Haki na Sheria Initiative & 3 others v Attorney General & 4 others (Petition E008 of 2021) [2025] KEHC 221 (KLR) (21 January 2025) (Judgment)

Neutral citation: [2025] KEHC 221 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT GARISSA

PETITION E008 OF 2021

JN ONYIEGO, J

JANUARY 21, 2025

IN THE MATTER OF ARTICLES 1(1), 1(3) (A) & (B), (2) (1), (2) & (6), 10 (1) (A), (B) & (C), 10(2)(A) & (C), 12,22,29,38,39,53,55,165(3) (D), 73 & 258 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF ARTICLES 258 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF DOUBLE REGISTRATION FACED BY THE MINORITY GROUPS IN KENYA

BETWEEN

HAKI NA SHERIA INITIATIVE ..... 1ST PETITIONER

HAMDI MOHAMED MUHUMED ..... 2ND PETITIONER

SAHAL ABDI AMIN ..... 3RD PETITIONER

DEKA MUKTAR GURE ..... 4TH PETITIONER

AND

THE HONOURABLE ATTORNEY GENERAL ..... 1ST RESPONDENT

THE CABINET SECRETARY MINISTRY OF INTERIOR & CO-ORDINATION OF NATIONAL GOVERNMENT ..... 2ND RESPONDENT

DIRECTOR OF NATIONAL REGISTRATION BUREAU ..... 3RD RESPONDENT

THE COMMISSION FOR REFUGEE AFFAIRS ..... 4TH RESPONDENT

UNHCR ..... 5TH RESPONDENT

Citizenship by birth cannot be lost through voluntary registration as a refugee

The petition concerned Kenyan citizens by birth who had registered as refugees to access basic needs. The court held that voluntary registration as a refugee could not extinguish citizenship, which was an inalienable right under article 14 of the Constitution. The court further held that victims of double registration who had been vetted and cleared were entitled to immediate de-registration from the refugee database and issuance of identity documents. However, the court declined to declare as citizens those awaiting vetting, holding that citizenship could not be conferred without completion of the statutory vetting process.

Reported by Kakai Toili

Constitutional Law *- citizenship – citizenship by birth – grounds of losing citizenship by birth - whether the voluntary registration of Kenyan citizens by birth as refugees was a ground to lose their citizenship - whether victims of double registration who had been vetted and cleared were entitled to deregistration from the refugee database and issuance of identification documents - whether the court could declare as citizens victims of double registration who were awaiting a vetting process which had stalled, without completion of the vetting process – Constitution of Kenya, articles 14 and 24; Registration of Persons Act (cap 107), sections 6 and 14.*

Brief facts

The petition challenged the prolonged denial of national identification cards to victims of double registration. They alleged that due to marginalization and proximity to refugee camps, some Kenyan citizens were registered as refugees; often by parents seeking access to food, medical aid, and other essentials during droughts. That registration led to their inclusion in the refugee database, effectively stripping them of nationality rights. Despite Government vetting exercises initiated in 2015 and 2019, thousands of cleared victims had not been de-registered from the refugee database, leaving them without identity cards and unable to access basic services, political rights, or socio-economic opportunities. The petitioners thus sought, among other orders, an order of *mandamus* against the 4th respondent to compel them to deregister all the victims of double registration from the refugee data base within a specific reasonable timeline.

The respondents attributed the double registration to the petitioners' voluntary or parental actions. They stated that vetting was ongoing to ensure only *bona fide* citizens were issued identity cards and argued that the petitioners had approached the court with dirty hands. The respondents urged the court not to interfere with the statutory vetting process, citing public interest in maintaining accurate records. The petitioners contended that the vetting process was discriminatory, prolonged, and imposed unreasonable documentation requirements, while also breaching data protection principles by sharing refugee database information without consent or risk assessment.

Issues

i. Whether the voluntary registration of Kenyan citizens by birth as refugees was a ground to lose their citizenship.
ii. Whether victims of double registration who had been vetted and cleared were entitled to de-registration from the refugee database and issuance of identification documents.
iii. Whether the court could declare as citizens victims of double registration who were awaiting a vetting process which had stalled, without completion of the vetting process.

Relevant provisions of the Law

Constitution of Kenya

Article 12 - Entitlements of citizens.

(1) Every citizen is entitled to—

(a) the rights, privileges and benefits of citizenship, subject to the limits provided or permitted by this Constitution; and

(b) a Kenyan passport and any document of registration or identification issued by the State to citizens.

(2) A passport or other document referred to in clause (1)(b) may be denied, suspended or confiscated only in accordance with an Act of Parliament that satisfies the criteria referred to in Article 24.

Article 14 - Citizenship by birth.

(1) A person is a citizen by birth if on the day of the person's birth, whether or not the person is born in Kenya, either the mother or father of the person is a citizen.

(2) Clause (1) applies equally to a person born before the effective date, whether or not the person was born in Kenya, if either the mother or father of the person is or was a citizen.

(3) Parliament may enact legislation limiting the effect of clauses (1) and (2) on the descendents of Kenyan citizens who are born outside Kenya.

(4) A child found in Kenya who is, or appears to be, less than eight years of age, and whose nationality and parents are not known, is presumed to be a citizen by birth.

(5) A person who is a Kenyan citizen by birth and who has ceased to be a Kenyan citizen because the person acquired citizenship of another country, is entitled on application to regain Kenyan citizenship.

