



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

PETITION NO. 4 OF 2017

CORAM: D.S. MAJANJA J.

BETWEEN

STANLEY NTONGAI.....1ST PETITIONER

JOSEPH KAINGA MAINGI.....2ND PETITIONER

ANDRIANO MITHIKA KARATHO.....3RD PETITIONER

PATRICK NKHIRA M'MUTHUMBA.....4TH PETITIONER

PURITY MAKENA.....5TH PETITIONER

JEREMIAH RATANYA MUTUNDU.....6TH PETITIONER

LUCY THAURIA.....7TH PETITIONER

AND

MURUNGI MUTUNDU.....1ST RESPONDENT

DEPUTY COUNTY COMMISSIONER

IGEMBE NORTH SUB-COUNTY.....2ND RESPONDENT

PRINCIPAL SECRETARY MINISTRY OF

INTERIOR & CO-ORDINATION OF

NATIONAL GOVERNMENT.....3RD RESPONDENT

CABINET SECRETARY MINISTRY OF

INTERIOR & CO-ORDINATION OF

NATIONAL GOVERNMENT.....4TH RESPONDENT

THE ATTORNEY GENERAL.....5TH RESPONDENT

JUDGMENT

1. The petitioners are residents of Ntunene Location within Laare Division of Igembe North Sub-County of Meru County. They bring this

petition because they are aggrieved by the selection and appointment of the 1st respondent as the Chief of Ntunene Location. They complain that the process for selecting him was not transparent and that he started serving as a Chief before that position was advertised in June 2016 hence his appointment was a foregone conclusion to the detriment of other applicants. They also allege that the 1st respondent did not meet the requisite academic and integrity qualifications necessary to be appointed chief.

2. In the petition dated 27th February, 2017, the petitioners pray for the following reliefs:

1. A declaration that the 1st respondent does not have the academic requirements to be appointed as a chief of Ntunene Location.
2. A declaration that the 1st respondent does not meet the threshold set out under Article 73 and 75 of the Constitution of Kenya
3. A declaration the 2nd, 3rd and 4th respondents acted inimical to the provisions of Article 10 and 47 of the Constitution of Kenya in appointing the 1st respondent to the office of chief of Ntunene location.
4. A declaration that the actions by the 2nd 3rd and 4th respondents in appointing the 1st respondent as Chief of Ntunene Location was illegal and unconstitutional.
5. A bench mark, edit and/or legal declaration as to have appointments of CHIEFS should be conducted in future so as to underpin the requirements set out under Chapter Six of the constitution of Kenya.
6. Any further and/or better orders and/or declarations that shall promote the adherence to the constitution as well as promote the implementation of the provisions of the constitution.

3. The respondents, who are represented by the Office of the Attorney General opposed the petition on the ground that this court has no jurisdiction to adjudicate over this matter as the issues raised by the petitioners are appropriately dealt with by other bodies established under the Constitution and our law. Counsel for the respondents pointed to the Inspector General of Police, the Director of Public Prosecutions and the Ethics and Anti-Corruption Commission.

4. The preliminary objection was dealt with by Ongijo J., who held as follows:

The 2nd to 5th respondents have not filed any pleadings in the response to the complaints raised by the petitioners to say that they received the complaints and have acted on them and absolved the first respondent from the allegations that have been labelled against him and it would be negligent for this court to strike out the petition without considering the substance of the petitioners' complaints.

5. In as much as I agree with the learned judge, I also take the position espoused in ***International Center for Policy and Conflict and Others v Attorney General and Others NRB Petition No. 552 of 2012 [2013]eKLR*** where the court held that:

An important tenet of the concept of the rule of law is that this court before exercising its jurisdiction under Article 165 of the Constitution in general, must exercise restraint. It must give an opportunity to the relevant constitutional bodies or state organs to deal with the dispute under the relevant provision of the parent statute.

6. This position merely augments the principle reiterated by the Court of Appeal in ***Peter Muturi Njuguna v Kenya Wildlife Service NKU CA Civil Appeal No. 260 of 2013 [2017]eKLR*** where it observed that, “[It] is abundantly clear to us that where there is a specific procedure as to redress of grievances, the same ought to be strictly followed.” (See also ***Speaker of the National Assembly v Njenga Karume [2008]1 KLR 425***).

7. That principle is not intended to result in injustice and while I accept the respondents' submissions on the law, this does not end the matter because before the petitioner filed this case, they lodged a petition dated 7th September 2016 with the Cabinet Secretary, Office of the President raising the complaints that are the subject of this petition. The respondents were given an opportunity to respond to the issues raised by the petitioner but they did not. Further, they have had an opportunity to respond to those complaints since this case was filed but they have not responded to the allegations. Having failed to file any replying affidavit the respondents cannot deny that they did not receive the petition.

8. The duty of the court is to ensure that every body established by law acts in accordance with the law by, for example, responding to citizens' petition. The right to petition the government is fundamental to maintaining a democratic government consistent with the values of good governance, transparency and accountability articulated under **Article 10(2)(c)** of the Constitution. The right to petition the Government is protected by **Article 37** of the Constitution. The right would be empty, if it did not involve or require a concurrent duty of the Government to respond to the petitioners. Other rights that support the petitioners case is the right and freedom of information protected under **Article 35** of the Constitution while the right to fair administrative action includes the right to receive a response to any query with a reasonable time as anchored in **Article 48** of the Constitution.

9. So that while I decline to enter into the arena of dealing with the substantive complaints raised by the petitioners, I am satisfied that the petitioners cannot walk out this court without a remedy. They have not received an answer to their petition. I therefore allow the petitioner and order as follows:

- a. The Cabinet Secretary, Ministry of Interior and Co-ordination of National Government is directed to respond to and deal with

issues and queries raised by the petitioners in their petition dated 7th September 2016 within the next **forty-five (45) days** from the date of service of this order.

b. There shall be no order as to costs for this petition.

DATED and DELIVERED at MERU this 25th day of October 2018.

D.S. MAJANJA

JUDGE

Mr Kirimi Mbogo instructed by Mbogo Muriuki Advocates for the petitioners.

Mr Kiongo, Senior Litigation Counsel, instructed by the Officer of the Attorney General for the respondent.