



**Singh & 2 others v Registered Trustees of Siri Gurdwara Bazaar, Nairobi & another (Constitutional Petition E154 of 2022) [2022] KEHC 15952 (KLR) (Constitutional and Human Rights) (25 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 15952 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CONSTITUTIONAL AND HUMAN RIGHTS  
CONSTITUTIONAL PETITION E154 OF 2022**

**M THANDE, J  
NOVEMBER 25, 2022**

**BETWEEN**

**MANJIT SINGH ..... 1<sup>ST</sup> PETITIONER  
DHARAM SINGH MATHARU ..... 2<sup>ND</sup> PETITIONER  
HARJINDER SINGH KALSI ..... 3<sup>RD</sup> PETITIONER**

**AND**

**REGISTERED TRUSTEES OF SIRI GURDWARA BAZAAR,  
NAIROBI ..... 1<sup>ST</sup> RESPONDENT  
REGISTRAR OF SOCIETIES KENYA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. In their petition dated April 12, 2022 and in an affidavit sworn on their behalf by the 1<sup>st</sup> petitioner on their behalf, the petitioners state that they are representatives of members of the 1<sup>st</sup> respondent and of the larger congregation of the Siri Gurdwara Bazaar Temple, erected on LR No 209/6398 and 209/3271 (the properties). They further state that the 1<sup>st</sup> respondent is a society duly registered under the *Societies Act* chapter 108 of the Laws of Kenya and holds the properties in trust. The Temple which was started in 1962, consists of the main prayer hall, Guru Nanak Nursery School, Secondary School and dispensary. The 1<sup>st</sup> respondent holds the properties and is required to act in the best interest of the congregation and seek its approval in all matters pertaining to the ownership and management of the properties.
2. The petitioners allege that the trustees of the 1<sup>st</sup> respondent are in office illegally having served for more than prescribed 6 years. They further allege that in blatant abuse of the trust bestowed upon it



by the society's constitution, the 1<sup>st</sup> respondent purported to unilaterally sell the temple without the members' knowledge, consent and/or approval. The 1<sup>st</sup> respondent violated the society's constitution which requires a resolution of a special general meeting before the sale of any of the 1<sup>st</sup> respondent's properties. The 1<sup>st</sup> respondent further violated articles 32, 3(1), 10(2)(c) and (d), 23 and 25 of the Constitution of Kenya, 2010. The petitioners contend that as a result of the respondent's acts, the petitioners are unable to conduct prayers freely in the temple as desired.

3. The petitioners now seek the intervention of this court to grant the following reliefs:
  - a. An order of declaration declaring that Amrik Singh, Pritam Singh and Harbhajan Singh Gill (the Registered Trustees of Siri Gurdwara Bazaar, Nairobi) who are the 1<sup>st</sup> respondent herein are not validly in office.
  - b. An order of prohibition prohibiting Amrik Singh, Pritam Singh and Harbhajan Singh Gill (the Registered Trustees of Siri Gurdwara Bazaar, Nairobi) who are the 1<sup>st</sup> respondent herein from further infringing the petitioners' right to freedom of worship of denying the petitioners' access to the Siri Gurdwara Bazaar Temple.
  - c. An order of *mandamus* compelling Amrik Singh, Pritam Singh and Harbhajan Singh Gill (the Registered Trustees of Siri Gurdwara Bazaar, Nairobi) who are the 1<sup>st</sup> respondent hereinto grant the petitioners unlimited and unimpeded access to the Siri Gurdwara Bazaar Temple erected on the properties known as LR No 209/6398 and LR No 209/3271 and allow the petitioners to manifest their right to freedom of worship.
  - d. An order of *mandamus* compelling the 2<sup>nd</sup> respondent to hold elections of the society (Siri Gurdwara Bazaar, Nairobi) forthwith and register the officials elected in the election as the officers of the society and file a report in court.
  - e. An order for compensation for breach of the petitioners' constitutional rights and issue any such orders that would be in the interest of justice and would protect the petitioners' rights.
  - f. Costs of the petition, and
  - g. Any other orders that the honourable court may deem just and fit to grant as the justice of this case may permit.
4. The subject of this ruling is an application dated May 25, 2022 in which the 1<sup>st</sup> respondent seeks that the petition be struck out for failure to raise any bona fide issues. In the alternative, the 1<sup>st</sup> respondent seeks that its name be struck out of from the petition and have it discharged from the proceedings herein as no fundamental rights and freedoms set out in the bill of rights can be enforced against a private citizen.
5. The application is premised on the grounds set out therein, and in the affidavit sworn on even date by Amrik Singh Chhaja Singh Singh, a trustee of the 1<sup>st</sup> respondent. The 1<sup>st</sup> respondent contended that the petition goes against the law and jurisprudence on what constitutes a constitutional petition; that the petition is vague and does not specify in any way or sufficiently, the rights and fundamental freedoms violated, infringed upon, denied or threatened by the 1<sup>st</sup> respondent or indeed how such breach has been committed. Further that the many constitutional provisions cited are not supported by evidence. The 1<sup>st</sup> respondent further contended that the reliefs sought by the petitioners are obtainable under civil law and that in fact the petitioners have already filed Nairobi ELC No E064 of 2022- Manjit Singh & 2 others v the Registered Trustees of Siri Gurdwara where they are enjoying interim orders. It was further stated that it is now settled that the petitioners cannot maintain an action of



