



**Tim v Chief Lembus Torongo Location & 5 others (Petition  
E003 of 2021) [2022] KEHC 14312 (KLR) (27 October 2022) (Judgment)**

Neutral citation: [2022] KEHC 14312 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
PETITION E003 OF 2021  
WK KORIR, J  
OCTOBER 27, 2022**

**BETWEEN**

**SAMSON K.A. TIM ..... PETITIONER**

**AND**

**CHIEF LEMBUS TORONGO LOCATION ..... 1<sup>ST</sup> RESPONDENT**

**ASSISTANT COUNTY COMMISSIONER LEMBUS TORONGO DIVISION OF  
KOIBATEK SUB-COUNTY BARINGO COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**OFFICE OF THE DEPUTY COUNTY COMMISSIONER KOIBATEK SUB-  
COUNTY OF BARINGO COUNTY ..... 3<sup>RD</sup> RESPONDENT**

**COUNTY COMMISSIONER BARINGO COUNTY ..... 4<sup>TH</sup> RESPONDENT**

**CABINET SECRETARY MINISTRY OF INTERIOR AND CO-ORDINATION  
OF NATIONAL GOVERNMENT ..... 5<sup>TH</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 6<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. The petitioner, Dr Samson K.A Tim, filed the petition dated January 25, 2021 in which he seeks the removal of the Chief Lembus Torongo location and the Assistant County Commissioner Lembus Torongo division of Koibatek sub- county Baringo county (the respective 1<sup>st</sup> and 2<sup>nd</sup> respondents) from office for denying him services hence violating articles 27(1) and 28 of the [Constitution](#); the removal from office of the Deputy County Commissioner Koibatek sub- county of Baringo county, the County Commissioner Baringo county, the Cabinet Secretary Ministry of Interior and Co- ordination of National Government, and the Hon Attorney General (the respective 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents) for failing to investigate his complaint against the 1<sup>st</sup> and 2<sup>nd</sup> respondents; an order directing the Koibatek sub-county Civil Registrar to issue to him a death certificate for the deceased Joseph Kibitok



- Kiptim who died on September 16, 1974; an order of compensation for the violation of his rights against the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents; and, costs of the petition.
2. The petitioner averred that on July 23, 2020, he visited the Civil Registrar's office, Koibatek sub-county where he was issued with forms in order to apply for the issuance of a death certificate for his deceased brother Joseph Kibitok Kiptim who died on September 16, 1974. As directed, he took the forms to Eldama Ravine police station where they were stamped and he returned them to the office of the Civil Registrar. He was then asked to bring a letter from the area chief confirming the death.
  3. The petitioner stated that he telephoned the 1<sup>st</sup> respondent and they agreed to meet on August 1, 2020. When they met, the 1<sup>st</sup> respondent told him that he needed directions from the 2<sup>nd</sup> respondent on the application. The 2<sup>nd</sup> respondent joined them at some hotel at Eldama Ravine where they had lunch together. It was the petitioner's case that he had already typed the letter that was to be signed by the 1<sup>st</sup> respondent but the 1<sup>st</sup> respondent did not sign the letter on that day.
  4. The petitioner averred that on August 14, 2020, the 1<sup>st</sup> respondent went to his office where he signed a letter for one Robert Kibor Chebunyei who was also applying for a death certificate. The petitioner deposed that thereafter, the petitioner took photographs of all the documents in support of his application for the death certificate and went away promising to come and sign his letter later.
  5. It was the petitioner's case that on August 17, 2020 he lodged a formal complaint with the 5<sup>th</sup> respondent but there was no response to his complaint. The petitioner averred that the failure of the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents to act on his complaint violated his rights under articles 28, 47, 48 and 50 of the *Constitution*.
  6. The respondents opposed the petition through a replying affidavit sworn on April 14, 2021 by Edwin K Ronoh who is the chief of Torongo location within Koibatek sub-county. Through the affidavit, the respondents averred that the petition is without substance and is instituted in bad faith with a view to destabilizing and jeopardizing the execution of their statutory duties.
  7. The respondents contended that this court has no territorial jurisdiction over the matter. The respondents also asserted that the petition does not satisfy the threshold for pleading constitutional violations as set out in *Anarita Karimi Njeru v Republic* [1976-1980] KLR 1272 and *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* [2013] eKLR. Further, that the petitioner was a stranger to the estate of the late Joseph Kibitok Kiptim in respect of which the death certificate was sought.
  8. The respondents deposed that upon receiving the petitioner's request for a letter confirming that the deceased Joseph Kibitok Kiptim was a resident of his location, the 1<sup>st</sup> respondent conducted investigations and established that the deceased was a resident of Tinet sub-location, Lembus Mosop location in Mumberes division which was outside his jurisdiction.
  9. The respondents stated that before the 1<sup>st</sup> respondent could communicate his findings, the petitioner complained to the 5<sup>th</sup> respondent alleging denial of services. They averred that the 5<sup>th</sup> respondent directed the 4<sup>th</sup> respondent to investigate the allegation which delayed the response to the petitioner.
  10. The respondents claimed that further investigations disclosed that a certificate in respect to the death of Joseph Kibitok Kiptim was issued to Grace Bittok, the widow of the deceased on June 25, 2004. They asserted that another death certificate in respect of the same deceased person could not therefore be issued to the petitioner. The respondents therefore sought the dismissal of the petition.



