

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MILIMANI
THE CONSTITUTION AND HUMAN RIGHTS DIVISION
PETITION NO. OF 2025

**IN THE MATTER OF: THE THREATENED CONTRAVENTION OF ARTICLES 1,
2, 3, 4(2), 10, 12(1) (a), 19, 20, 21, 22, 23, 24, 27, 35, 38, 81, 82,
83,84, 91, 92, 93,94, 163, 250,258, 259 and 260 OF THE
CONSTITUTION OF KENYA 2010;
AND**

**IN THE MATTER OF: RULES 23 AND 24 OF THE CONSTITUTION OF KENYA
(PROTECTION OF RIGHTS AND FUNDAMENTAL
FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013;**

AND

**IN THE MATTER OF: THE COMPUTER MISUSE AND CYBERCRIMES ACT,
NO. 5 OF 2018**

AND

**IN THE MATTER OF: THE COMPUTER MISUSE AND CYBERCRIMES
(AMENDMENT) ACT, 2024**

BETWEEN

REUBEN KIGAME LICHETE=====1ST PETITIONER
KENYA HUMAN RIGHTS COMMISSION (KHRC)=====2ND PETITIONER
-VERSUS-

ATTORNEY GENERAL=====1ST RESPONDENT
SPEAKER OF THE NATIONAL ASSEMBLY=====2ND RESPONDENT

~AND~

KENYA UNION OF JOURNALISTS =====1ST INTERESTED PARTY
MEDIA COUNCIL OF KENYA=====2ND INTERESTED PARTY
LAW SOCIETY OF KENYA =====3RD INTERESTED PARTY
DATA PROTECTION COMMISSIONER=====4TH INTERESTED PARTY

PETITION.

TO:

THE HIGH COURT OF KENYA
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
MILIMANI, NAIROBI.

The Humble Petition of **REUBEN KIGAME LICHETE** and **KENYA HUMAN RIGHTS COMMISSIONS (KHRC)** whose address of service for the purpose of this petition is care of *MUTUMA GICHURU & ASSOCIATES ADVOCATES, Hurlingham Plaza, 2nd Floor, Suite No. C1, Argwings Kodhek Road, P.O. Box 46059 – 00100, Nairobi, Tel: 0789897811*
Email: mgalawoffice2@mgaadvocates.com is as follows:

A. DESCRIPTION OF PARTIES

1. The 1st Petitioner is a male adult of sound mind, Christian teacher, musician, journalist, scholar, human rights defender and social activist in Kenya.
2. The 2nd Petitioner is a premier and flagship Non-Governmental organization (NGO) established in 1992 and registered in Kenya in 1994 as a Public Benefits Organization (PBO) with a vision of a democratic and human right state and society where freedoms and human dignity are upheld. Its mission is to work with the people and consolidate their sovereign power to claim their power and enhance accountability through advocacy for strict application of the Constitution of Kenya and transnational Human Rights Instruments and Good governance.
3. The 1st Respondent is the Attorney General of the Republic of Kenya and holds the office established under Article 156 (6) of the Constitution, being the Principal legal adviser to the National Government and under Article 156(6) is obligated to promote, protect and uphold the rule of law and defend the public interest. The Attorney General has been sued in this Petition as the Legal Representative of the Government of Kenya and whose address of service for

the purposes of this Petition is care of *The Attorney General's Chambers, Sheria House, Harambee Avenue, Nairobi.*

4. The 2nd Respondent is the Speaker of the National Assembly of Kenya, a Constitutional office established under Article 106 (1) of the Constitution of Kenya and is the head of the National Assembly House of Parliament established under Article 93(1) of the constitution which house is clothed with legislative authority under Articles 94(1) and 95 of the Constitution.
5. The 1st interested party, the Kenya Union of Journalists (KUJ) is a trade union representing and advocating for the fundamental principles and rights at work of journalists which was established to improve, protect and promote media freedom, professionalism and ethical standards in the media industry.
6. The 2nd Interested Party is an independent National institution established by the Media Act, 2007 as the leading institution in the regulation of media and in the conduct and discipline of journalists.
7. The 3rd interested party is The Law Society of Kenya (LSK) established under The Law Society Act as a professional bar association for advocates in Kenya, responsible for regulating the legal profession, **upholding the rule of law**, and assisting the public and government in matters of justice. As a statutory organization, LSK is mandated to advise and assist members of the legal profession, the government and the larger public in all matters relating to the administration of justice in Kenya.
8. The 4th interested party is The Data Protection Commissioner established under The Data Protection Act whose role is to regulate the processing of personal data, enforce data protection laws, and safeguard individuals' privacy rights. This includes investigating complaints, providing guidance to organizations on compliance, promoting public awareness of data protection rights, and taking enforcement action, such as issuing fines, when laws are broken.

