

IMPUNITY WATCH

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MACHOZI YA JANA

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"The time is always right to do what is right."

-Martin Luther King Jr. -

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Between 2013 and 2015, a report released by Mathare Social Justice showed that over 800 people had been killed by police officers. Some of these executions, according to witness statements, took place in front of family members and neighbours with the victims being shot at close range or in the back as they ran for their lives.

“Sound ya glass ya champagne ikigonga cheers impunity ikicelebrate, ikatizwe na sauti ya nyundo kwa court wakiface judgement.” (The cheers clicking of celebrating impunity’s champagne glasses will be interrupted by the sound of the gavel as they face judgement in court.)

-Juliani -

- Machozi ya Jana-

The Kenyan law only permits police to use lethal force when necessary for self-defence or to save a life. Section 4 of the Sixth Schedule of the National Police Service Act of 2011 requires police officers who use lethal force to report to their immediate superior explaining the circumstances that necessitated the use of force. Section 5 of the same act requires officials to report any use of force that leads to death or serious injury to IPOA for investigation.

However, a Human Rights Watch correspondence with IPOA revealed on September 18, 2017 that this requirement had not been adhered to for all police shootings that had taken place in August 2017. This comes as no surprise considering that the government's response is largely denying the scale of the violence.

For instance, even as the August 2017 post election clashes were ongoing, the acting Cabinet Secretary for the interior, Fred Matiang'i, claimed on August 12 that police had not used firearms, nor killed anyone.

His claim that all demonstrators were looters implied they were legitimate targets for shooting.

The cabinet secretary implied that the few people who might have been killed were criminals who were looting shops and that police had only acted to thwart such criminal attempts.



ACKNOWLEDGMENT

The Kenyan Section of the International Commission of Jurists (ICJ Kenya) would like to appreciate the contribution and support the Police Reforms Working Group, through its various advocacy interventions in the campaign against extra judicial killings in Kenya and more specifically, coordination of successful Machozi ya Jana Community Dialogues.

We would also like to extend appreciation to Kevin Onyango and Charles Ndegwa for their creative and literacy contributions to the publication respectively. We appreciate the Kenya Human Right Commission for their technical and financial support towards the publication of this magazine.

Finally, ICJ Kenya is sincerely grateful to its secretariat staff for conceptualizing and supporting the development of this magazine. We are also grateful to our strategic partners in the human rights field and our development partners for their unwavering technical and financial support for ICJ Kenya's work.

Samwel Mohochi
Executive Director

FOREWORD

The Kenyan Section of the International Commission of Jurists (ICJ Kenya) and Kenya Human Rights Commission are members of the Police Reforms Working Group (PRWG), which advocates for accountability for extra judicial killings in Kenya.

The PRWG undertook a country wide campaign in 2017 against extrajudicial killings committed by Law Enforcement Agents. This publication is part of the continuing advocacy campaign aimed at raising awareness to members of the public and duty bearers on the impacts of extrajudicial killings in the community.

Extra judicial killings in Kenya is among the most flagrant, mortifying and irreparable form of human rights violations which contravenes provisions of the Constitution and the international laws on personal liberty, human dignity and the right to life. Whenever a law enforcement agency resorts to violate the rights of an individual while enforcing the law enforcement agency resorts to violate the rights of an individual while enforcing the law or to maintain public order, the agency loses its credibility, legality and authority.

The number of extrajudicial killings in Kenya is on the rise. According to the 2017 Human Rights Report by Amnesty International, Kenya was ranked top in Africa in cases of police shootings and killings of civilians. The respect for human rights is in an entitlement to every human being and must constantly be safeguarded.

This publication is the second edition of the Impunity Watch magazine that reinforces the importance of sustained advocacy against extra judicial killings in Kenya. This edition of the magazine highlights three stories of victims of extra judicial killings who lost their lives in the hands of law enforcement agents and uses these stories to enhance awareness on the severity of the consequences of extra judicial killings and demonstrates the illegality in these acts.