Held

1. Under article 22 of the Constitution, the petitioners had a right to petition on their own behalf and those of others who may not necessarily have been actual parties in the suit for the realization of their fundamental rights which may have been infringed upon or threatened with infringement. Therefore, the court under article 23 of the Constitution had the jurisdiction and indeed the authority to make such declarations and or grant the relevant remedies including but not limited to making judicial review orders.
2. The right to one's nationality or citizenship by birth was an inalienable right which could not be taken away at the pleasure of any individual or body save under justifiable constitutionally or statutorily provided circumstances. Article 14 of the Constitution provided what entailed citizenship. Under article 24 of the Constitution, a constitutional right such as citizenship or a fundamental freedom could not be taken away or limited whimsically or capriciously save only if the limitation was reasonable or justifiable in an open democratic society based on human dignity, equality and freedom taking into account all relevant factors.
3. Under section 6 of the Registration of Persons Act (cap 107), every Kenyan who attained or had attained the age of 18 years and was unregistered shall be liable to registration within 90 days after attaining that age. The petitioners were claiming denial of their rights to register and subsequently be issued with national identity cards to avoid prosecution under section 14 of the Act.
4. A citizen had certain rights which a non-citizen did not enjoy. Section 22 of the Kenya Citizenship and Immigration Act provided such rights as; the right to be registered as a voter, right to reside anywhere in Kenya or enter and exit Kenya; right to participate in free, fair and regular election, to vie or vote; own land, to be appointed in public office and entitlement to any registration or identification documents.
5. Citizenship or ones' nationality was a critical component in somebody's life. From the petition and the affidavits in support, there were Kenyans who registered as refugees for the sake of getting *inter alia* free supplies in terms of food, healthcare and shelter. From the pleadings, the victims of double registration were victims of circumstances. It was a step taken out of desperation due to non-provision of essential or basic services including health care, food and shelter by the Government. They were forced to seek refugee status in their own country because of survival. Had the Government made available basic provision like food, water, shelter or health services, that situation would not have arisen.
6. There ought to have been due diligence by the concerned registration agencies in sieving and ascertaining genuine refugees. Although the victims voluntarily lied about their status, that was inevitable. That alone could not be a ground to lose their citizenship which was their birth right or be

declared stateless. They deserved to repossess it no matter what subject to following due process within a reasonable period of time. There were two categories of persons affected in that process:

1. The first category was a group of persons who had been vetted and recommended for deregistration as refugees hence removal of their names from the refugees' data base to facilitate issuance of national identity cards or birth certificates.
2. The second category was the one awaiting vetting which was not forthcoming or indefinite since the vetting committees established 2019 were yet to make any progress thus subjecting the victims to loss of opportunities and uncertainty.

7. Among the victims of the first category were, the 3rd and 4th petitioners who were cleared by their respective vetting committees and issued with clearance letters yet their names were still in the refugees' data base. For all purposes and intents, those victims that had been cleared ought to have their names cleared and or removed from the refugees' data base and subsequently be issued with necessary registration and identification documents among them, national identity cards and or passports. The respondents had a duty under the Fair Administrative Action Act to take quick action. Since 2019 when vetting allegedly commenced was quite a long time yet no explanation for the delay was being offered.
8. Section 4 of the Fair Administrative Action Act which was a replica of article 47 of the Constitution provided that every person had the right to administrative action which was expeditious, efficient, lawful, reasonable and procedurally fair. Section 6 of the Act emphasized on written reasons or explanations for inaction by a public officer. No explanation was given as to why the 2nd - 4th petitioners and the rest of the victims who had been vetted and cleared could not have their names removed from the refugees' data base.
9. The inordinate delay by the respondents in not taking steps to deregister the 2nd - 4th petitioners was a constitutional breach against article 47 of the Constitution hence requiring a *mandamus* order to direct the respondents to perform what they were lawfully supposed to do.
10. The respondents had a duty to de-register from the refugees' data base all victims of double registration who had been cleared and certified to be Kenyan citizens without further delay. Regarding the 3rd and 4th petitioners who had established that the vetting committee had cleared them and certified them as Kenyan citizens, the respondents were directed to cause removal of their names from the refugees' data base within 90 days of delivery of the judgment. In particular, the 4th and 5th respondents should with immediate effect have deregistered them from their refugee data base to enable them process their applications for issuance of identity cards.
11. Regarding the second category of victims yet to be vetted, the court had no power to automatically declare them citizens without proper vetting process. In as much the Ministry of Interior had the power to constitute the vetting committees to screen double registration victims, it had an obligation to act efficiently, reasonably and without undue delay. The Government must act with speed to expedite the process. Further delay would mean loss of further opportunities like employment, business, free movement, lack of enjoyment of basic necessities like education and the higher education loan facility (HELB) and health care all of which were constitutional entitlements and that were being infringed on. That respondents had failed to reasonably act, required the court to intervene by way of supervision through a judicial review order; in that case a *mandamus* order.
12. The department of refugee affairs and the UNHCR were like twin brothers or sisters in execution of refugee affairs. The same applied to the 3rd respondent. They shared information for policy direction and planning. The petitioners did not prove the specific constitutional breach suffered with reasonable degree of precision.

Petition partly allowed.

