



**Murayi alias Jamal v Nation Media Group Limited & 6 others
 (Constitutional Petition E666 of 2024) [2025] KEHC 12289 (KLR)
 (Constitutional and Human Rights) (12 August 2025) (Judgment)**

Neutral citation: [2025] KEHC 12289 (KLR)

**REPUBLIC OF KENYA
 IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
 CONSTITUTIONAL AND HUMAN RIGHTS
 CONSTITUTIONAL PETITION E666 OF 2024**

AB MWAMUYE, J

AUGUST 12, 2025

**N THE MATTER OF THE ENFORCEMENT OF THE BILL OF RIGHTS
 UNDER ARTICLE 22 OF THE CONSTITUTION OF KENYA 2010**

AND

**IN THE MATTER OF THE ALLEGED VIOLATIONS OF ARTICLES 28, 29(D),
 31(C), 33(3), 35(2) AND 40(1) OF THE CONSTITUTION OF KENYA 2010**

BETWEEN

JAVAN MORTON MURAYI ALIAS JAMAL PETITIONER

AND

NATION MEDIA GROUP LIMITED 1ST RESPONDENT

STANDARD GROUP LIMITED 2ND RESPONDENT

ROYAL MEDIA SERVICES 3RD RESPONDENT

BOXRAFT LIMITED 4TH RESPONDENT

TUKO MEDIA LIMITED 5TH RESPONDENT

EPUKA UGAIDI ORGANIZATION 6TH RESPONDENT

RADIO AFRICA GROUP 7TH RESPONDENT



JUDGMENT

1. Vide Petition dated 25th November, 2024 the Petitioner alleges violation of his constitutional rights by the Respondents via their publications of false and malicious news reports and/or information about him.
2. The Petitioner is seeking the following orders:
 - i. That a declaration be and is hereby issued that the 1st, 2nd, 3rd, 4th, 5th and 6th Respondents have violated his rights to dignity and the right to have his reputation respected under Articles 28 and 33(3), his right not to be subjected to psychological torture under Articles 29 (d) and his right not to be vilified under Article 33(2)(d)(i) of *the Constitution* in their individual capacities by publishing false and malicious news reports about him in their respective media platforms and falsely claiming therein without any justification that he was arrested in his way to Somali to join Al Shabaab by linking up with his friends who are members of the terrorist group and that he was found in possession of materials used to make explosive devices together with a notebook containing terrorism information or plan on how to destroy buildings and by the 1st Respondent claiming that he was found with an IED.
 - ii. That a declaration be and is hereby issued by this Court that the 1st and 6th Respondents have violated his right to dignity and the right to have his reputation respected under Article 29(d) and his right not to be vilified under Article 33 (2) (d) (i) of *the Constitution* in their individual capacities by publishing false and malicious news report about him in the Standard newspaper and on www.x.com respectively and falsely claiming therein without any justification an by innuendo that he was suspected to have been involved in in the radicalization of the youth in Nakuru town.
 - iii. That a declaration be and is hereby issued by this Court that the 2nd Respondent has violated the Petitioner's right to dignity and the right to have his reputation respected under Articles 28 and 33(3), his right not to be subjected to psychological torture under Article 29(d) and his right not to be vilified under Article 33(2)(d)(i) of *the Constitution* by publishing a false and malicious news report about him in the Standard Newspaper and falsely claiming therein without any justification that he was arrested on a terror – related offence when enroute to Somalia and that he was charged in a Marsabit court with planning to carry out a terror attack.
 - iv. That a declaration be and is hereby issued by this Court that the 1st, 2nd and 7th Respondents have violated his right to dignity and the right to have his reputation respected under Articles 28 and 33(3), his right not to be subjected to psychological torture under Articles 29(d) and his right not to be vilified under Article 33(2)(d) (i) of *the Constitution* in their individual capacities by publishing false and malicious information about him in their respective media platforms and falsely claiming therein without any justification that he was radicalized in Nakuru then adopted violent extremist ideologies and he ended up being recruited by Al Shabaab terrorist group.
 - v. That a declaration be and is hereby issued by this Court that the 1st, 2nd, 3rd, 4th, 5th, 6th and 7th Respondents have violated his right to dignity and the right to have his reputation respected under Articles 28 and 33(3) and his right not to be subjected to psychological torture under Article 29(d) of their Constitution in their individual capacities by publishing false and malicious news reports and/or information about him in their respective media platforms



