



REPUBLIC OF KENYA



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**Asiya v Ministry of Interior and Coordination of National Government &
3 others (Constitutional Petition 079 of 2024) [2025] KEHC 12480 (KLR)
(Constitutional and Human Rights) (12 August 2025) (Judgment)**

Neutral citation: [2025] KEHC 12480 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CONSTITUTIONAL AND HUMAN RIGHTS

CONSTITUTIONAL PETITION 079 OF 2024

AB MWAMUYE, J

AUGUST 12, 2025

**IN THE MATTER OF ARTICLES 2,3,10, 22, 23, 25, 27, 29, 39, 43, 47,
49, 50, 73, 129, 130, 159, 165, 258, 259 OF THE CONSTITUTION 2010.**

AND

**IN THE MATTER OF SECTIONS 4, 35, 48, AND 57 OF THE
KENYAN CITIZENSHIP AND IMMIGRATION ACT NO. 12 OF 2012**

AND

**IN THE MATTER OF THE VIOLATION OF ARTICLES 2(5), 2(6),27,28,29{A),
(B),(D),(E) AND (F), 47 OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF THE VIOLATION OF ARTICLE 5 OF THE
UNITED NATIONS DECLARATION OF HUMAN RIGHTS**

AND

**IN THE MATTER OF THE VIOLATION OF ARTICLES 1,3(A), 9, 12 (1), (2), AND (3),
AND 26 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

AND

**IN THE MATTER OF THE VIOLATION OF ARTICLES 2,3, 5, 6 AND 12
OF THE AFRICAN CHARTER ON HUMAN AND PEOPLES RIGHTS**

AND

**IN THE MATTER OF THE VIOLATION OF ARTICLE 104 OF THE
TREATY ESTABLISHING THE EAST AFRICAN COMMUNITY**

AND

IN THE MATTER OF DISCRIMINATION ON THE BASIS OF AGE AND SEX



AND
IN THE MATTER OF MISTREATMENT AND/OR UNFAIR TREATMENT
AND
IN THE MATTER OF UNFAIR ADMINISTRATIVE ACTIONS
AND
IN THE MATTER OF VIOLATION AND/OR INFRINGEMENT
ON THE FUNDAMENTAL RIGHTS OF THE PETITIONER
AND
IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS
& FUNDAMENTAL FREEDOM) PRACTICE AND PROCEDURE RULES, 2013

BETWEEN

NANCY LUANGHY ASIYA PETITIONER

AND

**THE MINISTRY OF INTERIOR AND COORDINATION OF NATIONAL
GOVERNMENT 1ST RESPONDENT**

**THE DIRECTORATE OF IMMIGRATION AND CITIZEN
SERVICES 2ND RESPONDENT**

**THE DIRECTOR GENERAL, DIRECTORATE OF IMMIGRATION AND
CITIZEN SERVICES 3RD RESPONDENT**

THE HONOURABLE ATTORNEY GENERAL 4TH RESPONDENT

JUDGMENT

1. The Petitioner, a female national of the Democratic Republic of Congo (DRC), instituted this petition dated 30th October 2023, alleging violation of her rights following two denials of entry into Kenya on 21st September 2023 and 2nd October 2023, respectively, despite holding valid travel documents, a round-trip ticket, confirmed accommodation, and relying on the visa waiver agreement which took effect from 1st September 2023.
2. The Petitioner asserts that she was subjected to unlawful and degrading treatment at Jomo Kenyatta International Airport, Nairobi, and denied access to legal counsel, basic amenities, and administrative due process. The Petitioner thus seeks the following reliefs:
 - i. A declaration that the denial of entry to Kenya, despite the existence of a visa waiver agreement between Kenya and the DRC, is a violation of the petitioner's constitutional rights, constituting discrimination and profiling based on age and sex;
 - ii. A declaration that the failure to provide sufficient and specific reasons for the denial of entry constitutes a breach of the petitioner's right to fair administrative action and right to be furnished with reasons for actions or inactions. That the Immigration officers acted in violation of Sections 4,35, and 58 of the *Kenya Citizenship and Immigration Act*;



- iii. A declaration that the Petitioner's detention, restriction of movement, denial of access to Legal Counsel, and due process was unlawful and a violation of the Petitioner's Constitutional rights specifically Article 50 (1) (g) of *the Constitution* of Kenya;
- iv. A declaration that the Petitioner's denial of Basic Human needs including being subjected to deplorable conditions was unlawful and a violation of the Petitioner's Constitutional rights specifically Article 28 of *the Constitution* of Kenya;
- v. An order for compensation for specific damages suffered, including reimbursement for booked accommodations that became non-refundable due to the denial of entry, as well as travel expenses all amounting to One Thousand Four Hundred and Thirty Dollars(1430\$) only;
- vi. An order for compensation for the psychological and emotional distress suffered as a result of the unlawful denial of entry, detention, discrimination, and profiling;
- vii. An order for exemplary damages on for the discrimination of the claimant on the basis of her age and sex including gross violation of her human dignity;
- viii. An order of prohibition preventing any further actions by the authorities that violate the petitioner's constitutional rights, including denying entry without proper reasons and engaging in discriminatory practices;
- ix. Costs and incidentals be provided for; And
- x. Any other relief deemed just and appropriate by the court in light of the circumstances of this case

The Petitioner's Case

3. The Petitioner contends that the Government of Kenya, through the Directorate of Immigration, issued a formal communication dated 25th August 2023, publicly announcing the implementation of a visa waiver agreement between Kenya and the Democratic Republic of Congo, effective 1st September 2023. Relying on this public directive, the Petitioner booked an all-around trip from Kinshasa to Dubai, with a scheduled stopover in Nairobi, both en route to and upon return from the United Arab Emirates. She asserts that she undertook these travel arrangements in good faith and reliance on the official position of the Government of Kenya.
4. Upon her arrival in Nairobi on 21st September 2023, the Petitioner avers that she presented her valid passport, return ticket, and travel documents to the immigration officers. Despite asserting her eligibility under the visa waiver, her passport was confiscated without a due explanation, and she was ordered to await further communication. She maintains that this action was taken arbitrarily and without written justification, contrary to the principles of transparency and accountability under Article 10 of *the Constitution*.
5. The Petitioner avers that she was detained at Jomo Kenyatta International Airport for over 12 hours in the transit lounge under conditions she describes as degrading and dehumanising. She alleges that she was denied food, warm clothing, and basic sanitary amenities during her overnight stay, despite it being rainy and cold. Moreover, she claims she was denied access to legal representation, and no reasons were given for her exclusion, which induced fear, mental distress, and trauma.
6. The Petitioner further states that on 2nd October 2023, following her return from Dubai, she intended to stay in Nairobi for a two-week vacation, having booked accommodation and secured funds for her expenses. Nevertheless, she was again denied entry and compelled to board a flight back to



