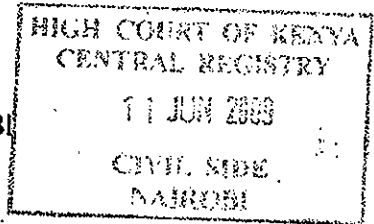


REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NAIROBI  
JK PETITION NO. 333 OF 2009



IN THE MATTER OF SECTION 84(1)

IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER THE CONSTITUTION OF KENYA, to wit, CONTRARY TO SECTION 70, 72(1)(e), 74, 76,77,78, 79,82 AND 82.

BETWEEN

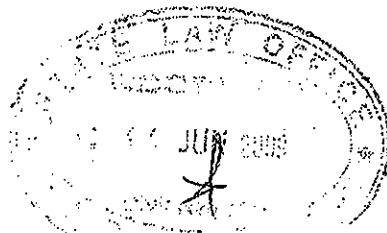
KAMILYA MOHAMMED I TUWENI AI KINDY..... PETITIONER

VERSUS

THE COMMISSIONER OF POLICE.....1<sup>st</sup> RESPONDENT  
ATTORNEY GENERAL.....2<sup>nd</sup> RESPONDENT  
TO:  
THE HIGH COURT OF KENYA

IN THE HUMBLE PETITION OF Kamilya Mohammedi Ai Kindy. of Dubai, in the United Arab Emirates is as follows:-

1. That your humble petitioner a female citizen of the United Arab Emirates ordinarily resident in Dubai.
2. That your humble petitioner came to Kenya on 29<sup>th</sup> January 2007 in the company of two men namely [REDACTED] and [REDACTED] both of the United Arab Emirates.
3. That even though I am not a Kenyan citizen I was entitled to protection by and under the Constitution of Kenya and international common law as well as international law instruments that Kenya has signed and covenanted to uphold.
4. That your humble petitioner was on the night of 9<sup>th</sup>/10<sup>th</sup> January 2007 arbitrarily arrested by the Kenyan authorities to wit, the Kenya police, Anti Terrorism Police Unit in total violation and disregard of the Constitution of Kenya which guarantees the right against arbitrary arrest.
5. That section 70 of the said constitution clearly and unequivocally declares that the Rights and Freedoms of the Individual are available to all people in Kenya.
6. That your humble petitioner was detained and denied access to family, friend, doctor, lawyer, consular visitation or pay from of right known to law.
7. That your humble petitioner was detained in police custody, for a period in excess of that permitted by the constitution of Kenya.
8. That the petitioner was denied the right to protection of the law in Kenya through the forcible removal from the Kenyan jurisdiction to lawless Somalia even though your humble petitioner had had judicial process commenced by a Human Rights group, the Muslim Human Rights Forum.



9. That your humble petitioner should have been presented to court in event there was any reasonable suspicion that the petitioner had been engaged in any crime known to Kenyan law whatsoever.
10. That your humble petitioner was discriminated against in the being treated with prejudice by the Kenyan officers who released her business companions and holding her without any cause or justification whatsoever. Perhaps the petitioner was prejudicially treated because of her situation of origin and station in life.
11. That your petitioner was subjected to inhuman and degrading treatment both in Kenya, Somalia and Ethiopia where she was held for a cumulative period of about seventy two (72) days without charge nor judicial process.
12. That your petitioner was both mentally and physically tortured by being threatened with rape, detention in filthy cells, exclusion from other prisoners, physical beatings thus in violation of the constitution of Kenya, the Convention Against Torture and international common law.
13. That your humble petitioner's right to enjoy the protection under the principle of **non-refoulement** even though she was not a refugee nor seeking refugee status in Kenya. This right is found under Article 3 of the Convention Against Torture, Article 7 of the International Convention on Civil and Political Rights, Article 5 of the African Charter on Human and Peoples' Rights all of which Kenya is obligated to.
14. That your humble petitioner was at all times in Kenya entitled to protection in the context of the principle of **legitimate expectation**.
15. That as a result of the torture and ill treatment of your humble petitioner is currently suffering Post Stress Traumatic Disorder (PSTD) from which she may not recover. Annexed to the petition is the Psychological Assessment Report by Dr Brock Chisholm, a clinical psychologist and notarized by Shujaat Husein of 4Palace Court, 250 Finchley Road, London, NW3 6DN. ENGLAND
16. That consequently your humble petitioner will need treatment possibly for the rest of her life due to the physical and psychological scars that have been indelibly etched in her.
17. That another enormous consequence on the petitioner is that having been branded a terrorist, directly and constructively, by the Kenyan, Somali, Ethiopian authorities she has lost forever her business contacts as trust in her was dealt a fatal blow thus severely undermining her capability of making a livelihood for herself and children.
18. That your Kenya, having set in motion the continuing and systematic violations against the humble petitioner is therefore responsible for all actions and omissions against the petitioner in the entire period of unlawful detention both in and outside Kenya.
19. That your humble petitioner has annexed an affidavit on 18<sup>th</sup> February 2009 and notarized by Shujaat Hussein, Notary Public of 4Palace Court, 250 Finchley Road London, NW3 6DN, ENGLAND.
20. YOUR Petitioner therefore humbly prays for:-
  - A) A declaration that the petitioner's rights under the constitution were violated.