B. LOCUS STANDI

9. The Petitioners institute this Petition on the strength of Article 3(1) which provides that every person has an obligation to respect, uphold and defend the Constitution of Kenya 2010.
10. The Petitioners being, a Christian teacher, musician, journalist, scholar, human rights defender and social activist in Kenya and a Human Rights advocacy Non-Governmental organization (NGO) a Public Benefits Organization (PBO), bring this Petition on their own behalf and interest and also on behalf of Public interest under Article 22(1) (2)(c) of the Constitution.

C. BACKGROUND OF THE PETITION

11. The Constitution of Kenya, 2010, following its promulgation on 27th August, 2010 has been acclaimed and celebrated as the most progressive constitution both regionally and globally.
12. The most remarkable bit and aspect about the Constitution of Kenya, 2010 is its Chapter Four, the Bill of Rights, which is an integral part of the nation's democratic framework encompassing fundamental rights and freedoms.
13. Among the encompassed rights and freedoms, the more defined and most relevant to the instant petition are; the right to privacy under Article 31, Freedom of expression under Article 33, Freedom of the media under Article 34, Right of access to information under Article 35 and freedom of association under Article 36 of the Constitution of Kenya, 2010.
14. The people of Kenya, in the exercise of their sovereign power, adopted the Constitution, entitling each and every Citizen to the enjoyment of these rights without any discrimination, curtail or malicious censorship by the state.

15. The rights enshrined under Chapter Four of the Constitution of Kenya, 2010 are to be enjoyed by every Citizen unlimitedly within the confines of the Constitution and the guiding legislation.

D. THE CONSTITUTIONAL FOUNDATIONS OF THE PETITION.

16. The Petitioners' case is anchored upon the following **supreme and inviolable provisions of the Constitution of Kenya, 2010**:
17. **The Supremacy of the Constitution and the Duty to Uphold It.** In accordance with Article 2(1), the Constitution is the supreme law of the Republic and binds all persons and State organs. Pursuant to Article 2(4), any law, act, or omission that is inconsistent with the Constitution is void to the extent of its inconsistency.
18. Article 3 imposes a duty upon every person to **respect, uphold, and defend the Constitution.**
19. **The Governing National Values and Principles of Governance.** Article 10 sets out the National Values and Principles of Governance that bind all State organs, State officers, public officers, and all persons whenever any law is enacted, applied, or interpreted. These principles include the rule of law, human dignity, equity, social justice, and non-discrimination.
20. Crucially, the **principle of public participation**, inherent in Article 10, requires that for any legislation to be valid, the process of its enactment must involve meaningful and adequate consultation with the people of Kenya.
21. **The Primacy, Application, and Enforcement of the Bill of Rights.** Article 19 establishes the Bill of Rights as an integral part of Kenya's democratic state and the framework for all social, economic, and cultural policies.
22. Article 20 obligates this Honourable **Court to apply the Bill of Rights to all law and to promote the values underlying an open and democratic society.** It

further mandates that the Court shall adopt the interpretation that most favours the enforcement of a right or fundamental freedom.

23. Article 21 imposes a fundamental duty upon the State and every State organ to observe, respect, protect, promote, and fulfil the rights and fundamental freedoms in the Bill of Rights.
24. The **jurisdiction and authority to enforce these rights** are vested in this Honourable Court by Article 23, which empowers it to grant appropriate relief.
25. **The Specific Rights and Freedoms Engaged.** The following specific rights and freedoms, which are central to the instant matter, are guaranteed under the Constitution:
 - a. The right to equality and freedom from discrimination under Article 27;
 - b. The right to privacy, including the right not to have one's communications infringed, under Article 31;
 - c. The right to freedom of expression, which includes the freedom to seek, receive, and impart information, under Article 33;
 - d. The freedom and independence of the media under Article 34;
 - e. The right of access to information under Article 35; and
 - f. The right to freedom of association under Article 36.
26. **The Petitioners' Standing and the Court's Interpretive Mandate.** The Petitioners, in bringing this action, are exercising the right vested in every person by Articles 22(1) and 258(1) of the Constitution to institute court proceedings where a constitutional right has been denied, violated, infringed, or is threatened.
27. Finally, this Honourable Court is guided by Article 259, which requires **the Constitution to be interpreted in a manner that promotes its purposes, values, and principles; advances the rule of law, human rights, and fundamental freedoms; and contributes to good governance.**

