

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
1/14/2022 8:18 AM  
BY ERIN L. LENNON  
CLERK

NO. 100416-8

---

**SUPREME COURT OF THE STATE OF WASHINGTON**

---

KAY KAYONGO,

Petitioner,

v.

STATE OF WASHINGTON, KING COUNTY,  
CITY OF TUKWILA,

Respondents.

---

**RESPONDENT, STATE OF WASHINGTON'S ANSWER  
TO PETITION FOR REVIEW**

---

ROBERT W. FERGUSON  
Attorney General

CHRISTOPHER CLAY  
Assistant Attorney General  
WSBA No. 30677  
P.O. Box 40126  
Olympia, WA 98504-0126  
360-586-6428  
OID No. 91023

## TABLE OF CONTENTS

|      |   |    |
|------|---|----|
| I.   | INTRODUCTION.....   | 1  |
| II.  | COUNTERSTATEMENT OF ISSUES FOR<br>REVIEW .....  | 2  |
| III. | COUNTERSTATEMENT OF THE CASE.....   | 2  |
|      | A. PROCEDURAL FACTS .....   | 2  |
|      | B. SUBSTANTIVE FACTS.....   | 3  |
| IV.  | WHY REVIEW SHOULD BE DENIED .....   | 4  |
|      | A. Ms. Kayongo Fails to Satisfy Any of the Bases<br>for Appeal to the Supreme Court Required by<br>RAP 13.4(b)..... | 7  |
| V.   | CONCLUSION .....  | 11 |

## TABLE OF AUTHORITIES

### Cases

|   |                |
|---|----------------|
| <i>Calhoun v. State</i> ,<br>146 Wn. App. 877, 193 P.3d 188 (2008)..... | 6              |
| <i>Kayongo v. State</i> ,<br>No. 81884-8-I (Wash. Nov. 1, 2021) .....   | 5, 6, 7, 9, 10 |

### Statutes

|                   |   |
|-------------------|---|
| RCW 2.08.010..... | 4 |
|-------------------|---|

### Rules

|                      |             |
|----------------------|-------------|
| CR 11.....           | 1, 2, 6, 7  |
| CR 12(b)(6) .....    | 2           |
| RAP 10.3(a)(6) ..... | 8           |
| RAP 13.4(b).....     | 1, 7, 8, 11 |
| RAP 13.4(b)(3).....  | 8           |
| RAP 13.4(b)(4).....  | 8           |

## **I. INTRODUCTION**

Ms. Kayongo's Petition for Review should be denied. The petition is based on two liability claims, conversion and assault. However, the petition contains no argument of these claims against the State. On this basis alone review should be denied. The petition does contain an argument related to the denial of Ms. Kayongo's request for CR 11 sanctions against the State as well as the other Co-Defendants. But, that argument fails to explain how the trial court's denial of CR 11 sanctions constituted an abuse of discretion. More significantly, none of the arguments contained in the Petition satisfy any of the RAP 13.4(b) criteria. Ms. Kayongo makes the same unfounded conclusory allegations in her Petition that were properly rejected by the trial court and the Court of Appeals. Accordingly, the Petition for Review should be denied.

## **II. COUNTERSTATEMENT OF ISSUES FOR REVIEW**

1. Whether the Petition for Review satisfies any of the criteria for accepting review under RAP 13.4(b).

## **III. COUNTERSTATEMENT OF THE CASE**

### **A. PROCEDURAL FACTS**

Kay Kayongo filed her complaint against the City of Tukwila, King County, and the State of Washington in March 2020. CP 1-11. The State filed a motion to dismiss her complaint pursuant to CR 12(b)(6) and for the court to find Ms. Kayongo a vexatious litigant. 1 Suppl. CP 508-880. At a hearing on August 21, 2020, the Honorable David Keenan granted the State's motion to dismiss Ms. Kayongo's complaint but declined to find Ms. Kayongo a vexatious litigant. CP 302-05. Ms. Kayongo filed a motion for reconsideration of the trial court's ruling, including a request for CR 11 sanctions due to the State's request she be found a vexatious litigant. Her requests were denied. CP 443-44. Kayongo moved for reconsideration in the superior court. This motion was denied.

Ms. Kayongo appealed these decisions to the Court of Appeals. In an unpublished opinion issued November 1, 2021, the Court of Appeals affirmed the decisions of the trial court because Kayongo failed to properly give the court and opposing parties fair notice of her claims. Kayongo now seeks review in the Supreme Court.

