



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CIVIL CONSTITUTION PETITION 6 OF 2016

JAMES EKELERIO NGOFIA *Alias* Muguu1st PETITIONER

BONIFACE EYIANAE LOWOI2nd PETITIONER

VERSUS

MOSES KASAINI LENOLKULAI.....RESPONDENT

RULING

1. **JAMES AKELERIO NGOFIA** alias **Muguu**, the 1st Petitioner and **BONIFACE EYIANAE LOWOI**, 2nd Petitioner, Petitioned in this cause alleging that the County Assembly of Samburu appointed 7 members of the Samburu County Public Service Board (the Board) from the Samburu tribe thereby excluding persons of Turkana tribe. The Petitioners further alleged that t.+he said Board had practised nepotism, tribalism and discrimination in the recruitment of County employees. The Petitioners sought by their petition declaration, that:

(i) the appointment of that Board was in violation of the Constitutional Provisions Under Article 10;

(ii) that the Board's nominee of Chief Officer submitted by the Board was null and void and;

(iii) That the Samburu County Governor and County Assembly do re-advertise the posts of the Board.

2. The petitioners simultaneously filed a Chamber Summons dated 10th March 2014 together with the petition. By that Chamber Summons the petitioners sought Conservatory Orders by way of barring the respondents from submitting the nominee of Chief Officers for vetting by the County Assembly and Conservatory Orders barring members of the Board from carrying out functions of their office.

3. The Chamber Summons was heard and a Ruling delivered on 13th May, 2014. The court by that Ruling dismissed the Petitioner's Chamber Summons on the basis that the Petitioners should have appealed to the Public Service Commission as provided under **Section 77 (2) of the County Government Act**, against the appointment of the members of the Samburu Public Service Board. On that basis the court declined to grant Conservatory Orders as Sought. The court in so declining stated:

"For the reasons set out above this court finds no reason to grant the conservatory orders sought as the petitioners did not present their objection at the first port of call and further find that this court has no jurisdiction to entertain the application as it is premature".

4. There is no evidence presented to this court that the Petitioners filed an appeal, to the court of appeal, against the dismissal of their Chamber Summons and the finding that this court has no jurisdiction, to entertain the Chambers Summons and by extension the petitioners claim in the petition in view of the right they had to appeal before the Public Service Commission.

5. In view of the finding that this court lacked jurisdiction the respondents filed a Chamber Summons dated 3rd June 2014 seeking the dismissal or striking out of the petition. The respondents based their said Chambers on the ground that the petition is premature and on the ground that the claim in the petition did not warrant the intervention of the Constitution.

6. At the hearing of the respondents' Chamber Summons Counsel for the Petitioners' Learned Counsel Mr Chweya informed the court that the 2nd petitioner was no longer interested in pursuing this petitioner. The 1st Petitioner however, who is still pursuing the petition, filed a replying affidavit in opposition to the respondents' application. In that replying affidavit the 1st Petitioner deponed that the petition raises weighty matters which require intervention of the High Court and that the Petitioners had a plausible case.

7. I have considered the rival arguments. What is clear is that a Judge of the High Court by the Ruling dated 13th May, 2014 found that the High Court has no jurisdiction to entertain the Petitioners' petition. The petitioners did not appeal, to the court of appeal, against that finding. It follows that any other High Court Judge cannot give a contrary decision on jurisdiction. It is no wonder that from the date the High Court delivered its Ruling of 13th May, 2014 the petitioners, so to speak, developed 'cold feet' over this petition. They failed to proceed with their petition which is **Contrary to the Provisions of Article 159(1) (b) for the Constitution** which provides:

"Justice shall not be delayed".

On that ground alone the petition should be struck out.

8. This petition shall also be struck out because the High Court, by its Ruling of 13th May 2014, found it had no jurisdiction to entertain this petition and since no appeal was filed against that finding the only logical conclusion is to strike out the petition.

9. In view of the above finding the petitioners' petition is hereby struck out with costs to all the respondents.

It is so ordered.

Dated and Delivered at Nanyuki this 29th JUNE 2017

MARY KASANGO

JUDGE

Coram

Before Justice Mary Kasango

Court Assistant: Njue/Mariastella

1st Petitioner: James Ekalerio Ngogia Alias Muguu

2nd Petitioner: Boniface Eyianae Lowoi

Respondent: Moses Kasaine Lenolkulai

For Petitioner:

For Respondent

Language

COURT

Ruling on Sentence delivered in open court

MARY KASANGO

JUDGE