



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**  
**PETITION NO.84 OF 2015**

**BETWEEN**

**ALLOYS S. K. KALAA.....PETITIONER**

**AND**

- THE DIRECTOR OF PUBLIC PROSECUTION.....1<sup>ST</sup> RESPONDENT**
- THE ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**
- CECILIA W. GITHUA.....3<sup>RD</sup> RESPONDENT**
- DOREEN N. MULEKYO.....4<sup>TH</sup> RESPONDENT**
- PETER M. NDWIGA.....5<sup>TH</sup> RESPONDENT**
- D. A. OKUNDI.....6<sup>TH</sup> RESPONDENT**
- FRANCISCA OKUNDI.....7<sup>TH</sup> RESPONDENT**
- HILTON HOTELS CORPORATION.....8<sup>TH</sup> RESPONDENT**
- MARTIN VOSKAMP.....9<sup>TH</sup> RESPONDENT**
- OMAR KEMAL AMIN.....10<sup>TH</sup> RESPONDENT**
- HILTON NAIROBI.....11<sup>TH</sup> RESPONDENT**
- PROFESSOR MUSILI, WAMBUA & CO. ADVOCATES.....12<sup>TH</sup> RESPONDENT**
- PROFESSOR MUSILI WAMBUA.....13<sup>TH</sup> RESPONDENT**
- LEO INVESTMENTS ALIAS CHATUR GROUP.....14<sup>TH</sup> RESPONDENT**
- MATADALI CHATUR.....15<sup>TH</sup> RESPONDENT**

RAHIM CHATUR.....	16 <sup>TH</sup> RESPONDENT
AHMED ABDUL RAHIM.....	17 <sup>TH</sup> RESPONDENT
SUGURA BEGUM RAHIM.....	18 <sup>TH</sup> RESPONDENT
TAIPAN VACATIONAL AND TRAVEL.....	19 <sup>TH</sup> RESPONDENT
KANTILAL GUDHKA.....	20 <sup>TH</sup> RESPONDENT
HITEN K. LIMBANI MOTORS LIMITED.....	21 <sup>ST</sup> RESPONDENT
HITEN K. LIMBANI.....	22 <sup>ND</sup> RESPONDENT
THE SECRETARY, PUBLIC SERVICE COMMISSION.....	23 <sup>RD</sup> RESPONDENT
INSPECTOR GENERAL.....	24 <sup>TH</sup> RESPONDENT

## RULING ON A PRELIMINARY OBJECTION

### Background

1. Aloise S. K. Kalaa, the Petitioner filed his Petition on 6<sup>th</sup> March 2015 seeking the following orders;

*“(a) A Court order compelling and commanding the Inspector General of the National Police and the Director of Police Prosecution through DCIO Kilimani Divisional Police headquarters and the OCPD Central Divisional Police headquarters to have the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 10<sup>th</sup> Respondents be arrested and arraigned before the Chief Magistrate’s Court at Nairobi with offences relating to altering and forging Court records with intention to defeat the course of justice.*

*(b) A Court order compelling and commanding the newly appointed Head of Anti-Corruption Court in substitute of the 4<sup>th</sup> Respondent (D. N. Mulekyo) to take up the matter with a view of reinstating my Application dated 7<sup>th</sup> July 2008 as it was so ordered by Hon. Justice Fred Ochieng on 1<sup>st</sup> November, 2012.*

*(c) A Court order compelling and commanding the Director of Public Prosecution and the Inspector General of National Police to arrest and have the 10<sup>th</sup> Respondent charged with destroying my Employment records at Hilton Nairobi after same was handed to him by late Hassan Hamza who had received my Employment file from London Hilton where I was seconded same time for taking my Court Summons from me and destroying them before I could serve them on the 8<sup>th</sup> and 9<sup>th</sup> Respondents and himself relating to PP/ACC No.1 of 2007 at the Anti-corruption Court, Nairobi. (sic)*

*(d) A Court Order compelling and commanding the 8<sup>th</sup> and 9<sup>th</sup> Respondents to have me reinstated as it was so directed to them by the Ministry of Labour after there before the JIC was told there was no documentation of my terms and conditions of my Employment at Hilton Nairobi etc and this was true because my file for my Terms and Condition of my Employment was before the Human Resources Manager London Hilton and not before the Human Resources Manager Nairobi Hilton who have no any powers to terminate my services using my skeleton Employment file at Nairobi Hilton since I was more senior than him and any other African under Hilton Nairobi leave alone the Human Resources Manager at Hilton Nairobi. (sic)*