- B) A declaration that the Respondents by themselves and as agents of the Republic of Kenya are liable for the violations.
- C) A declaration that Kenya is and be held responsible for the continued violations of the petitioner's rights while in the custody of Somali and Ethiopian authorities over the entire period she was unlawfully held.
- D) An order that the government of Kenya through the Attorney General or such higher authority do tender a formal apology to the petitioner for the ill treatment she was subjected to at all times of her detention and confinement.
- E) An award for General and exemplary damages considering the need for future lifelong dependency on treatment.
- F) Costs of this petition.
- G) Any other order as the court may deem just and fair to grant in the interest of justice.

DATED at Nairobi this

10<sup>th</sup>

day of June

2009

  
HARON M NDUBI

ADVOCATE FOR THE PETITIONER

**DRAWN&FILED BY**

HARON M NDUBI, ADVOCATE  
HAKI FOCUS  
C/o AFRICOG  
Sheema Court, Block E8  
Kasuku Lane off Lenana Road  
P.O Box 34956-00100  
NAIROBI  
+254 722 499 131  
[haron008@gmail.com](mailto:haron008@gmail.com)

**TO BE SERVED UPON**

1. The Commissioner of Police  
Vigilance House  
NAIROBI.
  
2. The Hon Attorney General  
State Law Office  
Harambee Avenue  
NAIROBI

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

PETITION NO. 333 OF 2009

IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND  
FREEDOMS UNDER THE CONSTITUTION OF KENYA, to wit, CONTRARY TO  
SECTION 70, 72 (1) (E), 74, 76, 77, 78, 79, AND 82,

BETWEEN

KAMILIYA MOHAMMEDI TUJENI AI KINDY..... PETITIONER

VERSUS

COMMISSIONER OF POLICE ..... 1<sup>ST</sup> RESPONDENT  
THE ATTORNEY GENERAL ..... 2<sup>ND</sup>  
RESPONDENT

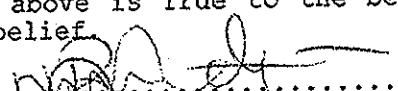
AFFIDAVIT OF SERVICE

I, BONFACE MUIINDE of Post Office Box number 7483-00300, Nairobi a resident within the aforementioned Republic do hereby make oath and state as follows:-

1. THAT I am a licensed Process Server duly authorised by this Court to serve Court Civil Processes.
2. That on 11<sup>th</sup> June 2009 I received instructions from the Advocate on record on behalf of the petitioner herein to serve a petition annexed thereto an affidavit and other annextures upon the Commissioner of Police the 1<sup>st</sup> Respondent and the Attorney General, the 2<sup>nd</sup> Respondent.
3. THAT on the same day I served a copy of the said Petition upon the Clerk to the Attorney General in the Attorney General's offices at Sheria House, 7<sup>th</sup> floor, who became known to me during the time of service and who accepted service thereof on behalf of the Attorney General by signing and stamping with their official rubber stamp at the front side of my copy which I hereby return to this court duly served.
4. THAT on the same day I also served a copy of the said Petition upon an officer at the Kenya Police Headquarter who became known to me during the time of service and who accepted service thereof on behalf of the Commissioner of Police by signing and stamping with their official rubber stamp at the back side of my copy which I hereby return to this court duly served.

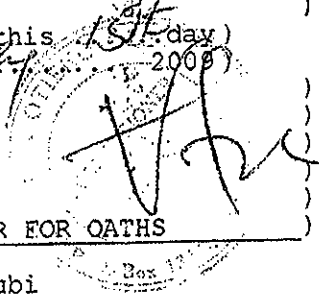
5. That what is stated herein above is True to the best of my knowledge, information and belief.

SWORN BY THE SAID  
BONIFACE MUINDE

  
Deponent

at Nairobi this <sup>15th</sup> day  
of July 2008

BEFORE ME



COMMISSIONER FOR OATHS

DRAWN BY:

Haron M. Ndubi  
Advocate

P.O Box 34956-00100

NAIROBI