and providing therein false information about him without any justification by the 1st, 2nd, 3rd, 5th, 6th and 7th Respondents claiming that he came from Vihiga County, by the 1st and 6th Respondents claiming that he converted to Islam in Mombasa and by the 1st, 2nd, 4th, 5th, and 7th Respondents claiming that he was still a student at Kabarak University at the time of his arrest in Jaldesa.

- vi. That a declaration be and is hereby issued by this Court that the 1st, 2nd, 3rd, 4th, 5th, 6th and 7th Respondents have violated his rights not to have information related to his private affairs unnecessarily revealed or required under Article 31(c) of *the Constitution* in their individual capacities by publishing false and malicious news report and/or information about him in their respective media platforms and identifying the Petitioner herein by his full name Javan Morton Murayi/ Murai alias Jamal and his private details without his consent and without any justification by the 1st, 2nd, 3rd, 5th and 6th Respondents using his photograph without his consent, by the 1st, 2nd, 3rd, 6th and 7th respondents identifying him as a rugby player for Nakuru RFC and by the 1st, 2nd, 4th, 5th and 7th respondents unnecessarily linking him to Kabarak University.
- vii. That a declaration be and is hereby issued by this court that the 1st, 2nd, 3rd, 4th, 5th, 6th and 7th Respondents have violated the Petitioner's rights to the exclusive ownership and use of his name and image as his personal property for his own commercial gain under Article 40(1) of *the Constitution* in their individual capacities by using his name and by the 1st, 2nd, 3rd, 5th and 6th Respondents using his photographs without his consent and without any justification in the false and malicious news reports and/or information they made about him for the sake of procuring profits for themselves at his expense.
- viii. That a declaration be and is hereby issued by this court that the 1st, 2nd, 3rd, 4th, 5th, 6th and 7th Respondents have violated his right to the correction of untrue and misleading information about him under Article 35(2) of *the Constitution* in their individual capacities by publishing false and malicious news reports and/or information about him in their respective media platforms wherein they make false terrorism allegations against him and provide false information about him without any justification and then deliberately and conveniently refusing to correct their publications to this day despite the fact that he was acquitted by a court of law from the actual terrorism allegations in Marsabit Criminal Case No. 359 of 2016 on 11th September 2017.
- ix. That an order be and is hereby issued by this court that the 1st, 2nd, 3rd, 4th, 5th, 6th and 7th Respondents do provide him with the publication of apologies for and corrections of the false terrorism allegations they made against him and false information they provided about him without any justification in the false and malicious news reports and/or information and which are to be made in the same malicious news reports and/or information and which are to be made in the same manner and prominence as the offending publications, and then the 1st, 2nd, 3rd, 4th, 5th, 6th and 7th Respondents be compelled to delete and/or remove the news reports and/or information they made about him from their website, social media accounts and from the world wide web.
- x. That an order of permanent injunction be and is hereby issued by the Court against the 1st, 2nd, 3rd, 4th, 5th, 6th and 7th Respondents in their individual capacities, thereby restraining them whether by themselves or their agents, proxies or any other person acting under their authority and influence from the continued publication of the false and malicious news reports and/or information about him in the world wide web and restraining them from any further



publication of the false terrorism allegations against him, the false information about him contained in their publications on any media platform and the world wide web, and restrain the Respondents from any further interference with the enjoyment of his rights and fundamental freedoms.