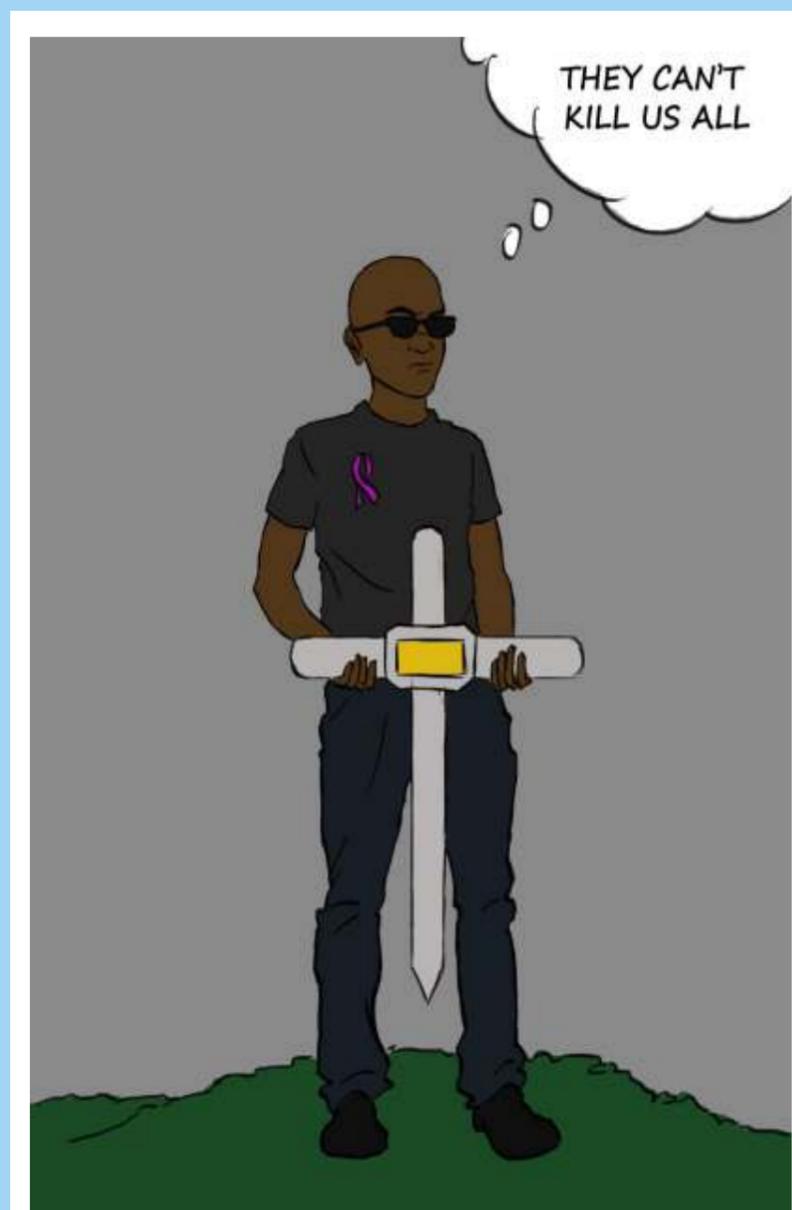
It is our hope that this publication will contribute to the campaign against extrajudicial killings in Kenya.

KELVIN MOGENI
Chairman, ICJ Kenya Council

There was 'Machizi ya Jana' community dialogue held by non-governmental organizations including ICJ-Kenya, International Justice Mission, government organizations including Kenya National Commission on Human Rights, Internal Affairs and the Independent Policing Oversight Authority.

This discussion established the fact that citizens were afraid of reporting extrajudicial killings to the police because the perpetrators were police officers.

They were however, encouraged to report such matters to civil society organizations, IPOA, KNCHR among others who would assist in ensuring that justice is attained.



*"The dead cannot cry out for justice.
It is a duty of the living to do so."
-Lois Bujold-*



The work of the judiciary is to prosecute the errant police officers who perpetrate extrajudicial killings.

“Courts operate on the basis of the rule of law. Court processes can be long and frustrating but that is no reason to suspend the rule of law. Obeying the law, however inconvenient, is the only way to maintain political and social stability.”

