



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

CONSTITUTIONAL PETITION NO. 28 OF 2020

IN THE MATTER OF: ARTICLES 19, 20, 21, 22, 23, 27, 28, 35 AND 43 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF: CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES 19, 20, 21, 22, 23, 27, 28, 35 AND 43 OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF: ENFORCEMENT OF THE CONSTITUTIONAL RIGHTS AS ENSHRINED UNDER ARTICLES 27, 28, 35 AND 43 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF: SECTION 27 AND 36 OF THE PUBLIC HEALTH ACT, CAP 242 LAWS OF KENYA

AND

IN THE MATTER OF: THE PUBLIC HEALTH (PREVENTION, CONTROL AND SUPPRESSION OF COVID-19) RULES, 2020

BETWEEN

MUSLIMS FOR HUMAN RIGHTS (MUHURI).....PETITIONER

AND

1. THE HON. ATTORNEY GENERAL

2. CABINET SECRETARY, MINISTRY OF HEALTH

3. INSPECTOR GENERAL OF POLICE.....RESPONDENTS

COURT/RULING

I have heard parties' submissions on the two applications before the Court. In my view, the Covid-19 pandemic has caused a public confusion over standards and parameters along which we do things. In this pandemic, new directions emerge almost on a daily basis, and the Court also should not rush to make any orders without hearing parties substantively.

Mr. Lumatete's application raises novel issues of serious public concern. However, these issues should be canvassed in a robust way through inter-partes hearing where every party is given a chance to make out their case.

Mr. Makuto's Preliminary Objection and Notice of Motion also raise serious issues which this Court cannot gloss over by giving interlocutory orders.

The upshot is that this Court must have regard to any other similar matters which may have been filed in any other court registry in the country. Therefore, I will give the parties a chance to bring all evidence before the Court by way of full responses to their various applications. Accordingly, Mr. Makuto shall fully respond to Mr. Lumatete's application dated 23/4/2020, and Mr. Lumatete shall also fully

respond to Mr. Makuto's Notice of Motion and Preliminary Objection both filed herein on 29/4/2020. The responses shall be done within six (6) days.

The matters will be heard together on 6/5/2020 before the Duty Judge Hon. P. J. Otieno. Parties are directed to exchange submissions simultaneously and file soft copies in Court.

The hearing will be via zoom.

E. K. OGOLA

JUDGE

29/4/2020