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WASHINGTON STATE SUPREME COURT  
Supreme Court Cause No. 100416-8  
Court of Appeals Cause No. 81884-8-I

KAY KAYONGO,

Petitioner

vs.

STATE OF WASHINGTON,  
KING COUNTY,  
CITY OF TUKWILA,

Respondents

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BRIEF OF RESPONDENT CITY OF TUKWILA IN RESPONSE TO  
APPELLANT'S PETITION FOR REVIEW

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MICHAEL G. SANDERS  
MIX SANDERS THOMPSON, PLLC  
1420 FIFTH AVENUE, SUITE 2200  
SEATTLE, WA 98101  
ATTORNEYS FOR RESPONDENTS

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## **I. COUNTER-STATEMENT OF THE CASE**

The petition for review before the Court should be denied as to the City of Tukwila. The Court of Appeals affirmed dismissal of Petitioner Kayongo's claims against the City of Tukwila because Petitioner Kayongo failed to state a claim upon which relief could be granted. Ms. Kayongo's petition raises no new relevant issues or arguments, and otherwise does not meaningfully address or engage with the grounds upon which the trial court and Division One of the Court of Appeals determined dismissal of her claims was appropriate. This Court should accordingly deny review.

In the present petition, Ms. Kayongo identifies three issues for review:

First, Ms. Kayongo cites to the Court of Appeals' footnote reference to Ms. Kayongo's failure to designate several of the Respondents' motions and briefs in the record on appeal. The footnote reads as follows: "Kayongo also failed to designate several of the motions and briefs of the government entities from the trial court in the record on appeal, however each of the respondents provided copies of those filings as appendices to their response briefs." The footnote is placed at the conclusion of the following sentence from the Court of Appeals' decision: "While the record designated on appeal does not contain a transcript of the hearing on the motion to dismiss, the parties have provided the various pleadings and orders of the court such

that the record before us is sufficient to properly review the assignments of error.” Ms. Kayongo argues RAP 9.6(a) requires the Respondents to designate appropriate Clerk’s Papers and appears to further argue she is not obligated to do so. Although this is a plain misreading of the applicable authorities, the Court need not address the issue at all since there is no question the Court of Appeals was fully apprised when it made its decision. Ms. Kayongo has failed to suggest how this purported issue would yield any basis to disturb the Court’s decision to terminate review.

Ms. Kayongo’s second issue is a conclusory disagreement with the Court of Appeals’ determination she failed to state a claim upon which relief could be granted. The Court of Appeals decision contained the following analysis of Ms. Kayongo’s claims against the City of Tukwila in its entirety:

*Kayongo alleges that the City of Tukwila stole her property by “continuously re-engineering the specific part of the Avenue to which the incident and the injury caused the filed record/information keep with them...including re-engineering of Foster High School.”*

*Again, Kayongo fails to allege facts demonstrating the defendants wrongfully interfered with her property, depriving her of rightful title, or that she was owed a duty different from that of the general public. Because she fails to state facts which would give rise to relief under the law, the superior court properly dismissed her complaint.*

*The superior court properly dismissed Kayongo’s claim against the City of Tukwila for failure to state a claim upon which relief can be granted.*

November 1, 2021 COA Opinion, pp. 6-7.

Ms. Kayongo's petition fails to address the absence of facts demonstrating the City of Tukwila wrongfully interfered with her property. It also fails to identify or address any special duty Ms. Kayongo may have been owed apart from the duty owed to the general public. Rather, Ms. Kayongo's petition contains repetitive conclusory allegations interspersed with novel and confusing factual assertions unsupported in the record. Ms. Kayongo also for the first time refers to a federal Constitutional claim. At no point does she elucidate what property of hers was interfered with or how the City of Tukwila proximately caused or contributed to it. At no point does she identify a qualifying special relationship to the City of Tukwila. No basis has been identified under Ms. Kayongo's second issue that would justify the Court disturbing its decision to affirm dismissal of Ms. Kayongo's lawsuit.

