 28<sup>th</sup> March 2023 by Kingsley Kanunta Kanu and Prince Kanu, respectively, amount to hearsay because none of them witnessed the alleged events as deposed in the affidavits.
35. The respondents maintained that no affidavit had been sworn by any authorized officer from Nairobi Hospital to confirm the authenticity of annexure KK4 (admission form) attached to the supporting affidavit. Dr. Kariuki did not also swear an affidavit to support the petitioner's averments. It was also not shown that Mr. Nnamdi Kanu's private secretary and the doctor were incapable of giving evidence or that their attendance could not be procured without delay or expense.
36. The respondents further argued that no report of a missing person was made at any police station and there was no application for Harbeaus corpus filed in court. They relied on the decision in Reuben Mwangi v Director of Public Prosecutions & 2 others; UAP Insurance & another (Interested Parties) [2021] eKLR.
37. The respondents again argued that while section 24 (e) and (g) of the National Police Service Act confers on the 3<sup>rd</sup> respondent power to detect, investigate and prevent crime, that mandate is only discharge or exercised within the confines of the Constitution and the law. It is the respondents' duty to investigate if and when a complaint is made. They relied on the decision in Republic v Commissioner of Police & another Ex Parte Michael Monari & another [2012] KEHC 4595 (KLR).



38. The respondents relied on article 245 (4) (a) of the *Constitution* to argue that criminal investigation is the exclusive mandate of the National Police Service and this court does not investigate the veracity of the assertions made in the petition. They maintained that the petitioner had not sought information from the 2<sup>nd</sup> and 4<sup>th</sup> respondents under article 35 of the *Constitution*. The petitioner did not also make inquiries in line with article 47 of the *Constitution*. They urged that the petition be dismissed.

### **Determination**

39. Upon considering the petition and arguments by parties, the issues that arise for determination are whether Mr. Nnamdi Kanu's rights were violated and, depending on the answer to this issue, the appropriate relief to grant.

### **Violation of rights**

40. The petitioner argued that Mr. Nnamdi Kanu's right and fundamental freedoms were violated because of the manner of his arrest, detention, torture and transfer from Kenya. The respondents denied the claim of violation of rights and fundamental freedom. To determine this issue, consideration of the facts on this petition is necessary.
41. Some facts in this petition are undisputed while others are. The undisputed facts are that Mr. Nnamdi Kanu is a British citizen of Nigerian descent. He lawfully entered Kenya on an East African Tourist Visa from Kigali Rwanda on 12<sup>th</sup> May 2021 through JKIA.
42. The following facts are however disputed. According to the petitioner, Mr. Nnamdi Kanu was arrested/abducted on 19<sup>th</sup> June 2021 at the JKIA by people said to be abductors. He was taken to a house where he was chained, tortured and subjected to inhuman and degrading treatment. He was denied basic necessities, including food and water. He was rarely given water to drink or bath and was denied medication despite request. After 8 days in captivity, on 27<sup>th</sup> June 2021, Mr. Nnamdi Kanu was driven to JKIA put on a plane and smuggled out of Kenya to Abuja, Nigeria, arriving in the evening of the same day where he was detained at the Nigerian National Intelligence Agency Headquarters, without any extradition order.
43. According to the petitioner, on 29<sup>th</sup> June 2021, the Attorney General of the Federal Government of Nigeria, addressed a press conference and revealed that Mr. Nnamdi Kanu had been rearrested through the collaborative efforts of the Nigerian intelligence and security services so that he could be tried for the charges he was facing before disappearing while on bail. It was on that basis that the petitioner stated that Mr. Nnamdi Kanu believes that having been allowed to enter the country and being in the country lawfully, the government of Kenya had a duty to protect him but failed.
44. The respondents' position was that they were not aware of the claim that Mr. Nnamdi Kanu had been arrested or abducted, detained incommunicado, tortured and taken out of the country to Nigeria. They denied that the government of Kenya was responsible for Mr. Nnamdi Kanu's transfer out of the country. The respondents maintained that there were no extradition proceedings to justify the government of Kenya's responsibility in Mr. Nnamdi Kanu's extradition; there is no OB record from any police station in the country to show that he had been lawfully arrested and detained for purposes of extradition proceedings. According to the respondents, since 19<sup>th</sup> July 2019 Mr. Nnamdi Kanu had entered and departed from Kenya on several occasions, and his last date of arrival was 12<sup>th</sup> May 2021 and there was no evidence that he left the country.
45. The respondents took the view, that the petition is based on hearsay because there was no evidence that Mr. Nnamdi Kanu was declared a prohibited immigrant under section 33 of the *Kenya Citizenship and*



Immigration Act, or that a deportation order was issued under section 43 of the Act. The depositions in the affidavits were made by persons who did not witness the events complained of.