Orders

i. *A declaration was issued that refusal by the respondents to deregister the 3rd and 4th petitioners from the refugees' data base even after being vetted and declared to be Kenyan citizens was unconstitutional and an infringement of their constitutional rights under article 14(1) of the Constitution.*

ii. *A declaration was issued that the 3rd and 4th petitioners were Kenyan citizens by birth as provided under article 14(1) of the Constitution and were entitled to the rights of a citizen as provided under article 12(1) of the Constitution.*

iii. *A declaration was issued that failure by the respondents to act or give sufficient reasons within reasonable time why the 2nd, 3rd and 4th petitioners could not be issued with identification documents such as an identity card was unconstitutional and in breach of article 47 of the Constitution.*

iv. *An order of mandamus was issued directed to the 1st and 2nd respondents to direct and compel the 4th and 5th respondents to deregister and or remove with immediate effect the names of the 3rd and 4th petitioners from the refugees' data base.*

v. *An order of mandamus was issued directed at the 1st, 2nd and 3rd respondents to facilitate registration and issuance of identification documents inter alia identity cards and or passports to the 3rd and 4th petitioners within 60 days from the date of the judgment.*

vi. *An order of mandamus was issued to the respondents to deregister within 60 days, names of victims of double registration who had been screened, vetted, cleared and declared to be Kenyan citizens from the refugees' data base.*

vii. *A mandamus order was issued directed to the 2nd and 4th respondents in collaboration with other relevant agencies to within 60 days constitute vetting committees or if already constituted to re-activate them and to within six months from the date of delivery of the judgment commence screening and vetting process. A report on the progress of the process to be filed in court by the respondents upon the expiry of six months.*

viii. *Each party to bear own costs.*

Citations

Cases

1. Gedi v Principal Registrar of Persons & another (Judicial Review Miscellaneous Application 15 of 2012; [2014] KEHC 7519 (KLR); [2014] 3 KLR 282) — Mentioned
2. Muigana & 16 others v County Government of Nyandarua (Petition E007 of 2023; [2024] KEHC 960 (KLR)) — Explained
3. Republic v Town Clerk, Kisumu Municipality, Exparte East African Engineering Consultants (Miscellaneous Civil Application 748 of 1996; [2007] KEHC 147 (KLR)) — Explained
4. Shah, Himatlal Lakhamshi Rajshi v Cabinet Secretary for the Ministry of Interior and Co-ordination of National Government & 2 others (Judicial Review Application E1123 of 2020; [2021] KEHC 9314 (KLR)) — Explained
5. S.I Syndicate v Union of India (1975 AIR 460, 1975 SCR (1) 956, AIR 1975 SUPREME COURT 460, 1975 SCD 913, 1975 2 SCJ 332, 1974 2 SCC 630) — Explained

Statutes

1. Constitution of Kenya — article 1(1), 1(3) (a), (b), (2) (1), (2), (6), 10 (1) (a), (b), (c), 10(2)(a), (c), 12, 14, 22, 23, 24, 29, 38, 39, 53, 55, 73, 165(3)(d), 258 — Cited
2. Fair Administrative Action Act (cap 7L) — section 4; 6 — Cited
3. Kenya Citizenship And Immigration Act (cap 170) — section 22 — Cited
4. Refugees Regulations 2009 revoked (cap 173 Sub Leg) — rule 37 — Cited
5. Registration of Persons Act (cap 107) — section 6 — Cited

Advocates

None mentioned

JUDGMENT

Introduction

1. Before this court is a petition dated 12.08.2021 filed by the petitioners vide the firm of Bashir, Noor and Co. Advocates seeking various prayers listed as hereunder:

    i. That the Honourable Court do issue a declaration that double registration victims are Kenyans by birth whose constitutional rights were violated by the respondents.

    ii. That the Honourable Court do issue orders to direct and compel the 3rd respondent that cleared persons namely the 2nd ,3rd and 4th petitioners and the 14,762 from Garissa and the 4952 persons from Wajir who were cleared be issued with the National Identification cards within fourteen days or within a specific reasonable timeline as the Honourable Court deems fit.

    iii. That the Honourable Court do issue an order of *mandamus* against the 4th respondent to compel them to deregister all the victims of double registration from the refugee data base within a specific reasonable timeline as the Honourable Court deems fit.

    iv. That the Honourable Court do issue an order of *mandamus* against the 5th respondent to compel them to deregister all the victims of double registration from the refugee data base within a specific timeline

    v. That the Honourable Court do issue orders to direct the respondents to create a fair mechanism for those not yet cleared and issue them with normal identification cards if they prove that they are genuine Kenyans within a reasonable timeline as the Honourable Court deems fit.

    vi. That the Honourable Court do issue orders to direct the respondents and other relevant offices that the persons who were locked out of the previous vetting sessions be fairly processed and deregistered from the refugees' data base so that they can be issued with the national identification cards.

    vii. That the Honourable Court do issue a declaration that the actions and inactions of the respondents' refusal to de-register them from the refugee data base and issue them with Kenyan National Identification Cards are unconstitutional.

    viii. That the Honourable Court do issue orders to direct the respondents and other relevant offices that the persons who were locked out of the previous vetting sessions that were closed be fairly processed and de-registered from the refugees' data base so that they can be issued with the national identification cards.

    ix. Cost of the petition.

Petitioners' case

2. The petition is premised on the grounds set out on its face and further amplified by the averments contained in the supporting affidavits of; Haretha M. Bulle (chair-person of the 1st petitioner) sworn on 12.08.2021; Hamdi Muhumed Mohamed (2nd petitioner) sworn on 12-08-2021; Sahal Abdi Amin (3rd petitioner) sworn on 12-08-2021 and Dekar Muktar Gure (4th petitioner) sworn also on the 12-08-2021.

