



**Wamani v Veterinary Board (Petition 19 of 2021)  
[2022] KEHC 17146 (KLR) (21 December 2022) (Judgment)**

Neutral citation: [2022] KEHC 17146 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISII  
PETITION 19 OF 2021  
REA OUGO, J  
DECEMBER 21, 2022**

**IN THE MATTER OF ARTICLES 22, 23, OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF CONTRAVENTION OF FUNDAMENTAL RIGHTS  
AND FREEDOMS UNDER ARTICLES 40 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF CONTRAVENTION OF FUNDAMENTAL RIGHTS AND  
FREEDOMS UNDER ARTICLES 40 OF THE CONSTITUTION OF KENYA**

**AND**

**ALL OTHER ENABLING PROVISIONS OF THE LAW**

**BETWEEN**

**DAN LALLY WAMANI ..... PETITIONER**

**AND**

**VETERINARY BOARD ..... RESPONDENT**

**JUDGMENT**

1. The petitioner carries on business in the name Greenland Agrovet in Embu. He filed his petition together with his supporting affidavit on September 9, 2021 challenging closure of the business premise where he operates. He avers that despite having obtained all licences from 2006 to 2018, the respondent closed his business by placing padlocks on his door. He holds a diploma in Agricultural Education from Egerton University and the Pets Control Products Board and Kenya Plant Health Service have all recognized his training. According to the petitioner, the closure of his business by the respondent



infringes on his constitutional right to acquire and run a business. The petitioner therefore seeks the following reliefs:

- a. The respondents, his employees, servants and/or agents be ordered to unlock the padlock which was fixed on the door of the premises of Greenland Agrovets business at Keumbu Town.
  - b. The respondent, his employees, servants and/or agents be ordered to pay for the losses suffered as to be calculated by the petitioner.
  - c. General damages for harmful closure/locking of the petitioner's business
  - d. Costs of this petition be met by the respondent.
2. Contemporaneously filed with the petition was the notice of motion dated September 6, 2021 seeking an order restraining the respondent from closing the petitioner's business and that the respondent should be liable for the loss occasioned by the closure of the petitioner's business. The petitioner in his supporting affidavit averred that on January 29, 2020 he was informed by one of his employees that the business had been closed by unidentified persons from the respondent's office. The petitioner further complains of harassment from the respondent claiming that they have arrested him on three occasions, 2017, 2018 and 2020, but was not taken to court and neither were any charge preferred. He deposed that he stands to suffer great loss if the business is closed down indefinitely.
3. The respondent filed its reply to the application. Dr Amutete Tolnert, the Principal Inspector at the respondent deposed that the respondent is vested with the responsibility to regulate veterinary practice, selling and dispensing of veterinary medicines. He alleged that the petitioner is not authorised to practice veterinary medicine since he does not meet the pre-requisites outlined by the law and neither does his licences from the Kenya Pest Control Products Board and Kenya Health Services extend to provision of veterinary medicine. He averred that petitioner had not met the conditions set out in section 17 of the *Veterinary Surgeons and Veterinary Para-Professional Act* (the Act) and that his business was being operated without a licence from the respondent contrary to section 13 (1) of the *Act*. He averred that in January 2020 while conducting a routine inspection of Agrovets in Keumbu Township in the company of 2 police officers, he came across the petitioner's business and took the inventory of the drugs he recovered from the premises which the petitioner was not authorised to sell. He reported the matter at Kisii Police Station under OB No./18/29/01/2020 and recorded his statement. He claims that the petitioner has never been harassed by the respondent and that any loss which he has suffered has been caused by the petitioner's negligence and his acts of conducting illegal activities.
4. Following the response from the board, the petitioner filed a supplementary affidavit dated December 23, 2021. He deposed that he was employed by the Teachers Service Commissions in 1976 to teach Agriculture, Biology and Chemistry but only used a quarter of the knowledge he acquired from the university. He therefore opened his Agrovets business and used to sell drugs only to veterinarians, para veterinarians and agriculture teachers and that they also consulted him on the challenges they faced. He used to have a list of 53 veterinarians and para veterinarians but the list was confiscated by the respondent's agent Dr. Bunyasia on account that it would be used as evidence. He explained that in 2010 when the veterinary law was still a bill in parliament, they raised concern on their exclusion yet they had the relevant training to help improve animal health and production. In the same year, while attending a veterinarians and para veterinarians meeting, he requested for a license to treat animals in the field but was denied. He contends that he does not understand why the respondent has refused to issue him with a licence.



