



REPUBLIC OF KENYA



KENYA LAW
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**Korir v Inspector General of Police & another (Petition
1 of 2019) [2024] KEHC 5892 (KLR) (23 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 5892 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
PETITION 1 OF 2019**

JK SERGON, J

MAY 23, 2024

BETWEEN

WILLIAM TUWEI KORIR PETITIONER

AND

INSPECTOR GENERAL OF POLICE 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

JUDGMENT

1. The petitioner filed a petition dated 4th January, 2019 seeking the following reliefs:
 - (a) A declaration that the petitioner was unlawfully detained for 150 days and the said detention amounted to breach of his fundamental rights
 - (b) A declaration that the Petitioner is entitled to compensation arising from the breach of his fundamental rights and freedoms.
 - (c) An order for compensation on the strength of (a) and (b) above being Kshs. 15,000,000/= being Kshs. 100,000/= daily for the 150 days payable by the 1st Respondent through the 2nd Respondent.
 - (d) Any other reliefs this Court may deem necessary to grant
 - (e) Costs of this petition.
2. The petitioner is a Kenyan citizen by birth and a Kenyan Nationality, hence is subject to the operation of *the Constitution* of Kenya, 2010. The petitioner has an unfettered right to enjoy the fundamental freedoms as enshrined under *the Constitution* of Kenya, 2010.
3. The 1st Respondent being a government institution is mandated by law to ensure that the petitioner, as among other Kenyan nationals and citizens, enjoy their fundamental rights and freedoms. The 2nd



- Respondent advises the 1st Respondent on matters ancillary to and incidental to the subject matter of the instant petition.
4. The petitioner provided a brief background to the instant petition. The petitioner was arrested on 18th April, 2003 at Kileges Village in Kericho District. The petitioner's arrest followed suspicion that he had committed an offence namely murder, he had murdered one Samuel Kipkirui Langat.
 5. The petitioner was arraigned in court on 29th September, 2003 and charged with the offence of murder vide Kericho High Court Criminal Case No. 44 of 2003 between the Republic v William Tuwei Korir, however, plea was not taken because he was arraigned in a subordinate court. The subordinate court directed that the petitioner be presented to the High Court on 23rd October, 2003, The petitioner was finally presented for plea taking and pleaded not guilty. The trial began on the 27th October, 2005, following a series of adjournments and mentions, the trial was completed on 14th April, 2009 when the trial court delivered its judgement.
 6. The petitioner was arrested on 18th April, 2003 and taken to Court on 29th September, 2009, which amounts to 164 days of detention, which translates to 150 days over and above the 14 days that were constitutionally provided for under the repealed constitution.
 7. The petitioner contended that he was arrested when the repealed constitution was in operation and in the said constitution, section 72 (3) (b) the provision for detention pending trial was clear that person (s) arrested on suspicion of committing a capital offence were to be held in custody not more than fourteen (14) days. Additionally, section 72 (6) of the repealed constitution provided for compensation for unlawful detention.
 8. The petitioner contended that the current constitution has similar provisions to the repealed constitution in respect to detention pending trial to wit article 49 (i) (a) - (e) of *the Constitution* of Kenya.
 9. The petitioner contended that *the Constitution* of Kenya, 2010 has provisions on alleged breach of fundamental rights and freedoms in article 22 (1) and 23 (3) (e) which apply to detention pending trial. The petitioner further contended that *the Constitution* of Kenya does not give any time limit for any person to seek redress for breach of fundamental rights and freedoms.
 10. The petitioner contended that the violations of the provisions on detention pending trial under the repealed constitution, properly construed, can be addressed under the provisions of the current constitution which have similar intent and purpose. The petitioner cited Legal Notice Number 117 on 28th Day of June, 2013 and in particular Part II namely *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 and section 19 of the sixth schedule of *the Constitution* of Kenya.
 11. Finally, the petitioner contended that the 1st Respondent is liable for proceedings under article 23 (3) (a) and (e) of *the Constitution* of Kenya, 2010 by reason of infringement of his rights as enshrined under article 49 (i) (f) of the same Constitution whereas the 2nd Respondent is the overall legal adviser of the government.
 12. The petition is supported by a supporting affidavit sworn by William Tuwei Korir, the petitioner herein.
 13. The petitioner avers that in as much as he was convicted for the offence of murder vide Kericho High Court Criminal Case Number 44 of 2003, he is hopeful that he will be acquitted by the Court of Appeal based on the strong and compelling appeal lodged vide Court of Appeal Criminal Appeal Number 114 of 2009.