E. FACTS GIVING RISE TO THE PETITION

28. The Constitution of Kenya, 2010, guarantees the right to privacy under Article 31. Pursuant to this, Parliament enacted the Data Protection Act, 2019 (DPA), a comprehensive legislative framework to give effect to this right, establishing core principles for data processing including lawfulness, data minimization, and accountability.
29. This Petition challenges the Computer Misuse and Cybercrimes (Amendment) Act, 2024 (hereinafter "the Impugned Amendment"), which has since been signed into law by the President of the Republic of Kenya on 15th October, 2025 which inter alia contravenes **the Constitution and specifically undermines and dilutes the carefully established provisions of the Data Protection Act.**
30. The Impugned Amendment introduces provisions that are unconstitutional and create a direct conflict with the Data Protection Act (DPA):
 - a. **The Criminalization of "False, Misleading, and Mischievous" Information:** This vague and overbroad offence chills freedom of expression and lacks the precision required by law;
 - b. **Mandatory Verification of Social Media Accounts:** This provision forces all social media users to link their online identities to their government-issued legal names;
 - c. **Dilution of the Data Protection Framework:** The Impugned Amendment creates parallel, overlapping, and less rigorous procedures for data access and handling, thereby undermining the core objective of the DPA;
 - d. The amendments are overly vague, ambiguous and overbroad, lacking in specificity and clarity in that the Act does not provide any specific and unambiguous definitions and/or meaning in utter contravention of Article 24 (2) of the Constitution;
 - e. The amendment to section 27 of the Principal Act, introduced by the Computer Misuse and Cybercrimes (Amendment) Act, 2024, is unconstitutionally vague. It fails to establish any objective criteria or

legal standard to determine what constitutes a communication that causes another person to commit suicide. This creates profound legal uncertainty and risks arbitrary enforcement;

- f. Consequently, the amended provision is unworkably speculative. It criminalizes speech based on a hypothetical and remote chain of causation, without a practical or demonstrable nexus between the communicator's actions and the ultimate result. It is, therefore, devoid of any practicable application;
- g. The amendment to section 27 introduces unacceptable ambiguity by omitting essential legal elements. Specifically, it fails to consider the inapplicability of direct causation in this context and provides no criteria such as the speaker's intent, the immediacy of the threat, or the vulnerability of the recipient to ascertain criminal liability. This vagueness renders the law void for uncertainty; and
- h. In the absence of these criteria, the provision remains a pre-emptive and theoretical construct. It has no practical utility in a court of law, as it offers no measurable standard to distinguish criminal speech from protected communication, thereby failing to provide any workable test for its application.

31. The apparent ambiguity, vagueness and lack of specificity and clarity as to the import and purport of the amendment act is a clear and utter contravention of Article 24 of the Constitution.

32. Further this Petition herein is premised on the procedural unconstitutionality of the enactment process based on the fact that the Act contains provisions that affect the functions and powers of the County governments as set out paragraph 13 of part 2 of the fourth schedule of the constitution:

- a. By virtue of affecting county functions, the Bill unequivocally fell within the definition of a "bill concerning county governments" pursuant to Article 110(1) of the Constitution;
- b. In blatant disregard for the Constitution, the National Assembly, flouted the prescribed legislative procedure. It failed to refer the Bill to the

Senate Speaker for the mandatory preliminary decision required by Article 110(3); and

- c. Moreover, and in direct contravention of Article 110(4), the Bill was never transmitted to the Senate for its participation in the legislative process. This exclusion of the Senate, a co-equal House of Parliament on matters affecting counties, is a fatal procedural defect that vitiates the entire enactment.

F. PARTICULARS OF BREACH, VIOLATION AND CONTRAVENTION OF THE CONSTITUTION.

33. That in blatant violation of the Constitution, the Respondents have flouted constitutional provisions on the procedure, specificity and clarity of legislative processes in the following manner:

a) *Violation of Article 31 and dilution of the Data Protection Act (DPA).*

34. The mandatory social media verification mandate constitutes a severe, blanket infringement of the right to privacy under Article 31 of the Constitution. It forces the unnecessary revelation of private affairs and directly infringes upon the privacy of communications.

