



Mwangaza v County Assembly of Meru; Njuri Ncheke Supreme Council of Ameru Elders (Proposed Amicus Curiae) (Constitutional Petition E013 of 2024) [2024] KEHC 14842 (KLR) (29 July 2024) (Ruling)

Neutral citation: [2024] KEHC 14842 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CONSTITUTIONAL PETITION E013 OF 2024**

**LP KASSAN, J
JULY 29, 2024**

BETWEEN

HON. KAWIRA MWANGAZA PETITIONER

AND

COUNTY ASSEMBLY OF MERU RESPONDENT

AND

**NJURI NCHEKE SUPREME COUNCIL OF AMERU ELDERS PROPOSED
AMICUS CURIAE**

RULING

1. Today the 29th day of July 2024, I am expected to deliver a ruling on this matter but when I logged into the system, I noted that there was an application by Njuri Ncheke seeking the following prayers;
 1. Postponement of the ruling to pave way for Alternative Justice System which was nearing conclusion.
 2. Inclusion of Njuri Ncheke as amicus curiae
2. This court must make a decision as to whether to grant the orders sought or to proceed with delivering the ruling. This is because there is no time for service to the parties herein and so time is of great essence. The following are the only options available to this court;

Proceed with the delivery of the ruling

3. This will automatically mean that the prayers sought Njuri Ncheke are as good as not granted or in other words, their application is dismissed. On the other hand, it will mean that this court will be expeditious in its mandate to deliver rulings as scheduled. Now, this court must balance two



constitutional provisions as to wit - the right to expeditious disposition of cases and the right to alternative dispute resolution which are both embedded in *the Constitution*. I have taken time to decide on which right should reign over the other because they are all overlapping and piercing the heart of *the constitution* in order to assert prominence over the other. The yardstick that will guide me in making this decision is to decide on the extent of prejudice that will be visited to parties in either way. First, if this ruling is delivered without hearing this application, then no doubt a quest of AJS attempt will fail. The request by Njuri Ncheke who are actively involved in the matter will be of no use. Currently, the judiciary is rolling out AJS countrywide and so should I wish away a request to arrest a ruling to see if this matter can be solved amicably. Mediation has addressed more hefty situations in this country including the 2007 electoral dispute between Raila Odinga and Mwai Kibaki. The courts have a constitutional mandate to hear and determine this case but where there is an intent to resolve a matter amicably, the court must give a limited time before making its own decision based on the facts at hand.

4. The truth of the matter is that we are living in the society where decisions by AJS are subjected to the court which will then decide if they are constitutional or not. The court is the ultimate authority to subject AJS decisions to constitutionalism but before that exercise, there must be an AJS decision. In fact, for the years that AJS has been embraced, jurisprudence has been created. As I write this ruling, plea bargain is gaining prominence everyday which was not a thing in the past. Who knew twenty years ago that someone can plead guilty for murder and the matter is settled with a lighter sentence?

The exceptional circumstances

5. The courts are not supposed to interfere with a constitutional process unless there are “exceptional circumstances”. This is a precedent that has been set by the courts all over. Now the question is, is there an exceptional circumstance to warrant this exemption? It is in public knowledge that under two years, there has been several impeachment processes which failed to meet the threshold at the Senate. Wouldn't it then be proper to give local solutions if it can be available so that the parties can reconcile or if they fail to do so, the constitutional bodies can take charge. These are very heavy issues that the court must decide to gain relevance to the people of Kenya.

The decision to differ the ruling in order to pave way for possible AJS.

6. Who will be prejudiced? The Respondent will be prejudiced because the ongoing impeachment process will stall. So the question is, for how long? This is an issue that I will address towards the end of this ruling. The Petitioner will only benefit for a few days pending the ruling. Again, this will be addressed below.

The effect of preserving status quo and allowing the Njuri Ncheke Application to be served.

7. This will automatically lead to more delay in determining this matter because parties will have to be served, submissions filed and a ruling date set- and if the court allows Njuri Ncheke to be made amicus curiae, then time will have to be given to them to submit their report, parties will have to react on the report and a substantive ruling date has to be set. To me this will delay this matter more.
8. The upshot of the above is that for the best interest of Justice and in order to determine this matter conclusively, I shall allow the prayers sought by Njuri Ncheke with strict timelines and to be specific, only three weeks. For clarification purposes, the decision by Njuri Ncheke will not in any way control the finality of my decision. It will not be tantamount in donating High court powers to Njuri Ncheke and finally, parties are not bound to submit themselves to Njuri Ncheke's entire proceedings. Any party not willing to subject itself to Njuri Ncheke may make a relevant application for the Ruling to be brought forward.



DELIVERED AT MERU THIS 29th DAY OF July 2024

LINUS KASSAN

JUDGE

Appearances

Court Assistants -Kinoti/Munene Petitioner -

Respondents -

