



**CV v DI & another (Miscellaneous Petition 004 of 2025) [2025] KEHC 12488 (KLR)
(Constitutional and Human Rights) (14 August 2025) (Judgment)**

Neutral citation: [2025] KEHC 12488 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
MISCELLANEOUS PETITION 004 OF 2025**

AB MWAMUYE, J

AUGUST 14, 2025

**IN THE MATTER OF ARTICLES 21(1), 23(1), 23(3), 43(1), 165(3)
(D), 258 AND 259(1)(B) OF THE CONSTITUTION OF KENYA, 2010**

AND

**IN THE MATTER OF SECTIONS 12(1)(B), 22(1)(G)(III) AND 24(1)
OF THE KENYA CITIZENSHIP AND IMMIGRATION ACT, 2011**

BETWEEN

CV PETITIONER

AND

DI 1ST RESPONDENT

ML 2ND RESPONDENT

JUDGMENT

1. Vide Petition dated 20th January 2025, the Petitioner avers that the 1st Respondent was married to the Petitioner’s mother when she was 6 years old and took the Petitioner in as his step – daughter however, after the demise of the Petitioner’s mother, the 1st Respondent remarried the 2nd Respondent herein. The Petitioner asserts that that the 1st and 2nd Respondents used their national identity cards to register for the Petitioner’s birth certificate and Kenyan ID but have denied the Petitioner their Identity cards to allow her make an application for a passport registration claiming that she will travel out of the country, which they are opposed to.
2. The Petitioner therefore approached this Honourable Court seeking the following orders:
 - a. An order be issued to the 1st and 2nd Respondent compelling them to provide the Petitioner with their Kenyan Identity Cards;



- b. An order be issued compelling the 1st Respondent to issue the Petitioner with her late mother's burial permit and death certificate;
 - c. An order be issued to the department of civil registration of birth certificate to remove the 2nd Respondent from the Petitioner's birth certificate;
 - d. Costs of the Petition.
3. The Petitioner filed an Affidavit in support of the Petition dated 20th January 2025 and deponed by Caren Vienda, the Petitioner herein who equally filed a witness statement of even date. She averred that she was raised by her mother till she was six years old when her mother passed on and she was left under the care of her step father since she did not know her real father.
4. The Petitioner further avers that her step father remarried the 2nd Respondent herein when their relationship changed once she completed high school.
5. She asserts that the Respondents chased her away from her home one Sunday after coming back from church and she thereafter found someone who took care of her. Thereafter, she decided to apply for a passport in order to travel and look for a job outside the country. She contends that her parents, the 1st and 2nd Respondents refused to give her copies of their identity card.
6. The Petitioner states that she went to the chief to get assistance but none was forth coming thus she decided to approach this Honourable Court for assistance.
7. The Respondents filed a response to the Petition where they averred that they are not opposed to the Petition and have no objection to the orders sought by the Petitioner, however, they are praying for further orders as follows:
 - a. That this Court issues further orders directing the Registrar of births and deaths to remove the Respondent's names from the Petitioner's birth certificate and any other official records where applicable;
 - b. That this court issues a further order confirming that the 1st and 2nd Respondents have no legal or parental obligations towards the Petitioner and shall not bear any future liability arising from their previous listing in her documents;
 - c. That this court issues an order directing all relevant government agencies, including the Department of Immigration and Civil Registration, to ensure that any applications made by the Petitioner in the future do not require the involvement of the 1st and 2nd Respondents.
 - d. Each party to bear their own costs in this matter.
8. The Respondents contend that they do not wish to be associated with the Petitioner's documentation moving forward as their inclusion could expose them to legal, financial, or other forms of liability in the future.
9. The instant Petition was canvassed by way of written submissions but only the Petitioners filed their submissions.

Petitioner's Submissions

10. The Petitioner submitted that the Petition is not opposed and the only point of divergence lies with the Respondents' desire to dissociate themselves from the Petitioner's documentation moving forward.



In that endeavor they have prayed for an Order directing all relevant agencies to expunge their names from their Petitioner's documentations.