- xi. That an order for compensation be and is hereby issued by the court against the 1st, 2nd, 3rd, 4th, 5th, 6th and 7th Respondents in their individual capacities for violating the Petitioner's rights enshrined under Articles 28, 29(d), 31(c), 33(2)(d)(i), 33(3), 35(2) and 40(1) of the Constitution, in the form of general damages, aggravated damages and exemplary damages.
 - xii. That this court awards the Petitioner the costs of the Petition and interest on (xi) above at court rate.
 - xiii. That court grants him any other order it deems just and appropriate to grant.
3. The Petitioner filed an affidavit in support of the Petition dated 25th November 2024 and sworn by Javan Morton Murayi, the Petitioner herein to which he averred despite the fact that his claim in the Petition arises from the publication of defamatory information about him by the Respondents he needs to emphasize that his claim is one alleging the violation of his constitutional rights and is not in any way a claim for defamation, thus the Petition is subject only to the limitations contemplated in the Constitution and is not subject to the limitations contemplated in Limitations of Actions Act, and the Petition seeks the remedies provided for in the Constitution and not the remedies sought in an action or defamation.
 4. According to him, on 10th June, 2016 he was arrested in Jaldesa, Masabit County after damaging one of the of the water tanks from the Jaldesa Community Conservancy after damaging one of their water tanks. He avers that he was taken to Marsabit police station and booked in for malicious damage to property and on suspicion of being a terrorist. He was arraigned in Marsabit Principal Magistrate's court for plea taking which was differed for 30 days to allow the Isiolo based Anti-Terrorism Police Unit to conduct investigations but the court granted them 14 days.
 5. He further avers that as he was being transported to Isiolo on 13th June 2016, the 1st Respondent published false and malicious news report about him on www.nation.co.ke under the title University student detained over terror link authored by Ken Bett. The news report remains in publication to this date contains his photograph taken by the author at Marsabit police station earlier that afternoon. According to the Petitioner, the 4th Respondent also published false and malicious news report about him on www.kenyans.co.ke without his knowledge and consent under the title Kabarak Student arrested with dangerous terrorism plan.
 6. The Petitioner states that on Tuesday 14th June 2016 while being detained by the ATPU in Isiolo the 1st, 2nd, 3rd, and 5th Respondents published news about him in their respective media platform. Further, the 1st Respondent published news report about him in the Nation Newspaper, without his knowledge and consent, under the title Youth on mission to join shabaab apprehended authored by Ken Bett which read as follows:

“A Kabarak University student has been arrested on suspicion of heading to Somalia to join Al-Shabaab terrorists...He said Mr. Murai, who comes from Vihiga County, was heading to Somalia to link up with friends who had already joined the group... He said officers found him with suspicious items, including wires and a notebook which contained information on how to destroy buildings. “We found him with materials related to terrorism among them an explosive device,” Mr. Barasa said in his office in Marsabit town.’