3. It was deposed by the 1st petitioner that the genesis of this petition, is the double registration of children from the marginalized groups within whose locality refugee camps in Kenya are situated. That the same occurred where Kenyan citizens in areas closer to the refugees' camp such as Daadab and Kakuma registered their children as refugees in order to access the necessities available such as medical services and food especially during the drought period.

4. It was deponed that the respondents failed to fulfil their obligations in ensuring that all Kenyans especially from the marginalized communities in Garissa and Wajir Counties have access to and enjoy socio-economic rights hence the registration by parents of their children as refugees. It was urged that the respondents further erred by facilitating the entry of the children's' names in the refugee data base before taking all the necessary steps in verifying whether such persons were indeed refugees or not.

5. It was averred that the victims of double registration have suffered and continue to suffer as they have been unable to acquire national identity cards (hereafter IDs) which are required for one to access basic services interalia; health; education; banking services; employment and access to business.

6. That the victims of double registration have been denied so many political rights and economic entitlements which are inaccessible to them for lack of their national identification cards. It was averred that the respondents did not address the issue regarding nationality documents through the removal of the victims' names from the refugee data base.

7. Additionally, it was contended that the respondents have proposed National Integrated Identity Management Systems (NIIMS) which provides that persons without national identification card shall not be issued with Huduma Card. That such people shall therefore have no option but to be registered as foreigners and issued with a foreign Huduma Card which shall further disadvantage them by rendering them stateless yet stateless persons are not recognized in the regulations.

8. It was contended that should NIIMs be fully implemented, the same shall further the suffering of these people as it shall introduce a list of seventeen services linked to the Huduma Number to which the victims shall miss out. That the respondents have since declined to rely on their own documents which they issued the affected members such as birth certificates to process issuance of national ID cards. It was therefore averred that the affected members are thus living a life of indignity as they fear being harassed by the state authorities for lack of national identity cards.

9. Hamdi Muhumed Mohamud, the 2nd petitioner herein in his affidavit sworn on 12.08.2021 stated that he is a bonfide Kenyan citizen born in Ijara within Garissa County in the year 1998. That his late father was known as Muhumed Mohamud Dagane while his mother is, Rhabai Mahat Abdi holder of Kenyan Identification Card No 054XXXX.

10. That in pursuit of his higher education, he went to Garissa High School and upon attaining adulthood age, he applied for an Identification card but was instead turned down on grounds that he was registered as a refugee. He urged that he is a Kenyan born of Kenyan parents and currently, his life is on hold as he lacks an identification card.

11. As proof of the above averments, he attached a copy of his birth certificate (HMM1), his late father's death certificate (HMM2), mother's national ID card (HMM3), copy of his form four result-slip (HMM4) and national ID application waiting card (HMM5).

12. Sahal Abdi Amin, the 3rd petitioner in his affidavit sworn on 12.08.2021 stated that his father is Abdi Amin Mohamed holder of identification number 6386737 while his mother holds identification number 2102828. That he was a victim of double registration without his consent as the same through his uncle was done in the year 2003 at Hagadera Refugee Camp when he was a minor aged 8 years.

13. He blamed the respondents for having failed to take reasonable steps to ensure that only refugees got registered. That he stayed in the refugee camp for four years when his father took him back to start school. He stated that after completing his secondary school, he applied for an identity card which request was declined. He swore that despite applying for deregistration, the same has not been successful in as much as he was even issued with a clearance letter.

14. He urged that the respondents have since disowned the birth certificate which they issued to him and further made him suffer as his life is currently on hold. He argued that had his parents been informed of the implications of their actions, then they would not have allowed him to be registered as a refugee. That it is the duty of the respondents to issue him with an identification card just like any other Kenyan.

15. As proof of his averments, he attached; a copy of his birth certificate (SAA1), his father's ID card (SAA2), his mother's ID card (SAA3), his form four certificate (SAA 4), P1 teachers training college certificate(SAA7) and clearance certificate directing deregistration of his name from the refugee data base (SAA 8).

16. Deka Muktar Gure in her affidavit sworn on 12.08.2021 deponed that her father is a Kenyan and holder of identity card number 113XXXX (annexture DMG1) while her mother is a holder of identity card number 1470XXXX (annexture DMG2). She urged that in the year 2010, she got married and was blessed with a child. That she was thereafter divorced and has since remained a single parent. She urged that when she heard that people could be registered as refugees in order to get provisions such as food and medical services she volunteered to register as such out of desperation.

17. That she did not understand that the said act would make her lose her nationality. When she came of age, she made an application to be issued with an identity card but the same was declined. She urged that in the year 2019, she was approved to be deregistered and be issued with a national identification card but the same has not actualized (see annexture DMG being the clearance letter). She prayed that this court grants the orders sought herein in order to be issued with an identity card.

18. The 1st-4th respondents filed a replying affidavit deponed by Kodeck Makori sworn on 19.01.2022 wherein it was deponed that he is the acting commissioner of refugee affairs and that the government is well aware of the problem of double registration. That as a response, the government initiated a vetting process to clear up both refugees and Kenyan databases. It was deponed that the said process had been rolled out in Wajir and Garissa Counties. That the process was meant to validate the identities of the affected persons who were expected to provide documentation and fingerprints of their sponsors to evaluate their claims.

19. It was deponed that the government is committed to resolving the matter in the interest of safeguarding the rights of Kenyans and the refugees. That the petitioners and the affected persons are the authors of their misfortunes and therefore have approached this court with unclean hands and that notwithstanding, the orders sought herein should be denied as the petitioners do not deserve equity.