11. Reliance was placed on Section 15 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 and submitted that if the Respondents had any reliefs they wished to pursue, the proper procedure would be to file a cross-petition that way the Petitioner would have had a fair chance to respond.
12. The Petitioner submitted that although the Respondents say they do not oppose the Petition, they are asking for substantive orders including to have their names removed from the Petitioner's documentation and that sort of relief cannot be casually inserted into a response. The same should be properly pleaded through a Cross-Petition in line with rule 15(3) as read together with Rule 10(2) of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and procedure Rules, 2013. Reliance was similarly placed on the case of John Harun Mwau & 3 others v Attorney General & 2 others [2012] eKLR and the case of West Kenya Sugar Company Limited v Agriculture Fisheries & Food Authority & 11 others [2016] eKLR.
13. She argues that the Respondents appear not to appreciate the weight and significance of a child's constitutional right to identity, which includes the right to carry their father's name, whether biological or adoptive and that is not a right that is to be granted or withdrawn at the whims of a parent or guardian, but one that flows directly from *the Constitution*. She relied on the case of Re R (a Child) (Surname Using Both Parents') [2001] EWCA Civ 1344.
14. She contends that the Respondents seek in essence to retroactively, rewrite the Petitioner's Identity, to erase her name from official records and by extension from her life and that that endeavor does not only offend the principles of Natural Justice, but also strikes at the heart of the Petitioner's dignity, identity and sense of belonging therefore this Honourable Court ought to reject the same firmly and unequivocally.

Analysis And Determination

15. I have considered the issues raised in the Petition and the Response to the Petition together with the Petitioner's submissions and the decisions relied on. The issue that arises for determination is whether the orders sought by the Respondent in the Response to the Petition should be allowed.
16. It is trite that a Defence and Counter Claim is not available to the Respondent under the Constitutional Petition as it is under the Civil Procedure Rules 2010 but under *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 commonly known as the Mutunga Rules were Section 15(3) states thus: -

“The Respondent may file a Cross-Petition which shall disclose the matter set out in rule 10(2).”

17. The Court of Appeal in *Kivanga Estates Limited v National Bank of Kenya Limited* (2017) eKLR held that:

“It is not for nothing that the jurisdiction of the court to strike out pleadings has been described variously as draconian, drastic, and discretionary, a guillotine process, summary and an order of last resort. It is a powerful jurisdiction, capable of bringing a suit to an end before it has even been heard on merit, yet a party to civil litigation is not to be deprived lightly of his right to have his suit determined in a full trial. The rules of natural justice require that the court must not drive away any litigant from the seat of justice, without a



hearing, however weak his or her case may be. The flip side is that it is also unfair to drag a person to the seat of justice when the case is brought against him is clearly a nonstarter. The exercise of the power to strike out must balance these two rival considerations.”

18. Since striking out pleadings is such a draconian act, it is only resorted to in plain cases which can be adduced from the pleadings only. Although Article 159(2)(d) of *the Constitution*, 2010 requires that the court decides matters without undue regard to technicalities, the issue herein is not a technical issue. It is a serious issue of procedural requirement of law.
19. As provided for under the provisions of rules 10(2) and 15(3) of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, that the Respondents may file a Cross-Petition and raise the same issues they may wish as though it was a Counter Claim.
20. I am guided by the case of *Abdisalam Hassan Ismail & 2 others v Kenya Railways Corporation & 3 others* [2015] eKLR where an application was made under Order 45 of the Civil Procedure Rules requesting the Court to review one of its decisions. The Court stated in making a determination that: -

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- “13. I reject the Petitioner’s Submission that the application is incompetent for having been brought under the provisions of the *Civil Procedure Act*. I hold the view, that technicalities of procedure should not be entertained in matters of constitutional rights. I put reliance in the case of *Vallerie Namtilu Wafula & Another V Kenya National Union Of Teachers (knut) & 2 Others* eKLR where it was held as follows

“It is the second Respondent’s contention that in Petitions of this nature the Civil Procedure Rules have no place and therefore any application expressed to be brought under the latter is incompetent. First and foremost, it must be noted that under Article 22(3), the Chief Justice is enjoined to make rules inter alia providing for the court proceedings which shall satisfy the criteria that the court, while observing the rules of natural justice, shall not be unreasonably restricted by procedural technicalities. Although the said rules are yet to be promulgated (the rules have since been promulgated hereinbefore referred to as *Mutunga Rules*), the spirit of the foregoing provision together with the provisions of Article 159(2) (d) is clear that technicalities of procedure, more particularly in application brought for the enforcement of the Bill of Rights, should not be entertained. Even prior to the promulgation of the current Constitution, the relevance of the Civil Procedure Rules was considered in *Meme v Republic* [2014] 1 EA 124; [2004] 1 KLR 637, in which Rawal J (as she then was), Njagi J & Ojwang’ AJ (as he then was) held that at a very basic level the Court is empowered to draw from the Civil Procedure Rules in its exercise of powers under *the Constitution* of Kenya (Protection of Fundamental Rights and Freedoms of the Individual) Practice and Procedure Rules and by virtue of Order 1 Rule 10(2). This decision should put the second Respondent’s position on the applicability of Civil Procedure Rules to Constitutional Petitions to rest.”