- Kinshasa, thus suffering financial loss and emotional harm. She asserts that this second denial occurred notwithstanding the fact that she met all requirements of lawful entry, including sufficient financial means and pre-arranged lodging.
7. She further contends that her treatment stands in stark contrast to that accorded to another Congolese national, her relative, who was granted entry during the same period under similar travel circumstances. She avers that the only material differences between them were age and gender, from which she infers that her exclusion was based on impermissible discriminatory grounds in violation of Article 27 of *the Constitution*.
 8. To support her assertions, the Petitioner filed a Supporting Affidavit dated 27th October 2023, a Supplementary Affidavit dated 31st May 2024, and accompanying documentation including her travel itinerary, proof of accommodation, certified bank statements, and a letter confirming her status as a student at an aviation training center. She emphasizes that her documentation met all legal requirements and that no legitimate justification was ever advanced for denying her entry.
 9. The Petitioner maintains that the denial of entry constituted an administrative action capable of adversely affecting her rights and freedoms, and was thus subject to the safeguards under Article 47 of *the Constitution*. She argues that the failure to provide written reasons, afford her an opportunity to be heard, or communicate in a timely and humane manner rendered the actions of the immigration officers procedurally unfair, unreasonable, and unlawful.
 10. The Petitioner urges the Court to find that the actions of the Respondents amounted to a gross abuse of public power, a breach of her constitutional rights to dignity, fair treatment, and non-discrimination, and a failure to adhere to Kenya's obligations under international instruments such as the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights.
 11. Ultimately, the Petitioner seeks declarations that her rights were violated, compensation for the losses incurred, and orders to prevent similar unlawful conduct by the Respondents in the future. She argues that the circumstances of her treatment warrant the issuance of both general and exemplary damages to vindicate her rights and deter administrative arbitrariness.

Respondents' Case

12. The Respondents argue that the Petition is based on a misapprehension of the nature of visa waivers. They submit that while Kenya may waive visa requirements for nationals of certain countries, such waivers do not create an automatic or absolute right to enter Kenya. Rather, entry remains subject to statutory scrutiny and compliance with admissibility requirements at the point of entry, as outlined in the Citizenship and Immigration Act, 2011.
13. According to the Respondents, the Petitioner failed to meet essential entry conditions, particularly the requirement to demonstrate sufficient means of subsistence during her intended stay in Kenya. They relied on Section 33(2)(c) of the Citizenship and Immigration Act to justify the finding of inadmissibility. It is their position that this assessment was within the lawful discretion of immigration officers and formed part of routine entry vetting processes.
14. The Respondents further argue that the immigration officers had reasonable grounds to suspect that the Petitioner posed a potential risk to national interests, invoking Section 33(1)(iii) of the Citizenship and Immigration Act and Article 7(5) of the Protocol on the Establishment of the East African Community Common Market. While specific details of the alleged risks were not disclosed, the



Respondents maintain that such determinations are within the prerogative of sovereign states and are not justiciable unless demonstrated to be irrational or motivated by malice.

15. On the conditions at the airport, the Respondents deny that the Petitioner was held in detention in the criminal or penal sense. Rather, she was instructed to remain in the transit lounge while awaiting her flight to Dubai. The Respondents assert that such treatment is standard practice and consistent with international norms governing transit passengers. No adverse treatment or deprivation of amenities is said to have occurred.
16. As regards the alleged failure to issue a written notice or provide specific reasons for denial of entry, the Respondents argue that immigration officers acted promptly and reasonably in the circumstances. They maintain that border decisions must sometimes be made expeditiously in the interests of national security and that procedural requirements should be interpreted contextually and not rigidly.
17. The Respondents also reject the allegation of discrimination, asserting that every foreign national is assessed independently at the point of entry. That another Congolese national may have been admitted into the country does not, in their view, create a presumption of discrimination. They emphasize that immigration determinations are individualised and depend on the conduct, documents, and disclosures of each entrant.
18. Ultimately, the Respondents urge the court to dismiss the Petition in its entirety, contending that the Petitioner has failed to establish any violation of her constitutional rights as the petition does not disclose any legal and justifiable claim against them and that all actions taken by the immigration authorities were lawful, proportionate, and justified within the framework of Kenyan immigration law.
19. The petition was canvassed by way of written submissions, and both parties complied by filing their respective submissions.

Petitioner's Submissions

20. The Petitioner, in her submissions dated 4th September 2024, submits that her entry into Kenya was governed by a binding visa waiver agreement between Kenya and the Democratic Republic of Congo, which was publicly communicated through an official circular issued by the Directorate of Immigration. She contends that she made all travel plans based on this official assurance, including securing a round-trip ticket and booking accommodation.
21. The Petitioner asserts that she was denied entry without lawful justification, despite satisfying all material requirements, including presenting a valid passport, proof of onward travel, eligibility for a visa waiver as a citizen of the Democratic Republic of Congo and evidence of financial capacity. In her Supplementary Affidavit, she annexed bank statements showing that she had at least USD 500 available at the time of travel, a sum she contends was sufficient for a short stay.
22. It was submitted that the Respondents failed to specify under which specific category of Section 33 of the Citizenship and Immigration Act the Petitioner falls. Citing Section 109 of the *Evidence Act*, it was argued that he who alleges the existence of certain facts must prove their existence, which the Respondents failed to do.
23. It was further submitted that Section 37 of the Kenya Citizenship and Immigration Rules, 2012 outlines the procedure to be undertaken once a foreigner is considered to be a prohibited Immigrant/ inadmissible person under section 33 of the *Kenya Citizenship and Immigration Act*. The Petitioner submits that the Respondents' reliance on post facto justifications and unsubstantiated allegations of criminal activity is not only defamatory but also indicative of bad faith. She maintains that no formal