20. The 5th respondent did not participate in the suit herein.

21. The court directed that the petition be canvassed by way of written submissions and that parties file and exchange the same.

22. The petitioners in their written submissions dated 06.12.2021 submitted in regards to the following issues:

    i. Whether the petitioners and other victims' right to nationality has been violated by the respondents by refusing to issue them with a national identity card.

ii. Whether the 1st ,2nd and 3rd respondents' failure to remove the victims who have been vetted and cleared from the database has violated their rights.

iii. Whether the 1st ,2nd and 3rd respondents' failure to establish a fair mechanism for resolution of double registration dilemma has violated the petitioners and other victims of double registration rights.

iv. Whether the 5th respondent in handing over the petitioners' data as keyed in the refugee database to the 1st ,2nd and 3rd respondents which data was used to deny the victims their nationality breached its obligations to do no harm to the victims.

23. Regarding the 1st issue, it was contended that the three petitioners have since attained the majority age and have applied for the national identification cards to no avail. That the 1st, 2nd and 3rd respondents initiated the vetting of double registered persons sometime in the year 2019 with a promise to issue national identity cards and other registration documents to genuine Kenyans who registered as refugees under circumstances laid out in the petition herein. It was submitted that despite the respondents having subjected the victims of double registration into unfair vetting process severally to which the said victims have willingly cooperated to, they are yet to be issued with the identity cards. That so far, Fourteen Thousand Seven Hundred and Sixty – Two people have been vetted and cleared in Garissa County and Four Thousand Five Hundred and Ninety-Two in Wajir County but the respondents have refused and or ignored to de-register them from the refugee data base or issue them with national identity cards.

24. On the second issue, it was submitted that some genuine Kenyans in areas close to refugee camps such as Daadab and Kakuma were inadvertently registered as refugees so as to have access to the necessities available for refugees such as medical services and food. That the respondents further erroneously facilitated the entry of their names and other victims in the refugee data base without taking all the necessary steps in verifying whether such persons were indeed refugees or not.

25. That the a foresaid-victims who are now adults find themselves registered as refugees, a fact they did not have control over. It was urged that as a result, the petitioners' rights have been violated and continue to. Reliance was placed on articles 12,24,53,27,28,29,31,38,39 and 26 of the *Constitution* and Regulation 37 of the *Refugees Regulation 2009* to buttress the violation meted out on the petitioners' rights.

26. On the third issue, the petitioners' urged that the process of vetting started in the year 2015 and thereafter, 2019 but that notwithstanding, the approvals made by the respondents have simply remained a mere piece of paper. That no reason has been afforded to the petitioners on why they can't be issued with national identity cards despite them undergoing the various vetting processes.

27. It was contended that the discriminatory nature of the vetting process only creates a further hardship for the victims and many remain locked out of the vetting process for failure to meet the unreasonable standards set such as providing grandparents identity cards and birth certificates. The respondents were further faulted for not having provided steps to ensure that such persons are vetted with a view of having the genuine Kenyans cleared.

28. Lastly, it was submitted that the 5th respondent is bound by the principle to do no harm to any persons in carrying out its activities. That their act of collecting the sensitive personal data without informed consent of the vulnerable double registered data subjects and not informing them of the potential risks was in breach of the rights of the victims.

29. That the 5th respondent violated the rights of the victim by collecting their personal data and entering it in the refugee data base without conducting pre and post data protection impact assessment. Thus,

the act of the 5th respondent in handing over the registration and documentation activities to the government of Kenya without informing the data subjects and without carrying out impact assessment of handing over that data was in breach of the victims' rights. In the end, this court was urged to allow the prayers herein as sought.

30. The 1st - 4th respondents in their submissions coined two issues for determination to wit:

    i. Whether the rights of the petitioners herein have been in any way violated by the respondents.

    ii. Whether the orders sought can be granted.

31. On the first issue, the respondents submitted that the actions by the petitioners voluntarily registering themselves as refugees with full knowledge that they are not is not only a misrepresentation of facts in a bid to benefit from the services offered to refugees, but the same amounts to a criminal offence punishable by law.

32. That the respondents have embarked on an extensive vetting exercise to clean up the register to ensure no bona fide citizens are listed as refugees. It was argued that it was not controverted that the 2nd ,3rd and 4th petitioners were registered as refugees either by their own doing or through actions of their parents; that the petitioners have failed to disclose that steps have been taken to clear and issue them with identification cards upon successful vetting.

33. On the second issue, it was submitted that if the orders sought herein are granted, the same would adversely affect the respondent's ability to dispense their statutory mandate. That the vetting process is critical in cleaning up the registers and therefore, ample time must be afforded the respondents to do so. To that end, the respondents relied inter alia on the case of *Abdikadir Salat Gedi v Principal Registrar of Persons & another* [2014] eKLR where similar prayers were declined.

34. That further, in the case of *S.I Syndicate v Union of India* AIR 1975 SC 460, it was stated that, 'as a general rule, the orders would not be granted unless the party complained of has known what it was he was required to do, so that he had the means of considering whether or not he should comply, and must be shown by evidence that there was a distinct demand of that which the party seeking the *mandamus* desires to enforce, and that the demand was met with refusal.'

35. It was submitted that in view of the prayers sought, the petitioners are asking the court to compel the respondents to issue identity cards yet there was no proof that the respondents have abdicated their role and mandate. That all the respondents are doing is ensuring that any person whose name is removed from the refugee's register and issued with an identification card is indeed a Kenyan citizen and not a refugee. In the end, the respondents urged that there has been no violation of the rights of the petitioners since the present situation is a result of their own doing. This court was therefore urged to disallow the prayers sought as the same were unmerited.