46. The respondents maintained that the East African Tourist Visa issued in Kigali Rwanda was valid from 13<sup>th</sup> March 2021 to 11<sup>th</sup> June 2021 and, therefore, it was not possible for Mr. Nnamdi Kanu to be in the country on the same visa on 19<sup>th</sup> June 2021. The respondents' position was that the petitioner had failed to show that it was Kenyan police officers who arrested Mr. Nnamdi Kanu or that he was in the custody of the authorities in Kenya.

### **Presence in Kenya**

47. The undisputed facts in this petition are clear that Mr. Nnamdi Kanu entered Kenya lawfully on an East African Tourist visa from Kigali, Rwanda and stayed in the country for some time. The respondents admitted this fact, stating that his last arrival in the country was on 12<sup>th</sup> May 2021. They also stated that there was no evidence that he had left the country. The respondents admitted, therefore, that there is no record of Mr. Nnamdi Kanu's lawful exit from the country.
48. The respondents' position that there is no record that Mr. Nnamdi Kanu had left Kenya, seems to give credence to the petitioner's assertion that Mr. Nnamdi Kanu was abducted while in Kenya and taken out of the country. If that be not the case, the question then is; since Mr. Nnamdi Kanu entered the country lawfully on 12<sup>th</sup> May 2021 and, had not left Kenya, where is he?
49. Mr. Nnamdi Kanu having entered Kenya lawfully, he had the right to remain in the country for the period his visa allowed him to stay and in the event the visa expired, he knew what to do to extend his stay in the country. While in Kenya, Mr. Nnamdi Kanu enjoyed the protection offered by the Constitution and laws of Kenya. He was also subject to the laws of Kenya in the event he committed a crime. His presence in the country was indeed acknowledged by the respondents.
50. The petitioner pleaded, averred and deposed, that Mr. Nnamdi Kanu was abducted on 19<sup>th</sup> June 2021 at the JKIA by people said to be security agents from Nigeria and detained incommunicado for 8 days in a house in Nairobi. He was there after taken to JKIA and put on a plane to Abuja, Nigeria. On arrival, he was taken to that country's Intelligence Services Agency Headquarters. The respondents of course denied being aware of the alleged abduction or that Kenya was involved. The respondents again maintained that indeed, Mr. Nnamdi Kanu arrived in Kenya on 13<sup>th</sup> May 2021 but there was no evidence that he had exited the country.
51. The respondents' assertion that there was no evidence that Mr. Nnamdi Kanu had left the country would imply that he was still in Kenya. If that were the case, the respondents had the ability and means to find out where Mr. Nnamdi Kanu is. Prince Kanu deposed that he met Mr. Nnamdi Kanu on 27<sup>th</sup> July 2021 at the Intelligence Security Services Headquarters in Abuja, Nigeria where Mr. Nnamdi Kanu was being detained and gave him information on how he was abducted and taken to Nigeria.
52. The information deposed by Prince Kanu corresponded with what the petitioner stated in the petition on how Mr. Nnamdi Kanu drove to JKIA on 19<sup>th</sup> June 2021 only to be abducted while at the Airport precincts. The petitioner gave details, including the time Mr. Nnamdi Kanu was abducted.
53. JKIA is a high security area and nothing can happen at the Airport without being detected. If the respondents had interest to know what had happened, they would have known. The respondents, one of whom is the Cabinet Secretary for interior, another the officer commanding Police Station at JKIA and The Attorney General, the principal legal advisor to the national government, would know what happened at country's premier facility if they wanted to. However, even with the averments and depositions that Mr. Nnamdi Kanu was abducted while at one of the most secure facilities in the



country, all the respondents could say was that the depositions were hearsay, while admitting that Mr. Nnamdi Kanu entered the country but there was no evidence that he had left.