(e) *A Court order compelling and commanding the Public Service Commission of Kenya to declare the 1<sup>st</sup> Respondent unfit to continue being the Head, as the Director of Public Prosecution within the meaning of the Constitution of Kenya 2010 under Article 75 and after he could not take over my PP/ACC No.1 of 2007 within the meaning of Article 157 6(A) of the Constitution of Kenya 2010.*

(f) *Compensation for loss of my money and the time wasted while going on with the PP/ACC No.1 of 2007 not knowing it was changed to P.P. No.1 of 2007 and being forced to pay twice for same proceeding and ruling through faults of the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 10<sup>th</sup> Respondents. (sic)*

(g) *General damages.*

(h) *Any other further relief this Honourable Court may deem fit.”*

2. The said orders are clear enough to explain the nature of his Petition and why each of the Respondents was sued.

### **The Preliminary Objection**

3. Upon being served with the Petition, the 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> Respondents by a Notice of Preliminary Objection dated 9<sup>th</sup> April 2015 sought the dismissal of the Petition on the following grounds;

*“(1) The issues raised, and specifically though relating and touching on Private Prosecution Case No.1 of 2007 are res judicata, the same having been conclusively adjudicated upon by the Court.*

*(2) The Petition contravenes the express provisions of Article 160(5) of the Constitution of Kenya.*

*(3) The Petition seek prayers A, C and E against Parties who are not privy to the suit as the Inspector General of Police and the Public Service Commission are not parties to this Petition.*

*(4) This Petition is scandalous, vexatious, frivolous and an abuse of the Court process.*

*(5) The Petition and its Supporting Affidavit have no evidence supporting the allegations therein.*

*(6) The Petition raises issues touching on the Petitioner’s employment which terminated on or about 1974 which should properly be handled by the Employment and Labour Relations Court; in any case, the same would be statute barred.*

*(7) The Petition contravenes the provision of Article 50 of the Constitution.*

*(8) The Petition alleges criminal offences punishable under the Penal Code which the Petitioner wants the Court to investigate and yet the Court is not an investigative agency.”*

4. In submissions, Counsel for the 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> Petitioners stated as hereunder;

5. (i) On res judicata

Referring to prior proceedings in **Private Prosecution No.1 of 2007 – Aloise S. K. Kalaa vs Hilton Hotel Corporation & Others** they submitted that prayer (b) of the Petition as set out above cannot be granted as the Magistrate’s Court is now *functus officio* having already heard and determined the said private prosecution. That since the Petitioner had chosen not to file any appeal

or review of that decision, he cannot now relitigate the issues raised in it by instituting the present Petition.

**(ii) ... Article 160(5) of the Constitution**

The above Article provides as follows;

“(1) ...

(2) ...

(3) ...

(4) ...

***(5) A member of the Judiciary is not liable in an action or suit in respect of anything done or omitted to be done in good faith in the lawful performance of a judicial function.”***

6. The 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> Respondents submitted in the above regard that the 3<sup>rd</sup> to 7<sup>th</sup> Respondents are all Judicial Officers and the accusations against them in their personal capacities for actions undertaken in their official capacities cannot lie in law and therefore Prayer (a) of the Petition cannot be granted.

**(iii) ... Article 50(1) of the Constitution**

***“(1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.”***

7. The submission made in this regard was that the Inspector General of Police and the Public Service Commission are the entities to whom Prayers (a), (c) and (e) of the Petition are directed and yet they are not parties to the Petition. Relying on the principle that an affected party must be heard, it was submitted that no adverse orders can be made against such parties.
8. In addition, that since the basis for the Petition is **Private Prosecution No.1 of 2007** and since the 9<sup>th</sup> and 10<sup>th</sup> Respondents were never parties to those proceedings, no subsequent proceeding, including this Petition, can properly lie as against them.
9. Lastly on this issue, that the Petition is incomprehensible and the Respondents will be prejudiced in defending it and therefore their right to a fair trial is certain to be violated.