**B. SUBSTANTIVE FACTS**

On March 16, 2020, Plaintiff filed her Complaint against the State and other parties, alleging two counts: 1) “Injury to Personal Property Conversion, Theft,” and 2) “Personal Injury Assault/Battery.” CP 1-11. In the first count, Ms. Kayongo alleged a claim for: “conversion, theft/deprive of plaintiff’s personal property record/information filed and kept with them without legal justification or her consent and/or just compensation.” CP 9. For this claim, as related to the state of Washington, Ms. Kayongo alleged:

[T]here is an increasing of re-reengineering in the territory of State Of Washington for residential and commercial buildings, houses, including all King County Libraries, public law libraries and

University of Washington buildings and Law  
Library . . . .

CP 6.

In the second count, Ms. Kayongo alleged four assaults that occurred on King County Metro bus routes, as well as one assault that occurred while walking between the Cities of Tukwila and Burien, both in King County. Plaintiff alleged jurisdiction under RCW 2.08.010, and as a resident of King County, WA. CP 3. Plaintiff requested general damages in the amount of \$22 billion. CP 10, 20, 33, 44.

#### **IV. WHY REVIEW SHOULD BE DENIED**

Ms. Kayongo's petition for review outlines two issues for review. The first is a conversion claim based on conclusory allegations that the State was involved in "re-engineering" of various buildings, including buildings at the University of Washington and the University of Washington law library, which constituted a theft of her information. The Court of Appeals affirmed dismissal of this claim ruling:

Kayongo fails to allege any facts demonstrating she 1) had chattel 2) that was willfully or unlawfully taken and 3) the taking deprived her of possession. The bare allegation of "an increasing of [re-engineering] in the territory of State of Washington [including] University of Washington buildings and Law Library" is not sufficient to give the defendant fair notice of the grounds underlying her claim. Kayongo does attach an exhibit, but it is simply a photograph of the University of Washington library. This not sufficient to give the court and opposing parties fair notice of her claim, even under our liberal pleading requirements.

*Kayongo v. State*, No. 81884-8-I, at 4 (Wash. Nov. 1, 2021).

The second claim upon which Ms. Kayongo seeks review relates to her assault allegations that occurred on Metro buses or while walking as a pedestrian. The Court of Appeals affirmed dismissal of these claims holding:

Kayongo fails to establish any state agent or agency that was involved in the assaults. The State correctly notes that simply because an event which may give rise to a claim occurs within the territorial boundaries of the State of Washington, such an event does not automatically create liability on the part of the State. Kayongo further fails to state any facts demonstrating that the State would be liable for the alleged assaults.



Because Kayongo's complaint does not give fair notice as to her claim, nor allege any facts giving rise to a legal claim, her complaint against the State of Washington was properly dismissed.

*Kayongo*, slip op. at 5.

In addition, the Petition for Review does not argue the first two claims of Conversion or Assault as to the State of Washington. As to King County and the City of Tukwila, the Petition merely restates the claims made in both the trial court and the Court of Appeals without offering any valid legal argument or authority for further consideration. On this basis alone, review should be denied as to the State. *See Calhoun v. State*, 146 Wn. App. 877, 193 P.3d 188 (2008) (holding that a party waives review of issues not raised in an Opening Brief that were the basis for dismissal below).

Finally, with regard to Ms. Kayongo's denial of her request for CR 11 sanctions, the Court of Appeals noted:

Kayongo mischaracterizes the ruling of the trial court by stating that the judge denied the request because it was 'frivolous.' There is nothing in the

orders signed by the judge to indicate that he found that request by any of the government entities was frivolous.

Nothing in the record demonstrates that procedure or that outcome was based on maliciousness, but rather one of the many possible outcomes that may occur when a party makes the weighty decision to initiate litigation, whether represented by counsel or proceeding pro se.

*Kayongo*, slip op. at 8, 9.

On this challenge, Ms. Kayongo fails to explain how the trial court abused its discretion in determining she had not met her burden to establish that CR 11 sanctions were warranted or how the Court of Appeals erred in upholding that decision.

**A. Ms. Kayongo Fails to Satisfy Any of the Bases for Appeal to the Supreme Court Required by RAP 13.4(b)**

RAP 13.4(b) lists the four criteria under which a Court of Appeals decision should be accepted for review. A petition for review will be accepted for review by the Supreme Court only if:

- (1) the decision of the Court of Appeals is in conflict with a decision of the Supreme Court;
- (2) the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals;

(3) a significant question of law under the Constitution of the State of Washington or of the United States is involved; or

(4) the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b).

Ms. Kayongo has not sufficiently argued how any of these requirements are satisfied such that review by the Supreme Court is warranted in this matter.

Ms. Kayongo focuses on RAP 13.4(b)(3) and (4) in her petition. Petition for Review at 9. However, Ms. Kayongo merely alleges a constitutional issue, and fails to make any legal argument to support her position. An appellant's brief must contain "argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record." RAP 10.3(a)(6). Absent such argument and legal authority, Ms. Kayongo's Petition should be denied.