14. The petitioner maintains that the issue under contention in the instant petition, however, is the prolonged detention pending trial whilst under police custody.
15. The petitioner filed an amended petition dated 4th February, 2019, in which he amended the particulars of his claim as follows; “The petitioner was arrested on 18th April, 2003 and taken to Court on 29th September, 2003, which amounts to 164 days of detention, which translates to 150 days over and above the 14 days that were constitutionally provided for under the repealed constitution.”
16. The petitioner filed a supporting affidavit in support of the amended petition adopting the contents in the amended petition and the initial affidavit in support of the petition.
17. The petitioner filed submissions in support of his petition.
18. The petitioner reiterated that he was arrested on 18th April, 2003 but was not arraigned in court until 29th September, 2003, culminating in 164 days in custody, 150 days over and above the period prescribed in the then repealed Constitution. The petitioner stated that proof of the violation was in court proceedings. The petitioner was adamant that the detention period was longer than that prescribed in section 72 (3) (b) the repealed constitution and article 49 (1),(f) (i) and (ii) in *the Constitution* of Kenya, 2010.
19. The petitioner contended that during the entire trial no explanation was given as to why the petitioner, then the accused, was not produced in court within the prescribed period, moreso, even after the respondents were served with the instant petition up and until filing of submissions, there was no response on the part of the state. The petitioner cited the case of Paul Mwangi Murunga v Republic [2010] eKLR, where the Court of Appeal was explicit on the burden to prove or disprove breach in cases of unlawful detention and held as follows; “ We do not accept the position that the burden is upon an accused person to complain to a magistrate or judge about the unlawful detention in the custody of the police. The prosecuting authorities themselves know the time and date when an accused was arrested... But in case the prosecution does not offer any explanation, then the court, as the ultimate enforcer of the provisions of *the constitution*, must raise the issue.”
20. The petitioner argued that the detention was unlawful and caused damage, 150 days in police custody before taking plea was unprecedented and he was therefore entitled to compensation. The petitioner maintained that the unlawful detention was during the era of the old constitution. The petitioner reiterated that the repealed constitution provided for damages in cases of unlawful detention and in any event the current constitution permits redress of the violation of fundamental rights and freedoms in article 22 (1) and 23 (3) (a) and (f). The petitioner argued that the courts have made a pronouncement that the redress for violation of fundamental rights do not have a time limit, hence the instant application was within time.
21. Finally, the petitioner submitted that where the explanation is not acceptable or reasons for unlawful detention are not justifiable, as in the instant case, the damages ought to be substantial, where the explanation is reasonable, it may be less. The petitioner submitted several authorities, to include the High Court of Nakuru Petition No. 7 of 2010 Lechornai Lorkurani v Attorney General whereby the court awarded a sum of Kshs. 500,000/= to the petitioner, where the petitioner was detained for 5 days. He had committed murder. The court also noted that he had not indicated his earnings and the loss he suffered in the period he was in custody. The petitioner therefore maintained that a sum of Kshs, 15,000,000/= was reasonable in the circumstances.
22. The 1st and 2nd Respondent filed grounds of opposition in response to the petitioner’s amended petition dated 4th February, 2019 on the following grounds;