7. The Petitioner states that the 1st and 2nd Respondents equally published news reports about him in their respective media platforms. Accordingly, the 1st, 2nd, 3rd, 4th and 5th Respondents were well aware that he was arrested for damaging a water tank at Jaldesa and was also being held and investigated for suspicion of being a member of Al-Shabaab terrorist group but they deliberately decided to exploit his detention to develop unsubstantiated narratives about his arrest.
8. The Petitioner asserts that on 27th June 2016, the 6th Respondent published news about him in the Nation Newspaper without his consent under the title; Police: Rugby player was to join Shabaab in Somalia by Eric Matara. He further asserts that on 28th June he was arraigned in court for plea taking on the terrorism charges where cash bail was set at Kshs. 1,000,000.00 and a bond of Kshs. 3,000,000.00. The criminal proceedings came to an end on 11th September, 2017 and the court delivered a judgment in his favour, acquitting him of all 12 counts of terrorism pursuant to Section 215 of the Criminal Procedure Code.
9. He further asserts that on 24th October, 2021, the 1st Respondent published false and malicious information about him on www.nation.co.ke under the title, Kenya's new terror hotspots raise alarm authored by Mary Wambui and on 23rd December, 2021 the 7th Respondent published false and malicious information on www.star.co.ke under the title current violent extremism hotspots outlined in new report.
10. The Petitioner contends that while the Respondents were exercising their freedom of expression, they violated his right to dignity, his right to have his reputation respected, his right to privacy, his right not to be vilified, his right to property, his right to the correction of untrue and misleading information that affects him and his right to psychological torture through spreading false narratives about his arrest and false terrorism allegations without any justification.
11. In response and in opposition of the Petition, filed a Replying Affidavit dated 28th January, 2025 sworn by Lucas Barasa, a reporter and journalist who was employed by the 1st Respondent at the time material to the instant petition. He avers that it is not contested that the Petitioner was arrested and charged in Marsabit Criminal Case 359 of 2016 Republic v Javan Morton Murayi with 12 counts of being in possession of an Article connected with a terrorism offence under the [Prevention of Terrorism Act](#) 2012.
12. He asserts that being a matter of public interest, he went together with his colleague, Ken Bett to interview the Marsabit County Criminal Investigation officer, Mr. Benard Barasa on 15th June 2016, who provided them with the Petitioner's details and the items of his possession at the time of his arrest. The details given by Mr. Barasa formed the basis of the 1st Respondent's publications.
13. He further asserts that the Petitioner's university, religion, home county and association with Nakuru RFC were obtained from the police and Nakuru RFC chairman Ali Ajabri through a press conference. The 1st Respondent denied violating the petitioner's rights as it published and distributed information regarding the Petitioner's arrest and subsequent court proceedings which was information already in the public record.
14. The 2nd Respondent equally filed a Replying Affidavit in response to the Petition that was dated 31st December 2024 and sworn by Njenga Njihia, the legal officer of Royal Media Services Limited to which he averred that this is the 2nd Petition that the Petitioner has filed touching on the same matter the first being Milimani HCCC Petition No. 357 of 2019; Javan Morton Murayi alias Jamal v Nation Media Group Ltd & 5 others.
15. He further avers that he has been advised by the 3rd Respondent's advocates that the Petitioner's claim if any is a claim of tort of defamation which is best canvassed in a civil suit or complaint before the Media



- Council not a constitutional petition, that the article complained about was published over 8 years ago brought by the Petitioner who is trying to circumvent Section 4(2) of the Limitations of Actions Act which provides that an act for libel or slander may not be brought after the end of 12 months.
16. They contend that the source of information for their publication was a press statement issued by Nakuru RFC which the Petitioner admits he played for and the court records and it is thus not clear what manner the publications contravened his rights and fundamental freedoms.
 17. The 4th Respondent filed a Replying affidavit dated 18th February 2025 sworn by Robert Ndungu, the Managing Partner of the 4th Respondent in response and in opposition of the Petition. He averred that he has been advised by his advocates on record that Section 4(2) of the Limitations of Actions Act, 2022 expressly provides that an action for libel or slander may not be brought after the end of twelve months from such date of publication and that the instant Petition is a defamation suit couched as a constitutional petition.
 18. He also contends that the Petitioner is attempting to circumvent the Statutory limitations imposed on defamation suits by presenting the matter under the guise of a constitutional petition to aid his indolence in filing the civil suit.
 19. The 5th Respondent equally filed a replying affidavit in response to the Petition, dated 27th January 2025 and sworn by Julia Majale, the 5th Respondent's Managing director to which she reiterated contents of the 1st, 2nd and 4th Respondent's affidavits and further contends that the information in the publication was accurate in both substance and fact and that the Petitioner has not reached the threshold for institution of a constitutional petition as per the *Mumo Matemu vs Trusted Society of Human Rights Alliance and 5 Others* [2013] eKLR.
 20. Vide a Replying Affidavit dated 9th January, 2025 and Sworn by Akello Odenyo, a journalist working for Radio Africa Group, the 7th Respondent opposed the Petition and averred that the Petitioner's claim is one of defamation in nature and would best be dealt with a civil suit or as a complaint before the Media Complaints Commission. Further, that the instant petition has not met the threshold to be instituted as a constitutional petition. The 7th Respondent equally contends that the contents of the said publication of 23rd December 2021 were true in substance and in fact, made in good faith and without malice, on account of a matter of immense public interest.
 21. The Petitioner filed a supplementary affidavit dated 13th February 2025, where he reiterated contents of his supporting affidavit. He avers that he had previously filed a suit, Constitutional Petition No. 357 of 2019, against the 1st, 2nd, 3rd, 4th and 5th Respondents which he withdrew on 3rd October, 2023, thus the instant petition is a fresh matter.
 22. He further avers that his claim is seeking an enforcement on the Bill of Rights granting this court jurisdiction to determine his suit under Article 165(3) of *the Constitution*.
 23. The petition was canvassed by way of written submissions, and in compliance all parties except the 6th Respondent filed and served their submissions.

