



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT GARISSA

PETITION NO. E003 OF 2020

MOHAMED ABBEY MOHAMED.....PETITIONER

VERSUS

THE ETHICS AND ANTI-CORRUPTION COMMISSION.....1ST RESPONDENT

THE DIRECTOR OF PUBLIC PROSECUTION.....2ND RESPONDENT

GARISSA CHIEF MAGISTRATE'S COURT.....3RD RESPONDENT

ATTORNEY GENERAL.....4TH RESPONDENT

RULING

1. By a Petition dated 17th November, 2020 the Petitioner moved the court seeking for declarations as follows;

a) A declaration that at the time it completed investigations and forwarded its report and recommendation to charge him, the 1st Respondent was not properly constituted.

b) A further declaration that the charging and prosecution of the Petitioner based on the investigation, report and recommendations of the 1st Respondent while not properly constituted was unconstitutional, null and void.

c) An order quashing all proceedings against the Petitioner in Garissa Chief Magistrate's Court Criminal Case No. 290 of 2019.

d) Pending the hearing and final determination of this Petition, this court be pleased to issue interim orders directed to the Garissa Chief Magistrate's Court Criminal Case No. 290 of 2019 to suspend any or further proceedings in the case.

2. The Petitioner prior to taking up the job of Speaker of the County Assembly of Garissa, was employed by the National Health Insurance Fund (NHIF) and it is alleged that he submitted a forged recommendation letter purported to have been signed by the NHIF Garissa office manager.

3. As a result of the allegation, the 1st Respondent commenced investigations leading to the 2nd Respondent charging the Petitioner in the 3rd Respondent court in Garissa Chief Magistrate's Court Criminal Case No. 290 of 2019.

4. At the 1st mention of the matter, the 1st and 2nd Respondent sought for the Petition to be transferred to Nairobi Anti-Corruption Court. Though both submit that there was no objection from the Petitioner's counsel, the record shows that Mr. Onono while acknowledging the Gazette Notices referred to by the 2nd Respondent, sought time to react to the application. Indeed, he thereafter filed grounds of opposition to the transfer being sought for.

5. For now, the only issue for this court's determination is whether or not to transfer this Petition herein to the Anti-Corruption Court in Nairobi for hearing and determination.

6. On the part of the 1st and 2nd Respondent, their respective submissions are similar in substance and the court will consider the same together. The court's attention was drawn to the following Gazette Notices;

a) Gazette Notice No. 9123 of 2015 which stated as follows:

“It is notified

1there shall be established Anti-corruption and Economic Crimes Division.

2. In Nairobi, all disputes relating to corruption and economic crime matters that may be filed under any law in the High Court shall be lodged and heard before the Anti-corruption and

Economic Crimes Division”.

b) Gazette Notice Number 10263 of 2016 provided mandate of the said court to be;

(a) Petitions and Judicial Review Applications on claims of infringement or the threatened infringement of constitutional rights relating to corruption and/or economic crime related matters.

c) Gazette Notice Number 7262 of 2018 provides;

8. All cases relating to corruption and economic crimes which have been filed before other stations or divisions of the High Court, in which hearing has not commenced shall be transferred to the Anti-corruption and Economic Crimes Division”.

7. It was further submitted that the above directions require that all matters relating to corruption and economic crime shall be transferred to the Anti-Corruption Court in Nairobi. In other words, issues arising in cases that touch on corruption and economic crimes shall only be handled by the Anti-Corruption Court in Nairobi. Reference was made to the following cases; -

Tom Ojienda Vs Ethics and Anti-Corruption Commission (2020) eKLR.

Ethics and Anti-corruption Commission & Another Vs William Baraka Mzenge & 4 Others (2017) eKLR .

Pius Wanjala Vs Ethics and Anti-corruption; Sicily Kariuki, Cabinet Secretary Ministry of Health & Another (2020) eKLR.

8. The Petitioner on the other hand challenged the transfer on the basis that practice direction cannot override the provisions of the Constitution that gives the High Court unlimited jurisdiction to adjudicate in Civil and Criminal matters. The court has referred to **Misc. Application No. 5 of 2017 Republic Vs Ethics and Anti-Corruption Commission, Ex-parte Stephen S. Barawa Hezekiah Oira Versus EACC & D.P.P HCC No. 285 of 2013.**

9. The court is of the view that counsel on both sides are right in holding their respective views save that in creating a special division of the High Court administratively, the Chief Justice in his Practice Notice cannot be said to have taken away the mandate of the High Court, but created a division of the High Court with special jurisdiction to deal with matters “**relating to Corruption and Economic Crimes**” and for purposes of good order, expediency and efficiently.

10. Having stated the above, the court will zero in on issues concerning this Petition. The same raises the following concerns;

i. whether or not the 1st Respondent; the Ethics and Anti-Corruption Commission was properly constituted between 3rd March 2013 and 10th October, 2018.

ii. whether the report pursuant to the said investigations thereof is unconstitutional, null and void and

iii. whether or not to quash the proceedings in Chief Magistrate case No. 290 of 2019.

11. Based on the issues raised in the Petition the court forms the opinion that the said issues do not touch on Corruption or Economic Crime nor claims of infringement or the threatened infringement of constitutional rights relating to corruption and/or economic crime related matters. The issues squarely therefore fall under the jurisdiction of this court and ought therefore not to be transferred to a court whose mandate is very specific.

12. The application for transfer of this Petition is therefore rejected with costs.

DATED, DELIVERED AND SIGNED THIS 23RD DAY OF SEPTEMBER, 2021.

.....

ALI- ARONI

JUDGE