**(iv) ... Lack of Evidence**

10. The 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> Respondents submitted that the Petition was bare of supportive facts, had no clear evidence of the existence of **Private Prosecution No.1 of 2007** and no indication is given as to how and which of the Petitioner’s constitutional rights have been violated.

**(v) ... Jurisdiction on Employment issues**

11. On prayers (c) and (d) of the Petition, the 8<sup>th</sup> – 10 Respondents submitted that under **Article 162(2)** of the **Constitution**, this Court lacks the jurisdiction to hear and determine any employment related questions and even if it had, the alleged cause of action arose in 1974 and is therefore statute time – barred.

**(vi) ... Application of the Criminal Procedure Code Cap.75 Laws of Kenya**

12.The submission made in this regard is that whereas the Petition makes serious allegations of a criminal nature against the 3<sup>rd</sup> – 10<sup>th</sup> Respondents, **Section 3** of the **Criminal Procedure** which sets out the procedure and need for the inquiry and trial of offences has been ignored. That in that regard, no complaint nor investigation has been made to warrant any trial against those Respondents and none of them has in any event been found criminally culpable.

**(vii) Whether the Petition is scandalous, vexatious, frivolous and an abuse of Court process**

13.It has been submitted that the Petitioner is a vexatious litigant who has, over the years, harassed and intimidated the 8<sup>th</sup> – 10<sup>th</sup> Respondents by filing multiple suits against them which have been dismissed.

14.For the above reasons and in very concise and brief – submissions, the 8<sup>th</sup> – 10<sup>th</sup> Respondents seek that the Petition should be dismissed with costs.

**Petitioner’ Response**

15.In a short reply to the Preliminary Objection, dated 25<sup>th</sup> June 2015, the Petitioner stated that firstly, any reference to **Private Prosecution No.1 of 2007** is mistaken as the private prosecution that he had instituted was **Private Prosecution Anti-Corruption Case No.1 of 2007** and even if it was, he had sought orders to have the latter case reinstated to hearing.

16.Secondly, that his Petition does not contravene **Article 160(5)** of the **Constitution** as it is only dealing with Court officials who had involved themselves in the alteration and forging of Court records for monetary gain at the instance of the 10<sup>th</sup> – 15<sup>th</sup> Respondents.

17.Thirdly, that the 9<sup>th</sup> and 10<sup>th</sup> Respondents are the right parties to be charged under **Section 63** of the **Penal Code** and therefore there is no violation of the **Criminal Procedure Code** as alleged.

18.Fourthly, that there is no contravention of **Article 50** of the Constitution because when the 8<sup>th</sup> – 11<sup>th</sup> Respondents refused to reinstate him to employment at the Hilton Hotel, he properly moved to Court by filing a private prosecution against them.

19.Lastly, that he has not sued the Inspector General of Police nor the Public Service Commission because it is upon the Court to make the necessary orders against them when determining the Petition.

20.For the above reasons, the Petitioner prays that the Preliminary Objection should be overruled and his Petition heard on its merits.

**Determination**

21.As I understand it, in law, generally, a Preliminary Objection should only be raised on a point of law which would dispose of the whole matter before the Court hence the statement of Sir Charles Newbold to that effect in **Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd [1969] E. A. 696**. Ojwang J. in **Oraro vs Mbajj [2005] eKLR** also stated that **“where a Court needs to investigate facts, a matter cannot be raised as a preliminary point”**.

22.Looking at the issue raised in the Notice of Preliminary Objection, against the above test, it is obvious that issue No.(iv) on lack of evidence cannot be properly raised as a preliminary point for obvious reasons; that evidence is based on supportive facts and as was stated in **Oraro (supra)**, **“any assertion which claims to be a Preliminary objection, and yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true preliminary objection which the Court should allow to proceed.”**

23. The above holding must also apply to the question in issue No.(vii) whether the Petition herein is frivolous and vexatious, because determination of the said question would require an investigation as to facts which can only be made in an application, say, for striking out of proceedings and not in a preliminary objection. It follows therefore that only issues Nos.(i), (ii), (iii), (v) and (vi) can properly be determined as preliminary points and so I shall.

### **Res Judicata**

24. The doctrine of *res judicata* is founded upon the principle that a party ought not to be vexed with litigation before a competent Court more than once. That is why in **Kirti Kumar Chaman Lal Kundaliya vs Union of India (1981) 2 S.C. 436** it was held that the principle of *res judicata* does not apply in cases where the points raised had not been agitated in a former Petition before the High Court but where the facts are exactly the same, *res judicata* will apply.

