



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT GARISSA

PETITION NO. 14 OF 2019

MOHAMED ABDI SALAT.....PETITIONER

VERSUS

THE HON. ATTORNEY GENERAL.....RESPONDENT

RULING

1. The directions being sort by the parties is whether the matter should proceed by way of *viva voce* evidence or affidavit evidence. This similarly applies to **Ibrahim Dabar Abdi vs Republic, Petition No. 4 of 2019, Hussein Abdulahi Osman & 4 Others vs Republic Petition No. 5 of 2019** and **Saadi Abdi Muhumed Petition No. 13 of 2019** as the said matters arise from allegedly similar facts and counsels on record have urged the court that the directions issued herein ought to apply to the other three.

2. Mr. Ingutya for the Petitioners in all the 4 files urges that oral evidence is more suited due to the nature of the claim before court. Three indeed relate to deaths of citizens allegedly in the hands of law enforcement agencies. He has indeed filed witness statements. In his submissions he relied on Rule 20 of **The Constitution of Kenya (Protection of Rights & Fundamental Freedoms) Practice & Procedure Rules, 2013**.

3. In his response Mr. Kuria for the State confirms receipt of witness statements, and adds that in Petition No. 4 and 5 submissions have been filed. He further informed the court that he will be raising a preliminary objection and will rely on Section 82 of the Law of Succession Act.

4. So far, no Preliminary Objection has been placed on record and therefore the court is not able to appreciate and comment on the same save to state that the Preliminary Objection if any will be dealt with as and when the same is filed.

5. Section 20 of **The Constitution of Kenya (Protection of Rights & Fundamental Freedoms) Practice and Procedure Rules, 2013** states as follows on hearing of Petition: -

“20 (1) The hearing of a petition shall unless the court otherwise directs be by way of

(a) Affidavits

(b) Written submissions; or

(c) Oral evidence.

(2) The court may limit the time for oral submissions by parties.

(3) The court may on its own motion direct that the petition or part thereof be heard by way of oral evidence.

(4) The court may on its own motion, examine any witness or call and examine or recall any witness if the court is of the opinion that the evidence is likely to assist the court arrive at a decision.”

6. The court takes note that the allegations against the State are grave, yet the affidavit evidence placed before court by both sides are scanty. It is therefore necessary to have oral evidence as the same will go a long way in assisting the court determine the matters. I therefore direct that in all the four files quoted herein the matter do proceed by way of oral evidence.

7. The court further notes that in some of the files the court had already directed that *viva voce* evidence be adduced. And since as earlier indicated the circumstances of all the Four files are similar it will only be right, fair and just that similar orders be made on the mode of hearing. For avoidance of doubt these directions will apply to Petition 4, 5, 13, & 14 all of 2019.

8. Further the Court directs that comprehensive witness statements, and documents if any be filed and exchanged within the next 21 days of the date hereof.

9. At the hearing witness will adopt their comprehensive statements and only be cross examined on the same in order to save judicial time.

10. A date for hearing will be fixed at the next mention once the court ascertains the Covid-19 situation and whether open court sessions are amenable.

DELIVERED AND SIGNED AT GARISSA THIS 28th DAY OF JANUARY, 2021.

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ALI ARONI

JUDGE