## Submissions By Parties

5. The petitioner in his submissions argued that the respondent violated the *Constitution of Kenya* by locking the premises while his products were in the shop. He submitted that any person has a right to live and do business anywhere in Kenya. The respondent therefore discriminated against him by locking his shop leaving his goods to expire.
6. The respondent on the other hand argued that the petition has not met the threshold of a constitutional petition. They argued that a constitutional petition should set out with a degree of precision the petitioner's complaint, the provisions infringed and the manner in which they are alleged to be infringed (see *Anarita Karimi Njeru v The Republic* (1979) eKLR). They also relied on the decision by the court in *Chosen Children International v County Government of Trans-Nzoia & 2 others* [2019] eKLR where the court held that:

“A constitutional petition is meant to address weightier issues relating to violation of the *Constitution* right of a citizen or as in the current instant, an entity. The dispute in this matter related to whether the actions of the respondents are unconstitutional and whether the petitioner has been discriminated against. Pursuing of a private claim that does not involve any interpretation of the *Constitution* in a constitutional petition is highly discouraged.”

7. The respondent also submitted that the petitioner did not have a licence to practice veterinary medicine. A diploma in Agriculture Education does not warrant one to be eligible to practice veterinary medicine and the respondent should not be punished for carrying out its statutory responsibility. Although the petitioner contends that the respondent locked his premises, there was no evidence led by the petitioner to prove the same.

## Determination

8. I have considered the petition, the response thereto and the parties submissions. However, before delving into the issues raised by the petitioner, the respondent has challenged the jurisdiction of this court arguing that the petition has failed to meet the threshold of a constitutional petition. Therefore, at the onset the court will consider whether the petition raises any constitutional matter. So, what is a constitutional matter? This was answered by the court in *Fresh Produce Exporters Association of Kenya (FPEAK) & 3 others v Cabinet Secretary, Ministry of Agriculture, Livestock and Fisheries through Attorney General & 3 others; Kenya Flowers Council (Interested Party)* (Constitutional Petition E236 of 2021) [2022] KEHC 13591 (KLR) (Constitutional and Human Rights) (30 September 2022) (Judgment) that cited with approval the decision of the South African case in *Fredricks & others v MEC for Education and Training, Eastern Cape & others* (2002) 23 ILJ 81 (CC). The court in the South African case explained that:

“The Constitution provides no definition of ‘constitutional matter’. What is a constitutional matter must be gleaned from a reading of the Constitution itself: if regard is had to the provisions of... Constitution, constitutional matters must include disputes as to whether any law or conduct is inconsistent with the Constitution, as well as issues concerning the status, powers and functions of an organ of State.... the interpretation, application and upholding of the Constitution are also constitutional issues. So too .... is the question of the interpretation of any legislation or the development of the common law promotes the spirit, purport and object of the Bill of Rights. If regard is had to this and to the wide scope and application of the Bill of Rights, and to the other detailed provisions of the Constitution, such as the allocation of powers to various legislatures and structures of



government, the jurisdiction vested in the Constitutional Court to determine constitutional matters and issues connected with decisions on constitutional matters is clearly on extensive jurisdiction...”

9. The petitioner has not challenged any of the provisions of the *Veterinary Surgeons and Veterinary Para-Professional Act*. Although the petitioner complains that the respondent violated his constitutional rights, he does not clearly state the provisions of the *Constitution* that are alleged to have been violated and the manner in which the respondent infringed the rights. It was not in dispute that the petitioner did not have a licence issued respondent. The petitioner has not disputed violation of the *Veterinary Surgeons and Veterinary Para-Professional Act*.
10. I also note that the petition as drafted does not disclose any violation of the petitioner’s rights and neither does it raise a constitutional matter. The petitioner prays that the court should intervene and order respondent to open the premises and that the respondent be compelled to pay general damages. His reliefs are not anchored on the protection or enforcement of a constitutional provision; and neither are they on a declaration of a right. The reliefs sought by the petitioner are thus not appropriate for a constitutional matter. The court in *G’Oganyo v Independent Electoral Commission Selection Panel & 2 others; Independent Electoral and Boundaries Commission & 6 others* (Interested Parties) (Constitutional Petition E345 of 2022) [2022] KEHC 10184 (KLR) (Constitutional and Human Rights) (30 June 2022) (Judgment) cited with approval the decision of the *South African in Fose v Minister of Safety & Security* [1977] ZACC 6 where the court observed that:

“Appropriate relief will in essence be relief that is required to protect and enforce the *Constitution*. Depending on the circumstances of each particular case the relief may be a declaration of rights, an interdict, a mandamus or such other relief as may be required to ensure that the rights enshrined in the *Constitution* are protected and enforced. If it is necessary to do so, the courts may even have to fashion new remedies to secure the protection and enforcement of these all-important rights.”
11. In my view, the petition has not explained the manner in which the *Constitution* was violated. In the end, I find that the petition as does not meet the threshold of a constitutional petition as it fails to disclose any violation of the *Constitution*. The petition is hereby dismissed. Each party shall bear its own costs.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT BUNGOMA THIS 21<sup>ST</sup> DAY OF DECEMBER, 2022.**

**R.E. OUGO**

**JUDGE**

**In the presence of:**

**Mr. Sagwe for the Petitioner- Present**

**Respondent - Absent**

**Ms. Wilkister/ C/A**