- deportation notice or adverse finding was issued to her under Section 37 of the Kenya Citizenship and Immigration Regulations.
24. It is the Petitioner's submission that the Respondents failed to afford her an opportunity to be heard, did not provide written reasons for the denial of entry, and acted in breach of Article 47 of *the Constitution*. She submits that the right to fair administrative action applies to every person, including foreign nationals, and cannot be curtailed by blanket references to sovereign discretion. Reliance was placed on *Bashir Mohamed Jama Abdi v Minister for Immigration and Registration of Persons & 2 others* [2014] eKLR.
 25. It was also submitted that, as per the doctrine of legitimate expectation, the official notice by the immigration authorities and the absence of any caveats therein created a justifiable belief that she would be granted entry under the waiver, and since the Respondents failed to provide any substantive reason for the denial renders the process procedurally flawed. Reliance was placed on *Kenya Revenue Authority v Export Trading Company Limited* (Petition 20 of 2020) [2022] KESC 31 (KLR) (Civ) (17 June 2022) (Judgment) and *Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others* [2014] eKLR.
 26. The Petitioner further argues that she was subjected to cruel, inhuman and degrading treatment, citing her prolonged stay in the transit area without basic amenities, warm clothing, or legal counsel. She submits that this experience caused her significant psychological distress, the impact of which was aggravated by a lack of communication from immigration officials.
 27. It was also argued that since the Petitioner fulfilled all legal requirements to enter and reside in Kenya for the specified period, the actions of the authorities contravened her right and freedom of movement under Article 39 of the Kenyan Constitution and Article 13 of the Universal Declaration of Human Rights.
 28. On discrimination, the Petitioner submits that she was treated less favourably than another Congolese national who was admitted into Kenya during the same period, despite both persons being similarly situated. She argues that the only distinguishing features were her age, sex, and unmarried status, and that these should not have influenced immigration decisions.
 29. On remedies, the Petitioner claims both specific and general damages. She argues that her loss of non-refundable accommodation and travel costs amounting to USD 1,430 was clearly documented.
 30. Lastly, the Petitioner submits that the circumstances of her exclusion from Kenya warrant the award of general and exemplary damages. She cites *VMK v CUEA* [2013] eKLR, where the Court awarded Kshs. 5 million for exemplary damages for discrimination. She urges this Court to grant her the prayers sought as she has proven that the Respondents did not follow the prescribed procedure while denying her entry to the country.

Respondents' Submissions

31. The Respondents submit that the Petition is predicated on an erroneous interpretation of the visa waiver agreement between Kenya and the Democratic Republic of Congo. They argue that the waiver merely exempts eligible nationals from applying for a visa in advance but does not guarantee automatic entry into the Republic of Kenya. They cite Section 33 of the *Kenya Citizenship and Immigration Act*, 2011, to affirm that immigration officers retain the discretion to admit or deny entry at the port of entry based on national interest and compliance with admissibility criteria.
32. It is the Respondents' position that the Petitioner failed to demonstrate compliance with all legal entry requirements, particularly the obligation to prove possession of sufficient funds for her intended stay.



- They argue that immigration officers are statutorily mandated to ensure that visitors do not become a burden on public resources and that their assessment of the Petitioner's financial capacity was within the scope of lawful administrative discretion.
33. The Respondents further contend that during interrogation, suspicions arose concerning the Petitioner's intentions and possible involvement in conduct contrary to public policy and international security protocols. Though no criminal charge was levelled, the Respondents maintain that they were justified in denying her entry under Section 33(1)(iii) of the Citizenship and Immigration Act, which empowers officers to exclude any individual suspected of posing a threat to national interests.
 34. On the issue of alleged inhumane treatment and detention, the Respondents refute the Petitioner's claims, asserting that she remained in the transit area at Jomo Kenyatta International Airport, a space accessible to all transiting passengers, with amenities consistent with international travel norms. They argue that the Petitioner was not arrested, detained, or placed in custody and that the circumstances she describes are either exaggerated or unsupported by any independent evidence. Reliance was placed in the case of *Leonard Otieno v Airtel Kenya Limited* [2018] eKLR.
 35. On the issue of discrimination, the Respondents argue that the visa waiver agreement does not confer an automatic right to entry. Immigration laws remain operational, and decisions regarding admissibility are made at the port of entry, subject to assessment by immigration officers which is clearly indicated on Kenya's e-visa and Electronic Travel Authorization (eTA) portals, which emphasize that possession of a travel document or waiver does not guarantee entry. They submit that the admission of the Petitioner's relative does not establish a comparator in law, nor does it prove that the Petitioner was discriminated against based on her age, gender, or marital status since each entrant into Kenya is evaluated on an individual basis, and that admission is neither granted nor denied collectively based on nationality. Additionally, it was argued that the petitioner did not tender an evidence to show that she was treated less favourably based on her age and sex and the decision of the authorities was based on lawful grounds and assed within the statutory framework applicable to all foreign nationals.
 36. The Respondents maintain that immigration discretion is a sovereign function exercised in the national interest and that judicial intervention should be limited to instances of clear abuse or illegality, which, they argue, has not been demonstrated in this case. They submit that the decisions taken were in accordance with national laws and Kenya's obligations under Article 7(5) of the Protocol on the Establishment of the East African Community Common Market, which permits denial of entry on grounds of public policy, public health, or public security.
 37. In response to the Petitioner's claim for compensation, the Respondents submit that the financial losses she alleges were self-incurred. They argue that any prudent traveller ought to ensure compliance with immigration entry requirements before incurring accommodation or travel expenses, and that such expenditures were undertaken at the Petitioner's own risk.
 38. On the issue of general and exemplary damages, the Respondents reiterate that no evidence has been provided to support the alleged emotional or psychological distress. They submit that claims of mental anguish or reputational damage require expert testimony or independent verification and cannot be based solely on the subjective opinion of the Petitioner.
 39. In conclusion, the Respondents submit that the Petition lacks legal merit, is based on unfounded factual premises, and ought to be dismissed with costs. They argue that the actions of the immigration officers were lawful, rational, and proportionate, and that no constitutional or statutory rights of the Petitioner were infringed in the course of executing their official mandate.



