



**Kantai v Judicial Service Commission; Director of Public Prosecutions (Interested Party) (Constitutional Petition E543 of 2021) [2022] KEHC 18137 (KLR) (Constitutional and Human Rights) (25 January 2022) (Ruling)**

*Sankale Ole Kantai v Judicial Service Commission; Director of Public Prosecutions (Interested Party) [2022] eKLR*

Neutral citation: [2022] KEHC 18137 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CONSTITUTIONAL AND HUMAN RIGHTS  
CONSTITUTIONAL PETITION E543 OF 2021**

**AC MRIMA, J**

**JANUARY 25, 2022**

**BETWEEN**

**HON. JUSTICE SANKALE OLE KANTAI ..... PETITIONER**

**AND**

**JUDICIAL SERVICE COMMISSION ..... RESPONDENT**

**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... INTERESTED PARTY**

**RULING**

1. This Court has carefully perused and considered the matters raised in this Petition. It also heard Counsel for the parties who appeared before Court on 5<sup>th</sup> January, 2022.
2. The instant Petition challenges the hearing and determination of two Petitions filed before the Respondent seeking the removal of the Petitioner from office. The Petitions were filed by one Gabriel Hannah Van Straten and one Okiya Omtatah Okoti.
3. The basis of the Petitions before the Respondent herein relate to the matters which are directly in issue in several litigations before the High Court. The matters are Petition No. E334 of 2021 which has by now been consolidated with Petition Misc. No. E037 of 2021, Petition No. E453 of 2021 and Petition No. E459 of 2021. Of essence is the fact that the High Court has since issued conservatory orders restraining the Public Service Commission from considering the Petitions filed before it for the removal of Mr. Noordin Mohammed Haji, the current Director of Public Prosecutions, on the basis



of the manner in which he exercised his discretion and made a decision not to charge the Petitioner herein with the murder of one Tob Cohen.

4. Likewise, the Petitions pending before the Respondent for the removal of the Petitioner from office are based on the same substratum, that is, matters relating to the death of the said Tob Cohen. There is, therefore, no doubt that the Petition herein is related to the consolidated Petitions under Petition No. E334 of 2021.
5. Be that as it may, the consideration of the Petition herein and the consolidated Petitions raises several pertinent questions. One of such questions is the likely effect of the Respondent herein considering and allowing any of or both Petitions before it for the removal of the Petitioner from office and eventually the High Court determines the consolidated Petitions, in one way or the other, but in favour of the Petitioners therein. Certainly, serious issues as to the substance of the decisions by the Respondent will arise.
6. Given the nature of the Petition herein and the consolidated Petitions, there is need for this Court to exercise extreme caution in determining the best way forward and to maintain a level playing field for all the parties as the matters are heard and determined. Having said so, it is of essence to point out that a Notice of Motion dated 4<sup>th</sup> January, 2022 was filed seeking the joinder of Gabriel Hannah Van Straten and Grace Ita Ndinda (Suing for and on behalf of the Estate of Silas M’Njamiu Ita) as parties in the current Petition.
7. To this Court, the best way out is to place all the parties at the same level. In order to achieve that goal, this Court has to adopt the following four ways. The first way is to consolidate this Petition with the consolidated Petitions. The second way is to order a stay of any further proceedings before the Respondent, just like in the case of the consolidated Petitions, pending any further orders of the Court.
8. The third way is to order the joinder of the Petitioners in the Petitions before the Respondent into the consolidated Petitions. The basis thereof is Rules 5(d)(ii) and 7 of the [Constitution of Kenya \(Protection of Rights and Fundamental Freedoms\) Practice and Procedure Rules](#), 2013 (hereinafter referred to as ‘the Mutunga Rules’). And, the last way is to expedite the hearing of all the related and consolidated matters.
9. The foregoing being the most balanced and appealing way forward to this Court, and in the unique circumstances of the matters herein, this Court hereby makes the following orders and directions: -
  - (a) Petition No. E543 of 2021 is hereby consolidated with Petition No. E334 of 2021 (as consolidated with Petition Misc. No. E037 of 2021, Petition No. E453 of 2021 and Petition No. E459 of 2021).
  - (b) Petition No. E334 of 2021 shall remain as the leading Petition.
  - (c) As the Petitioner herein and the intended Interested Parties, Gabriel Hannah Van Straten and Grace Ita Ndinda (Suing for and on behalf of the Estate of Silas M’Njamiu Ita) are already parties in the consolidated Petitions, Okiya Omtatah Okoiti, shall appear as the 5<sup>th</sup> Interested Party in the consolidated Petitions.
  - (d) The Notice of Motion dated 4<sup>th</sup> January, 2022 is hereby marked as spent.
  - (e) The directions issued on 9<sup>th</sup> December, 2021 in Petition No. E334 of 2021 (as consolidated) shall encompass the current Petition No. E543 of 2021.
  - (f) So as to accord the 5<sup>th</sup> Interested Party herein an opportunity to participate in the hearing of the Notice of Motion dated 7<sup>th</sup> December, 2021 seeking the recusal of the Hon. Judge,



the Applicants thereof shall serve the said Notice of Motion together with all responses and submissions filed upon Okiya Omtatah Okiiti in the next 2 days.

- (g) Once served, the 5<sup>th</sup> Interested Party shall file and serve his response and submissions thereto within 5 days.
- (h) The Applicants shall then file and serve any further responses and further written submissions, if need be, within 3 days of service.
- (i) The Hon. Deputy Registrar shall ensure that this matter is listed on the same day as Petition No. E334 of 2021 (as consolidated) and shall accordingly inform the 5<sup>th</sup> Interested Party herein.
- (j) Pending further orders of this Court on the hearing of the pending applications and the Petitions as consolidated, the Respondent herein is hereby restrained from considering and making any decision on the Petitions filed before it by Okiya Omtatah Okiiti and Gabriel Hannah Van Straten dated 4<sup>th</sup> October, 2021 and 5<sup>th</sup> October, 2021 respectively seeking the removal of the Petitioner herein from office.

Orders accordingly.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 25TH DAY OF JANUARY, 2022**

**A. C. MRIMA**

**JUDGE**