11. In support of his case, the petitioner filed submissions dated May 30, 2022. In opposition to the respondents' assertion that his pleadings do not meet the test of specificity established in *Anarita Karimi Njeru* (supra), the petitioner submitted that his case discloses his complain, the constitutional provisions said to be infringed and the manner of their infringement. The Petitioner submitted that his case is straight forward as it is anchored on violation of identified constitutional rights.
12. Turning to the question as to whether he has proved violation of his constitutional rights, the petitioner asserted that he suffered discriminatory treatment in violation of article 27 of the [Constitution](#). The petitioner contended that the 1<sup>st</sup> and 2<sup>nd</sup> respondents discriminated against him when they declined to endorse his application for the death certificate for his deceased brother while endorsing a similar application by someone else. The petitioner referred to the case of [Peter K Waweru v Republic](#) [2006] eKLR as stating what amounts to discrimination.
13. The petitioner further asserted that the 1<sup>st</sup> and 2<sup>nd</sup> respondents' actions violated his right to dignity which is protected by article 28 of the [Constitution](#).
14. In respect to his claim that the respondents' actions violated his right to fair administrative action as guaranteed by article 47 of the [Constitution](#), the petitioner cited the case of [Republic v Fazul Mahamed & 3 others Ex-parte Okiya Omtatab Okoiti](#) [2018] eKLR and submitted that individuals who are affected by administrative decisions are entitled to have the decisions made in a fair, impartial, and open process.
15. On the issue of the appropriate remedy, the petitioner submitted that he has established violation of his constitutional rights and he is entitled to compensation from the respondents. He asked for Kshs 750,000/= as general damages and relied on the case of [NWR & another v Green Sports Africa Ltd & 4 others](#) [2017] eKLR in justification of the proposed award.
16. The petitioner rejected the respondents' defence that the failure to allow his application was because there were ongoing investigations. The petitioner stressed that his rights were violated by the 1<sup>st</sup> and 2<sup>nd</sup> respondents' failure to explain why they had not signed his papers.
17. The petitioner concluded his submissions by stating that he had not submitted on his prayer for the removal of the respondents from office because the right forum for such a prayer would be the Public Service Commission.
18. The respondents did not file submissions.
19. Although the issue of territorial jurisdiction of Eldoret High Court was raised by the respondents, the issue no longer merits any comment following the transfer of this matter from Eldoret High Court to this Court (Kabarnet High Court) on 11<sup>th</sup> May, 2021.
20. It is also important for purposes of record to note that the petitioner indicated in his submissions that he was abandoning the prayer for the removal of the respondents from office. This issue will therefore not be addressed in this decision.
21. There was the claim by the respondents that the petition does not meet the holding in *Anarita Karimi Njeru* (supra) that a person seeking redress under the [Constitution](#) should "set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed." Without much ado, I must agree with the petitioner that he has clearly stated the provisions of the [Constitution](#) allegedly violated, the manner of the violation of those provisions and the injuries he has sustained as a result of the alleged violations. The respondents'