-Chief Justice David Maraga-

ABSTRACT

“ The conclusion I reached was that killing was widespread, that it was basically part of the way in which the police force operated, that it wasn’t just tolerated by the senior police but directed by them.”

This was what former UN Special Rapporteur on Extrajudicial Summary or Arbitrary Executions, Philips Alston reported regarding extra judicial killings in Kenya in 2007.

Kenya has a long history of extra judicial killings, documented from as early as the 1960s in the crackdown on the Shifta. This vice has continued with Human Rights Watch reporting at least two-hundred people either killed or disappeared by security officers around Mt. Elgon area in 2008 alone.?

As of December 8, 2014, the Anti-Terrorism Police Unit had killed close to five-hundred suspected terrorists according to an Aljazeera investigation reported under the title, “Kenyan counter terrorism police admit to extra judicial killings.”

This means that even the new Constitution of 2010 didn’t deliver Kenya from this vice. The Independent Medico-Legal Unit (IMLU) reported that ninety-seven Kenyans were summarily executed by police in 2015.



WILLIE KIMANI CASE

Post-mortem reports read in court averred that the three bodies had signs of torture.

On June 23rd, 2016, human rights lawyer Willie Kimani, his client; Josephat Mwenda and that of their driver; Joseph Muiruri were allegedly killed by Administration Police officers. Their bodies were retrieved from the Ol Donyo Sabuk River on July 1st, 2016.

The trio went missing in June after Mr Kimani filed a case in court against a police officer on behalf of Mr Mwenda. The said police officer had allegedly shot Mr. Mwenda in the arm and filed trumped up charges against him.

Post-mortem reports read in court averred that the three bodies had signs of torture.

Five police officers have since been arrested and charged with the murders.



Usually when extrajudicial killings take place, protests follow. This was the case in the aftermath of the Willie Kimani and others' murders where lawyers and activists held countrywide protests. Similarly protests occurred after the execution of the eight youths in Mukuru kwa Re



According to reports by the Human Rights Watch, between August and October 2017, as many as 50 people were killed by police officers in Nairobi, Kisumu and Siaya Counties.

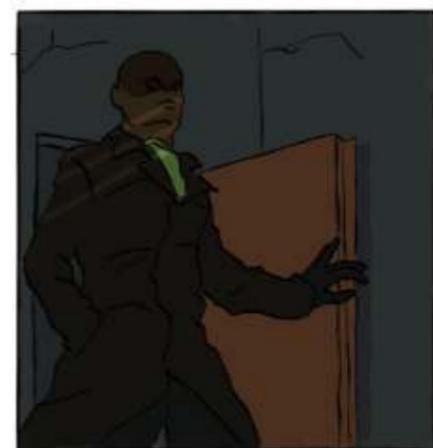
The killings mainly resulted from post election tension. One of the victims was a ten-year old girl who shot and killed while playing at the balcony to their home in Nairobi, and another was a six-month old baby mercilessly clobbered to death by the anti-riot police.