Analysis and Issues for Determination

40. Having carefully reviewed the pleadings, affidavits, written submissions, and annexed documents, and upon full consideration of the legal and factual arguments advanced by the parties, the Court frames the following issues for determination:
- i. Whether the visa waiver agreement between Kenya and the Democratic Republic of Congo compromises Kenya's sovereignty or affects the application of its national immigration laws.
 - ii. Whether the denial of entry to the Petitioner violated her right to fair administrative action under Article 47 of *the Constitution*.
 - iii. Whether the Petitioner was subjected to inhuman and degrading treatment in violation of her Constitutional rights.
 - iv. Whether the denial of entry constituted discrimination contrary to Article 27 of *the Constitution*.
 - v. Whether the Petitioner is entitled to the reliefs sought.

Whether the visa waiver agreement between Kenya and the Democratic Republic of Congo compromises Kenya's sovereignty or affects the application of its national immigration laws

41. The first issue for determination concerns the scope, effect, and legal implications of the visa waiver agreement entered into between the Republic of Kenya and the Democratic Republic of Congo (DRC), and whether such an agreement impedes or modifies Kenya's sovereign power to control its borders and enforce immigration laws. This issue lies at the heart of the dispute and calls for a constitutional and legal analysis of the doctrine of sovereignty vis-à-vis international obligations.
42. Article 1(1) of *the Constitution* of Kenya, 2010 affirms that all sovereign power belongs to the people of Kenya and shall be exercised only in accordance with *the Constitution*. Article 4(1) further establishes Kenya as a sovereign republic. The implication of these provisions is that Kenya retains absolute and exclusive authority to determine the conditions under which non-citizens may enter, remain, or be excluded from its territory.
43. The *Kenya Citizenship and Immigration Act*, 2011 operationalizes this sovereign power through a statutory framework governing the entry, stay, and removal of non-citizens. Section 33 of the Act expressly empowers immigration officers to declare any person inadmissible or a prohibited immigrant on grounds including, inter alia, lack of sufficient funds, public interest, or suspicion of criminal activity.
44. The visa waiver agreement between Kenya and the DRC is undoubtedly an international engagement, and by virtue of Article 2(6) of *the Constitution*, it forms part of the laws of Kenya. However, such international agreements must be read in harmony with domestic laws and *the Constitution*. It does not oust the provisions of the *Kenya Citizenship and Immigration Act* unless Parliament amends the primary statute to reflect any such override explicitly.
45. Visas and other entry requirements are instruments of executive discretion unless the law or a treaty expressly provides otherwise. In the absence of an entrenched right of entry under the visa waiver agreement, the discretion of the immigration authorities remains unimpaired.
46. The Respondents correctly submit that the waiver of a visa requirement does not equate to an unqualified right of entry. It simply removes the procedural necessity of securing a visa prior to travel



but leaves intact the substantive requirement of demonstrating admissibility at the port of entry, which includes financial capacity, lawful intent, and security clearance.

47. The Court finds no evidence that the visa waiver agreement altered or derogated from Kenya's sovereign authority to control its borders. The agreement does not amend the *Kenya Citizenship and Immigration Act* nor does it abrogate Section 33 thereof. The waiver must therefore be interpreted as facilitating ease of travel, not as diminishing Kenya's sovereign powers or the constitutional responsibilities of immigration officers.
48. The Petitioner's submission that the visa waiver created an automatic entitlement to entry is, in this Court's view, legally untenable. The principle of legitimate expectation, though applicable in administrative law, cannot override express statutory provisions or constitutional doctrine. Legitimate expectations must conform to the law and *the Constitution* and cannot be used to subvert legislative authority.
49. It is further noted that Article 7(5) of the Protocol on the Establishment of the East African Community Common Market permits partner states to impose restrictions on movement on grounds of public health, public policy, or public security. Kenya remains within its rights to regulate entry even within the context of a regional agreement.
50. In conclusion, the Court holds that the visa waiver agreement between Kenya and the DRC does not compromise Kenya's sovereignty nor does it curtail the application of Kenya's immigration laws. The sovereign discretion vested in the immigration authorities under the *Kenya Citizenship and Immigration Act*, 2011 remains intact and lawful, provided that it is exercised in a fair, reasonable, and constitutionally compliant manner.

Whether the denial of entry to the Petitioner violated her right to fair administrative action under Article 47 of *the Constitution*

51. Article 47(1) of *the Constitution* of Kenya, 2010 guarantees every person the right to administrative action that is expeditious, efficient, lawful, reasonable, and procedurally fair. Article 47(2) further provides that if a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for that action. This constitutional right is further implemented through the *Fair Administrative Action Act*, No. 4 of 2015, which operationalizes the standards of fairness required in all administrative decisions undertaken by public officers.
52. In the instant matter, it is not in dispute that the Petitioner, a foreign national from the Democratic Republic of Congo, was denied entry into Kenya on two separate occasions, first on 21st September 2023 and subsequently on 2nd October 2023 despite being in possession of a valid passport, round-trip ticket, pre-arranged accommodation, and sufficient financial means. The central contention is whether the manner in which the immigration authorities arrived at this decision conformed to the standards of procedural fairness prescribed under Article 47.
53. If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action. These constitutional provisions have been echoed in the *Fair Administrative Action Act*, 2015 particularly under section 4(1) and (2).
54. Section 4(3) of the *Fair Administrative Action Act*, 2015 provides that where an administrative action is likely to adversely affect the rights and fundamental freedoms of any person, the administrator shall give the person affected by the decision prior and adequate notice of the nature and reasons for the



proposed administrative action; an opportunity to be heard and to make representations in that regard; notice of a right to a review or internal appeal against an administrative decision, where applicable; a statement of reasons pursuant to section 6.