Ms. Kayongo's third and final issue is difficult to interpret. As written, the issue (phrased as a question) reads: "Whether do State of Washington, King County, and City of Tukwila have right to taken and use petitioner's the said information/record CP 78-79 above for sanitary purposes without legal justification." Petition for Review, p. 7. Following a good faith review of Ms. Kayongo's briefing, this third issue does not appear related to any of the reasons for the Court of Appeals' decision to

affirm the trial court and terminate review. Whether the Respondents, including the City of Tukwila, have a “right” to take alleged information from Ms. Kayongo was not addressed by the Court of Appeals because it was not necessary to reach that analysis. Ms. Kayongo failed to state a claim upon which relief could be granted, and nothing in the present petition provides a coherent legal theory to the contrary.

Respondent City of Tukwila is unable to interpret Ms. Kayongo’s materials to support any other cognizable issue. The issues noted above do not supply a basis to overturn the Court of Appeals’ and the trial court’s determination that the claim should be dismissed with prejudice. To the extent other issues are interpreted by this Court to exist in the petition, the City of Tukwila respectfully requests an opportunity to supplement this petition with further briefing to address any such issues identified by the Court.

## **II. ARGUMENT**

### *Standard of Review*

The appropriate standard of review as to the dismissal of Ms. Kayongo’s claims against the City of Tukwila under CR 12(b)(6) is *de novo*. See, e.g., FutureSelect Portfolio Mgmt., Inc. v. Tremont Grp. Holdings, Inc., 180 Wn.2d 954, 962, 331 P.3d 29 (2014).

///

*Argument*

Division One of the Court of Appeals boiled the merits of this appeal to their essence by closing its opinion as follows:

Throughout her briefing, Kayongo appears to merely repeat the arguments and allegations that she presented to the trial court. Because Kayongo fails to identify or engage with the standard of review on appeal or otherwise argue how the trial court erred as to its rulings in the initial hearing and on reconsideration, we affirm the superior court.”

November 1, 2021 COA Opinion, P. 9.

Ms. Kayongo has continued to merely restate herself at all levels of this litigation and does not address the bases for dismissal identified at the trial court level and again at the Court of Appeals. Since Ms. Kayongo has failed to meaningfully address, much less rebut, the grounds upon which her lawsuit was dismissed, there is no basis upon which this Court should determine further review is warranted.

Although Ms. Kayongo is proceeding pro se, this Court has been clear in setting forth the standard to which pro se litigants must be held. “In our cases, we have established a stricter approach that pro se petitioners must comply with applicable rules and statutes and, importantly, we hold them to the same standard as an attorney.” Matter of Rhem, 188 Wn.2d 321, 328, 394 P.3d 367, 370 (2017); *citing* In re Pers. Restraint of Bonds, 165



Wn.2d 135, 143, 196 P.3d 672 (2008). It can avail Ms. Kayongo nothing that she is proceeding as her own legal counsel. Denial of review is appropriate based on the record and the absence of a stated claim upon which relief can be granted.

### III. CONCLUSION

As the Court of Appeals noted, Ms. Kayongo dedicated the bulk of her request for appellate review to expressing grievance over the Respondents' request to have her identified as a serial and vexatious litigant. As also noted by the Court of Appeals, this request was denied by the trial court.

Ms. Kayongo has failed to put the City of Tukwila on notice of any claim upon which relief could be granted. Dismissal was and continues to be the only appropriate remedy, and the City of Tukwila therefore respectfully requests the Court deny review of Ms. Kayongo's petition.

RESPECTFULLY SUBMITTED this 7<sup>th</sup> day of January 2022.

MIX SANDERS THOMPSON, PLLC

s/ Michael G. Sanders

Michael G. Sanders, WSBA #33881

Attorney for Respondents

*I hereby certify, pursuant to RAP 18.17(c)(10) and RAP 13.4(f), that the foregoing submission contains 1,300 words.*

s/ Michael G. Sanders

**MIX SANDERS THOMPSON, PLLC**

**January 07, 2022 - 3:00 PM**

**Transmittal Information**

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**Comments:**

Brief of Respondent City of Tukwila in Response to Appellant's Petition for Review

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Sender Name: Courtney Levitsky - Email: courtney@mixsanders.com

**Filing on Behalf of:** Michael George Sanders - Email: michael@mixsanders.com (Alternate Email: )

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