### **Exit from the country**

54. I have read the affidavit sworn by Prince Kanu, a brother to Mr. Nnamdi Kanu. He deposed that he met Mr. Nnamdi Kanu in Abuja, Nigeria where he was being detained. Mr. Nnamdi Kanu told him what had happened and how he was abducted from Nairobi Kenya by Nigerian security agents and taken to Abuja, Nigeria. Prince Kanu deposed to facts as told to him by Mr. Nnamdi Kanu who was being held in detention and could not therefore swear his own affidavit. In other words, the facts deposed to by Prince Kanu were on information given to him personally by Nnamdi Kanu himself. In that respect, the facts deposed in the affidavit could not be hearsay.
55. The petitioner was also forthright that on 19<sup>th</sup> June 2021 at 12 noon Mr. Nnamdi Kanu was taken to JKIA, put on a plane and taken to Abuja, Nigeria, arriving in the evening of the same day. The petitioner's position, just like that of Prince Kanu, was that Mr. Nnamdi Kanu exited Kenya through JKIA after he was forced on to a plane and taken to Abuja, Nigeria where he was detained. From these facts, there can be doubt that just like no one can enter the country through JKIA without documents or being detected, no one can depart through the airport, JKIA for that matter, without documents and or the knowledge of those responsible for the security of the Airport and board a plane without being detected.
56. The respondents did not dispute the fact that Mr. Nnamdi Kanu was taken out of Kenya through JKIA. Their position was that there was no deportation order; there was no record at any police station showing that he had been lawfully arrested and that the government was not responsible. The abduction and incommunicado confinement were not lawful acts and, therefore, there could be no record on acts not sanctioned by law given the respondents' admission that there was no deportation order in respect of Mr. Nnamdi Kanu. I find and hold Mr. Nnamdi Kanu, having not left the country voluntarily, he was forcibly removed from Kenya and that is why there is no record regarding his departure or exit from Kenya.

### **Violation of rights**

57. The next and most important issue is whether Mr. Nnamdi Kanu's rights were violated. The petitioner argued that Mr. Nnamdi Kanu was abducted without warrant and kept in a secluded house within Nairobi where he was chained, tortured and treated in an inhuman and degrading manner for 8 days. During the period, Mr. Nnamdi was denied food, water and access to medication despite his health condition. The respondents denied knowledge of these acts.
58. Mr. Nnamdi Kanu having entered Kenya lawfully, was subject to the protection guaranteed by the Constitution and laws of Kenya. He was to be treated as required by the Constitution and laws of Kenya since his rights were recognised and protected by the Constitution and, in particular, the Bill of Rights. It is in that respect that article 19(2) of the Constitution provides that the purpose of recognising and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realisation of the potential of all human beings. Clause (3) thereof is also clear that rights and fundamental freedoms in the Bill of Rights "belong to each individual and are not granted by the state" and "are subject only to the limitations contemplated in this Constitution."
59. Article 20(1) states even more succinctly that "the Bill of Rights applies to all law and binds all State organs and persons" and that (2) "Every person shall enjoy the rights and freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedoms." the