declaration against the 1<sup>st</sup> respondent which is a private citizen for breach of fundamental rights under the Constitution. Additionally, the 1<sup>st</sup> respondent asserted that orders of judicial review cannot issue against individual trustees of the 1<sup>st</sup> respondent which is not a public body and does not exercise a public function. The 1<sup>st</sup> respondent urged the court to strike out the petition to avoid wastage of judicial resources as well as the 1<sup>st</sup> respondent's resources.

6. The petitioners opposed the application *vide* a replying affidavit sworn on July 1, 2022 by the 1<sup>st</sup> petitioner. He averred that the petition meets the competency threshold of a constitutional petition as it sets out with a degree of precision breach of articles 32(1), 23, 10(2)(c) and 25(a) of the Constitution; that in paragraph 11 of the petition, it is pleaded that the temple is a holy place and that the petitioner will be deprived of the only place of worship if the unlawful decision by the 1<sup>st</sup> respondent were to prevail; that the petitioners pleaded that the decision to sell the temple was not made through a democratic process; that the minutes exhibited by the 1<sup>st</sup> respondent are forged and are an attempt to demonstrate that the sale was sanctioned in a general meeting; that the 1<sup>st</sup> respondent performs a public function and further that a claim for violation of a constitutional right can be brought against a private individual; that ELC case No E064 of 2022 challenges the legality of the process of selling the properties and injunctive reliefs were granted; that the issues raised therein are distinct from the matters herein; that the jurisdiction of this court was properly invoked. The petitioners urged the court to dismiss the application.
7. Other affidavits opposing the application were sworn on July 1, 2022 by Kulwinder Singh Memi, Gursev Singh Memi, Kamaljit Singh Chana, Sarabjit Singh Chana, Harcharan Singh Chana who described themselves as members of the Siri Gurdwara Bazaar, Nairobi and of the larger congregation of the temple. In their somewhat identical affidavits, they all stated that according to their beliefs, the temple should not be sold. Further that there was no democratic process approving the sale of the temple and that they were all dismayed after being shown the minutes of meetings of the 1<sup>st</sup> respondent alleging that meetings took place on July 10, 2011 and November 13, 2016 to approve the sale of the temple. They all denied attending such meetings and that their signatures appearing in the meetings are a forgery. Further that the purported minutes have never been placed before members in any subsequent meeting for confirmation and adoption. They claim that owing to the conduct of the 1<sup>st</sup> respondent, they have been unduly denied access to the temple to exercise their freedom of worship.
8. I have given due consideration to the submissions filed by the parties. I have also considered all the authorities cited. The only issue for determination is whether the petition herein meets the threshold of a constitutional petition.
9. Article 22 of the Constitution guarantees to every person the right to approach court for enforcement of their fundamental rights and freedoms as follows:
  - (1) Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the bill of rights has been denied, violated or infringed, or is threatened.
10. Article 23 confers upon this court the authority to uphold and enforce the bill of rights and grant appropriate reliefs. It provides as follows:
  1. The High Court has jurisdiction, in accordance with article 165, to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the bill of rights.



