



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 141 OF 2018

THE MANAGING TRUSTEES OF

THE NAIROBI FOUNDATION.....PETITIONER

VERSUS

KENYA AIRPORTS AUTHORITY PARKING

SERVICES (KAPS) LIMITED.....1ST RESPONDENT

KENYA AIRPORTS AUTHORITY.....2ND RESPONDENT

THE CABINET SECRETARY,

MINISTRY OF TRANSPORT.....3RD RESPONDENT

THE CABINET SECRETARY,

MINISTRY OF FINANCE.....4TH RESPONDENT

THE HON. ATTORNEY GENERAL.....5TH RESPONDENT

JUDGMENT

1. The petitioner herein is the board of trustees of the Nairobi foundation, a Non- Government organization registered under the Non-Governmental organization Co- ordination Act (Cap 19) of 1990 sued the respondents herein through the petition dated 13th April 2018 seeking the following orders:

- a) A declaration that the decision to increase parking fees at the Jomo Kenyatta International Airport to take effect from 15th April, 2018 is unconstitutional.
- b) A declaration that the decision to increase parking fees at the Jomo Kenyatta International Airport is against public policy and national interest.
- c) A judicial review order of mandamus compelling the 1st and 2nd respondents to stop the implementation of the decision to increase the parking fees for various categories of motor vehicles at the Jomo Kenyatta International Airport.
- d) Costs.

2. The petitioner's case is that on 11th April 2018, the 1st respondent as an agent of the 2nd respondent made an announcement to the media to the effect that the cost of parking for various categories of motor vehicles at the Jomo Kenyatta International Airport with effect from 15th April 2018.

3. The petitioner contended that the said decision by the 1st and 2nd respondents was arbitrary, whimsical, unilateral and against the express provisions of the statute and the constitution. It is the petitioner contention that the said decision violates the provisions of Article 47 of the Constitution and will have a ripple effect on increasing the production costs of various imported and exported goods thereby adversely affecting the economy of the country.

4. The petition was not supported by any affidavit; however, an application filed contemporaneously with the petition was accompanied by the supporting affidavit of **MARTIN NKARI**, the petitioners Managing Trustee. He attached copies of the documents showing the new parking rates, copy of the newspaper and social media reports as annexure “MN1” “MN2” and “MN3” respectively.

5. The 1st respondent opposed the petition through the replying affidavit of its legal manager **Lawrence Odera Madialo** who deposes that as admitted by the petition the 1st respondent is merely the agent of the 2nd respondent and that for that reason, the petitioner, has no cause of action against the 1st respondent who only acts on the instructions and orders of its principal.

6. The 3rd-5th respondents filed grounds of opposition dated 18th September 2018 in which they set out the following grounds:

1. That the petition is pre-emptive as the petitioner seeks to have a declaration issued on a proposed increment of parking fees by the 1st respondent that has not been implemented.

2. That the petitioner has not demonstrated the violation or threatened violation of their fundamental rights by the 3rd, 4th and 5th respondents hence no justifiable cause.

3. That there is no constitutional issue for the Court’s determination.

4. That the petition is frivolous, vexatious and an abuse of the court’s process and meant to obstruct the operations of the 1st respondent stipulated under the law.

7. At the hearing of the petition, parties opted not to file any submissions and asked the court to make determination based on their pleadings.

8. I have considered the pleadings filed herein I note that the petitioners claim is that by increasing the parking fees, the respondents breached Article 47 of the Constitution which implies that the respondents took an administrative action that was unreasonable and procedurally unfair.

9. All that the petitioner did was to claim that the decision to increase fees was arbitrary whimsical, unilateral and against the express provisions of statute and the Constitution.

10. My finding is that the petitioner made very serious allegations against the respondents and it was therefore incumbent upon them to prove the allegations with cogent evidence. It was not enough for the petitioner to make a blanket allegation of a violation without making any attempts to demonstrate how the respondents’ actions violated the law.

11. Needless to say, any increment in fees does not attract a positive response from consumers. However, the mere fact that such fee is increased does not necessarily translate into a violation of the Constitution. Moreover it was not disputed that as at the time of the filing of the instant petition, the alleged increment had not been implemented and was still merely a proposal in which case, one can say that the present petition was premature and not based on the actual position regarding the airport parking fees.

12. I therefore find that alleged violations of the Constitution not proved and the order that commends itself to me is to dismiss the petition with no orders as to costs.

Dated, signed and delivered in open court at Nairobi this 29th day of November 2018.

W. A. OKWANY

JUDGE

In the presence of:

Mr Angaya for Amuga for the 1st respondent

No appearance for petitioner

Court Assistant – Kombo