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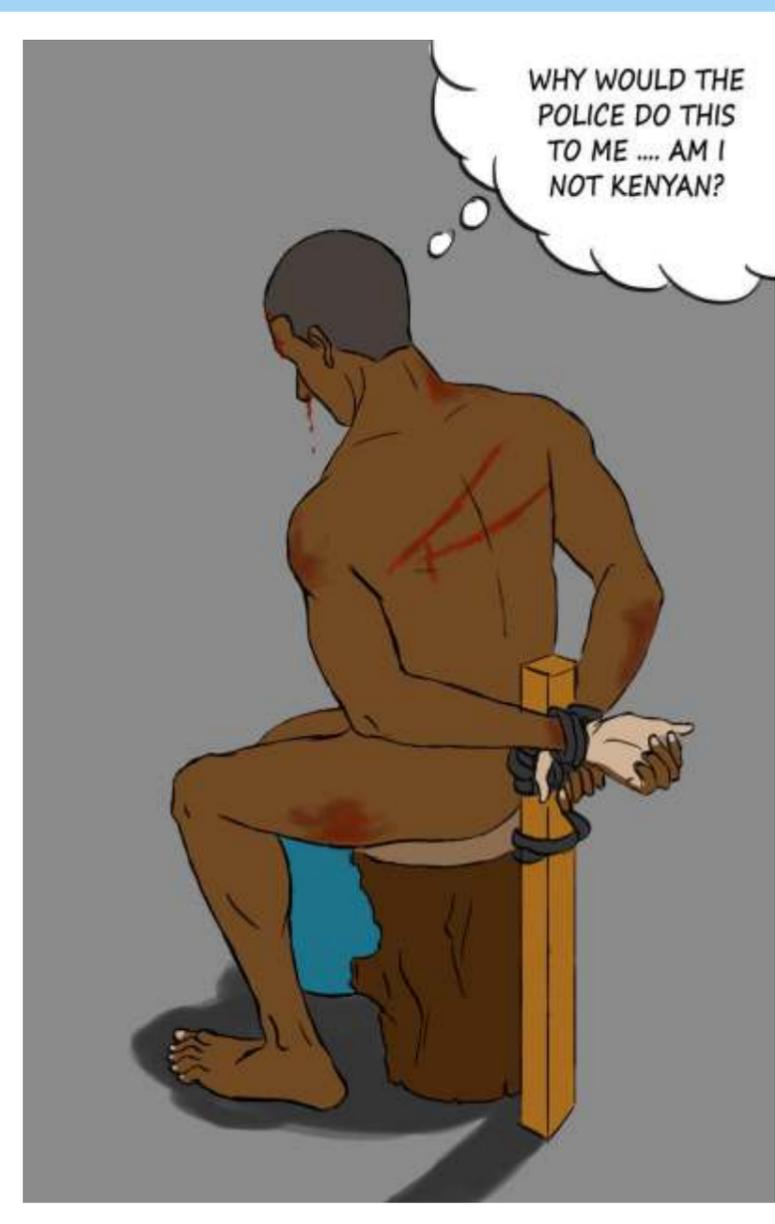
WILLIE KIMANI AND TWO OTHERS WENT MISSING IN JUNE 2016 AFTER MR. KIMANI FILED A CASE AGAINST A POLICE OFFICER ON BEHALF OF MR. MWENDA





Under Article 50 of the Constitution, a suspect or an accused person must be subjected to the due process of law which exemplifies the strict adherence to the principles of natural justice. Arrested people have rights and so do those facing trial in court. Nowhere in the Constitution mentions that when a suspect is arrested, they can be taken to an ungazetted cell, beaten and killed.

It is important to note that the Common Article 3 of the Four Geneva Conventions, whose lime lighting of extrajudicial killings has been widely used. The article stipulates that; The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples are prohibited at all times under all circumstances with no exceptions.



Under Article 50 of the Constitution, a suspect or an accused person must be subjected to the due process of law which exemplifies the strict adherence to the principles of natural justice.



The law is clear that the duty of the Kenya Police is to investigate any particular offence or offences and to enforce the law against any particular person or persons. This is according to Article 245 (4) of the Constitution, the police have taken it upon themselves to go ahead and be judge, jury and executioner.

The Constitution further provides that the National Police Service is required to comply with constitutional standards of human rights and fundamental freedoms. One of those human rights as fate may have it, is the right to life as enshrined in Article 26.

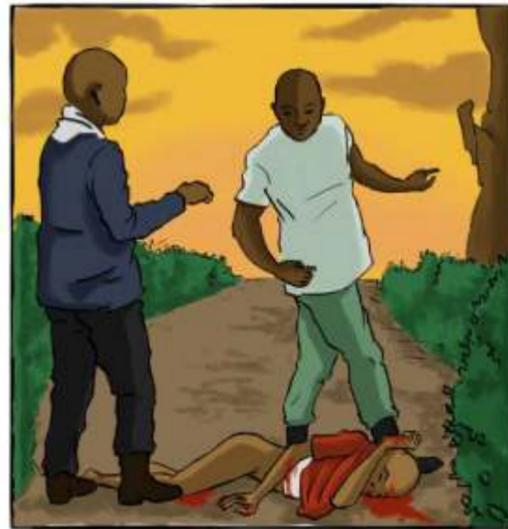
The courts, it appears, tend to frown upon extrajudicial killings every now and then. The High Court of Kenya ruled in Republic v Cyrus Mwangi Kimunyu [2016] eKLR that no person or authority has a mandate to find a person guilty of any crime except the courts of law.