25. In the present case, it has been urged that because **Private Prosecution Case No.1 of 2007** had been determined by a competent Court, this Court cannot now re-open the issues that necessitated that case. To put matters into context, that case was instituted as a private criminal prosecution by the Petitioner against Hilton Hotels Corporation, Martin Voskamp, Omari Kemal Amin and Stephen Mwititi. As was the law, the Petitioner required leave to institute the said proceedings and in a Ruling delivered on 3<sup>rd</sup> October 2008, Hon. C. W. Githua, Senior Principal Magistrate (Now Judge of the High Court), declined to grant such leave and stated partly that ***“the Applicant’s complaints against the Respondents herein are of a purely civil nature requiring remedies which can only be obtained from a Civil Court. They did not constitute criminal offences ... The alleged offences as per the proposed charge sheet show clearly that the Applicant was seeking compensation for alleged wrongful termination of his employment with the 1<sup>st</sup> Respondent and compensation for monies withheld and which he was allegedly entitled to as payment of several allowances and NSSF deductions, plus interest at commercial rates.”***

26. Attempts by the Applicant to review the said orders before the Chief Magistrate’s Court did not succeed but on 1<sup>st</sup> November 2012, Ochieng J. in **H. C. Criminal Revision No.44 of 2012** ordered that the ***“Notice of Motion dated 7<sup>th</sup> July 2008 be reinstated for hearing before the learned Chief Magistrate’s Court.”*** That Motion is the same one that Hon. Githua had dismissed.

27. Elsewhere, above, at prayer (b) of the Petition, the Petitioner is seeking orders that the same Motion be reinstated for hearing as had been ordered by Ochieng J.

28. In that context, the record would show that P.M. Ndwiga, Ag. Senior Principal Magistrate, on 25<sup>th</sup> April 2014 dismissed all applications in **Private Prosecution No.1 of 2007** and stated that;

***“A look at the Court record reveals numerous applications all touching on the reinstatement of this case. The matters directly in issue in the present applications have been clearly been directly and substantially in issue in the former applications between the same parties before this same Court ... In all those rulings are common findings that this Court is now functus officio.”***

By that Ruling, **Private Prosecution No.1 of 2007** was terminated.

29. It is obvious therefore that the issue of reinstatement of **Private Prosecution No.1 of 2007** has been determined by both the High Court and the Chief Magistrate’s Court on more than four occasions and rulings delivered. It would be improper for this Court to enter the fray by re-visiting the same other than by way of an appeal and so prayer (b) of the Petition is struck out.

### **Articles 160(5) of the Constitution**

30. I have elsewhere above reproduced the above Article and it requires no more than a literal interpretation. In the present Petition, the 3<sup>rd</sup> – 7<sup>th</sup> Respondents are all judicial officers sued in

their personal names. In the Petition, it is alleged that **“at all material times through all forms of corruption and abuse of human rights, they acted to defeat the course of justice through ignorance of the law”** after the High Court had ordered the reinstatement of the Petitioner’s **Private Prosecution Case No.1 of 2007**.

31. In prayer (a) of the Petition, an order is sought to have the said Respondents arrested and charged with offences relating to the alteration and forging of Court records with intention to defeat the course of justice. The authorities who are supposed to do so are the Inspector General of Police and the DPP (the 1<sup>st</sup> Respondent).
32. On the latter aspect of the objection, it is trite that every party to whom adverse orders are made or may be made ought to be enjoined to the proceedings. It is indeed true the Inspector General has not been enjoined but that is not the main issue in prayer (a) of the Petition. It is whether in fact the Judicial Officers named above can properly be sued in a Constitutional Petition for alleged criminal acts.
33. My view is quite straightforward; they cannot be sued for actions undertaken in their judicial capacity but can properly be arrested and charged for any criminal actions on their part including in the alteration and forging of Court documents. If that be so, is the present Petition the proper means of so doing? I think not. The Petitioner has not stated that he has filed a criminal complaint before the relevant authority and that the DPP pursuant to **Article 157** of the **Constitution** has failed to take action.
34. This Court has stated on more than one occasion that it cannot take over investigations of alleged crimes from the National Police Service or the prosecution of such crimes from the DPP. It can only interrogate their actions against the threshold of the Constitution and no more.
35. In the end, prayer (a) of the Petition is misguided and ought to be struck off.

