



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
PETITION NUMBER 4 OF 2017

ONDIEK NYAIRO.....PETITIONER

AND

HON. PAUL CHEPKWONY.....RESPONDENT

AND

INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION....1ST INTERESTED PARTY

AUDITOR GENERAL.....2ND INTERESTED PARTY

RULING

1. The petitioner, Ondiek Nyairo, has filed the present petition against the respondent, the current Governor of Kericho. He seeks from the court the orders which I reproduce below verbatim:

- a) A declaration that the respondent abdicated, neglected and or failed to uphold his duties as envisaged under Article 179 (4) of the Constitution of Kenya, 2010.**
- b) A declaration that the respondent using his position and/or power has involved himself in corrupt ways and activities.**
- c) A declaration that the respondent has failed to comply with, and/or breached the provisions of the Constitution, Public Procurement and disposal Act in discharging his duties as the Governor of Kericho County government, and thus in gross violation of the law.**
- d) A declaration that the actions of the respondent amounts to gross misconduct by a person holding the office of the Governor.**
- e) A declaration that the respondent herein should be surcharged for all the public funds lost as per the Auditor General’s reports, by the Kericho County Government during his tenure as the Governor in light with the provisions of Article 179 (4) of the Constitution of Kenya, 2010.**
- f) A declaration that the respondent is unfit to hold any public office.**
- g) Costs of the suit.**

2. When the matter came up before the court on 20th April 2017, Mr. Wanyama, Learned Counsel for the

respondent, applied for the matter to be transferred to the Anti-corruption and Economic Crimes Division of the High Court. This was on the basis that under Rules 5 and 7 of the **Practice Directions for the Anti-corruption and Economic Crimes Division** dated 9th December 2016, this matter falls within the mandate of that Division. Further, that the entire petition was based on what these Practice Directions cover.

3. In response, Learned Counsel for the petitioner, Mr. Ndegwa, argued that the petitioner's application does not deal with the question of corruption. That it merely deals with the question of the fitness or otherwise of the Governor of Kericho County to continue in or to vie for office. Further, that the petition is brought on the basis of Chapter 6 of the Constitution and the Leadership and Integrity Act. In the view of Counsel for the petitioner, the issue of corruption was a ground on which the petitioner was asking the court to find the Governor unfit. He was of the opinion that Practice Direction No. 5 and 7 would be applicable where the DPP has preferred a charge against the respondent.

4. In reply, Mr. Wanyama pointed out that the prayers that the petitioner was seeking, such as the first prayer, are consequential in nature; that the petitioner had set out to establish allegations that the respondent had breached, among others, the Constitution. If the prayers are correlated with the Practice Directions, the dispute falls squarely within the Practice Directions, and should therefore be transferred to the Anti-Corruption and Economic Crimes Division.

5. I have considered the petition and the prayers sought therein against the requirements of the **Practice Directions for the Anti-Corruption and Economic Crimes Division of the High Court** issued by the Chief Justice and published as Gazette Notice No. 10263 on 9th December 2016. The respondent has cited in particular Rule No. 5(a) and (d) which provide as follows:

“5. The following matters shall be heard by the Anti-corruption and Economic Crimes Division of the High Court-

a. Petitions and Judicial Review applications on claims of infringement or the threatened infringement of constitutional rights relating to corruption and/or economic crimes related matters;

...

d. cases relating to corruption and economic crimes filed under the following Acts:

...

iii. Anti-corruption Act, Cap.130A.

iv. Leadership and Integrity Act, Cap 182.

v. Public Procurement and Asset Disposal Act, No.33 of 2015.

vi. Public Officers Ethics Act, Cap 183.

vii. Public Finance Management Act, No.18 of 2012

...

Xiii. Or filed under any other enabling provisions of law.”

6. Rule No.7 requires that all cases relating to corruption and economic crimes should be transferred to the Anti-corruption and Economic Crimes Division:

7. All cases relating to corruption and economic crimes which have been filed before other

stations or Divisions of the High Court, in which hearing has not commenced, shall be transferred to the Anti-corruption and Economic Crimes Division.

7. The petitioner charges the respondent in this case with breaches of the Constitution, the Public Finance and Management Act, the Leadership and Integrity Act, and Public Procurement and Disposal Act. He seeks declarations that the respondent has involved himself in corrupt ways and activities, and should be surcharged for all the public funds lost “***as per the Auditor General’s reports, by the Kericho County Government during his tenure as the Governor.***”

8. For the court to issue these declarations and orders, it would need to enter into an inquiry into the alleged corrupt activities, and interrogate the reports relied on by the petitioner against the provisions of the various Acts of Parliament alleged to have been violated or breached.

9. As is evident from the Practice Directions issued by the Chief Justice regarding the mandate of the Anti-corruption and Economic Crimes Division, all matters “*relating to corruption and economic crimes*” filed under any of the Acts enumerated in Rule 5 fall within the mandate of the Division. In my view, the petition before me is one such matter. It would defeat the purpose for the establishment of the Division if we were to engage in a splitting of hairs and argue that a matter does not fall within its mandate because it does not involve a prosecution for corruption, yet it seeks the orders and sanctions that are within the mandate of the court when dealing with cases initiated under the Acts enumerated in the Practice Direction.

10. In the circumstances, I find that this matter falls within the mandate of the Anti-corruption and Economic Crimes Division. It is therefore hereby transferred to the said Division for hearing and determination.

11. It shall be mentioned before the Presiding Judge of the Division on a date to be agreed upon between the parties for directions with regard to the hearing of the petition and any interlocutory applications.

Dated, Delivered and Signed at Kericho this 21st day of April 2017.

MUMBI NGUGI

JUDGE