36. From the court record, I have seen an expert opinion report in form of an affidavit by One Laura Lazaro Cabrera, a legal officer with Privacy International, hereinafter P.I., sworn on 26.01.2021. No leave was sought to introduce such expert opinion report. For those reasons the said report is expunged from the court record.

37. Having considered the petition herein, response thereof and parties' submissions, issues that stand out for determination are as follows:

    i. Whether the petitioners' rights to nationality were violated by the respondents?

    ii. Whether the 5th respondent in handing over the petitioners' data with the 1st ,2nd and 3rd respondents violated their rights?

iii. Whether the reliefs sought can issue

iv. Who bears the costs

Whether the petitioners' rights to nationality were violated by the respondents

38. The suit herein has been initiated by the petitioners on their own behalf and that of the general public in this case victims of double registration exercise where their particulars were captured reflecting them as refugees when in actual sense they were masquerading as such with the sole intention of gaining some benefits such as food rationing and other benefits associated with refugee status. Having realized that they had sold their respective birth right of Kenyan nationality and the attendant benefits, they now want to reclaim and or repossess the same.

39. The petitioners are therefore seeking this court to direct the respondents to facilitate issuance of national registration documents interalia; National IDs, pass ports and birth certificates to the affected victims to enable them access various services that require production or submission of such documents inter alia; employment opportunities; education; health services; business opportunities; right to vote; free movement within and outside the country and above all national identity and or recognition.

40. On the other hand, the respondents do not deny the fact that there are indeed cases of double registration involving Kenyans in the affected areas who falsely disguised themselves as refugees thus voluntarily disowning their citizenship at the altar of short-term refugee status benefits which were temporary owing to the suffering they were undergoing as Kenyans. The respondents merely contended that the petitioners have approached the court with dirty hands as they are admitting committing a criminal offence by falsely registering as refugees.

41. Under Article 22 of the *Constitution*, the petitioners have a right to petition on their own behalf and those of others who may not necessarily be actual parties in the suit for the realization of their fundamental rights which may have been infringed upon or threatened with infringement. Therefore, this court under Article 23 of the *Constitution* has the jurisdiction and indeed the authority to make such declarations and or grant the relevant remedies including but not limited to making judicial review orders.

42. For purposes of clarity, I wish to reproduce articles 22 and 23 of the *Constitution* as hereunder;

> " Art.22. Enforcement of Bill of Rights
>
> (1) Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.
>
> (2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by—
>
> (a) a person acting on behalf of another person who cannot act in their own name;
>
> (b) a person acting as a member of, or in the interest of, a group or class of persons;
>
> (c) a person acting in the public interest; or

(d) an association acting in the interest of one or more of its members.

(3) The Chief Justice shall make rules providing for the court proceedings referred to in this Article, which shall satisfy the criteria that—

(a) the rights of standing provided for in clause (2) are fully facilitated;

(b) formalities relating to the proceedings, including commencement of the proceedings, are kept to the minimum, and in particular that the court shall, if necessary, entertain proceedings on the basis of informal documentation;

(c) no fee may be charged for commencing the proceedings;

(d) the court, while observing the rules of natural justice, shall not be unreasonably restricted by procedural technicalities; and

(e) an organisation or individual with particular expertise may, with the leave of the court, appear as a friend of the court.

(4) The absence of rules contemplated in clause (3) does not limit the right of any person to commence court proceedings under this Article, and to have the matter heard and determined by a court.

Art. 23. Authority of courts to uphold and enforce the Bill of Rights

(1) The High Court has jurisdiction, in accordance with Article 165, to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.

(2) Parliament shall enact legislation to give original jurisdiction in appropriate cases to subordinate courts to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.

(3) In any proceedings brought under Article 22, a court may grant appropriate relief, including—

(a) a declaration of rights;

(b) an injunction;

(c) a conservatory order;

(d) a declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights and is not justified under Article 24;

(e) an order for compensation; and

(f) an order of judicial review.

43. The right to one's nationality or citizenship by birth is an inalienable right which cannot be taken away at the pleasure of any individual or body save under justifiable constitutionally or statutorily provided circumstances. In the case of *Abdikadir Salat Gedi v Principal Registrar of Persons and Commissioner for Refugee Affairs* (*supra*) the court held as follows;

> " without a doubt the Government of Kenya is under a duty to register all its citizens and to issue them with documents of registration or identification. This is a statutory duty firmly anchored in the *Constitution* and Act, which is an Act of parliament".

44. Article 14 of the *Constitution* does provide what entails citizenship as follows;

> " Art.14. Citizenship by birth-
>
> (1) A person is a citizen by birth if on the day of the person's birth, whether or not the person is born in Kenya, either the mother or father of the person is a citizen.
>
> (2) Clause (1) applies equally to a person born before the effective date, whether or not the person was born in Kenya, if either the mother or father of the person is or was a citizen.
>
> (3) Parliament may enact legislation limiting the effect of clauses (1) and (2) on the descendents of Kenyan citizens who are born outside Kenya.
>
> (4) A child found in Kenya who is, or appears to be, less than eight years of age, and whose nationality and parents are not known, is presumed to be a citizen by birth.
>
> (5) A person who is a Kenyan citizen by birth and who has ceased to be a Kenyan citizen because the person acquired citizenship of another country, is entitled on application to regain Kenyan citizenship.