Petitioner's Submissions

24. The Petitioner submits that he does not contend that the dispute between himself and the Respondent arises from libel, rather, he contends that what he filed in Court is a constitutional petition which does not raise a claim for defamation because it has been brought pursuant to Article 22 of Constitution of Kenya (2010) where he alleges the violation of his enshrined under Articles 28, 29(d), 31(c), 33(2)(d)(i), 33(3), 35(2) and 40(1) in the Bill of Rights and is seeking the relief provided for under



Article 23 of *the Constitution* as remedies for the alleged violations, not the reliefs sought in a civil suit for defamation. Reliance was placed on In the Matter of the Interim Independent Electoral and Boundaries Commission, Phinehas Nyagah v Gitobu Imanyara [2013] KEHC 6662 (KLR), Glorious Stella Nyamogo v Royal Media Services [2017] KEHC 8815 (KLR) and the South African case NM & OTHERS V Smith & others (CCT 65/05) [2007] ZACC 6.

25. On whether his claim is time barred, the Petitioner submitted that there wasn't any inordinate delay as Article 19(3)(c) of *the Constitution* provides that the rights and fundamental rights in the Bill of Rights are subject only to the limitations contemplated in the Constitution. He relied on the case of Chief Land Registrar & 4 others v Nathan Tirop Koech & 4 others [2018] KECA 27 (KLR) in support of the same.
26. The Petitioner argues that the Petition meets the threshold of instituting constitutional petition because it gives a fair notice to the Respondents regarding the issues in controversy between them and the Petition sets out, with a reasonable degree of precision the constitutional rights alleged to have been violated by the Respondent and the manner in which the Respondents are alleged to have violated those rights. He cited the case of Anarita Karimi Njeru v Republic [1979] KEHC 30 (KLR) and the case of Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] KECA 445 (KLR).
27. He further contends that he is not guilty of material non-disclosure for failing to disclose the details of the previous suit against the 1st, 2nd, 3rd, 4th and 5th Respondents regarding the same issue in the instant petition because he withdrew the previous petition before it was heard or determined and that there is no other pending lawsuit between the parties. Reliance was placed on the case of MNN v MNN [2016] KEHC 6400 (KLR). he then proceeded to reiterate contents of both his Supporting and Supplementary Affidavits.

1st Respondent's Submissions

28. The 1st Respondent submitted that the Petitioner in his supporting affidavit states that he instituted these proceedings to clear his name from the falsehood published about him and right the wrongs done to him without justification. The averments of the Petitioner that the publications were not only false but malicious form the basis for a claim of defamation thus according to the 1st Respondent, the instant petition is a defamation claim disguised as a constitutional petition and this court should refrain from handling civil suits disguised as constitutional petitions. They relied on the case of SG V Standard Media Group & 3 Others (Constitutional Petition E066 of 2021) [2022] KEHC 13633 (KLR).
29. The 1st Respondent further stated that at all material times they maintained a fair and accurate account of events leading to the Petitioner's arrest. Further, they were under a moral and social duty to publish the information complained of to the members of the public as the issue of terrorism is a matter of public interest. They also asserted that the Petitioner's picture was taken when he was presented in court and not for any commercial purpose thus the publications were made not out of a commercial benefit but based on public interest. They cited the case of Jessicar Clarise Wanjiru v Davinci Aesthetics & Reconstruction Centre & 2 others [2017] KEHC 9230 (KLR) and also the case of JWI & TMK V The Standard Group Limited & Nation Media Group Petition No. 466 of 2012.
30. The 1st Respondent contends that having established that the Petitioner's rights were not violated, the Petitioner is not entitled to compensation as prayed and the prayer for an apology is without basis having established that the publications are a true account of the events and a matter of public interest. Reliance was placed on the case of Nzibo v Nation Media Group Limited & another (Civil Suit 57 of 2020) [2024] KEHC 12720 (KLR) and Ongili v Nation Media Group Kenya Limited &