- (i) The petitioner has not met the threshold of a constitutional petition by failing to demonstrate with specificity and provide particulars on how the respondents violated his constitutional rights. It is trite law that the specific provisions and evidence in support of acts of infringement or threats of violation of rights in a constitutional petition must be pleaded with precision as elucidated in *Anarita Karimi Njeru v R* 1979 KLR 154.
 - (ii) There was inordinate delay in bringing the petition as the facts giving rise to the claims in the instant petition occurred in 2003 more than sixteen (16) years ago. There was no plausible explanation for the inordinate delay.
 - (iii) That the records which would have aided the respondents in responding to the instant petition had already been destroyed in line with the *Records Disposal Act*, CAP 14 and the *National Police Service Act* No. 11A of 2011.
 - (iv) That the delay in bringing the petition was unreasonable, inordinate and jeopardises the respondents case as the possible witnesses have already retired, some have aged hence cannot vividly remember the events leading to the instant petition and some have died.
 - (v) Therefore the lack of essential witnesses and documents would be prejudicial to the respondent's case.
 - (vi) The petition is incompetent, misconceived, misplaced, frivolous , vexatious and therefore an abuse of court process.
23. The 1st and 2nd respondents filed submissions in support of their case and maintained that there was inordinate delay in filing the instant petition. The respondents argued in as much as there is no time limitation in respect of constitutional petitions, the delay must not be inordinate and that there must be a plausible explanation for the delay and cited a myriad of cases, however, I wish to highlight the case of *Peter M. Kariuki v Attorney General* (2014) eKLR whereby the Court in addressing a delay of 23 years in bringing a claim stated as follows; “ We have already adverted to the fact that the appellant filed his constitutional petition some twenty three [23] years after his conviction by the court martial. We agree with the trial court that his claim was not time barred. However, the consequence of the appellant's delay in lodging his claim was some level of prejudice to the respondent who contended that the matters complained of by the appellant had taken place a while back and many of the actors were no longer available as witnesses. We have already emphasised that the right to a fair trial must be accorded to both the appellant and the respondent.”
24. The respondents contended that the petitioner failed to comply with the rules of evidence by placing reliance on uncertified copies of judgement in support of his case.
25. The respondents contended that the petition does not meet the threshold of a constitutional petition as set out in the case of *Anarita Karimi Njeru v R* 1979 KLR 154 which requires that there be reasonable precision in drafting and framing of issues in constitutional petitions; that is; defining the dispute the court is called upon to decide, give particulars of the complaints and manner of alleged infringement.
26. I have considered the pleadings and submissions by the parties and I find that the issues for determination by this Court is whether the petition meets the threshold for a constitutional petition and whether the petitioner is entitled to the reliefs sought for the alleged violation and/infringement of fundamental rights and freedoms.
27. On the issue as to whether the instant petition meets the constitutional threshold for a petition as set out in the case of *Anarita Karimi Njeru v R* 1979 KLR 154, the answer is in the negative. The locus classicus case of *Anarita Karimi* requires that there be reasonable precision in drafting and



framing of issues in constitutional petitions; that is; defining the dispute the court is called upon to decide and giving particulars of the complaints and/or manner of alleged infringement. I find that the instant petition does not meet the threshold of a constitutional petition, the petitioner in framing the particulars of the alleged infringements solely relied on extracts of the proceedings in the Trial Court, which was not sufficient.

28. On the issue as to whether the petitioner is entitled to reliefs sought, the petitioner conceded that in as much as the petition was filed long after the alleged violation and/or infringement of his fundamental rights and freedoms, there is no time limitation in respect of constitutional petitions.
29. The respondents on their part conceded that there is no time limitation in respect of constitutional petitions, however, maintained that the delay must not be inordinate and that there must be a plausible explanation for the delay, the petitioner did not offer any plausible explanation for the inordinate delay in filing the instant suit.
30. The respondents faulted the petitioner for the inordinate delay in filing the instant suit and reiterated that the delay would jeopardise their case as some of the documents they would rely on had been disposed off pursuant to the Records Disposal Act, CAP 14 and the National Police Service Act No. 11A of 2011.
31. The respondents also argued that the delay in bringing the petition was unreasonable and would prejudice their case as the essential witnesses could not be availed; some of the witnesses had aged hence cannot vividly remember the events leading to the instant petition, some witnesses had retired and some witnesses had died.
32. The respondents deemed the delay as untenable and prejudicial to their case. They cited several cases on the issue of inordinate delay, however, I wish to highlight the case of Peter M. Kariuki v Attorney General (2014) eKLR whereby the Court in addressing a delay of 23 years in bringing a claim stated as follows; “We have already adverted to the fact that the appellant filed his constitutional petition some twenty three [23] years after his conviction by the court martial. We agree with the trial court that his claim was not time barred. However, the consequence of the appellant’s delay in lodging his claim was some level of prejudice to the respondent who contended that the matters complained of by the appellant had taken place a while back and many of the actors were no longer available as witnesses. We have already emphasised that the right to a fair trial must be accorded to both the appellant and the respondent.”
33. In the case of Wellington Nzioka Kioko vs. Attorney General [2018] eKLR, the Court of Appeal observed as follows; “although there is no time limit in respect of constitutional petitions and such a petition would ordinarily not be defeated by the doctrine of laches. However, an unexplained delay of almost 30 years in bringing the action, makes it impracticable for the court to properly administer justice and renders the action an abuse of the court process. For this reason I would uphold the dismissal of the appellants’ suit.” In light of the foregoing, I find that the instant petition was filed after inordinate delay. The petitioner has not furnished this Court with a plausible explanation for the delay, which delay is inexcusable and therefore jeopardises the respondents case. In the circumstances, I find that the petitioner is not entitled to the reliefs sought.
34. I hereby find that the petition is incompetent, misconceived, frivolous, vexatious and an abuse of court process. I therefore dismiss the petition with no order as to costs.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 23RD DAY OF MAY, 2024.

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J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

Maragia for the Petitioner

Ojwang holding brief for Chepkemoi for Respondent

