



COMPROMIS 2018 KUSOL ALLKENYAN

MOOT COURT COMPETITION (AKMCC)

Dates: **March 2018**

Venue: **Kenyatta University School of Law**

Theme: **“STRIKING THE BALANCE BETWEEN THE RESPECT FOR HUMAN
RIGHTS AND MAINTAINING NATIONAL SECURITY”**

IN THE MATTER BETWEEN
NADYA NATIONAL HUMAN RIGHTS COMMISSION (NNHRC)
AND
THE REPUBLIC OF NADYA

1. The Republic of Nadya is a Third World State on the Eastern shores of the great Afran Continent bordering the Inan Ocean. It is a State rich in cultural diversity. Its Capital City is the great Nabi. According to the latest statistics, Nadya has a population of approximately 48.16 million people. As at 2016 Nadya had a Gross Domestic Product (GDP) of USD 70.53 billion. Despite the existence of a huge gap between the rich and the poor in the country, Nadya remains one of the leading economic powerhouses East of Afran. Over time, Nadya has been touted as a model emerging democratic State more so since the adoption of its new constitution in 2010 that is famed as being the most progressive in Afran.
2. National elections in Nadya are usually held after every five years. Electioneering periods in Nadya are often characterized by economic downturns and high political tension. Previous election years have been characterized by post-election inter-ethnic clashes on the basis of political affiliation. One such aftermath gave rise to human casualties in thousands and displacement of hundreds of thousands of people. Consequently, national security has always been given utmost priority by the State of Nadya in periods leading to national elections with political activities being constantly under the scrutiny to ensure they do not sow discord.
3. All sovereign power under the Nadya Constitution belongs to the people and is required to be exercised only in accordance with the provisions of the Nadya constitution. The constitution guarantees the freedoms of opinion, expression, association as well as the right to demonstrate, picket and present petitions to public authorities. Nadya has moreover ratified all international human rights Treaties and conventions including the African Charter on Human and People's Rights, the International Covenant on Civil and Political

Rights, the International Convention for the Protection of all Persons from Enforced Disappearance as well as the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Nadya's constitution is the exact replica of that of Kenya as is its laws.

4. Nadya held its last national elections in July 2017. Aggrieved by their loss in the previous election cycle, Nadya's opposition parties began agitating for electoral reforms in the run up to the elections. Seeing the reluctance on the part of the State to take measures to meet their demands, the opposition leaders called for weekly national protests until the government gave in and effected the requested reforms. Various civil society groups also joined in the call for electoral reform and in the protests. Subsequently, massive protests were held each week in Nabi and other towns in Nadya.
5. Although indicated as being peaceful protests, the demonstrations always ended up in violence with the Nadya anti-riot police using teargas, water cannons and hand batons to disperse the protestors. The police argued that the demonstrations were not peaceful; that the demonstrators were armed with stones, sticks and occasionally some carried machetes during the demonstrations. It was also argued by the State that some of the demonstrators merely used the demonstrations as a disguise to engage in breaking, entering and plundering shops along the way as well as in wanton destruction of private property. Nadya's cabinet secretary in charge of national security and the Inspector General of Police issued a warning to those taking part in demonstrations stating that all who engaged in criminal activities would be met with the full force of the law and that the government of Nadya would not allow power-hungry individuals to jeopardize national security in the name of pushing for reforms whereas the law and procedure on legal reform was crystal

clear. Subsequent to this warning, the police used even more force to thwart every effort at protests. There emerged reports in the media of unarmed civilians who took part in the protests being brutalized by the police. There were also reported various cases of protestors sustaining injuries from live bullets with others being killed on the spot. The police denied using excessive force stating they were doing all they can to prevent the loss of life and property. They further accused the media of partisanship. This however didn't stop the demonstrations from taking place every subsequent week.

6. Tangery Ismael, a fourth-year law student at the University of Nabi was a victim of the police brutality that had accompanied the protests. Three weeks before, her younger brother aged 10 had been shot dead by a stray bullet allegedly from one of the anti-riot police officers who were quelling protests in one of the towns outside Nabi where concurrent protests were taking place. This happened while the brother was playing with other children outside their house. The police, through their spokesperson, distanced themselves from the shooting citing that there were armed demonstrators firing at the police which caused the police to fire back in return. He however added that if it was a case of misuse of a firearm that the responsible person, if it be a police officer, shall incur individual criminal responsibility. Despite promises by the Nadya's police service to 'get to the bottom of the matter' no progress had been made and Tangery's family had not heard a word from the police or from any other policing oversight agency.
7. Although not supporting the protests called by the opposition parties, Tangery decided to join one of the groups protesting against the use of excessive force by the police on protestors. This was organized by a civil society organization, Kituo cha Haki (Kituo), which had previously been taking part in the protests. The group called on the State to

make good its international obligation to investigate the loss of life and ensure accountability for the same. The protests were held twice in a week, every Monday and Thursday. Tangery was joined by and led a group of law students twice each week to take part in Kituo's protests.