55. As to what constitutes fair administrative action, the court in *President of the Republic of South Africa and Others v South African Rugby Football Union and Others* (CCT16/98) 2000 (1) SA 1, stated thus:

“Although the right to just administrative action was entrenched in our Constitution in recognition of the importance of the common law governing administrative review, it is not correct to see section 33 as a mere codification of common law principles. The right to just administrative action is now entrenched as a constitutional control over the exercise of power. Principles previously established by the common law will be important though not necessarily decisive, in determining not only the scope of section 33, but also its content. The principal function of section 33 is to regulate conduct of the public administration, and, in particular, to ensure that where action taken by the administration affects or threatens individuals, the procedures followed comply with the constitutional standards of administrative justice. These standards will, of course, be informed by the common law principles developed over decades...” [Emphasis supplied]

56. Thus, a person whose interests and rights are likely to be affected by an administrative action has a reasonable expectation that they will be given a hearing before any adverse action is taken as well as reasons for the adverse administrative action as provided under Article 47 (2) of *the Constitution*. Generally, one expects that all the precepts of natural justices are to be observed before a decision affecting his substantive rights or interest is reached. It is however also clear that in exercising its powers to superintend bodies and tribunals with a view to ensuring that Article 47 is promoted the court is not limited to the traditional judicial review grounds. The *Fair Administrative Action Act*, 2015 must be viewed in that light.

57. The Petitioner avers that no reasons were given to her, orally or in writing, to justify the refusal of entry. She further asserts that her passport was confiscated without explanation, and she was denied an opportunity to be heard, access to legal counsel, or any formal communication outlining the basis of inadmissibility. This, she argued, violated not only Article 47 but also the statutory obligations of immigration officers under the *Kenya Citizenship and Immigration Act* and the Kenya Citizenship and Immigration Regulations.

58. The Respondents, in rebuttal, contend that immigration discretion is exercised at the port of entry based on a traveller’s compliance with certain requirements, including but not limited to proof of financial support and lawful purpose of visit. The Respondents relied on Section 33(2)(c) of the Citizenship and Immigration Act, which allows denial of entry where an individual fails to demonstrate sufficient means of sustenance, and Section 33(1)(iii) on exclusion for reasons of national interest or suspicion of unlawful conduct.

59. While this Court affirms that immigration officers possess lawful authority to control entry into Kenya under the statute, that authority must be exercised in a constitutionally compliant manner. Procedural fairness is not incompatible with sovereignty.

60. Section 33 (1) (a) of the *Kenya Citizenship and Immigration Act* provides as follows:

(1) For purposes of this Act, a prohibited immigrant is a person who is not a citizen of Kenya and who—



- (a) not having received a pardon—
 - (i) has been convicted in Kenya or any country of an offence created under a statute for which a sentence of imprisonment is for a minimum term of three years;
 - (ii) has been acquitted by a court of any offence and who at the time of acquittal has no valid immigration status;
 - (iii) has committed or is suspected of having committed an offence provided for under international treaties and conventions ratified by Kenya;

61. Further, Section 33 (2) of the Act states:

- 2) For purposes of this Act, an inadmissible person is a person who is not a Kenyan citizen and who—
 - (a) refuses to submit for examination by a medical practitioner after being required to do so under section 48(1)(d) of this Act;
 - (b) the family and dependants of a prohibited immigrant;
 - (c) incapable of supporting himself and his dependants (if any) in Kenya;
 - (d) is adjudged bankrupt;
 - (e) anyone who has been judicially declared incompetent;
 - (f) an asylum seeker whose application for grant of refugee status has been rejected under the Refugee Act (Cap. 173); or
 - (g) is, by order of the Cabinet Secretary, declared inadmissible on grounds of national security or national interest.

62. Regulation 36 of the Kenya Citizenship and Immigration Regulations provides as follows;

- (1) An immigration officer may issue a notice, in Form 38 set out in the First Schedule, to a person who has been declared to be a prohibited immigrant or an inadmissible person and who enters or intends or attempts to enter Kenya by any means.
- (2) A notice to a prohibited immigrant or an inadmissible person may require the prohibited immigrant or inadmissible person—
 - (a) to remain on the carrier by which he entered, intended or attempted to enter Kenya;
 - (b) to leave Kenya by such means and within such period as may be stated in the notice; and
 - (c) to enter into or remain in Kenya subject to complying with such requirements as to place of residence, occupation, security or reporting to a specified authority as may be specified in the notice.
- (3) An immigration officer may vary the terms and conditions specified in the notice to a prohibited immigrant or inadmissible person.
- (4) Any prohibited immigrant or inadmissible person to whom a notice has been issued under this regulation has been who refuses or fails to comply with any requirements of the notice commits an offence.



