



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**PETITION NO. 4 OF 2017**

**IN THE MATTER OF ENFORCEMENT OF FUNDAMENTAL RIGHTS AND FREEDOMS**

**AND**

**IN THE MATTER OF THE RIGHTS AND GUARANTEES OF LEADERSHIP AND  
INTEGRITY AS PROVIDED FOR UNDER CHAPTER SIX OF THE CONSTITUTION OF  
KENYA – ARTICLES 73, 74 AND 75**

**STANLEY NTONGAI & 6 OTHERS..... PETITIONERS**

**VS**

**MURUNGI MATUNDU & 4 OTHERS.....RESPONDENTS**

**RULING**

Stanley Ntongai brought this petition under Certificate of Urgency dated 27<sup>th</sup> February 2017 and Notice of Motion of even date seeking:

**That** the honourable court issues orders restraining the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondent from in anyway whatsoever swearing in the 1<sup>st</sup> Respondent to the office of the Chief of Ntunene Location on 3<sup>rd</sup> March 2017 at Muriengene D.O's office compound and /or any other date pending the hearing and determination of the application.

**That** the honourable court be pleased to direct that the court files listed by the petitioners be kept under lock and key of the Meru Court Executives Officer pending hearing and determination of this application:

- I. Meru H.C Succession No. 129 of 1990
- II. Meru H.C. Succession No. 488 of 2013
- III. Meru CM CR. No 497 of 2013
- IV. Meru CMCC NO. 38 of 2012

**That** upon hearing the application interpartes the honourable court be pleased to confirm prayers 2 & 3 above.

**That** the honourable court be pleased to certify the entire petition urgent and hear it on a priority

basis.

The application was supported by grounds on the face of the application and supporting affidavits of the 7 petitioners herein in which they raised several allegations against the 1<sup>st</sup> Respondent.

Hon. Justice Mabeya Certified the application urgent and granted prayers 2 and 3 pending interpartes hearing of the application on 16<sup>th</sup> March 2017.

Mr Gitonga was granted 14 days to respond to application from 16<sup>th</sup> March 2017 but instead filed Preliminary Objection dated 4<sup>th</sup> day of May 2017. The objection was to the effect that this court lacks jurisdiction to entertain the petition as the issues raised in the petition are the preserve of the Inspector General of Police, the DPP and Ethic and Anti-Corruption Commission and that the issues of leadership and integrity raised in the petition as against the 1<sup>st</sup> Respondent are alleged to have taken place before the promulgation of the constitution of Kenya 2010 and therefore not within the realm of the current chapter 6 of the constitution of Kenya.

That the 1<sup>st</sup> Respondent has never been investigated for corruption or charged under the Economic Crimes Act or Convicted of any criminal offence.

The 1<sup>st</sup> Respondent prayed that the petition be struck out.

I have considered the preliminary objection and the submissions and agree with the 1<sup>st</sup> Respondents counsel proposition that the alleged violations ought to have been investigated and prosecuted by either the Inspector General of Police, the Director of Public Prosecution and Ethics and Anti-Corruption Commission. However, from a casual perusal of the petition and supporting affidavits it appears that the petitioners have filed their complaints with the different agencies and from their pleadings they allege that those complains have not been attended to. The petitioners have raised several pertinent issues touching on alleged impropriety of the 1<sup>st</sup> Respondent which they think make him unsuitable to hold the office of the Chief of Ntunene Location.

They have annexed copies of documents as evidence that they have tried to pursue the complaints with the relevant authorities but all in vain and they were therefore prompted to bring the matter to court and like **Nyamu J** (as he then was) held in *Mureithi & 2 others vs AG & 5 others* in Nairobi H.C. No. 158 of 2005 [200] KLR 443 I will find that a party who comes to court to challenge illegality, unreasonableness, arbitrariness, irrationality and abuse of power, ought to be given a hearing by a court of law. This court's jurisdiction is to uphold and defend the constitution and can't shirk from its duty to grant relief to deserving persons merely because agencies given that responsibility have neglected or shied away from performing their duties.

The petitioners have joined those agencies and **Hon. Justice Mabeya** in the authority relied upon by the Respondent that is the authority of *Isaiah Kithinji vs Hon Peter Gatirau Munya* – Petition No. 8 of 2017 said rightly that the jurisdiction of the High Court is unlimited save as provided under Article 165 (5) of constitution of Kenya 2010 but must exercised with restraint where there are other dispute resolution mechanisms.

At paragraph 36 of **Justice Mabeya** ruling line 10 he says

**“In my view therefore, it is only after EACC has undertaken investigations and made findings or failed to undertake investigations or delayed with any such investigation that the High Court should be approached to flex its supervisory powers over both the EACC and the affected state Officer”**

**Justice Mabeya** distinguished this authority with that of *Ritho Mureithi vs J.W. Wakhungu* – Petition No. 19 of 2014 which is similar to the instant case where propriety of the 1<sup>st</sup> Respondent is being

challenged to the appointment to office of the chief by the petitioners.

The 2<sup>nd</sup> to 5<sup>th</sup> Respondents have not filed any pleadings in the response to the complaints raised by the petitioner to say that they received the complaints and have acted on them and absolved the first Respondent from the allegation 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. The objection is therefore overruled. Directions should be taken on how the petition should proceed.

**Ruling Signed, Delivered and Dated this 21st Day of September 2017.**

**HON. A.ONG'INJO**

**JUDGE**

In the presence of:

C/A : Penina

Petitioner: - Mr Mwenda Advocate for Mbogo for Mr Gitonga Advocate for 1<sup>st</sup> Respondent.

Respondent: - N/A for 2<sup>nd</sup> to 5<sup>th</sup> Respondent.

**HON. A.ONG'INJO**

**JUDGE**