8. On Thursday, 16th March 2017, Kilina Kilao, a Nadya National Police Service officer attached with the Nabi Central Police Station together with a posse of police officers from the Station were called to monitor and ensure security during a developing protest at the heart of Nabi Central Business District. The demonstration was organized by the Forum for Progressive Change (FOPC), the leading opposition party in Nadya, as part of the pro-electoral-reform protests. Being a Thursday, the protest coincided with that of Kituo protesting the use of excessive force and extra-judicial killing of protestors by the police. The latter had gained momentum over time and now mainly involved students from the University of Nabi who were apparently led by Tangery. The two groups marched together along the streets of Nabi and could only be distinguished by the messages borne in the placards they carried.
9. Acting on the warning issued by Nadya's Inspector General of Police and the Cabinet Secretary in charge of national security that protestors would be dealt with the full force of the law, Officer Kilina and his crew all adorned in anti-riot gear stormed the streets of Nabi specifically along College Road where the police anticipated would be the epicenter of the protests. As the demonstrators advanced towards college road, Kilina and his fellow police officers lobbed teargas canisters and aimed water cannons at Tangery and the other protestors making them to scamper for safety but only to re-group shortly afterwards and continue with their protest. The police engaged in running battles with the protestors,

pursued them and indiscriminately beat up any one they came across with batons and kicks. The protestors, on their part, started hurling stones at the police officers whilst some blocked roads by burning tyres in the middles of the road and stoned passing motorists. Some broke into shops and display windows looting whatever they came across. An old lady in a wheel chair also lost her hand bag to one of the demonstrators.

10. Kilina and his officers were overwhelmed by the resilience of the protestors and resorted to shooting in the air to scare them off to no avail. The police requested for back up and were told that none was forthcoming, they received orders to shoot the protesters from their commander so as to quell the protests. Officer Kilina decided to pursue one of the protestors who was at the forefront of the protests and whose face looked familiar probably as a result of being an outspoken lead in previous protests. This particular protestor was among a group that seemed relentless to go on with the protests despite the attempts by the police to disperse them. This was the group that carried banners protesting police brutality and were quick to pick teargas canisters thrown at them and hurl them right back at the police. Some carried twigs and some had stones. Kilina was certain he had seen this particular protestor bend as if to pick a stone to throw at the police so he charged at her with his gun on one hand a baton on the other.

11. Nadya Police Service Training Tactics authorize police to shoot leaders of protest groups in order to regain control of crowds. This is based on the 'Use of Force Continuum' manual that Nadya has retained from its colonial masters. The manual is yet to be reviewed though the Nadya Human Rights Commission has said its contents are unconstitutional. These tactics are further roundly criticized by the International Human Rights Organizations.

12. Tangery upon noticing that a police officer was forcefully charging towards her decided to scamper to safety using a nearby alley. Seeing the opportunity to corner this notorious protestor, Kilina followed in hot pursuit. Tangery tripped and fell in the confusion and as a result of trying to avoid running into other protestors. Kilina took this opportunity and pinned down Tangery at a corner in the alley, kicking her with his heavy police boots and simultaneously beating her lame with the baton. Tangery managed to get up with difficulty and tried to run from the officer. Without hesitation, Kilina aimed his gun at Tangery who was half running and half crawling away and shot her in the chest.
13. Suddenly, Kilina alerted by some noise from the end of the alley, saw Mumbea, a news reporter with Kero Television, who had all along been recording the scene on his video camera. In panic, Kilina raised his gun and fired at Mumbea. The bullets missed Mumbea by a whisker and he managed to jump onto a van and get away.
14. By mid-afternoon that day, most of the demonstrators were either injured or in police vans awaiting booking at the Nabi Police station. A quick visit to the emergency wing of the Nadya National Hospital revealed the true dark picture of what had happened. The medical superintendent, Dr. Jikol told reporters that they had received forty-five casualties mostly with broken or fractured limbs, open bleeding wounds and three of them had live bullets lodged in their bodies. Soon thereafter Tangery's body was found lying lifeless in the alley off College Road and taken by paramedics to the County morgue.
15. On 20th March 2017, Mumbea's video emerged on social media detailing the conduct of the police during the protest. Kero Television management had refused to officially broadcast the contents of the video for fear of backlash from the police hence forcing Mumbea to share it on social media. The video showed the police using force to disperse

the protests; throwing stones back at protestors as well as aiming live bullets at the protesting crowds and the rowdy youth who were hurling stones at them. What was most shocking was the part showing the police officer pursuing an unarmed Tangery down the alley, beating her lame and finally fatally shooting her at close range. The video however did not detail events before the officer pursued Tangery and she failed to clearly capture the officer's face.