- (5) Where an immigration officer has issued a notice to a prohibited immigrant or inadmissible person under this regulation, the immigration officer may, if he deems it fit, issue a copy of such notice to the owner, person in charge or agents of the carrier on or from which the prohibited immigrant or inadmissible person entered, intended or attempted to enter Kenya, and thereafter the owner, person in charge or agents may take such steps as shall be necessary to ensure that the prohibited immigrant or inadmissible person complies with the terms of the notice served on him. Provided that compliance with the requirements of a notice under this regulation shall not relieve the owner, person in charge or agents of the carrier of his obligations under the Act or any other written law.
- (6) Where a prohibited immigrant or an inadmissible person has been refused permission to enter Kenya, the immigration officer shall issue a notice in Form 39 set out in the First Schedule to the owner, person in charge or agents of the carrier on or from which the prohibited immigrant or inadmissible person entered, intended or attempted to enter Kenya requiring the owner, person in charge or agents of the carrier on or from which the prohibited immigrant or inadmissible person entered, intended or attempted to enter Kenya to take the prohibited immigrant or an inadmissible person into their custody and ensure that the prohibited immigrant or an inadmissible person is removed from Kenya.
63. The evidence before this Court supports the Petitioner’s position that no formal communication or written reasons were given for her exclusion, contrary to Article 47(2). The Respondents did not produce any document, such as a notice under Form 38 as required under Regulation 36(1) of the Kenya Citizenship and Immigration Regulations, which stipulates that an inadmissibility decision must be conveyed in writing to the affected individual.
64. The Respondents’ argument that oral communication at the port of entry sufficed is unpersuasive. The constitutional obligation under Article 47(2) is clear: where administrative action is likely to adversely affect a right, written reasons must be provided. In the present case, the denial of entry, confiscation of a passport, and direction to exit the country were adverse administrative actions requiring a written explanation.
65. In *Regina v Secretary of State for the Home Department Ex parte Doody* [1994] 1 AC 531, Lord Mustill expressed the duty to give reasons under common law at p. 564 – E-F thus:
- “I accept without hesitation, --- that the law does not at present recognise a general duty to give reasons for an administrative decision. Nevertheless, it is equally beyond question that such a duty may in appropriate circumstances be implied.”
66. It is also important to remember that the right to be given written reasons for the decision is not absolute as by article 24(1) it can be limited by law for a reasonable and justifiable cause. The duty to give reasons and the nature and extent of the reasons envisaged by article 47(2) is dependent on the character and limits of the administrative discretion conferred on the administrator by *the Constitution* or law and its application to the facts of the case.
67. Furthermore, the right to be given written reasons under article 47(2) arises, if the right has been or is likely to be adversely affected by the administrative action. In other words, the administrative action must have adversely affected the right or is likely to adversely affect the right.
68. In this case, the decision to deny entry was not subjected to any internal review or appeal mechanism, nor was the Petitioner informed of any recourse available to her under the law. In the absence of notice,



reasons, or the opportunity to respond, the process fell short of the minimum threshold of fairness established under *the Constitution* and the *Fair Administrative Action Act*.

69. The Act places a legal obligation on administrators to take steps that are in line with Article 47(2) in ensuring that the person who is likely to be adversely affected by intended administrative action, has had an opportunity to fully understand what action he is likely to face, and the reasons for it. This is in line with the rule that the person should not be condemned unheard. (*avaialteram pertem* rule) as espoused in Halsbury's laws of England, 5th Ed. Vol.61 page 539 paragraph 639 thus: -

“The rule that no person is to be condemned unless that person has been given prior notice of the allegations against him and a fair opportunity to be heard the (*avaialteram partem* rule) is a fundamental principle of justice. This rule has been refined and adopted to govern proceedings of bodies other than Judicial tribunals; and a duty to act in conformity with the rule has been imposed by common law on administrative bodies not required by statute or contract to conduct themselves in a manner analogous to a court. Moreover, even in the absence of any charge, the severity of the impact of an administrative decision on the interests of an individual may suffice itself to attract a duty to comply with this rule. Common law and statutory obligations of procedural fairness now also have to be read in right of the right under the convention for the protections of Human Rights and Fundamental Freedoms to a fair trial which will be engaged in cases involving the determination and civil rights or obligations on any criminal charge.”

70. The facts of this case, involving confiscation of documents and prolonged restriction of movement, clearly triggered the right to procedural fairness.
71. Accordingly, the Court finds that the actions of the Respondents in denying the Petitioner entry into Kenya without providing specific, timely, or written reasons amounted to a violation of her right to fair administrative action under Article 47 of *the Constitution*. While Kenya retains sovereign discretion over entry, such discretion must be exercised in accordance with the rule of law and the constitutional imperative to act fairly, lawfully, and reasonably.

Whether the Petitioner was subjected to inhuman and degrading treatment in violation of her Constitutional rights.

72. The Petitioner contends that following her entry denial, she was detained in the airport transit area for over twelve hours under deplorable conditions, denied access to legal counsel, and subjected to psychological and physical suffering, alleging breach of Articles 25, 28, 29, 39, 50(2)(g) and 48 of *the Constitution*.
73. Article 49 of *the Constitution* protects against arbitrary arrest and detention. 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.”

74. 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.

75. 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*.

76. Further, Article 50(2)(g) guarantees every accused person the right to legal representation in court proceedings. However, the concept of detention under Article 49 applies to criminal or quasi-criminal custody, not administrative holding in a transit facility pending immigration determination.

77. The Respondents aver that the Petitioner was not ‘detained’ within the meaning of Article 49 but was required to wait in the transit lounge for flight removal procedures, enjoying standard transit privileges, without handcuffs, barriers, or confinement in a detention cell. “Detention” implies physical restraint or custody equivalent to arrest. Mere requirement to remain within a transit area pending processing does not engage Article 49 safeguards.

78. Article 28 enshrines the right to human dignity. Article 29 prohibits cruel, inhuman or degrading treatment. The European Court of Human Rights has defined torture and inhuman treatment in the *Greek Case 1969 Y.B. Eur. Conv. on H.R. 186 (Eur. Comm’n on H.R.)* in the following terms;

“The notion of inhuman treatment covers at least such treatment as deliberately causes suffering, mental or physical, which, in the particular situation is unjustifiable. The word ‘torture’ is often used to describe inhuman treatment, which has a purpose, such as the obtaining of information or confessions, or the infliction of punishment, and it is generally an aggravated form of inhuman treatment. Treatment or punishment of an individual may be said to be de-grading if it grossly humiliates him before others, or drives him to an act against his will or conscience.”



79. In *Frankline Kithinji Murithii vs Loyford Riungu Murithii & 4 others*, [2014] eKLR the Court concluded thus;

“From annexures FK1 and FK2, the appellant made complaints to the Police and there is no evidence on record to indicate that the veracity of the complaints was established. There is no evidence on record to illustrate that there was psychological or physical abuse of the appellant by the respondent. There is no evidence on record that intense pain or punishment was meted to the appellant by the respondent. Inhuman treatment is defined to include physical or mental cruelty so severe that it endangers life or health. There is no evidence on record that the respondents have endangered the life or health of the appellant.”

80. The Petitioner’s claims of lack of adequate shelter, food, and warmth are serious; yet, no medical or photographic evidence was produced to substantiate that conditions fell below the standard enjoyed by other transit passengers or violated airport duty-of-care obligations.