21. In the instant petition however, I agree with the argument by the Petitioner that in order for the Respondents to pursue any further reliefs, they are required to bring their grievances to this Court in the proper procedure being a Cross-Petition to enable the Petitioner a fair chance to respond to any allegations brought forward. To try and squeeze in reliefs through a response to a petition is in my view an abuse of the court process that cannot be cured by Article 159 of *the Constitution*.



22. It is well established litigation that a party alleging violation of his or her constitutional rights must plead with a reasonable degree of precision the manner in which there has been such alleged violation. Article 22 and 258 of *the Constitution* remain the anchor provisions relating to the locus standi in instituting Petitions.
23. The Courts have expressly set out on the manner in which Petitions ought to be presented in court. The Supreme Court in *Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others* (2014) eKLR provided the following regards Constitutional Petition;
- “ Although Article 22(1) of *the Constitution* gives every person the right to initiate proceedings claiming that a fundamental right or freedom has been denied, violated, infringed or threatened, a party invoking this Article has to show the rights said to be infringed, as well as the basis of his or her grievance. This principle emerges from the High Court decision in *Anarita Karimi Njeru v Republic*, (1979) KLR 154: the necessity of a link between the aggrieved party, the provisions of *the Constitution* alleged to have been contravened, and the manifestation of contravention or infringement. Such principle plays a positive role, as a foundation of conviction of good faith, in engaging the constitutional process of dispute settlement.”
24. I have perused the Response to Petition herein where the Respondent assert that they are not opposed to the Petition and have no objection to the orders sought by the Petitioner, however, they are praying for further orders. Save for citing the Constitutional provisions in the title of the Response, the Respondents have not stated how the Petitioner has violated or threatens to violate Articles 21(1), 23(1), 23(3), 43(1), 165(3)(d), 258 and 259(1)(b) of *the Constitution* of Kenya 2010.
25. The Response is based on generalized allegations that they no longer want any legal or parental obligations towards the Petitioner and shall not bear any future liability arising from their previous listing in her documents. They have not disclosed the manner which *the Constitution* has been violated or is threatened to be violated by the Petitioner if the orders being sought are not granted.
26. Moreover, the Respondents have not specified how the Petitioner has violated any of their Constitutional rights. The whole object of pleadings is to bring clarity to an issue. However, looking at the response to the Petition as drafted is difficult to decipher the issues the Respondents want the Court to determine.
27. Whereas the Respondents may have valid complaints against the Petitioner, such cannot be prosecuted in an omnibus style. It is imperative that pleadings are drafted with certain degree of specificity as to accord the Petitioner a fair opportunity to know what the complaint is all about and to possibly prefer a response thereto. Given the nature of the Petition and the response herein, there needs to be that the pleadings be crafted in a manner as to demonstrate how the Petitioner violated which of the Respondents’ constitutional rights. (See *Mbugua & 10 others vs Attorney General & 54 others*; *Communication Commission of Kenya (Interested Party)* (Constitutional Petition E237 of 2021) [2023] KEHC 1917 (KLR))
28. On the prayer of costs, Rule 26 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 that the award is the discretion of the Court. I agree with the holding in *Haraf Traders Limited v Narok County Government* (2022) eKLR where the court stated as follows: -

“The Court has discretion as to whether costs are payable by one party to another, the amount of those costs and when they are to be paid. Where costs are in the discretion of



the Court, a party has no right to costs unless and until the courts award them to him and the Court has an absolute and unfettered discretion to award or not to award or not to award them. This discretion must be exercised arbitrarily but in accordance with reason and justice.” This court finds that this being a constitutional matter, each party to bear their own costs.

29. From the foregoing, it is clear that the parties are largely in agreement on what the outcome of this Petition should be despite being on opposite sides of a dispute filed in court. Consequently, this Court issues the following orders:
- A. An order be and is hereby issued to the 1st and 2nd Respondent compelling them to provide the Petitioner with certified copies of their Kenyan Identity Cards for purposes of passport registration only;
 - B. An order be and is hereby issued compelling the 1st Respondent to issue the Petitioner with certified copies of the Petitioner’s late mother’s burial permit and death certificate;
 - C. An order be and is hereby issued to the Department of Civil Registrations – Birth Certificate Section to remove the 2nd Respondent from the Petitioner’s birth certificate and to issue a new birth certificate compliant with this judgment; and
 - D. Each Party to bear its own costs.

Orders accordingly. File Closed Accordingly.

DATED, SIGNED, AND DELIVERED VIRTUALLY THIS 14TH DAY OF AUGUST 2025.

BAHATI MWAMUYE

JUDGE

In the presence of: -

Counsel for the Petitioner – No appearance

Counsel for the Respondents– Ms. Anyango h.b Mr. Rabala

Court Assistant – Ms. Lwambia