another; Director of Public Prosecutions (Interested Party) (Petition E012 of 2020) [2024] KEHC 11391 (KLR).

2nd Respondent's Submissions

31. The 2nd Respondent asserts that this Petition has all hall marks of a defamation suit and the wording and claims in the Petition are those of a defamation suit cloaked as a petition. They further submitted that the Petitioner filed the instant suit as an afterthought to circumvent the statutory limitations period window barring him from bringing a defamation claim after 12 months from the date the cause of action arose. According to the 2nd Respondent, the instant petition amount to constitutional avoidance which doctrine frowns upon the practice of bringing ordinary disputes to the constitutional court. Reliance was placed on the Supreme Court case of Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others [2014] eKLR and also the case of Grays Jepkemoi Kiplagat v Zakayo Chepkoga Cheruiyot [2021] eKLR and Uhuru Muigai Kenyatta v Nairobi Star Publications Limited [2013] eKLR .
32. They further averred that the Petitioner did not exhaust internal dispute resolution mechanisms such as the Media Complaints Commission before instituting the present petition. They equally argued that the Petitioner has failed to establish the particular violations of his rights by the Respondents under Article 31 of *the Constitution* but raises the question of interpretation of statute particularly provisions on the *Defamation Act*. Reliance was placed on the case of Wycliffe A. Swanya v Toyota East Africa Ltd & another [2009] eKLR .
33. The 3rd, 4th, 5th and 7th Respondents reiterated contents of their Replying affidavit and analyzed issues already outlined above by the 1st and 2nd Respondents thus no need to duplicate the same having discussed the above.

Analysis and Determination

34. I have very carefully considered the Petition, the Affidavits in support and in opposition thereto and the subsequent submissions filed as well as the authorities relied upon in support thereof. The issues that arise for consideration can be summed up as follows: -

a. Whether the Petition as presented raises any constitutional issues

35. It is the duty of this court to satisfy itself in a matter that it is possessed of jurisdiction otherwise it may end up acting in vain. The jurisdiction of this court in dealing with Constitutional Petitions is properly invoked once a Petition that complies with the constitutional and legal requirements is lodged. The Court must therefore, decline any invitation by a Petitioner to deal with an alleged Petition which falls short of the laid down parameters on Constitutional Petitions.
36. This matter focuses on the parameters of constitutional petitions. Articles 22 and 258 of *the Constitution* remain the anchor provisions relating to the locus standi in instituting Petitions.
37. *The Constitution* as well as courts have expressed themselves on the manner in which Petitions ought to be presented in court. The Supreme Court in Communications Commission of Kenya & 5 Others vs Royal Media Services Limited & 5 Others had the following to say on Constitutional Petitions: -

“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 or 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 clearly from the High Court decision



in *Anarita Karimi Njeru vs. 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 the Contravention or infringement. Such principle plays a positive role, as a foundation of conviction and good faith, in engaging the constitutional process of dispute settlement.”