- assertion that the petitioner's pleadings do not meet the standard of a constitutional claim is therefore without merit.
22. The key question for the determination of this court is whether the petitioner has established violation of his constitutional rights. In order to determine if the 1<sup>st</sup> and 2<sup>nd</sup> respondents violated the rights of the petitioner, it is important to understand the procedure for the issuance of death certificates.
  23. Section 7(1) of the *Births and Deaths Registration Act*, cap 149 imposes a duty on every registrar to keep a register of deaths and to enter therein the prescribed particulars of every death notified to him. Section 16 of the same Act requires a person notifying a death to the registrar to give the prescribed particulars to be entered in the register and the person shall sign the register to certify the correctness of the information. Section 22 gives the penalty for various offences including giving false information to the registrar.
  24. The role of the 1<sup>st</sup> and 2<sup>nd</sup> respondents was to verify the information that the petitioner had presented in his application for the late registration of the death of his brother. They had a duty to ensure that whatever they had stated in support of the petitioner's application was correct.
  25. The petitioner's major complaint is that the 1<sup>st</sup> and 2<sup>nd</sup> respondents declined to issue him with a letter confirming the death of his brother. The petitioner alleges that their refusal was discriminatory because a request for a similar letter by another person went through without any hurdles. Further, that the 1<sup>st</sup> and 2<sup>nd</sup> respondents failed to give him reasons for not issuing him with the necessary letter.
  26. The petitioner's case should be considered against the respondents' reply to the petition. The replying affidavit discloses that after the petitioner's request was received, the 1<sup>st</sup> respondent commenced investigations which disclosed that the brother of the petitioner was not a resident of the 1<sup>st</sup> respondent's location and that a death certificate was issued in 2004 in respect of his death.
  27. The totality of the evidence placed before this court leads me to the conclusion that the petitioner has not discharged the burden of proof to the required standard so as to warrant the issuance of the orders sought. The evidence shows that the 1<sup>st</sup> respondent was ready and willing to assist the petitioner to get the death certificate. This is shown by the fact that the 1<sup>st</sup> respondent went to meet the petitioner and even instructed him to draft the relevant letter. However, as a public servant the 1<sup>st</sup> respondent had a duty to conduct due diligence on the information supplied by the petitioner lest he supported an illegality.
  28. The investigation by the 1<sup>st</sup> respondent actually revealed that the deceased did not hail from his jurisdiction and that a certificate had been issued in regard to the death. These were valid reasons for denying the letter to the petitioner. The petitioner cannot therefore be heard to say that he was denied service by the 1<sup>st</sup> and 2<sup>nd</sup> respondents. For the same reason his averment that the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents did not act on his complaint is also without merit. It is on record that the 5<sup>th</sup> respondent wrote to the 4<sup>th</sup> respondent and asked him to investigate the petitioner's allegation that he had been denied services by the 1<sup>st</sup> and 2<sup>nd</sup> respondents.
  29. On the petitioner's claim that he was discriminated against on the ground that the 1<sup>st</sup> and 2<sup>nd</sup> respondents issued an approval letter for the late registration of the death of a relative of another applicant, I will only observe that the Petitioner has not demonstrated that the facts of that case were similar to his. The facts of the petitioner's case were unique in that the respondents demonstrated that a death certificate had already been issued to the widow of the deceased brother of the petitioner. In order to succeed in his claim, the petitioner ought to have adduced evidence to show that the person whose application for late registration of a death was endorsed was in similar circumstances with him. The



petitioner has not done so. I therefore find that the petitioner has not established that he was subjected to discriminatory treatment by being denied an endorsement letter by the 1<sup>st</sup> and 2<sup>nd</sup> respondents.

30. On the claim by the petitioner that his right to fair administrative action was violated by the failure of the 1<sup>st</sup> and 2<sup>nd</sup> respondents to give reasons for their failure to issue the endorsement letter to him, the 1<sup>st</sup> respondent explained in his affidavit that as he was still conducting due diligence the petitioner complained to his bosses which lengthened the investigations and by the time the report was ready the petitioner had already filed the present petition. This explanation is plausible considering the petitioner's own averment that the 1<sup>st</sup> respondent took photographs of his documents on August 14, 2020 and hardly four days down the line, that is on August 17, 2020, the petitioner had complained to the 5<sup>th</sup> respondent. There was therefore no delay in giving reasons to the petitioner.
31. Considering what I have stated in this judgement, I reach the conclusion that the petitioner has not established any violation of his constitutional rights by the respondents. His petition therefore fails and is dismissed.
32. This being a matter that sought to enforce constitutional rights, the appropriate order on costs is to direct the parties to meet their own costs of the proceedings. It is so ordered.

**DATED AND SIGNED AT NAKURU THIS 24<sup>TH</sup> DAY OF OCTOBER, 2022.**

**W. KORIR, JUDGE**

**DATED, COUNTERSIGNED AND DELIVERED AT KABARNET THIS 27<sup>TH</sup> DAY OF OCTOBER, 2022.**

**H.K. CHEMITEI, JUDGE**