Further, the court held that there is no member of public or any other person for that matter who should be allowed to take away someone's right using extra judicial means.



In the 2016/2017 Amnesty International Report a majority of cases of extrajudicial executions were witnessed in the coastal region of the country. Most of the killings were conducted under the guise of combating terrorism and the insurgent Al-Shabaab terror group. It is reported that police officers carried out enforced disappearances, extrajudicial executions and torture with impunity.





Article 2 (6) of the Constitution domesticates any treaty or convention ratified by Kenya and states that such instruments form part of the laws of Kenya. Therefore, the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) to which Kenya is a signatory, form part of Kenyan law.

Article 3 of the UDHR maintains that everyone has the right to life, liberty and security of person.

The same sentiment is shared by the ICCPR whose Article 6 states that every human being has the inherent right to life. This right shall be protected by law.

No one shall be arbitrarily deprived of his life. On April 19, 2016, police officers shot and killed eight young people suspected to have been robbers in Nairobi's Mukuru kwa Reuben slum.



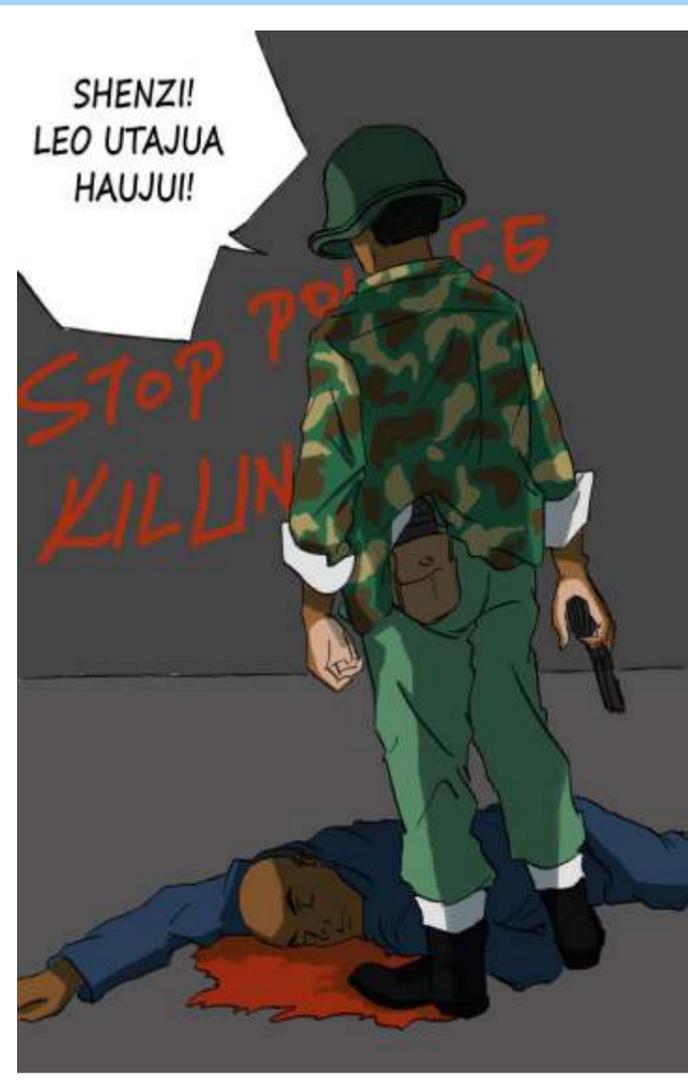
The narrative as told by the officers, ran that the young people were armed and in the process of stealing from law abiding citizens. When the officers intervened, they opened fire and they had no choice but to shoot back.

However, the evidence on the ground narrated a different story. Instead of used bullet casings lying around the alleged criminals' bodies, there was fresh khat. Either their guns were firing khat, or as the area residents opined, the young men were not criminals. Unfortunately, this is not a standalone occurrence.