2. Parliament shall enact legislation to give original jurisdiction in appropriate cases to subordinate courts to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the bill of rights.
3. In any proceedings brought under article 22, a court may grant appropriate relief, including—
  - a. a declaration of rights;
  - b. an injunction;
  - c. a conservatory order;
  - d. a declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the bill of rights and is not justified under article 24;
  - e. an order for compensation; and
  - f. an order of judicial review.

11. From the foregoing provisions, it is evident that the right of a party to move the court, for redress of a denial, violation or infringement of, or threat to a right or fundamental freedom as well as the jurisdiction of this court to enforce such rights and grant appropriate reliefs, are entrenched in the Constitution. This was buttressed in the case of Attorney General v Zinj Limited (Petition 1 of 2020) [2021] KESC 23 (KLR) (Civ) (3 December 2021) (Judgment), cited by the petitioners, where the Supreme Court stated:

Under article 22(1) of the Constitution, every person has the right to institute court proceedings claiming that a right or fundamental freedom in the bill of rights has been denied, violated, infringed, or is threatened. Among the reliefs that a court may grant upon proof of violation of a fundamental right, is an order for compensation (article 23 (3)(e)).

12. On whether the petition meets the threshold of a constitutional petition, the 1<sup>st</sup> respondent submitted that the petitioners have merely alleged violation of their rights but have not specified with precision how the alleged breach, violation and infringement of their rights has been committed by the respondents; that the petitioners have also not shown how the principles of national values and governance have been violated; that the petitioners have failed to disclose the particulars of the alleged infringements against the respondents to enable the respondents respond with finality and clarity; that the petition thus goes against statute law and the jurisprudence of this court on what constitutes a constitutional petition.
13. The petitioners countered the 1<sup>st</sup> respondent's submissions by asserting that the petition meets the competency threshold as it has set out with reasonable precision and particularity, the breach of the Constitution by the respondents.
14. It is well settled that a party claiming that the Constitution has been violated must state with precision the exact provisions violated and the manner in which they have been violated. This was the holding in the case of Anarita Karimi Njeru v Republic [1979] eKLR, where the court stated:

We would, however, again stress that if a person is seeking redress from the High Court on a matter which involves a reference to the Constitution, it is important (if only to ensure that justice is done to his case) that he 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.



15. And in *Mumo Matemba v Trusted Society of Human Rights Alliance & 5 others* [2013] eKLR the Court of Appeal stated:

(44) We wish to reaffirm the principle holding on this question in *Anarita Karimi Njeru* (supra). In view of this, we find that the petition before the High Court did not meet the threshold established in that case. At the very least, the 1st respondent should have seen the need to amend the petition so as to provide sufficient particulars to which the respondents could reply. Viewed thus, the petition fell short of the very substantive test to which the High Court made reference to. In view of the substantive nature of these shortcomings, it was not enough for the superior court below to lament that the petition before it was not the “epitome of precise, comprehensive, or elegant drafting,” without requiring remedy by the 1st respondent.

16. The Court of Appeal went on to state as follows, regarding the petition in question:

It is our finding that the petition before the High Court was not pleaded with precision as required in constitutional petitions. Having reviewed the petition and supporting affidavit, we have concluded that they did not provide adequate particulars of the claims relating to the alleged violations of the *Constitution* of Kenya and the *Ethics and Anti-Corruption Commission Act*, 2011. Accordingly, the petition did not meet the standard enunciated in the *Anarita Karimi Njeru case* (supra).

17. In the present case, the petitioners submitted that the petition is premised on the violation of their right to freedom of conscience, religion, thought, belief and opinion under article 32(1), human dignity, violation of the provisions of national values and principles of governance under article 10(2) (c) and violation of the right to freedom from torture and cruel, inhuman or degrading treatment and punishment guaranteed under article 25(a).
18. Other than the alleged violation of the right to freedom of worship, the petitions made no submissions on any of the other the alleged violations. Indeed, no particulars of the said violations have been pleaded in the petition.
19. It is trite law that mere allegations of violation of rights without particulars of how the violations were executed, do not warrant the intervention of the court. This was well articulated in the case of *Peter O. Ngoge v Francis ole Kaparo & 4 others* [2007] eKLR by a 3 judge bench as follows:

We find that the making of an allegation of contravention of chapter 5 provisions per se, without particulars of the contravention and how that contravention was perpetrated would not justify the court’s intervention by way of an inquiry where the particulars of contravention and how the contravention took place are plainly lacking in the pleadings. Indeed there is a wealth of authorities on the point. Suffice it to quote the cases of:-

- (1) *Martha Karua v Radio Africa Ltd T/a Kiss FM Station and two others* 2006 e KLR 1.
- (2) *Peter Nganga Muiruri v Credit Bank Ltd Charles Ayako Nyachae T/a Nyachae And Company Advocates* Hc Misc 1382 of 2003 (os).