45. Article 12 of the *Constitution* expressly does underpin the right of a citizen as below;

> " Art.12. Entitlements of citizens-
>
> (1) Every citizen is entitled to—
>
> (a) the rights, privileges and benefits of citizenship, subject to the limits provided or permitted by this Constitution; and
>
> (b) a Kenyan passport and any document of registration or identification issued by the State to citizens.
>
> (2) A passport or other document referred to in clause (1)(b) may be denied, suspended or confiscated only in accordance with an Act of Parliament that satisfies the criteria referred to in Article 24.

46. It is apparent under Article 24 of the *Constitution* that a constitutional right such as citizenship or a fundamental freedom cannot be taken away or limited whimsically or capriciously save only if the limitation is reasonable or justifiable in an open democratic society based on human dignity, equality

and freedom taking into account all relevant factors. For avoidance of doubt, I wish to reproduce Art.24 of the *Constitution* as follows;

> " Art.24. Limitation of rights and fundamental freedoms-
>
> (1) A right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including—
>
> (a) the nature of the right or fundamental freedom;
>
> (b) the importance of the purpose of the limitation;
>
> (c) the nature and extent of the limitation;
>
> (d) the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and
>
> (e) the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.

47. Under section 6 of the *registration of persons Act* cap 107 laws of Kenya, every Kenyan who attains or has attained the age of eighteen years and is unregistered shall be liable to registration within 90 days after attaining that age. The petitioners are claiming denial of their right to register and subsequently be issued with national id card to avoid prosecution under section 14 of the Act.

48. It is also apparent that a citizen has certain rights which anon-citizen does not enjoy. Section 22 of the *Kenya citizenship and immigration Act* provides such rights as; the right to be registered as a voter, right to reside anywhere in Kenya or enter and exit Kenya; right to participate in free, fair and regular election, to vie or vote; own land, to be appointed in public office and entitlement to any registration or identification documents.

49. From the above legal analysis, it is clear that citizenship or ones' nationality is a critical component in somebody's life. The 1st petitioner has brought this suit in conjunction with the 2nd -4th petitioners and on behalf some other victims. From the petition and the affidavits in support, it is clear that there are Kenyans who registered as refugees for the sake of getting inter alia free supplies in terms of food; healthcare and shelter. This fact has been admitted by the respondents who conceded that the process of deregistering the concern victims is in the government's agenda or programme.

50. From the pleadings, it is apparent that the victims of double registration herein were or are victims of circumstances. It was a step taken out of desperation due to non-provision of essential or basic services including health care, food and shelter by the government. They were forced to seek refugee status in their own country because of survival.

51. Had the government made available basic provision like food, water, shelter or health services, this situation would not have arisen. Similarly, due diligence ought to have been applied by the concern registration agencies by sieving and ascertaining genuine refugees. Although the victims voluntarily lied of their status, it was inevitable. That alone cannot be a ground to lose their citizenship which is their birth right or be declared stateless. They deserve to repossess it no matter what subject to following due process within a reasonable period of time.

52. There are two categories of persons affected in this process. The first category is a group of persons who have been vetted and recommended for deregistration as refugees hence removal of their names from the refugees' data base to facilitate issuance of national id cards or birth certificates. The second category is the one awaiting vetting which is not forthcoming or indefinite since the vetting committees established 2019 are yet to make any progress thus subjecting the victims to loss of opportunities and uncertainty.

53. Among the victims of category one are, the 3rd and 4th petitioners who were cleared by their respective vetting committees and issued with clearance letters yet their names are still in the refugees' data base. For all purposes and intents, those victims that have been cleared ought to have their names cleared and or removed from the refugees' data base and subsequently be issued with necessary registration and identification documents among them, National id cards and or passport. The respondents have a duty under the *Fair Administrative Action Act* to take quick action. Since 2019 when vetting allegedly commenced is quite a long time yet no explanation for the delay is being offered.

54. Section 4 of the *Fair Administrative Action Act* which is a replica of Art. 47 of the *Constitution* provides that every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair. Section 6 of the Act does emphasize on written reasons or explanation for inaction by a public officer. This position was succinctly espoused in the case of *Muigana & 16 others v County Government of Nyandarua* (petition E007 of 2023) (2024) KEHC 960(KLR) (8 February 2024) (Judgment) where the court held that the purpose for giving written reasons is to explain why a certain action was not being taken.

55. In the instant case, no explanation was given as to why the 2nd -4th petitioners and the rest of the victims who have been vetted and cleared could not have their names removed from the refugees' data base. The 2nd -4th petitioners have exhibited their birth certificates, their parents' id cards, academic certificates from Kenyan schools and id cards waiting papers.

56. Besides, the 3rd petitioner produced a clearance letter dated 20-08-2020 from the Ijara deputy county registrar on behalf of the vetting committee. Equally, the 4th petitioner got her clearance letter dated 20-06-2021.The respondents did not controvert this position nor was any explanation given why their names have not been removed from the refugees' data base.

57. The inordinate delay by the respondents by not taking steps to deregister the 2nd-4th petitioners is a constitutional breach against Art.47 of the *Constitution* hence requiring a *mandamus* order to direct the respondents to perform what they are lawfully supposed to do. See *Republic v Town Clerk, Kisumu Municipality, Exparte East African Engineering Consultants* (2007)2 EA441 where it was held that an order of *mandamus* compels a public officer to act in accordance with the law.