- Constitution is clear that the Bill of Rights binds not only state organs, but every person within the territory of Kenya. In that regard, Mr. Nnamdi Kanu's rights were recognized and protected by our Bill of Rights. He had the right to enjoy those rights and fundamental freedoms to the greatest extent possible while in Kenya.
60. The import of the above constitutional provisions in so far as this petition is concerned, is that they fully applied to Mr. Nnamdi Kanu to the full extent as soon as he entered and remained within the territory of Kenya whether lawfully or not. He was to enjoy his rights and fundamental freedoms and was to be treated fairly and justly as required by the Constitution and the law. If, for any reason, he was to be arrested, the arrest had to be lawful. Those arresting him had a constitutional duty to inform him the reason for the arrest and had to produce him in a court of law in Kenya within 24 hours following the arrest.
  61. Article 51(1) states in plain language that a person who is detained, held in custody or imprisoned under the law, "retains all the rights and fundamental freedoms in the Bill of Rights, except to the extent that any particular right or fundamental freedom is clearly inconsistent with the fact that the person is detained, held in custody or imprisoned." Article 51(1) contemplates only situations where the person has been subjected to due process and is being held lawfully and, even then, the person retains all his rights except those that he may not enjoy by reason only, of being in lawful custody.
  62. In the case of Mr. Nnamdi Kanu, the averments in the petition and depositions in the affidavits show that he was abducted without warrant, detained, tortured and later taken out of the country without any court order to that effect. The respondents admitted that there was no record in any police station that Mr. Nnamdi had been lawfully arrested. They also admitted that there was no deportation order issued by a court in Kenya. They did not argue that there was a warrant or order issued by any other court outside Kenya or even a request from any country to surrender or extradite Mr. Nnamdi Kanu from Kenya. That being the case, no one had constitutional or legal mandate and power to arrest Mr. Nnamdi Kanu within the territory of Kenya except those authorized by the laws of Kenya, namely; officers from the National Police Service. Even then, they had to do so in compliance with the constitutional standards of human rights and fundamental freedoms as required by article 244 (c) of the Constitution.
  63. The government of Kenya through the respondent, did not show that there was reason for Mr. Nnamdi Kanu's arrest in Kenya and if there was such reason, he was to be accorded due process and was not to be treated in a manner that violated his rights and fundamental freedoms since article 20(2) of our Constitution recognizes rights of "every person" so long as the person is within the territory of Kenya and abides by the laws of Kenya regardless of his citizenship. This position was reiterated in Moses Tengenya Omweno v Attorney General [2018] eKLR, that one is entitled to due process irrespective of his citizenship.
  64. Article 12(1) of the African Charter on Human and Peoples Rights also provides that "Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law." In that respect, Mr. Nnamdi Kanu had the right to reside in and move around Kenya for the period he was in the country as long as he did not break the law.
  65. When the Constitution speaks, it does so not as mere suggestions, but commands whose compliance is without question. The Court of Appeal affirmed this position in Attorney General & 2 others v Kituo Cha Sheria & 7 others [2017] KECA 773 (KLR) that "rights have inherent value and utility and their recognition, protection and preservation is not an emanation of state largesse because they are not granted, nor are they grantable, by the State."



66. The court emphasized that under Article 20, the Bill of Rights applies to all law and binds all State organs and all persons so that no one is exempt from its dictates and commands. This is so, because rights attach to all persons by virtue of their being human and respecting rights is not a favour done by the state or those in authority. They merely follow a constitutional command to obey.
67. the Constitution enjoins every person to act lawfully in so far as rights and fundamental freedoms are concerned, bearing in mind the theme of maximization and expansion in matters enjoyment of rights and fundamental freedoms.
68. The facts of this petition and more so, the way Mr. Nnamdi Kanu was treated point to clear pattern of violation of the Constitution and the law right from the time he was abducted; held incommunicado and forcibly removed from the territory of Kenya. The government of Kenya owed Mr. Nnamdi Kanu a duty to respect and protect his rights and fundamental freedoms, including his personal security guaranteed by article 29 of the Constitution. If he was to be arrested, there had to be justifiable cause for doing so, and even then, he was to be subjected to due process.
69. Those involved, were required to act within the tenets of the rule of law and human rights foundational values in our Constitution. The rule of law requires that all public power be sourced in law, which means that state actors should exercise power within the formal bounds of the law. (Law Society of South Africa v Minister of Transport [2010] ZACC 25.
70. The abduction of Mr. Nnamdi Kanu; the way it was done without due process, his incommunicado confinement while in chains, his treatment, including being denied basic necessities such as food and water; denying him access to medication despite request, were acts that are outlawed by the Constitution of Kenya 2010. In that regard, I find and hold, that there was gross violation of Mr. Nnamdi's rights and fundamental freedoms.