Any such inclination to demand an inquiry every time there is a bare allegation of a constitutional violation would clog the court with unmeritorious constitutional references which would in turn triviliase the constitutional jurisdiction and further erode the proper administration of justice by allowing what is plainly an abuse of the court process. Where



the facts as pleaded in this case, do not plainly disclose any breach of fundamental rights or the Constitution there cannot be any basis for an inquiry.

20. Other than the alleged violation of the right to freedom of worship, the petitions made no submissions on any of the other the alleged violations. Indeed, no particulars of the said violations have been pleaded in the petition.
21. I now turn to the alleged violation of the petitioners' freedom of worship. They submitted that to the extent that the 1<sup>st</sup> respondent purported to sell the temple, a holy place that ought not to be sold, contrary to their beliefs, the 1<sup>st</sup> respondent has violated the petitioners' right under article 32 of the Constitution. In this regard, the petitioners seek an order prohibiting the 1<sup>st</sup> respondent from infringing upon their right to freedom of worship and access to the temple and an order compelling the 1<sup>st</sup> respondent to grant the petitioners unlimited and unhindered access to the property to exercise their right to freedom of worship.
22. Article 32 of the Constitution provides:
  1. Every person has the right to freedom of conscience, religion, thought, belief and opinion.
  2. Every person has the right, either individually or in community with others, in public or in private, to manifest any religion or belief through worship, practice, teaching or observance, including observance of a day of worship.
  3. A person may not be denied access to any institution, employment or facility, or the enjoyment of any right, because of the person's belief or religion
  4. A person shall not be compelled to act, or engage in any act, that is contrary to the person's belief or religion.
23. I have carefully considered the petition and affidavits in support thereof and I do not see any evidence of the alleged infringement of the petitioners rights of religion. No details have been given as to how this right has been violated by the 1<sup>st</sup> respondent. All that the petitioners have stated is that the 1<sup>st</sup> respondent has purported to sell the property on which the temple stands and that such sale would deny them a place of worship thereby violating their right to freedom of worship. The purported sale of the property on which the temples stands does not in and of itself amount to a violation of the petitioner's freedom of worship. in any event, there is uncontroverted evidence on record that interim orders in favour of the petitioners were on April 24, 2022, issued in Nairobi ELC No E064 of 2022- Manjit Singh & 2 others v the Registered Trustees of Siri Gurdwara.
24. The 1<sup>st</sup> respondent further submitted that the remedies sought in the petition are obtainable and fall under civil law action and that the Constitution ought to be invoked only where there is no other recourse. The complaint by the petitioners that the temple was sold without their involvement thereby denying them the freedom of worship, does not require an interpretation of the Constitution. Such a complaint can be resolved by an ordinary civil suit.
25. It is a time honoured principle of law that where there exists a remedy in civil law, such remedy should be pursued as not every ill in society should attract constitutional sanction. (see Uhuru Muigai Kenyatta v Nairobi Star Publications Limited [2013] eKLR)
26. Reliance was placed on the case of Anne Nzaumi Munyaka v Oliver Nzeki Munyaka & another (as the Legal Rep' of the Estate of George Munyaka Kavulu) [2019] eKLR where Odunga, J. (as he then was) stated:



17. In the same vein, in *John Harun Mwau v Peter Gastrow & 3 others* [2014] eKLR the opined that the Constitution only ought to be invoked when there is no other recourse for disposing of the matter with the court holding that:

“Courts will not normally consider a constitutional question unless the existence of a remedy depends on it; if a remedy is available to an applicant under some other legislative provision or some other basis, whether legal or factual, a court will usually decline to determine whether there has been in addition to a breach of the other declaration of rights...It is an established practice that where a matter can be disposed of without recourse to the Constitution, the Constitution should not be invoked at all. The court will pronounce on the constitutionality of a statute only when it is necessary for the decision of the case to do so.”