58. In the same spirit, in the case of *Himatlal Lakhamshi Rajshi Shah v Cabinet Secretary for the ministry of interior and co-ordination of National management services and 2 others* Judicial Review Application No E1123 of 2020 Nairobi High Court the court held that;

> " The main principles that apply therefore for an order of *mandamus* to issue are firstly, that the court will only issue a *mandamus* order if it concludes that it is the only decision lawfully open to the public body, and there is no other legal remedy that is available to remedy the infringement of a legal right".

59. In anut shell, the respondents have a duty to deregister from the refugees' data base all victims of double registration who have been cleared and certified to be Kenyan citizens without further delay. Regarding the 3rd and 4th petitioners who have established that the vetting committee have cleared them

and certified them as Kenyan citizens, the respondents are directed to cause removal of their names from the refugees' data base within 90 days of delivery of this judgment. In particular, the 4th and 5th respondents should with immediate effect deregister them from their refugee data base to enable them process their applications for issuance of ID cards.

60. Regarding the second category of victims yet to be vetted, this court has no power to automatically declare them citizens without proper vetting process. See *Abdikadir Salat Gedi*(*supra*) where the court in a similar situation such as this one held as follows;

> " In my view, the discretion to register and issue applicants with identity cards is left with the relevant authorities. They receive applications, screen applicants and ascertain that the set criteria for issuing identity cards are met. This court cannot tell them on how to exercise that discretion".

61. In as much the ministry of interior has the power to constitute the vetting committees to screen double registration victims, it has an obligation to act efficiently, reasonably and without undue delay. The government must act with speed to expedite the process. Further delay will mean loss of further opportunities like employment, business, free movement, lack of enjoyment of basic necessities like education and the higher education loan facility (HELB) and health care all of which are constitutional entitlements and now being infringed on.

62. The respondents having failed to reasonably act, it calls upon this court to intervene by way of supervision through a judicial review order in this case *mandamus* order. It is imperative therefore that the relevant authorities in this case the respondents do act in joint collaboration to urgently and within 60 days constitute and if already in place reactivate various vetting committees to screen and vet the double registration victims without further delay. In view of that directive, the 1st and 2nd respondent shall coordinate and undertake the exercise of vetting in conjunction with other relevant departments and report back to the court of the progress within a period of six months.

Whether the 5th respondent in handing over the petitioners' data with the 1st ,2nd and 3rd respondents violated their rights.

63. The petitioners argued that by the 5th respondent submitting the refugees' data base personal particulars of double registered persons to the 3rd and 4th respondents amounted to breach of confidentially thus offending the principle of do no harm to their clients. It is clear that the department of refugee affairs and the UNHCR are like twin brothers or sisters in execution of refugee affairs. The same applies to the 3rd respondent. They share information for policy direction and planning. The petitioners did not prove the specific constitutional breach suffered with reasonable degree of precision. To that extent, I do not find that claim sustainable.

Whether the reliefs sought can issue.

64. From the analysis of the pleadings herein and the attendant evidence submitted together with rival submissions thereof, it is my finding that the petitioners have proved their case to the required degree. To that extent, the reliefs amenable for issuance are both *certiorari* and *mandamus* to the extent discussed herein above pursuant to Article 23 of the *Constitution*.

Who bears the costs

65. The final issue to consider is who should bear the costs of the petition herein. The applicable principles are that costs follow the event. However, the award of the costs is also at the discretion of the Court.

As this is a matter which clearly raises public interest concerns, it is my view that each party shall bear its own costs.

66. In view of the above holding, I find that the petition herein is merited and the same is allowed with the following reliefs/orders granted;

a. A declaration be and is hereby issued that refusal by the respondents to deregister the 3rd and 4th petitioners from the refugees' data base even after being vetted and declared to be Kenyan citizens is unconstitutional and an infringement of their constitutional rights under Article 14 (1) of the *Constitution*.

b. A declaration be and is hereby issued that the 3rd and 4th petitioners are Kenyan citizens by birth as provided under Article 14(1) of the *Constitution* and are entitled to the rights of a citizen as provided under Article 12(1) of the *Constitution*.

c. A declaration be and is hereby issued that failure by the respondents to act or give sufficient reasons within reasonable time why the 2nd, 3rd and 4th petitioners could not be issued with identification documents such as an ID card is unconstitutional and in breach of Article 47 of the *Constitution*.

d. That an order of *mandamus* be and is hereby issued directed to the 1st and 2nd respondents to direct and compel the 4th and 5th respondents to deregister and or remove with immediate effect the names of the 3rd and 4th petitioners from the refugees' data base.

e. That an order of *mandamus* be and is hereby issued directed at the 1st, 2nd and 3rd respondents to facilitate registration and issuance of identification documents interalia ID card and or pass port to the 3rd and 4th petitioners within 60 days from the date of this judgment.

f. That an order of *mandamus* be and is hereby issued to the respondents to deregister within 6o days names of victims of double registration who have been screened, vetted, cleared and declared to be Kenyan citizens from the refugees' data base.

g. That a *mandamus* order be and is hereby issued directed to the 2nd and 4th respondents in collaboration with other relevant agencies to within 60 days constitute vetting committees or if already constituted to re-activate them and to within six months from the date of delivery of this judgment commence screening and vetting process. A report on the progress of the process to be filed in court by the respondents upon the expiry of six months.

h. That each party shall bear own costs

DATED, SIGNED AND DELIVERED THIS 21ST DAY OF JANUARY 2025

.....

J. N. ONYIEGO

JUDGE