



**THE SUPREME COURT OF KENYA**

**CHARLES MUTURI MACHARIA & 6 OTHERS V. STANDARD GROUP & 4 OTHERS**

**SC PETITION NO. 13(E015) OF 2022**

**DATE OF JUDGMENT: 8<sup>th</sup> September 2023**

**MEDIA SUMMARY**

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*The following explanatory note is provided to assist the media in reporting this case and is not binding on the Supreme Court or any member of the Court.*

***Order: The Court allows the appeal in this matter.***

**Background**

On 5<sup>th</sup> November 2012, the appellants, who were minors and students at Mugoiri Girls School were presented before the magistrates' court in Murang'a to answer arson-related charges. On the same day, or subsequent to that day, the 1<sup>st</sup> to 4<sup>th</sup> respondents, all media houses, published and/or televised images of the students appearing before the court in print, online and visual media. The respondents published various stories in which full identities and descriptions of the seven minors; their names and images were disclosed, and detailed accounts of their alleged participation in the attempted burning of the school were given. Aggrieved by the publication, the appellants, suing as the next friend of and on behalf of the seven (7) students filed a petition before the High Court in which they complained that in publishing the details of the minors in the manner they did, the respondents ignored the minors' right to privacy and the best interest of the child. Accordingly, they sought various declarations, orders and damages for violation of their fundamental rights and freedoms by the respondents.

The High Court found that although the law provides for the imposition of extra-judicial sanctions to protect minor offenders from unwarranted publicity, this right is not absolute and can be limited under Article 24 of the Constitution; secondly, that the publication of the story and corresponding photographs were a matter of public interest, hence the question of violating the appellants' rights did not arise; thirdly, that the stories as published were factual and published without malice; and finally, that the appellants had failed to prove any loss or damage suffered as a result of the alleged breaches thereby failing to discharge the burden of proof. Consequently, the court dismissed the petition with costs to the respondents. On the first appeal, the Court of Appeal agreed with the High Court and dismissed the appeal. There were no orders on costs. The appellants, once again being aggrieved, have filed this second appeal.

In the appeal before the Supreme Court, the Court framed the following issues for determination:

- i) *whether the Court of Appeal erred in placing public interest in the publication of the images and identities of children in a criminal trial over and above the children's best interest;*
- ii) *whether upon proof of violation of the minors' fundamental rights and freedoms, the appellants were required to go further and prove damage or injury suffered as would be the case in normal civil litigation; and*

- iii) *whether the High Court was right to award costs against children in public interest litigation.*

Upon consideration, the Supreme Court has allowed the appeal for the following reasons:

1. **Issue 1:** Both superior courts below erred in raising the status of public interest over the protection and the best interest of the children without properly subjecting the limitation to Article 24 of the Constitution. The 1<sup>st</sup> to 4<sup>th</sup> respondents would have achieved the same goal of keeping the public informed by running the story without the children's names, photographs or identities. The combined respondents' actions were in violation of Articles 50(8), Article 31 and Article 53(2) of the Constitution. Consequently, the appellants proved a violation of the minors' constitutional rights.
2. **Issue 2:** An injured party is entitled to damages for the loss and injury suffered under private law causes of action, such as tort. In situations like those, compensation for personal loss may be granted upon proof of such loss or damage. However, arising out of the violation of constitutional rights and fundamental freedoms of an individual under public law, the nature of the damages awarded may broadly be compensatory or vindictory. The test, therefore is not what would alleviate the hurt that the victim alleges but what is an appropriate relief to protect the rights that have been infringed. Once a petitioner has presented proof on a balance of probabilities that his or her rights were violated, the court must vindicate and affirm the significance of the violated rights, even though the petitioner may not present evidence to demonstrate the loss suffered as a result of the violation.
3. **Issue 3:** The legal action by the appellants was initiated for the enforcement and advancement of constitutional justice and in public interest. For these reasons, parties are to bear their own costs.
4. In view of the public interest and nature of this case and the broad interests of the parties, the Court issues guidelines aimed at assisting all agencies in the child justice system to navigate the delicate contours of promoting, safeguarding, and fulfilling children's rights.

Accordingly, the Court grants the following orders:

- i) ***The Judgment of the Court of Appeal dated 13<sup>th</sup> May 2022, in Civil Appeal No. 296 of 2017 is hereby set aside, save for the determination on the costs of the appeal.***
  - ii) ***The Judgment of the High Court dated 2<sup>nd</sup> February 2017 in Constitutional Petition No. 56 of 2013 is hereby set aside in its entirety.***
  - iii) ***A declaration hereby do issue that the respondents violated the appellants' right to privacy as guaranteed under Article 31 (c) of the Constitution.***
  - iv) ***A declaration hereby do issue that the respondents violated the Appellants' right to have their best interests considered of paramount importance as guaranteed under Article 53(2) of the Constitution.***
  - v) ***Parties to bear their own costs of this appeal, in the High Court and the Court of Appeal.***
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