27. In the case of *Kyalo & 3 others v Central Church Council (Sued Through William Musyoka Kilunja Being Chairman of Church Board Trustee & 16 others)* (Petition 4 of 2021) [2022] KEHC 386 (KLR) (5 May 2022) (ruling) the learned judge expressed himself in a similar way as follows:

57. Whereas every person is pursuant to the provisions of article 3 and 22 under an obligation to respect, uphold and defend the Constitution and a right to right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened, it is my view that those provisions ought not to be abused. As was held in *Karuri & others v Dawa Pharmaceuticals Company Limited and others* [2007] 2 EA 235:

“Nothing can take the courts inherent power to prevent the abuse of its process by striking out pleadings or striking out a frivolous and vexatious application. Bapting such matters constitutional cannot make them so if they are in fact plainly an abuse of the court process...A constitutional court must guard its jurisdiction among other things to ensure that it sticks to its constitutional mandate and that it is not abused or trivialised. There is no absolute right for it to hear everything and it must at the outset reject anything that undermines or trivialises or abuses its jurisdiction or plainly lacks a cause of action... The notion that wherever there is a failure by an organ of the Government or a public authority or public office to comply with the law necessarily entails the contravention of some human right or fundamental freedom guaranteed to individuals is fallacious. The right to apply to the High Court under the Constitution for redress when any human right or fundamental freedom is or is likely to be contravened is an important safeguard of those rights and freedoms but its value will be diminished if it is allowed to be misused as a general substitute for the normal proceedings for invoking judicial control of administrative action. In an originating application to the High Court, the mere allegation that a human right or fundamental freedom of the applicant has been or is likely to be contravened is not of itself sufficient to entitle the applicant to invoke the jurisdiction of the court if it is apparent that the allegation is frivolous or vexatious or an abuse of the process of the court as being made solely for the purpose of avoiding the necessity of applying the normal way for the appropriate judicial remedy for unlawful administrative action which involves no contravention of any human right or fundamental freedoms.”

58. Therefore, it is my view and I so hold that to institute a constitutional petition with a view to circumventing a process by which institutions established by the Constitution, including ordinary civil courts, are to exercise their jurisdiction is an abuse of the court process. To allow entertain such a course would lead to the courts crippling such institutions rather than nurturing them to grow and develop.



- 28. It is common ground that the petitioners have filed Nairobi ELC No E064 of 2022- Manjit Singh & 2 others v the Registered Trustees of Siri Gurdwara, on February 18, 2022 seeking orders, inter alia, restraining the 1<sup>st</sup> respondent from disposing of the properties. It is also not disputed that the petitioners are enjoying interim orders of status quo issued on February 24, 2022. This confirms the availability of a civil remedy which indeed, the petitioners have invoked.
- 29. Having considered all the material before me, I hold the view that the facts as pleaded herein do not disclose any breach of fundamental rights of the petitioners or of the Constitution. Applying the well settled test set out above, I find that what is before me is not a constitutional petition warranting inquiry by the constitutional court. The issues raised in the petition can be and are being competently redressed in a civil suit in an ordinary civil court and do not attract constitutional sanction. Courts must be allowed to exercise the jurisdiction conferred upon them without hindrance. The cited authorities show that it is now well settled that where a matter such as the petition before me can be disposed of without recourse to the Constitution, the Constitution should not be invoked at all. (see *Mumo Matemu case*) (supra).
- 30. In the result, I find that the petition herein is incompetent as it does not meet the threshold of a constitutional petition. Having held as I have, it follows that the application dated May 25, 2022 is allowed with the consequence the petition dated April 12, 2022 as against the 1<sup>st</sup> respondent is hereby struck out with costs.

**DATED AND DELIVERED IN NAIROBI THIS 25<sup>TH</sup> DAY OF NOVEMBER 2022**

**M. THANDE**

**JUDGE**

**In the presence of: -**

- ..... **for the Petitioner**
- ..... **for the 1st Respondent**
- ..... **for the 2nd Respondent**
- ..... **Court Assistant**