### **Liability**

71. This brings us to the issue of who should be held liable for the violations. The actions that led to the violation of Mr. Nnamdi Kanu's rights and fundamental freedoms were committed within the territory of Kenya, the country that had the duty to respect, uphold and protect his fundamental rights and freedoms. The respondents denied knowledge of Mr. Nnamdi Kanu's abduction; his incommunicado confinement; torture and eventual forcible removal from the territory of Kenya. They maintained that the government of Kenya was not aware and was not involved.
72. If the respondents' assertions were to be believed, it would only show how perilous we stand as a country: That foreign agents can enter the country; conduct clandestine operations; abduct people who are lawfully in the country; hold them incommunicado, torture them and take them out of the country through some of the most secure national installations without the knowledge of the government and those responsible for the security of the country.
73. It is implausible that Mr. Nnamdi Kanu could have been abducted in broad daylight; held incommunicado in Kenya for 8 days; put on a plane at JKIA and taken out of the country without the knowledge of the government and those in charge of the security of the country, including the Airport. This court cannot accept that such acts could take place in an independent and democratic state governed by the rule without the knowledge of those in government.
74. It is my finding and, I so hold, that the covert operation to abduct and forcibly remove Mr. Nnamdi Kanu from the territory of Kenya, was done with the Knowledge, connivance, complicity and tacit approval of not only the government of Kenya, but also those in charge of the security of the country. The operation having been executed without any attempt to comply with the Constitution and the



laws of Kenya, the government of Kenya failed to respect, uphold and defend the Constitution and the law. Instead, it allowed violation of Mr. Nnamdi's rights and fundamental freedoms in breach of fundamental values of the rule of law, human rights and accountability for which the government must be held liable.

### **Appropriate relief**

75. Having determined that Mr. Nnamdi Kanu's rights and fundamental freedom were grossly violated, the next issue is what relief should the court grant.
76. This petition was brought seeking redress for the violation of Mr. Nnamdi Kanu's rights and fundamental freedoms enshrined in the Bill of Rights, with the belief that this court as the protector of the Constitution and the fundamental values embedded in it, namely; the rule of law, fundamental justice and preservation of the democratic process will respond and redress the violations.
77. Article 23(3) of the Constitution vests on this Court, jurisdiction to grant appropriate reliefs to redress violations of the rights in the Bill of Rights. The essence of such relief must be to ensure that the rights enshrined in the Constitution are protected and enforced. (*Fose v Minister of safety and Security* 1997 ZACC 6.
78. Once the court finds that rights and fundamental freedoms have been violated, it has an obligation to grant an appropriate relief as required by article 23(3) of the Constitution. In cases of violation of the Constitution and fundamental freedoms, the court must consider whether an award damages as compensation towards the violation is the appropriate remedy. The state may be required to pay damages for making decisions that are plainly unconstitutional, are in bad faith or an abuse of power.
79. The petitioner has demonstrated that indeed, Mr. Nnamdi Kanu's constitutional rights and freedoms were violated by the same state that is enjoined by the Constitution to respect, protect and preserve those rights. In *Tinyefuze v Attorney General of Uganda*, (Constitutional Petition No. 1 of 1996) [1997] UGCC 3, the Constitutional Court of Uganda stated that if a petitioner succeeds in establishing breach of a fundamental right, he is entitled to the relief in exercise of constitutional jurisdiction as a matter of course.
80. In *Canada (Attorney General) v Power* 2024 SCC 26, Wagner, CJ stated that section 24(1), of the Charter (equivalent to our article 23(3)(e), provides a personal remedy that is specific to the violation of an applicant's rights; a unique public law remedy against the state that should not be assimilated to the principles of private law remedies. An award of damages as remedy against the state for exceeding its legal powers has long been recognized as an important requirement of the rule of law.
81. Courts grant compensation in cases of violation of rights and fundamental freedoms as a deterrence against similar violation in the future. This fact was stated by ML Pilkington in an article titled "*Damages as a Remedy for Infringement of the Canadian Charter of Rights and Freedoms*" [1984] 62 Canadian Bar Review 517 thus:

[T]he purpose of awarding damages in Constitutional matters should not be limited to simple compensation, but such an award ought, in proper cases, to be made with a view to deterring a repetition of breach or punishing those responsible for it or even securing effective policing of the Constitutionally enshrined rights by rewarding those who expose breach of them with substantial damages.
82. Awarding compensation should also send a clear message that rights have a value; they are for enjoyment and not curtailment and there is no right without a remedy. It should also remind the state



and its agents that rights and fundamental freedoms must be respected, enhanced and protected as demanded by the Constitution. Their violation will, and must, attract compensation.

