



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CONSTITUTIONAL PETITION NO 13 OF 2014

IN THE MATTER OF RULES 3(3), (4) & (5); 5; 13; AND 23(1) & (2) OF THE CONSTITUTION OF KENYA (PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013 - LEGAL NOTICE 117 OF 2013)

AND

IN THE MATTER OF ARTICLES 22, 23, 28, 35, 47 AND 234 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF THREATENED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES 41, 47 OF THE CONSTITUTION

AND

IN THE MATTER OF THE CHIEF'S ACT, CAP 128 LAWS OF KENYA

BETWEEN

EUSTACE MURIGI WANYOIKE.....PETITIONER

AND

1. PETER MWAURA MWANGI

2. THE COUNTY COMMISSIONER MURANG'A

3. THE PUBLIC SERVICE COMMISSION

4. CABINET SECRETARY, MINISTRY OF INTERIOR &

COORDINATION OF NATIONAL GOVERNMENT

5. THE HONOURABLE ATTORNEY-GENERAL.....RESPONDENTS

J U D G M E N T

1. In the petition filed herein, the Petitioner, **EUSTACE MURIGI WANYOIKE**, has pleaded as follows:

(i) That he applied for the position of Assistant Chief of Kiahiti Sub-Location in Kigumo District of Murang'a County.

(ii) That he was invited by the *Office of the President* for an interview to be conducted on 1st July, 2009 at the offices of the District Commissioner, Kigumo.

(ii) That he duly attended the interview and was indeed interviewed and advised to await the outcome.

(iv) That his wife subsequently died and he was unable to follow up the matter of the interview as he was making funeral arrangements.

(v) That at the funeral of his wife on 19th September, 2009 the Chief of Muthithi Location announced to his family and mourners on behalf of the Kigumo District Commissioner that the Petitioner was the successful candidate for the position of Assistant Chief for Kiahiti Sub-Location, Kigumo.

(vi) That on 23rd February, 2010 the 1st Respondent, PETER MWAURA MWANGI, who had also been a candidate for the same position, “accompanied (by) some village elders, went to the Provincial Commissioner, Nyeri who issued them with an appointment letter which they took to the Kigumo District Commissioner for confirmation but who refused to confirm it”.

(vii) That the Petitioner then reported the issue to the then **Kenya Anti-Corruption Commission** to investigate the circumstances surrounding the interviews and appointment.

(viii) That the **Kenya Anti-Corruption Commission** subsequently confirmed that the Petitioner was the winning candidate vide a letter dated 26th April, 2010.

(ix) That the Petitioner then proceeded to the Provincial Commissioner’s Office, Nyeri in May 2010 to seek his assistance, who informed the Petitioner that he had signed the appointment letter “before the requisite information was noted in the letter by the secretary”.

(x) That therefore the process by which the 1st Respondent received his purported letter of appointment “is suspect as the proper process was not followed...”.

(xi) That the 2nd, 3rd and 4th Respondents have violated the Petitioner’s “guaranteed protection” under Article 35 of the Constitution for failure to provide the Petitioner “with the answers that he needs” about the fate of his interview.

(xii) That the Respondents have also contravened Article 47 of the Constitution by denying him information of the recruitment and results of the interviews for the position of Assistant Chief aforesaid.

2. The Petitioner seeks the following main reliefs-

(a) A declaration that the Petitioner is entitled to information pertaining to the interviews carried out on 1/7/2019 at the Kigumo District offices.

(b) A declaration that the 1st Respondent took office as the Assistant Chief of Kiahiti Sub-location, Kigumo, and was confirmed in that office in violation of the Petitioner’s rights.

(c) In the alternative to prayer (b), a declaration that the Petitioner is the rightful appointee of the post of Assistant Chief of Kiahiti Sub-location and entitled to the full benefits of that office.

(d) An order of compensation against the Respondents for violating the Petitioner’s rights.

3. Annexed to the petition is a supporting affidavit sworn by the Petitioner. Apart from repeating the averments contained in the petition, the affidavit exhibits the following documents –

(i) Letter dated 10th June, 2009 inviting the Petitioner to the interview of 1st July 2009.

(ii) Letter dated 26th April, 2010 addressed to the Petitioner by the **Kenya Anti-Corruption Commission**.

(iii) Letter dated 11th October, 2012 addressed to the Public Service Commission by the Petitioner.

(v) Letter dated 9th May, 2010 addressed to the County Commissioner, Murang’a by the Petitioner.

3. The Petitioner’s petition is premised upon the notion that he was the successful interviewee for the post of Assistant Chief of Kiahiti Sub-Location, Kigumo in Murang’a County. Apart from what the chief of Muthithi Location is alleged to have told him and others at his (Petitioner’s) wife’s funeral on 19th September 2009, the Petitioner has not exhibited any document of his alleged success at the interview. There is no official letter informing so, and of course there is no letter of his appointment to the position. There is no affidavit by the Chief of Muthithi Location by which he would perhaps have disclosed his source of information that the Petitioner was the successful candidate, and his authority to make the announcement.

4. Further, what the Petitioner has deposed to regarding the allegation that the 1st Respondent, who was also a candidate for the same position, had gotten a letter of appointment from the Provincial Commissioner, Nyeri in an unorthodox manner, was simply an allegation founded on rumour that was not verified in any credible way. There is no affidavit by the Provincial Commissioner, or by the person who may have told the Petitioner about issuance of the letter of appointment to the 1st Respondent.

5. So, there is no factual basis for the Petitioner’s assertion that he was the successful candidate for the position of Assistant Chief of Kiahiti Sub-location. The letter from the **Kenya Anti-Corruption Commission** is no evidence of that alleged fact. The letter simply said as follows in its body -

“You letter dated 7th April, 2010 refers.

It is noted from your letter that interviews were conducted and you were the successful candidate.

You are, therefore advised to liaise with the Provincial Commissioner Central Province, for advice on the matter”.

6. The letter, contrary to what the Petitioner appears to think, does **not** state that the *Kenya Anti-Corruption Commission* has investigated the matter and has found that indeed he was the successful candidate! The letter simply tells him in effect, that **you have asserted that you were the successful candidate; so, liaise with the Provincial Commissioner for advice on that matter!**

7. With regard to the complaint that the Petitioner’s request for information regarding the interview he attended for the post of Assistant Chief and the result thereof have gone unanswered, there is no evidence that his letter dated 11th October, 2012 addressed to the *Public Service Commission* and his letter dated 9th May, 2010 addressed to the *County Commissioner, Murang’a* were ever sent or otherwise delivered. There is no certificate of posting exhibited or evidence of the letters being received.

8. Even a constitutional petition must have grounding upon a proper factual basis, and it matters not that the Respondents have not filed any response. A court of law will not make any findings, constitutional or legal, upon unverified allegations of fact.

9. In the result I find no merit in this petition and the same is hereby dismissed with no order as to costs. It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANG’A THIS 29TH DAY OF MARCH 2019

H P G WAWERU

JUDGE