38. The Constitutional and Human Rights Court is supposed to exclusively deal with constitutional issues. Courts have defined what constitutional issues are in several instances. In *Fredricks & Other vs MEC for education and Training, Eastern Cape and Others* (2002) 23 ILJ 81 (CC), the Constitutional Court of South Africa rightly so, delimited what a constitutional issue entails and the jurisdiction of a constitutional court as follows: -

“*The Constitution* provides no definition of ‘constitutional matter’. What is a constitutional matter must be gleaned from a reading of *the Constitution* itself: if regard is had to the provisions of...*Constitution*, constitutional matters must include disputes as to whether any law or conduct is inconsistent with *the Constitution*, as well as issues concerning the status, powers and functions of an organ of State...the interpretation, application and upholding of *the Constitution* are also constitutional issues. So too...is the question of the interpretation of any legislation or the development of the common law promotes the spirit, purport and object of the Bill of Rights. If regard is had to this and to the wide scope and application of the Bill of Rights, and to the other detailed provisions of *the Constitution*, such as the allocation of powers to various legislatures and structures of government, the jurisdiction vested in the Constitutional Court to determine constitutional matters and issues connected with decisions on constitutional matters is clearly on extensive jurisdiction...”

39. Taking cue from the foregoing, and broadly speaking, a constitutional issue is, therefore, one which confronts the various protections laid out in a Constitution. Such protections may be in respect to the Bill of Rights or *the Constitution* itself. In any case, the issue must demonstrate the link between the aggrieved party, the provisions of *the Constitution* alleged to have been contravened or threatened and the manifestation of the contravention or infringement.
40. This Court agrees with the position in *Turkana County Government & 20 others vs Attorney General & others* (2016) eKLR where a multi-judge bench affirmed the profound legal standing that claims of statutory violations cannot give rise to constitutional violations.
41. A constitutional question is an issue whose resolution requires the interpretation of *the Constitution* rather than that of statute. Litigants should avoid trivializing *the Constitution* by turning every dispute into a constitutional matter, and leave constitutional adjudication to pure constitutional issues.
42. Returning to the matter at hand, this court has closely scrutinized the Petition. The heart of the Petition seems to be anchored on the allegations of information published by the defendants being defamatory in nature. To be defamatory, a statement must be false. If facts have to be stained to find out whether it is false, then it is not. Two things arise from the definition, reputation being lowered and the statement being false. The facts pleaded in this petition disclose civil defamation.
43. A fundamental question that must however be asked is whether this dispute as presented is in reality a constitutional dispute. The facts as presented in my view present a dispute that is allegedly based on defamation. Although these allegations can be framed as constitutional violations, they may very well support a claim of defamation but the Petitioner appears to have deliberately avoided taking that route.



44. A reading of the facts and issues arising on the Instant petition, it leaves no doubt that the petitioner's grievances can effectively be addressed in a civil suit premised on the law defamation. To determine whether the publications complained of are defamatory or whether they exposed him to ridicule or odium or psychological trauma, one does not need to invoke Article 31. These issues can be resolved within the realm of defamation law.
45. If therefore the claims before this Court can be adequately litigated in tort, was it proper for the Petitioners to fashion the matter as a constitutional dispute?
46. Courts have constantly weeded out disputes that are disguised as constitutional disputes when in reality they are not. In *Uhuru Muigai Kenyatta vs Nairobi Star Publication Limited* (2013) eKLR Justice Lenaola stated:
- “...Where there is a remedy in civil law, a party should pursue that remedy and I say so well aware of decision of *Haco Industries* where the converse may have been expressed as the position. My mind is clear however that not every ill in the society should attract a constitutional sanction as stated in *AG V Dutambala Criminal Appeal No. 37 of 1991* (Tanzania Court of Appeal) such sanctions should be reserved for appropriate and really serious occasions...”
47. Further in *John Harun Mwau v Peter Gastrow & 3 others* (2014) eKLR the Court held:
- “...Courts will not normally consider a constitutional question unless the existence of a remedy depends on it; if the remedy is available to an applicant under some other legislative provision or some other basis, whether legal or factual, a court will usually decline to determine whether in addition to breach of the other declaration of rights... it is established practice where a matter can be deposed without recourse of *the Constitution*, Constitution should not be invoked at all...”
48. In the case of *Grace Jepkemoi Kiplagat vs Zakayo Cheruiyot* (2021) eKLR Mutungi J. held thus: -
- “... there are no Constitutional issues that warrant adjudication by the Court and that the Petition may very well constitute an abuse of the due process of the court, I need to observe that parties are increasingly filing matters that are essentially civil matters and christening the same as constitutional Petitions which is not proper. Where there is the alternative remedy of filing matters that are essentially civil matters and christening the same as constitutional Petitions which is not proper. Where there is the alternative remedy of filing a suit in the ordinary civil courts, a party ought not to invoke the jurisdiction of the Constitutional Court.”
49. The Court of Appeal in dismissing a similar matter in the case of *James Kanyiita Nderitu v Attorney General and the Director of Public Prosecution* (2019) eKLR stated as follows:
- “...As we have stated above, the remedy for the appellant was to institute a suit for malicious prosecution. He has failed to do so and a constitutional petition cannot be used to circumvent primary legislation for enforcement of a given right or violation. It is not open to the appellant to urge that there can be no wrong without a remedy. Indeed, this legal principle is correct; the appellant had a remedy in the tort of malicious prosecution or an