Either their guns were firing khat, or as the area residents opined, the young men were not criminals. Unfortunately, this is not a standalone occurrence.

THE TRUTH SECTION

This section highlights the Kenyan position with regard to extrajudicial executions. It portrays the manner in which the vice is perceived in the country and includes the legal framework that protects citizens from these executions, paramount of which is article 26 of the Kenyan Constitution.



Extrajudicial, as per the Black's Law Dictionary, means outside court; outside the functioning of the court system.

Extrajudicial killings therefore, can be defined as killing outside the parameters of the law.

Kenya's Constitution has been hailed as one of the most comprehensive, if not the most, globally. Article 26 (1) of the Constitution guarantees the right to life and places emphasis on the fact that this right can only be limited as authorized by the Constitution or any other written law.

This is the key legal provision protecting individuals against the vice that is extrajudicial executions. Amnesty International released a report in 2016 finding that Kenya has the highest rate of police shootings and extrajudicial killings in Africa.

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As of October 2016, out of the 177 reported extrajudicial killings in Africa, 122 took place in Kenya. That is a daunting 68.92%. The problem is so pronounced that a police officer can execute a person in broad daylight in Nairobi's Eastleigh estate and the killing is recorded on camera and released online and the errant officer still pretty much gets away with it.

EASTLEIGH EXECUTION

...nobody has been arrested in connection with the same as of November 6th, 2017.

On March 31st, 2017, less than a year after the killing of three men including Willie Kimani, a video surfaced online showing a plain clothes police officer executing a man in broad daylight in Eastleigh.

The ICJ-K is in possession of videos (from Mathare Community Dialogue) where community members openly identify this police officer as Rashid.

This identification has been corroborated by Sunday Nation's April 9th, 2017 issue in an article titled, "Officer in alleged extrajudicial killing a 'darling of residents'"

Though the Independent Policing Oversight Authority is investigating the Eastleigh shooting, nobody has been arrested in connection with the same as of November 6th, 2017.