The Court of Appeals correctly held that Kayongo failed to properly state a claim against the State of Washington upon which relief could be granted. Its decision does not conflict with case law from this Court or a published decision of the Court of Appeals.

Kayongo made two claims against the State of Washington in her complaint. First, that the State of Washington stole her personal information and used it to “re-engineer” various buildings and roads. Kayongo failed to allege facts sufficient to support her claim of conversion or theft of information. The Court of Appeals properly affirmed the decision of the trial court to dismiss Kayongo’s claims against the State of Washington because Kayongo failed to give the State fair notice of the grounds underlying her claim. *Kayongo*, slip op. at 4.

Furthermore, Ms. Kayongo fails to argue that the Court of Appeals decision affirming dismissal of her negligence claim against the State of Washington for alleged assaults upon her

person on King County Metro buses and walking to/from bus stops was improper. The Court of Appeals noted, “Kayongo fails to establish any state agent or agency that was involved in the assaults.” *Id.*, slip op. at 5. Ms. Kayongo also failed to allege any facts that would demonstrate the State would be liable to her for her alleged assaults. *Id.*

Ultimately, the Court of Appeals noted that “Kayongo’s complaint does not give fair notice as to her claim, nor allege any facts giving rise to a legal claim” and found the trial court properly dismissed her complaint. *Id.*

As the Court of Appeals astutely noted, “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.” *Id.*, slip op. at 9. Ms. Kayongo’s Petition for Review appears to be more of the same. Ms. Kayongo fails to articulate

how the Court of Appeals erred such that any of the bases for review under RAP 13.4(b) apply in this matter.

In summary, the decision of the Court of Appeals does not conflict with a decision of this Court or a published decision of the Court of Appeals, and Ms. Kayongo does not allege otherwise. Ms. Kayongo has not challenged the constitutionality of any statute or regulation. Ms. Kayongo merely alleges that her constitutional rights have been violated by the actions of her opposing parties. Furthermore, the Petition has not alleged any substantial public interest involved in this case for this court to consider. Accordingly, pursuant to RAP 13.4(b), review should be denied.

## **V. CONCLUSION**

Ms. Kayongo's petition for review should be denied because she fails to argue or satisfy any of the RAP 13.4(b) criteria which would warrant review by this court. Ms. Kayongo merely restates the very general and conclusory arguments she made previously to the Court of Appeals. The decision of the

Court of Appeals correctly affirmed the dismissal of Kayongo's claims against the State of Washington. Accordingly, this Court should deny Ms. Kayongo's Petition for Review.

This document contains 1895 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 14th day of January 2022.

ROBERT W. FERGUSON  
Attorney General

*s/ Christopher M. Clay*  
Christopher M. Clay  
Assistant Attorney General  
WSBA #30677  
P.O. Box 40126  
Tumwater, WA 98501-40126  
360-586-6428  
OID No. 91023

**CERTIFICATE OF SERVICE**

I certify that on the date below I caused to be electronically filed the **RESPONDENT, STATE OF WASHINGTON’S ANSWER TO PETITION FOR REVIEW** with the Clerk of the Court using the electronic filing system which caused it to be served on the following electronic filing system participant as follows:

|  |  |
|--|--|
| Petitioner<br>Kay Kayongo<br>P.O. Box 27752<br>Seattle, WA 98165 | Carla Carlstrom<br>Counsel for King County<br><br>Carla.carlstrom@kingcounty.gov |
| osanibebe@yahoo.com  | Michael Sanders<br>Counsel for City of Tukwila<br><br>michael@mixsanderson.com   |

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED this 14th day of January 2022, at Olympia, Washington.

*s/ Christopher M. Clay*  
\_\_\_\_\_  
Christopher M. Clay  
Assistant Attorney General



**ATTORNEY GENERAL'S OFFICE, TORTS DIVISION**

**January 14, 2022 - 8:18 AM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 100,416-8  
**Appellate Court Case Title:** Kay Kayongo v. State of Washington, et al.

**The following documents have been uploaded:**

- 1004168\_Answer\_Reply\_20220114081521SC930234\_6501.pdf  
This File Contains:  
Answer/Reply - Answer to Petition for Review  
*The Original File Name was PFR\_Resp\_FINAL.pdf*

**A copy of the uploaded files will be sent to:**

- TortTAP@ATG.WA.GOV
- carla.carlstrom@kingcounty.gov
- michael@mixsanderson.com
- osanyibebe@yahoo.com
- torolyef@atg.wa.gov

**Comments:**

---

Sender Name: Beverly Cox - Email: beverly.cox@atg.wa.gov

**Filing on Behalf of:** Christopher Murray Clay - Email: Chris.Clay@atg.wa.gov (Alternate Email: )

Address:  
PO Box 40126  
Olympia, WA, 98504-0126  
Phone: (360) 586-6300

**Note: The Filing Id is 20220114081521SC930234**