81. The principle that he who alleges must prove is settled in Section 107(1) of the *Evidence Act*. The Petitioner did not tender witness statements, inspection reports, or independent testimonies to establish that the transit lounge conditions amounted to inhumane treatment.

82. Article 48 guarantees the right of access to justice. The Petitioner’s inability to consult counsel during administrative immigration proceedings does not amount to denial of access to courts or a fair hearing under Article 50, as no judicial process was in progress.

83. Accordingly, the circumstances described do not amount to unlawful detention in violation of Article 49 nor inhumane treatment breaching Article 28 and 29. The Petitioner’s inability to access counsel at this stage, while regrettable, does not engage constitutional safeguards reserved for judicial proceedings.

Whether the denial of entry constituted discrimination contrary to Article 27 of *the Constitution*

84. Article 27 of *the Constitution* guarantees the right to equality and freedom from discrimination. Under Article 27(1), every person is equal before the law and has the right to equal protection and equal benefit of the law. Sub-article (4) prohibits the State from discriminating directly or indirectly against any person on any ground, including race, sex, age, or social origin. Article 27 thus imposes both negative and positive obligations upon State actors to avoid unfair differentiation in treatment and to take steps to eliminate disadvantage arising from unfair systems or practices.

85. Discrimination was defined in the case *Peter K. Waweru Vs Republic* [2006] eKLR as follows:

“affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, place of origin or residence or other local connection, political opinions, colour, creed or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description. Blacks Law Dictionary (11th ed) defines ‘discrimination’ as hereunder:

..... In constitutional law the effect of a statute or established practice which confers particular privileges on a class arbitrarily selected from a large number of persons, all of whom stand in the same relation to the privileges granted and between them and those not favoured no reasonable distinction can be found.



.....'Unfair treatment or denial of normal privileges to person because of their race, age, sex nationality or religion. A failure to treat all person equally where no reasonable distinction can be found between those favoured and those not favoured.' Baker Vs California Land title Company DC CAL 349 Supp 235, 238, 239."

86. Black's Law Dictionary, Ninth Edition defines "discrimination" as,

"Differential treatment; a failure to treat all persons equally when no reasonable distinction between those favoured and those not favoured."

87. Direct and indirect discrimination was distinguished in the case of Nyarangi & Others vs Attorney General [2008] KLR 688 where court stated that;

"Direct discrimination involves treating someone less favourably because of their possession of an attribute such as race, sex, religion compared to someone without that attribute in the same circumstances. Indirect or subtle discrimination involves setting a condition or requirement which is a smaller proportion of those with the attribute are able to comply with, without reasonable justification. The US case of Griggs vs. Duke Power Company 1971 401 US 424 91 is a good example of indirect discrimination, where an aptitude test used in a job application was found "to disqualify negroes at a substantially higher rate than white applicants".

88. With regard to differential or unequal treatment it was observed in the case of Kedar Nath vs State of W.B. (1953) SCR 835 (843) that;

"Mere differentia or inequality of treatment does not per se amount to discrimination within the inhibition of the equal protection clause. To attract the operation of the clause it is necessary to show that the selection or differentiation is unreasonable or arbitrary; that it does not rest on any rational basis having regard to the object which the legislation has in view."

89. Similarly, in the case of Federation of Women Lawyers Fida Kenya & 5 Others vs Attorney General & another 2011 eKLR it was stated thus;

"In our view, mere differentiation or inequality of treatment does not per se amount to discrimination within the prohibition of the equal protection clause. To attract the operation of the clause, it is necessary to show that the selection or differentiation is unreasonable or arbitrary, that it does not rest on any basis having regard to the objective the legislature had in view or which *the Constitution* had in view. An equal protection is not violated if the exception which is made is required to be made by some other provisions of *the Constitution*. We think and state here that it is not possible to exhaust the circumstances or criteria which may afford a reasonable basis for classification in all cases".

90. Article 27 of *the Constitution* provides that all persons are equal under the law. All laws passed must apply to and benefit all persons whom they cover and must not be applied impartially. Preferential treatment accorded to certain persons in comparable situations, without any legal justifications amounts to discrimination



91. The Petitioner alleges that she was treated in a discriminatory manner by immigration officials on account of her age, gender, and marital status. She highlights the case of her relative, also a Congolese national who was allowed entry into Kenya under similar circumstances during the same period, despite both being beneficiaries of the visa waiver agreement. According to the Petitioner, this discrepancy in treatment was not based on any legitimate immigration criteria but on arbitrary personal characteristics.
92. The Petitioner further argued that the Respondents failed to explain why she was treated differently from her relative. She averred that both individuals held valid return tickets, the same nationality and that their situations were similar. She contends that her youthful appearance, unmarried status, and unaccompanied travel may have been perceived unfavourably, and that such perceptions reflect deep-seated gender and age-based biases.
93. The Respondents denied the allegation of discrimination, arguing that immigration decisions are individualized and cannot be analogized merely on the basis of shared nationality. They maintained that admission into Kenya is determined by a holistic assessment of each applicant's circumstances and compliance with legal criteria. They also argue that the fact of admission of another person from the same country does not amount to evidence of discriminatory treatment against the Petitioner.
94. Differential treatment constitutes discrimination when it is based on an illegitimate ground and results in disadvantage or the denial of a benefit without reasonable justification. In *Nelson Andayi Havi v Law Society of Kenya & 3 Others* [2018] KEHC 8791 (KLR), the court underscored that:
- “unfair discrimination is differential treatment that is demeaning. This happens when a law or conduct, for no good reason, treats people as inferior or less deserving of respect than others. It also occurs when a law or conduct perpetuates or does nothing to remedy existing disadvantages and marginalization.”
95. Applying the above test to the present case, the Court finds that there is a prima facie case of discriminatory treatment. The Respondents have not sufficiently rebutted the Petitioner's comparison with her relative, nor have they offered a lawful or fact-specific explanation for the differing outcomes. The Respondents rely on general assertions of national interest and discretionary powers without demonstrating how such powers were applied fairly and consistently across similarly situated individuals.
96. It is also instructive that under Article 259(1) of *the Constitution*, courts are enjoined to interpret *the Constitution* in a manner that promotes its values and principles, including human dignity, equality, and non-discrimination. The grounds listed under Article 27(4) are not exhaustive, and discrimination on analogous grounds is also prohibited. Nationality, immigration status, and related attributes may therefore form a basis of unlawful discrimination when used to arbitrarily disadvantage an individual.
97. The East African Community Protocol on the Establishment of a Common Market further reinforces this position. Article 7(2) of the Protocol requires partner states to refrain from discrimination based on nationality among citizens of member states. The failure to provide the Petitioner with equal access to the privileges of the visa waiver, as enjoyed by another Congolese citizen, infringes this obligation and weakens the regional goal of free movement.
98. The Court also considers the disproportionate effect of the denial of entry on the Petitioner. She was a young, unaccompanied woman travelling for tourism, and her exclusion, based on suspicion unsupported by evidence, resulted in financial loss, emotional harm, and reputational damage. Discrimination is not only about intention but also about the impact of a decision. Once differential