#### **Article 50(1) of the Constitution**

36. **Article 50(1)** protects and provides for the right to a fair hearing before *inter alia* Court such as this one. One of the foundations of that right is that no adverse decision should be made against any party before that party has been accorded a hearing.
37. The objection raised in the above context is that prayers (a), (c) and (e) of the Petition seek orders against the Inspector General of Police (a matter I alluded to above) and the Public Service Commission, none of which has been made a party to the Petition.
38. I have reflected on the matter and I note that I have already struck out Prayer (a) of the Petition for reasons other than the non-joinder of the Inspector General. Prayer (c) has the same import as prayer (a) in that it seeks to use this Court to order the arrest of the 10<sup>th</sup> Respondent and I have given reasons why such a prayer cannot lie in the circumstances of this case. The said prayer must for that reason alone meet the same fate as prayer (a).
39. Regarding prayer (e), it seeks substantially orders that the DPP is unfit to hold public office and that the Public Service Commission (PSC) should be compelled to make that decision. It is undoubted that the PSC has not been enjoined to these proceedings and therefore to make such an order in its absence would be unjust but the **Constitution** of Kenya (**Fundamental Rights and Freedoms) Practice and Procedure Rules**, a party that is necessary to be enjoined to proceedings, such as this one, can be enjoined. But there is a more fundamental issue of law arising from prayer (e) of the Petition. Is the PSC the right entity to declare the DPP unfit to hold public office for failure to take over **Private Prosecution No.1 of 2007**? I have said that in fact that case does not exist and so there is nothing for the DPP to take over under **Article 157(6)(b)** of the **Constitution**.

40. But even if he had failed to do so, his removal can only be undertaken under **Article 158** of the

**Constitution** which provides as follows;

**“(1) The Director of Public Prosecutions may be removed from office only on the grounds of—**

**a. inability to perform the functions of office arising from mental or physical incapacity;**

**(b) non-compliance with Chapter Six;**

**(c) bankruptcy;**

**(d) incompetence; or**

**(e) gross misconduct or misbehaviour.**

**(2) A person desiring the removal of the Director of Public Prosecutions may present a petition to the Public Service Commission which, shall be in writing, setting out the alleged facts constituting the grounds for the removal of the Director.**

**3. The Public Service Commission shall consider the Petition and, if it is satisfied that it discloses the existence of a ground under clause (1), it shall send the Petition to the President.**

**4. On receipt and examination of the petition, the President shall, within fourteen days, suspend the Director of Public Prosecutions from office pending action by the President in accordance with clause (5) and shall, acting in accordance with the advice of the Public Service Commission, appoint a tribunal consisting of—**

**a. four members from among persons who hold or have held office as a judge of a superior court, or who are qualified to be appointed as such;**

**(b) one advocate of at least fifteen years’ standing nominated by the statutory body responsible for the professional regulation of advocates; and**

**b. two other persons with experience in public affairs.**

**5. The tribunal shall inquire into the matter expeditiously and report on the facts and make recommendations to the President, who shall act in accordance with the recommendations of the tribunal.**

**6. A Director of Public Prosecutions who is suspended from office under clause (4) shall be entitled to half of their remuneration until removed from, or reinstated in, office.**

**7. A tribunal appointed under clause (4) shall elect a chairperson from among its members.**

**8. A tribunal appointed under clause (4) shall be responsible for the regulation of its proceedings.**

**9. The Director of Public Prosecutions may resign from office by giving notice, in writing, to the President.”**

41. Reading the above Article, it is obvious that even if I was minded to enjoin the PSC as a party, such joinder would serve no purpose at all, and so prayer (f) of the Petition is misguided and must be struck off.

#### **Jurisdiction on Employment issue**

42. Prayer (d) of the Petition relates to reinstatement of the Petitioner to his employment at Hilton Hotel. On this issue I will take very little time because **Article 162(2) of the Constitution**

provides as follows;

“(1) ...

(2) *Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—*

a. *employment and labour relations; and*

b. *the environment and the use and occupation of, and title to, land.*

(3) ...