83. In determining whether damages are an appropriate and just remedy, the court has to consider whether a constitutional right has been breached; whether damages would fulfil one or more of the related functions of compensation, that is; vindicating the right, or deterring future breaches and whether there is alternative remedy that would be effective than an award of damages, and the appropriate quantum of damages. In this petition, rights and fundamental freedoms having been violated, it was not demonstrated that there would be another effective remedy than an award of damages,

### Quantum

84. The petitioner sought damages for the violations. Mr. Nnamdi Kanu was abducted on 19<sup>th</sup> June 2021, held incommunicado, tortured and subjected to inhuman and degrading conditions for 8 days in violation of the Constitution and the law before he was taken out of the country again without following the law. He is entitled to damages.

85. When considering the level of damages to award, the court should pay attention to the words of Patterson, JA. in Fuller v A-G of Jamaica (Civil Appeal 91/1995, unreported) that:

Where an award of monetary compensation is appropriate, the crucial question must be what is a reasonable amount in the circumstances of the particular case. The infringement should be viewed in its true perspective as an infringement of the sacrosanct fundamental rights and freedoms of the individual and a breach of the supreme law of the land by the state itself. But that does not mean that the infringement should be blown out of all proportion to reality nor does it mean that it should be trivialized.

What his Lordship, Patterson, JA meant was that compensation should be commensurate with the violations since once rights are violated, they cannot be restored. Any compensation is merely of palliative value.

86. In Eunice Nganga v Higher Education Loans Board & 2 others [2021] eKLR, the court awarded general damages of Kshs.10,000,000 for infringement of fundamental rights and freedom. In Peter M. Kariuki v Attorney General [2014] eKLR, the Court of Appeal awarded Kshs. 15,000,000 general damages for violation of constitutional rights, while in Miguna Miguna v Fred Okengo Matiang'i Cabinet Secretary, Ministry of Interior and Coordination of National Government & 6 others; Kenya National Commission on Human Rights (Interested Party) [2018] eKLR, the court awarded Kshs. 7,000,000 for violation of rights and fundamental freedoms.

87. Taking these awards into account, the nature of violations herein and considering circumstances under which the violations occurred, I consider an award of Kshs. 10,000,000 fair and reasonable.

### Conclusion

88. Having considered the pleadings and arguments by parties, the decisions relied on, the Constitution and the law, I come to the following conclusions;

89. First, the government of Kenya violated the Constitution and Mr. Nnamdi Kanu's rights and fundamental freedoms. Having entered Kenya lawfully he was subject to the protection offered by the Constitution of Kenya 2010 and the government of Kenya had an obligation to uphold and protect his rights and fundamental freedoms.



90. Mr. Nnamdi was however abducted, kept in solitude confinement, tortured and denied food and medication a breach of basic rights. He was chained, humiliated, ridiculed and held in contempt and later forcibly removed from Kenya without following the law in violation of his rights and fundamental freedoms for which the government of Kenya is liable.

### **Disposal**

91. Based on the above conclusions, the court makes the following declarations and orders it considers appropriate;
1. A declaration is hereby issued that the abduction of Mr. Nwannekaenvi Nnamdi Kenny Okwu-Kanu; holding him in incommunicado confinement, torturing him and denying him food, water, medication and other basic necessities was a violation of his rights and fundamental freedoms.
  2. A declaration is hereby issued that the abduction and subsequent forcible removal of Mr. Nwannekaenvi Nnamdi Kenny Okwu-Kanu from Kenya to Nigeria was in violation of the laws of Kenya; his rights and fundamental freedoms, including freedom of movement and security of the person guaranteed by the *Constitution* of Kenya, 2010 and, therefore, unconstitutional and illegal.
  3. An order for compensation is hereby issued awarding Mr. Nwannekaenvi Nnamdi Kenny Okwu-Kanu general damages of Kshs 10,000,000 against the Attorney General of Kenya on behalf of the government of Kenya for the violation of Mr. Nwannekaenvi Nnamdi Kenny Okwu-Kanu's constitutional rights and fundamental freedoms.
  4. The Attorney General shall also pay costs of the petition and interest.

**DATED AND DELIVERED AT NAIROBI THIS 24<sup>TH</sup> DAY OF JUNE 2025**

**E C MWITA**

**JUDGE**

