



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MURANGA

CONSTITUTIONAL PETITION NO 4 OF 2013

(FORMERLY NAIROBI PETITION NO 314 OF 2012)

IN THE MATTER OF ARTICLES 19, 22, & 23 OF THE CONSTITUTION

AND

THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS

UNDER ARTICLES 25(a) & (b), 28, 29(a) & (f), 30(1) & (2) AND 39 OF THE CONSTITUTION

KIMERERA ELDERS ADVISORY

COUNCIL (MAU-MAU FOUNDERS) (SUING THROUGH

1. MAINA KAMAU

2. MWIANDI KIAMBATI

3. KIMWERE KAMAU).....PETITIONER

VERSUS

THE GOVERNMENT OF KENYA

(Through THE ATTORNEY-GENERAL).....RESPONDENT

J U D G M E N T

1. The petition herein filed on 24/07/2012 has been brought by a group calling itself **KIMERERA ELDERS ADVISORY COUNCIL (MAU-MAU FOUNDERS)**. It is represented by **MAINA KAMAU, MWIANDI KIAMBATI** and **KIMWERE KAMAU**; each has sworn a supporting affidavit. There are seven (7) more supporting affidavits sworn by **J. MUHIA KOGI, GAKUNJU MACHARIA, MWANGI KIMANI, KAGWANJA NJURU, WAWERU KABIRU, BEDAN MWANGI MUTHEE** and **MURIITHI MUTUIRANDO** which were filed on 15/10/2012. Another bunch of supporting affidavits sworn by **SARAH IGOJI BOORE-KAREU, MARGARET RUGURU MAGAMBO, AGNES NKINGA MUNYUA** and **MARIA NJOKI GACOGU**, were filed on 05/05/2016. The Respondent is the **Government of Kenya** sued through the **Attorney-General**.

2. The petition seeks various declarations, monetary compensation and restoration and refund to the Petitioner of unidentified “fixed assets and/or institutions acquired compulsorily without consent or compensation.”

These claims are made in respect of -

a) Loss of human life through torture, degradation, relocation from homes, detention and human suffering “caused during the period 1952 to 1963 during the “Mau-Mau or freedom fighters’struggle for independence in Kenya.”

b) Loss of land through displacement when people were forced into detention camps by the Colonia government “and the rest of the populace (in Central and Eastern parts of Kenya) were forced to live in villages in areas of Mau Mau operations.....”

“The first President of independent Kenya, Mzee Jomo Kenyatta, promised 50 acres to each survivor of the freedom struggle at Embu between Kiiye River to Mbogori.”

- c) Loss through confiscation by the Colonial Government of Mau-Mau properties held in trust by Independent Churches.
- d) Money released by the British Government to compensate the Mau-Mau – alleged to have been KShs.9 million.
- e) Recognition of the Petitioner’s members by the Kenya Government for the role they played in the freedom struggle in the period 1952 to 1962.

3. The Petitioner has also pleaded in the petition:-

- a) That members of the **Mau-Mau War Council** re-branded themselves in 1976 as the **Kimerera Elders Advisory Council** and were “constitutionally discriminated by the current Kenyan Government when it registered the **Mau-Mau War Veterans Association** in 2003 to represent War Veterans and their claims.”
- b) That the **Kimerera Elders Advisory Council** was formed on 01/11/1976 by the first President of the Republic of Kenya to represent war veterans.
- c) That the first President of the Republic of Kenya awarded the Petitioner land “at or in Eastern Province in Embu which land has not yet been transferred to the Petitioner.”
- d) That the Petitioner was also promised (monetary) compensation through the Attorney-General, which compensation is yet to materialize.
- e) That the Petitioner and its members have been discriminated against by successive governments of Kenya which continued to pay pension to “former home guards who were used by the Colonial Government to suppress the fundamental rights and freedoms of indigenous Kenyans....” prior to Independence.
- f) That the current independent Kenya Government is liable to the Petitioner and its members under the “principle of successive liability.”

4. Despite service upon the Attorney-General, even by advertisement in one issue of the “Daily Nation” newspaper, the Respondent never entered appearance nor filed any papers in response to the petition. The Petitioner therefore proceeded **ex parte** by direction of the court.

5. The Petitioner called 2 of the 3 persons representing it in the proceedings to testify. **Kimwera Kamau** testified as PW1 while **Maina Kamau** testified as PW2. They adopted their respective supporting affidavits as their testimonies-in-chief.

6. PW2 also produced in evidence the list and documents filed on 24/07/2012 by the Petitioner as **Exhibit P1**.

7. The Petitioner’s advocates filed written submissions on 17/09/2018. They are just as rambling as the petition itself. From those submissions, it is clear that the Petitioner has based its claims upon various articles of the **Constitution of Kenya, 2010**. Needless to say, that Constitution was not in place during the period of the alleged violations of the Petitioner’s rights and freedoms between 1952 and 1962.

8. It has also not been pleaded if the Petitioner is some kind of registered group. Even in constitutional petitions the petitioner ought to be properly identifiable.

9. This petition raises very serious issues regarding the abuse of Kenyan’s human rights during the colonial period, and more particularly during the period of the war of liberation between 1952 and 1962, by agents of the colonial government.

10. However, a perusal of the petition, the affidavits sworn in support and the documents exhibited in **Exhibit P1** show that the case has not been pleaded properly, betraying a lack of proper preparation on the part of the counsels appearing for the Petitioner. Most of the documents in **Exhibit P1** appear to be official letters that came into the possession of the Petitioner; others are letters written by the Petitioners and some answers thereto. All these documents do not advance in any way the claims set out in the petition.

11. I can only hope that one day a proper case is drafted, filed and prosecuted with all the seriousness it deserves, after properly identifying the claimants, their roles in the struggle for our independence, the particulars of their sufferings and breach of their human rights, the particulars of the properties confiscated from them by the colonial government, et cetera.

12. As it is now, no proper case emerges in this petition that this court can properly adjudicate upon, even in the absence of any representation by the Respondent. Regrettably I must dismiss the petition 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