(4) ...”

43. Further, **Article 165(5)(b)** provides as follows;

“(1) ...

2. ...

3. ...

4. ...

5. *The High Court shall not have jurisdiction in respect of matters—*

a. *reserved for the exclusive jurisdiction of the Supreme Court under this Constitution; or*

b. *falling within the jurisdiction of the courts contemplated in Article 162 (2).*

6. ...”

44. All matters relating to employment, including reinstatement to such employment, are outside the jurisdiction of this Court and any proceedings challenging non-reinstatement ought to be conducted at the Employment and Labour Relations Court as this Court has no jurisdiction to entertain them.

45. In the end, prayer (d) must be struck off.

### **Application of the Criminal Procedure Code Cap.75 Laws of Kenya**

46. The issue raised here was that any allegations of a criminal nature against the 3<sup>rd</sup> – 10<sup>th</sup> Respondents ought to be pursued through procedures known to the **Criminal Procedure Code**. I understand that to mean that there must be a complaint filed, investigations conducted and a decision made to charge any person deemed to be criminally culpable.

47. I have partly addressed the issue above but I need to reiterate the fact that this Court cannot investigate criminal complaints not only on account of jurisdiction but also on account of capacity. Secondly, the Petitioner initiated a private prosecution against some of the Respondents and I have stated that those proceedings have come to an end. This Court cannot revive those proceedings in the manner that the Petitioner is suggesting. That is all to say on this aspect of the objection.

### **Conclusion**

48. I have taken time to understand the genesis of the multiple proceedings filed by the Petitioner before both the Magistrate’s Court and the High Court. It seems that the termination of **Private Prosecution No.1 of 2007** which the Petitioner insists should be **Private Prosecution ACC No.1**

**of 2007**, a totally inconsequential matter, is what has caused his ire against all the Respondents. What initially started as a private prosecution against persons named at the beginning of this Judgment has mutated into a Petition that has dragged in every Judicial Officer who ever handled that matter except Justices Ochieng and Mwongo prior to that and in related proceedings, the then members of the Magistracy, Hon. Lesiit, Hon. Ougo among others who had handled the Petitioner's matter and dismissed his complaints.

49. For how long will the Petitioner agitate a matter that is by now quite spent? I have seen documents indicating that the Petitioner's services with the Hilton Hotel were terminated sometime in 1974 but by letter dated 22<sup>nd</sup> November 1975, the Ministry of Labour stated that it considered the termination wrongful and unjustified. The Permanent Secretary, H. K. Muriuki, then stated as follows;

***"I strongly recommend that he should be reinstated with full benefits without loss of seniority. Alternatively, he should be paid six (6) months wages as compensation for loss of employment ..."***

50. That recommendation was made more than forty years ago and so its legitimacy in terms of limitation of time may come in but the Petitioner has chosen both criminal and now this Constitutional Petition to pursue a purely employment and labour question. If any advice is needed, the Petitioner should go back to the drawing board, rethink his pursuit of justice within the law and find a lawful and timely solution to his pain.

51. Having so said, I have struck out prayers (a), (b), (c), (d) and (e) of the Petition. Prayers (f) and (g) are consequential prayers and once the former have been struck out, they too must be struck off. In essence, the whole Petition ought to be struck off.

### **Disposition**

52. For the above reasons and with tremendous sympathy to the Petitioner who is a citizen intent on putting right what injustices he perceives to have been committed against him but who is caught by the strictures of the law, the Petition dated 5<sup>th</sup> March 2015 is hereby struck off.

53. As for costs, the nature of the Petition and the circumstances of the case would necessitate an order that each party should bear its own costs.

54. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22<sup>ND</sup> DAY OF JANUARY, 2016**

**ISAAC LENAOLA**

**JUDGE**

### **In the presence of:**

Muriuki – Court clerk

Petitioner present in person

Miss Atim holding brief for Miss Ogombo for 8<sup>th</sup> – 10<sup>th</sup> Respondents

Miss Muhindi holding brief for Mr. Muchiri for 1<sup>st</sup> Respondent

Mr. Nyaburi for 17<sup>th</sup> and 18<sup>th</sup> Respondents and holding brief for 19<sup>th</sup> Respondent.

**Order**

Ruling duly delivered.

**ISAAC LENAOLA**

**JUDGE**