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REPUBLIC OF KENYA
THE JUDICIARY

THE SUPREME COURT OF KENYA

MONICA WANGU WAMWERE & 6 OTHERS V. THE ATTORNEY GENERAL

SC PETITION NOS. 26, 34 & 35 of 2019

DATE OF JUDGMENT: 27TH JANUARY, 2023

MEDIA SUMMARY

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.

Orders: The Court allows the consolidated appeal to the following extent:

- a) The Judgments of the Court of Appeal dated 28th June, 2019 and 6th August, 2019 in Civil Appeal Nos. 188, 189 and 190 of 2017 are hereby set aside.***
- b) The Judgments of the High Court dated 15th April, 2018 in HC Petition Nos. 196, 197 and 209 of 2013 are hereby set aside.***
- c) A declaration hereby do issue that the appellants' petitions in the High Court were lodged without inordinate delay due to the historical context under which the violations claimed occurred.***
- d) A declaration hereby do issue that the appellants rights and freedom from inhuman treatment as protected under Section 74(1) of the repealed Constitution were violated by the Government of Kenya through the actions of its agents and/or servants (police officers and GSU officers).***
- e) The Government of Kenya shall pay damages assessed at Kshs. 2,500,000.00/- to each of the appellants in this consolidated appeal.***
- f) The Government of Kenya shall bear the costs in the High Court, Court of Appeal and this Court.***

Background

On 28th February, 1992 a group of women together with their supporters congregated and camped at a section of Uhuru Park, popularly dubbed "Freedom Corner". They participated in a demonstration by going on a hunger strike to urge for the release of the political prisoners. The political prisoners had been incarcerated by the then oppressive regime for politically instigated offences ranging from treason, sedition, to being members of unlawful organizations. However, on 3rd March, 1992 police officers stormed Freedom Corner and dispersed the demonstrators. Thereafter, the appellants, who claimed to have taken part in the demonstrations, filed petitions

in the High Court seeking damages for violation of their fundamental rights and freedoms by the police officers. Their petitions in the High Court and subsequent appeals in the Court of Appeal were unsuccessful.

In their second appeal before the Supreme Court, the Court listed the following 4 issues for determination:

- i. *Whether there is limitation of time in filing claims for human rights violation.*
- ii. *Whether there was unexplained inordinate delay by the appellants in filing their petitions in the High Court.*
- iii. *Whether the appellants proved on a balance of probabilities that their fundamental rights and freedoms were violated.*
- iv. *If the answer to (iii) is in the affirmative, what is the appropriate remedy in the circumstances of the consolidated appeal?*

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

1. **Issue 1:** There is no limitation of time in matters relating to violation of rights under the Constitution which are evaluated and decided on a case by case basis.
 2. **Issue 2:** The appellants' explanation for the delay in filing their petitions in the High Court is plausible to the extent that it was attributed to lack of faith in the pre-2010 judiciary.
 3. **Issue 3:** Although the appellants did not exhibit any physical injuries or medical reports, the Court is persuaded that the whole incident had a psychological/traumatic effect on them. This is because the respondent did not give any justifiable reason(s) whatsoever why it was necessary to violently disrupt and disband the protests by the appellants who were harmless. The psychological/traumatic effect can be equated to inhumane treatment which was a violation Section 74(1) of the repealed Constitution.
 4. **Issue 4:** The appropriate remedy in the circumstances are damages assessed at Kenya Shillings two million, five hundred thousand (Kshs. 2,500,000/-) to each of the appellants.
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