



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CONSTITUTIONAL PETITION NO. 30 OF 2019

IN THE MATTER OF: THE CONSTITUTION OF THE REPUBLIC OF KENYA

AND

IN THE MATTER OF: THE EMPLOYMENT ACT, 2007

AND

IN THE MATTER OF: FAIR ADMINISTRATIVE ACTION ACT

AND

**IN THE MATTER OF: THE PETITIONERS' ACADEMIC PAPERS ISSUED
BY THE KENYA NATIONAL EXAMINATION COUNCIL; KENYA METHODIST
UNIVERSITY AND KENYA INSTITUTE OF STUDIES IN CRIMINAL JUSTICE**

AND

**IN THE MATTER OF: ALLEGED VIOLATION AND INFRINGEMENT OF THE RIGHTS
AND FREEDOMS IN ARTICLES 2(4), 3, 10, 19(1) & (2), 20(1) & (2), 21, 22, 23, 27, 28, 29(f),
25, 47, 48, & 50(1) & (2), 159, 258(1) & 259(1) OF THE CONSTITUTION OF KENYA**

-BETWEEN-

ABDI MOHAMED DAIB.....PETITIONER

-VERSUS-

KENYA PORTS AUTHORITY.....RESPONDENT

KENYA NATIONAL EXAMINATION COUNCIL.....1ST INTERESTED PARTY

KENYA INSTITUTE OF STUDIES IN CRIMINAL JUSTICE.....2ND INTERESTED PARTY

KENYA METHODIST UNIVERSITY.....3RD INTERESTED PARTY

ETHICS AND ANTI-CORRUPTION COMMISSION.....4TH INTERESTED PARTY

R U L I N G

1. Granted that this litigation is by way of a constitutional petition, it should never be deemed to negate on the norms of what would pass as

fair court process.

2. By rules, the evidence to be used in a petition is availed by Affidavits and Rule 20 only gives room to court to call a witness it forms the opinion could assist it. That leeway is to the court not to the parties to call at any time any witness from anywhere and without the courtesy to swear an Affidavit and serve the other parties.

3. On that basis, I do consider the position and complaint by Mr. Omondi to be a valid one that to avoid ambush, what Mr. Oscah Otieno is intended to tell the court need be availed to the opposing side in advance.

4. I also consider it a desirable practice that even in constitutional petitions a case conference needs to be undertaken so that directions anticipated under Rule 20(i) may be given on how to handle the petition. It appears that was not done here hence by the time the file landed on my desk it was not obvious how the matter would proceed.

5. On those two grounds and the additional fact that I am due to proceed on transfer not later than the 01/11/2020, I do adjourn the matter and stand it over to the 11/11/2020 for directions by the trial court in terms of Rule 20.

6. Between now and then, let every counsel who would wish to call a witness who has not filed any affidavit file Affidavits by such a witness and serve the other side.

7. Costs in the cause.

Dated, signed and delivered at Mombasa

this 22nd day of **September 2020**

P.J.O. OTIENO

JUDGE