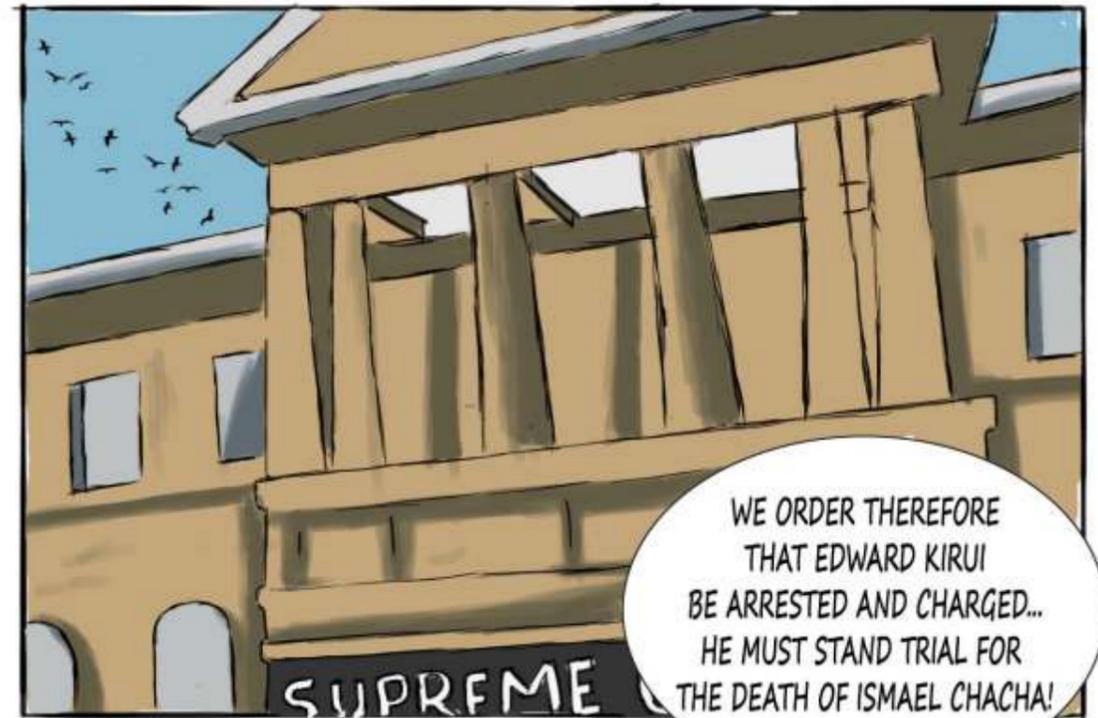


Eastleigh, Nairobi

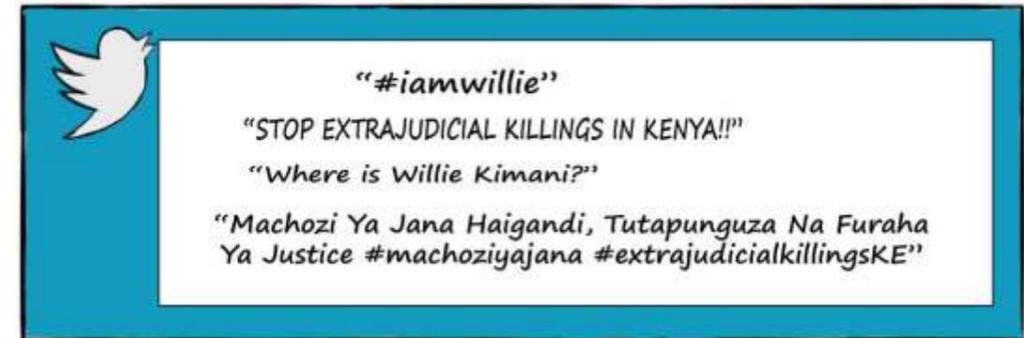
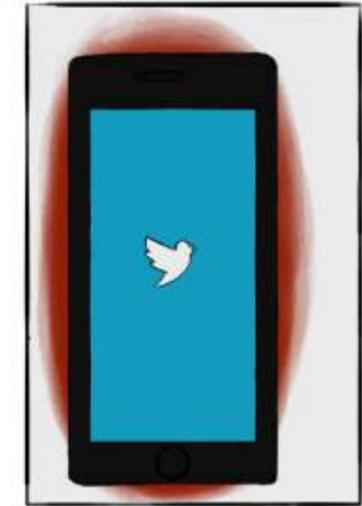




NAIROBI POLICE COMMANDER DISMISSES VIRAL VIDEO DEPICTING AN ALLEGED EXTRAJUDICIAL KILLING IN EASTLEIGH, NAIROBI.



WE ORDER THEREFORE THAT EDWARD KIRUI BE ARRESTED AND CHARGED... HE MUST STAND TRIAL FOR THE DEATH OF ISMAEL CHACHA!



EDWARD KIRUI CASE

KTN crew filmed a lone police officer ambushing the two unarmed youths and shooting them down in cold blood.

On 16th January 2008, George William Onyango and Ismael Chacha were murdered at, Kondele market Kisumu City.

KTN crew filmed a lone police officer ambushing the two unarmed youths and shooting them down in cold blood. A police officer, Mr. Edward Kirui was charged with two counts of murder of the two deceased men.

His case proceeded to trial where he was acquitted on 21st June 2012 for the murder of George Onyango.



IN DECEMBER 2007, PROTESTS HELD BY SUPPORTERS OF THE ORANGE DEMOCRATIC MOVEMENT TURNED VIOLENT. IT WAS WHEN THE POLICE WERE QUELLING THE RIOTOUS MOBS THAT GATHERED AT KONDELE MARKET THAT GEORGE ONYANGO AND ISMAEL CHAHA MET THEIR END THROUGH GUNSHOTS FIRED AT THEM BY A POLICE OFFICER.



FOLLOWING THOSE DEATHS, POLICEMAN EDWARD KIRUI WAS SINGLED OUT AS THE PERPETRATOR OF THE CRIMES COMMITTED ON THE TWO DECEASED PERSONS AND WAS CONSEQUENTLY INTERDICTED FROM THE POLICE FORCE, ARRESTED AND CHARGED WITH TWO COUNTS OF MURDER.