16. This exposé shocked the nation and the conduct of the police received condemnation from both civil society and human rights bodies. The United Nations Special Rapporteur on Extra-judicial killings immediately condemned the killing and brutal mishandling of the protestors and demanded expeditious investigations into the matter. The official opposition movement issued a press Statement condemning the grotesque acts by the police and promised justice for the affected families.

17. On the 21st day of March 2017, a day after Mumbea's video made headlines, the Nadya National Police Service issued a press Statement distancing themselves from the actions of the officer and promising a thorough investigation into the identity of the killer police officer. The police officer was later identified as Kilina Kila, Service Number 30078, of the rank of Police Constable. This was arrived at after an examination of one of the bullets found lodged in Tangery's body which matched those from the gun issued to Kilina. He was immediately suspended and arrested for the murder of Tangery. The police issued a call to the journalist who had recorded the video to come forward to record a Statement with the police to aid in the prosecution of Kilina.

18. Mumbea had gone into hiding immediately after the release of the video. No one knew of his whereabouts except his family. Immediately after the broadcast of the video, Mumbea

began receiving death threats from anonymous sources warning him against appearing to record any Statement or owning up to the video. Fearing for his life and that of his family, Mumbea decided to come from hiding, report the threats to the police and seek protection. On 1st April 2017, Mumbea decided to report to Hongo Police Station, a station outside Nabi for fear of encountering officers affiliated or sympathetic to Kilina in Nabi.

19. His family was however alarmed when Mumbea failed to return from the police station.

Eight hours later, Mumbea's wife, Siki, to whom he had intimated the plan to report to Hongo Police Station ran to the station in a bid to establish his whereabouts. Upon arrival, Siki was informed that no one matching Mumbea's description had been seen at the station and that no report on the alleged death threats had been made in the station's Occurrence Book. Upon further pleading with the officers to check whether Mumbea was arrested and held at the station, the officer on duty informed her that Mumbea had not been booked into the station and even went an extra mile to give her a tour of the holding cell where Siki confirmed that Mumbea was not among those held in the station. The officer requested to know if Siki wished to report Mumbea as missing so that the matter could be assigned an officer but Siki in distress refused to do so and ran out of the station.

20. It's now a year after the killing of Tangery and her little brother yet no conviction has been procured due to what the State terms as insufficient evidence to support prosecution. Mumbea's whereabouts are still unknown and the police deny ever holding him despite two witnesses having come forward to State that Mumbea was held briefly at Hongo Police Station where they too were being held before he was moved. The records at Hongo Police Station show no evidence of Mumbea ever having been booked there.

21. Nadya has been on the on UN watch list on extra-judicial killings, police brutality and enforced disappearances. In 2016, Nadya topped Afran in extrajudicial killings in a study conducted by Amnesty International. The report cited anonymous confessions by police officers who had allegedly individually taken part in State-sanctioned and targeted killings of persons deemed a threat to peace and national security. The State of Nadya has since dismissed the report terming it a ploy by a foreign organization to paint Nadya in bad light so as to continue securing donor funding.

22. Willan a leading human rights lawyer in Nabi and a government critic indicated that he would take Tangery's matter, vowing to seek justice for her family owing to Tangery's inhumane and 'apocalyptic treatment.' Two days after Willan had instituted these proceedings, he was arrested and held in one of the police stations in Nabi. Efforts by members of the Law Society of Nadya Nabi Branch to establish his whereabouts bore no fruit for two consecutive days. The National Police Service through its spokesman issued a press statement indicating that Willan was no longer in the hands of the police. The law society through their Chief Executive Officer released a statement stating that the continued disappearance of Willan infringed on not only Willan's rights, but also his client's right to counsel. Willan's body was found floating in a river in the outskirts of Nabi after a week of intense searching.

23. The Nadya National Human Rights Commission (NNHC) (the Commission) is an independent constitutional office established under Chapter Fifteen of the Nadya Constitution. Its mandate is to promote the protection and observance of human rights by public and private institutions. This includes monitoring, investigating and reporting on the observance of human rights in all spheres of life in Nadya including observance by the

national security organs. The Commission is further mandated to receive and investigate complaints about alleged abuses of human rights and to take steps to secure appropriate redress where human rights have been violated. As part of its duties, the commission serves to ensure that the State of Nadya complies with its obligations under treaties and conventions relating to human rights that have been ratified by Nadya.

24. The Commission condemned the police brutality, the extrajudicial killings, the disappearance of Mumbea and the failure of the State to act in the face of such violations. It has filed a petition at the High Court of Nadya in Nabi seeking a declaration that:

- a. The use of force by the police and the subsequent shooting of Tangery was in flagrant violation of the constitution of Nadya and International Human Rights law.
- b. Willan's arrest by the police and his subsequent death violated the right to legal representation enshrined in Nadya's Constitution and other international human rights laws.
- c. The actions by the Nadyan State actors violated the right to demonstrate encapsulated in Article 37 of the Nadyan Constitution.

Proceed to prepare arguments for both the Nadya Human Rights Commission and the State.