action for defamation, he has chosen not to pursue the causes of action within the legal timeframe...”

50. It is cardinal principle that where there exists an alternative remedy under statutory law or otherwise, then such a remedy should be pursued instead of a constitutional petition. For instance, in Patrick Mbau Karanja v Kenyatta University [2012] eKLR Lenaola J. held:

“I should only say this as I conclude; in Francis Waithaka vs Kenyatta University Petition No. 633 of 2011, this Court was categorical that it is imperative that the Bill of Rights and the constitutional imperative mandate of this court should not be invoked where other remedies lie.”

51. Chacha J. was of a similar view and which I entirely agree with in the case of Godfrey Paul Okutoyi & others v Habil Olaka & Another [2018] eKLR where he stated thus:

“65. It is time it became clear to both litigants and counsel that rights conferred by statute are not fundamental rights under the Bill of Rights and, therefore, a breach of such rights being a breach of an ordinary statute are redressed through a court of law in a manner allowed by that particular statute or in an ordinary suit as provided by procedure. It is not every failure to act in accordance with a statutory provision or where action is taken in breach of a statutory provision that should give rise to a constitutional petition. A party should only file a constitutional petition for redress of a breach of *the Constitution* or denial, violation or infringement of, or threat to a right or fundamental freedom. Any other claim should be filed in the appropriate forum in the manner allowed by the applicable law and procedure.”

52. In the instant petition, this court considers the allegations raised heavily lie in the civil claim of defamation. The Petitioner’s cause of action could have adequately been remedied by conventional civil law not as a constitutional grievance.

53. In the premise, to the extent that the Petition seeks to vindicate the Petitioner’s alleged defamation, it is misconceived. The jurisdiction of this court was improperly invoked and therefore this court declines the invitation to deal with the petition further.

54. Moreover, the Petitioners have not adduced evidence to show how the Respondents publications violated *the Constitution* and has also not shown how the information published was false and how the same was in violation of his constitutional rights as guaranteed in the Articles of *the Constitution* as cited.

55. Guided by the above principles, this court is satisfied that the grievances raised in this petition are ordinary civil disputes that the Petitioner is masking as constitutional grievances. Applying the doctrine of constitutional avoidance, this court finds that it cannot consider the same as a constitutional petition. Accordingly, the petition is found to be devoid of merit. The orders sought in the Petition being declarations as well as damages and costs are declined and dismissed.

56. In the interests of justice, each party to bear their own costs of the Petition.

57. Orders accordingly. File closed accordingly.

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

BAHATI MWAMUYE



JUDGE

In the presence of: -

Petitioner in person – Javan Murayi

Counsel for the 1st Respondent – Ms Chepkowny h/b Mr Ochieng

Counsel for the 2nd Respondent – Mr Kirage

Counsel for the 3rd Respondent – Mr Munyori

Counsel for the 4th Respondent – No appearance

Counsel for the 5th Respondent – Mr Olute

Counsel for the 6th Respondent – No appearance

Counsel for the 7th Respondent – Mr Gichuga

Court Assistant – Ms Neema

