



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT VOI

CRIMINAL MISC APPLICATION NO 4 OF 2017

THOMAS MORARA NYABENGA.....1ST APPLICANT

CHARLES OKELLO OLALA.....2ND APPLICANT

DENNIS MATEYO OMAIYO.....3RD APPLICANT

(On behalf of all inmates at Manyani Prison)

VERSUS

THE PS INTERIOR MINISTRY.....1TH RESPONDENT

THE COMMISSIONER GENERAL OF PRISONS.....2TH RESPONDENT

THE P.P.C. COAST REGION..... 3TH RESPONDENT

THE OFFICER IN CHARGE MANYANI PRISON.....4TH RESPONDENT

THE ATTORNEY GENERAL OF KENYA.....5TH RESPONDENT

AND

THE KENYA NATIONAL HUMAN RIGHTS COMMISSION

THE NATIONAL CHAIRMAN LAW SOCIETY OF KENYA

THE ETHICS AND ANTI – CORRUPTION COMMISSION

THE CIVIL SOCIETY OF KENYA

RULING

I have heard the lengthy submissions by the three (3) Applicants and Mr Sirima who is holding brief for Mr Wachira for the Attorney General and hereby direct as follows:-

1) According to Article 35 (1) (b) of the Constitution of Kenya, 2010, every citizen has the right of access to information held by another person and required for the exercise or protection of any right or fundamental freedom. Mr Sirima has indicated that Manyani Maximum G K Prison will avail copies of Cap 90, The Prisoners Transfer Act, 2015, Persons Deprived of Liberty Act 2015 and the Torture Act

2017 in its library. Appreciably, the three (3) Applicants are inmates who might not have financial ability to take copies of the Statutes. On the other hand, Manyani G K Prison is a penal institution that might not have a vote to facilitate the giving of copies to the Applicants. In view of the peculiar circumstances of this matter, I am more inclined to find that once copies of the Statutes are kept in the library for the Applicants' perusal, Manyani G K Prison will have complied with Article 35 (1) (b) of the Constitution of Kenya.

2) Regarding the issue of the transfer of the Applicants to different prisons, I leave the procedures and mode of transfers of the Applicants, if need be, to the Officer – in – Charge Manyani G K Prison as I am reluctant to interfere with the administrative duties of other statutory bodies without any formal application being placed before me for determination. I have, however, noted that the said Officer – in – Charge Manyani Maximum G K Prison is not opposed to transferring the 1st and 3rd Applicants to Shimo La Tewa G K Prison and the 2nd Applicant to Malindi G K Prison pending the hearing and determination of the Petition herein. Transferring the 3rd Applicant to Kisii G K Prison will also be outside the mandate of this court. However, he ought to be taken for his cases in Kisumu as and when Production Orders are issued for the hearings in Kisumu.

3) Directions have not been given regarding how the Petition herein will be disposed of. I am therefore not inclined to order the appearance of Mr Maswai Officer – in – Charge Manyani Maximum Prison personally during the hearing and determination of this Petition until directions have been taken.

4) As the Petitioners are inmates, I hereby direct that the Deputy Registrar High Court of Kenya, Voi do facilitate the serving of the Applicants' Petition and this order upon The Kenya National Human Rights Commission, The National Chairman Law Society of Kenya, and the Ethics and Anti – Corruption Commission for their perusal and further action and for their attendance in court in future.

5) This matter is hereby listed for **directions** on the manner of disposing of the Petition herein on 13th November 2017.

6) The Officer – in – Charge Manyani Maximum G K Prison is hereby directed to bear in mind the provisions of Article 28 of the Constitution of Kenya to ensure that the rights of the Applicants are respected and protected at all times they will be incarcerated at the said prison.

7) The Attorney General to inform the court of the position of the 2nd Applicant's monies in the sum of Ksh 75,000/- on the 13th November 2017.

8) Orders accordingly.

DATED and DELIVERED at VOI this 23rd day of October 2017

J KAMAU

JUDGE

In the presence of:-

Thomas Morara Nyabenga – 1st Applicant

Charles Okello Olala – 2nd Applicant

Dennis Mateyo Omaiyo– 3rd Applicant

Sirima holding brief for Wachira for the Attorney General

Josephat Mavu- Court Clerk