35. This provision fundamentally dilutes the Data Protection Act in the following ways:

- a. It violates the principle of lawfulness and fairness under Section 25 of the DPA, as it makes the processing of a highly sensitive personal identifier (legal name) a compulsory condition for accessing a service, without providing a less intrusive alternative;
- b. It violates the principle of data minimization under Section 27 of the DPA, which requires that data collected be adequate, relevant, and limited to what is necessary. **A legal name is not necessary for the purpose of using a social media platform, which functions globally with user-chosen identifiers;** and

- c. It undermines the role of the Data Commissioner by legislating a specific and intrusive data processing requirement without a prior, independent assessment of its proportionality or compliance with data protection principles, as required by the DPA.

b) Violation of Article 33 – Freedom of Expression

36. The provision against "**false, misleading, or mischievous**" information is impermissibly vague and creates a severe chilling effect. This violates Article 33 and is not a reasonable and justifiable limitation under Article 24.

c) Violation of Article 34 – Freedom of the Media.

37. By imposing strict liability and rapid takedown requirements on digital platforms, the Impugned Amendment forces them to engage in pre-emptive censorship. This state-induced prior restraint violates the freedom and independence of the media guaranteed under Article 34.

d) Violation of Article 47 – The right to Fair Administrative Action

38. The vague offences grant excessive discretion to law enforcement, rendering the law unpredictable and failing to meet the standards of lawfulness and reasonableness required by Article 47.

e) Unconstitutional legislative conflict and undermining of a specific statutory regime.

39. The Data Protection Act, 2019, is a comprehensive statute enacted to give effect to Article 31 of the Constitution. It establishes a detailed regulatory framework and an independent office (the ODPC) to oversee data processing.
40. The Impugned Amendment, by mandating a specific form of intrusive data processing (mandatory verification), creates an unconstitutional conflict with the DPA. It bypasses the principles and the independent oversight of the

ODPC, effectively creating a parallel and contradictory procedure for data handling.

41. This legislative conflict creates legal uncertainty and severely dilutes the protections Kenyans were granted under the DPA. However, the Impugned Amendment's attempt to override the DPA's core principles is *ultra vires* the Constitution.
42. That the Petitioners ask the Honourable Court to apply the constitution in a manner that protects the purposes of the constitution in order to prevent the continued violation and contravention of the Constitution and the Bill of Rights.
43. That unless this Honourable court intervenes, the glaring abuse, denial, violation and contravention of the constitutional rights under Articles 31, 33, 34, 35 and 36 will be perpetuated to the detriment of the sovereign people of Kenya.
44. That it is in the best interests of justice that this petition be allowed and the reliefs sought herein be granted.

G. RELIEFS SOUGHT: -

- a. A declaration that the provisions of the Computer Misuse and Cybercrimes (Amendment) Act, 2024 are inconsistent with Articles 10, 24, 33, 34, 35, 36 and 47 of the Constitution and are therefore null and void.
- b. A declaration that the provisions of the Computer Misuse and Cybercrimes (Amendment) Act, 2024 are inconsistent with Article 31 of the Constitution and Sections 25 and 27 of the Data Protection Act and are therefore null and void.
- c. A declaration that the Computer Misuse and Cybercrimes (Amendment) Act, 2024 falls within the definition of a "bill concerning county governments" pursuant to Article 110(1) of the Constitution, hence failure

to transmit the Bill to the Senate for its participation in the legislative process was a direct contravention of Article 110(4) of the Constitution of Kenya, 2010 thus rendering it null and void owing to procedural impropriety.

12

- d. A declaration that the Computer Misuse and Cybercrimes (Amendment) Act, 2024, to the extent that it conflicts with and dilutes the comprehensive framework of the Data Protection Act, is unconstitutional, null and void.
- e. A permanent order of prohibition, restraining the Respondents and their agents, servants, employees or anyone acting on their behest from implementing or enforcing the aforementioned unconstitutional provisions.
- f. The costs of this Petition be provided for.

DATED AT NAIROBI THIS 21st DAY OF October 2025



MUTUMA GICHURU & ASSOCIATES
ADVOCATES FOR THE PETITIONERS

DRAWN & FILED BY: -

MUTUMA GICHURU & ASSOCIATES
ADVOCATES
HURLINGAM PLAZA
2ND FLOOR, SUITE C1
ARGWINGS KODHEK ROAD
P.O BOX 46059-00100
NAIROBI

TEL: 0789 897 811
Email. mgalawoffice2@mgaadvocates.com

TO BE SERVED UPON:

1. ATTORNEY GENERAL
2. SPEAKER OF THE NATIONAL ASSEMBLY
3. KENYA UNION OF JOURNALISTS
4. MEDIA COUNCIL OF KENYA
5. LAW SOCIETY OF KENYA
6. DATA PROTECTION COMMISSIONER.