treatment is established, the burden shifts to the State to justify the distinction. In the present case, the Respondents have failed to discharge that burden.

99. Consequently, the Court finds that the Petitioner was subjected to discrimination contrary to Article 27 of *the Constitution*. The immigration authorities failed to justify their decision in a transparent, objective, or lawful manner, resulting in unequal treatment based on personal characteristics.

Whether the Petitioner is entitled to the reliefs sought

100. The Petitioner seeks a range of remedies including declarations of constitutional violation, compensation for financial and emotional harm, and exemplary damages to vindicate the breach of her rights. The Respondents oppose the grant of any relief, arguing that no actionable violation occurred, and that the Petitioner is undeserving of any damages.
101. 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.
102. Article 23(3) of *the Constitution* empowers the High Court, in proceedings brought under Article 22, to grant appropriate relief including a declaration of rights, an order for compensation, judicial review orders, and any other relief the Court considers appropriate.
103. From the analysis of the preceding issues, this Court has found that the Petitioner's rights under Articles 47 and 27 of *the Constitution* were violated by the Respondents' conduct in denying her entry without providing written reasons, and subjecting her to discriminatory treatment. These are actionable constitutional wrongs that justify the grant of appropriate relief to vindicate *the Constitution* and to provide redress to the aggrieved party.
104. On declaratory relief, the Court finds that a formal declaration is appropriate in affirming that the Respondents violated the Petitioner's rights. Declaratory orders serve the public interest by clarifying the law and ensuring that public authorities are held accountable for their actions. Such declarations also act as a deterrent against future transgressions.
105. On the question of compensation, the Court reiterates that monetary damages may be awarded as appropriate relief under Article 23(3)(e), particularly where constitutional rights are violated. While addressing itself to the question of damages, the Court of Appeal in *Gitabu Imanyara & 2 others v Attorney General* Civil Appeal No. 98 of 2014 [2016] eKLR stated thus:

“...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...”



106. In *Daniel Waweru Njoroge & 17 Others v Attorney General* Civil Appeal No. 89 of 2010 [2015] eKLR, the court underscored that:

“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.”

107. In the present case, the Petitioner has demonstrated that she suffered pecuniary losses arising from cancelled accommodation, non-refundable travel expenses, and costs incurred due to abrupt changes in itinerary. The Court finds that these losses were reasonably foreseeable and proximately caused by the Respondents’ unlawful actions. A modest award for special damages is therefore warranted, though subject to the principle that special damages must be strictly proved.

108. On exemplary damages, the Court notes that such damages are awarded sparingly and only where the conduct of the State or its agents is oppressive, arbitrary, or unconstitutional in a manner deserving of rebuke. Punitive or exemplary damages are awardable only under two circumstances, namely

- (i) where there is oppressive, arbitrary or unconstitutional action by the servants of the government; and
- (ii) where the Defendant’s action was calculated to procure him some benefit not necessarily financial, at the expense of the plaintiff. (See the Court of Appeal exposition in *Obongo & another v Municipal Council of Kisumu* [1971] EA 91). In the present case, while the Court is concerned by the Respondents’ failure to uphold constitutional standards, the threshold for awarding exemplary damages has not been fully met due to the absence of evidence of malice, bad faith, or deliberate targeting.

109. Ultimately, the Court must strike a balance between vindicating *the Constitution* and ensuring proportionality in the reliefs granted. The goal of constitutional remedies is not to enrich the Petitioner but to restore her dignity, deter future violations, and affirm the rule of law. The Court is guided in this regard by the principle of appropriateness, which mandates that remedies under Article 23 should be just, effective, and appropriate to the violation suffered.

110. From the foregoing, since the petition partially succeeds, and this Court makes the following orders: -

- a. A declaration be and is hereby issued that the denial of entry to the Petitioner to Kenya, despite the existence of a visa waiver agreement between Kenya and DRC, amounted to unfair discrimination based on age and sex, in violation of Article 27 of *the Constitution*;
- b. A declaration be and is hereby issued that the Respondents’ failure to furnish sufficient and specific reasons for the denial of entry constitutes a breach of the Petitioner’s right to fair administrative action and right to be furnished with reasons for actions or inactions;
- c. An order of prohibition be and is hereby issued prohibiting any further or future similar actions by the Respondents that violate the Petitioner’s constitutional rights as complained in the Petition, including denying entry without proper reasons and engaging in discriminatory practices;



- d. General damages for constitutional breaches are awarded to the Petitioner and which shall be borne by the Respondents in the sum of Kshs. 1,500,000 to compensate for unfair discrimination and breach of the Petitioner's right to fair administrative action;
- e. Special damages for forfeited accommodation and travel expenditures in the sum of USD 1,430, to be converted at the prevailing rate on the date of judgment are awarded to the Petitioner and shall be borne by the Respondents; and
- f. Costs of the Petition are awarded to the Petitioner.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 12th DAY OF AUGUST, 2025.

.....

BAHATI MWAMUYE

JUDGE

In the presence of: -

Counsel for the Petitioners – Ms. Gatura

Counsel for the Respondents – Mr. Marwa h/b Ms. Were

Court Assistant – Ms. Lwambia

