



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO.241 OF 2014

BETWEEN

NAZIR JINNAH.....PETITIONER

AND

PRINCIPAL MAGISTRATE,

MILIMANI COMMERCIAL COURTS1ST RESPONDENT

DIRECTOR OF PUBLIC PROSECUTIONS.....2ND RESPONDENT

INSPECTOR GENERAL OF POLICE.....3RD RESPONDENT

ATTORNEY GENERAL.....4TH RESPONDENT

AND

ASHAMAH PETERSEN.....1ST INTERESTED PARTY

PETER PETERSEN.....2ND INTERESTED PARTY

ALEX GATUNDU.....3RD INTERESTED PARTY

JUDGMENT

Introduction

1. The Petitioner, Nazir Jinnah has filed the Petition dated 23rd March, 2014 claiming that his right to fair administrative action, as is provided in **Article 47** of the **Constitution**, has been violated by the Respondents.

Factual background

2. The factual background to the Petition as stated in the Petitioner's affidavit sworn on 23rd May, 2014 can be summarized as herebelow;

3. That sometimes in May, 2010, the Petitioner entered into a sale agreement of a motor vehicle Mercedes Benz C 200 Avantgarde Auto Compressor silver metallic in colour with built in Chasis No, WDC2030452R045650 driven on engine No. 11195532384062 of 1998 cc with 69,000 miles (hereinafter “the motor vehicle”). The purchasers were Mr. Peter Rhode Petersen and Mrs. Asmahan Osman Petersen, the 1st and 2nd Interested Parties, respectively. The Motor vehicle was unregistered, but the 1st and 2nd Interested Parties had agreed to purchase it in that state. The motor vehicle was thereafter transferred to the 1st and 2nd Interested Parties pending full payment of the consideration.
4. The Petitioner now claims that shortly after transfer, the 1st and 2nd Interested Parties neglected the terms of the sale agreement and failed to honour their obligations to Kenya Revenue Authority i.e payment of excise duty and VAT and also failed to obtain legalized motor vehicle registration numbers from the Registrar of Motor Vehicles.
5. The 2nd Interested Party was subsequently arrested by officers of the National Police Service and taken to Kilimani Police Station for unlawfully operating the motor vehicle on public roads without possessing a valid motor vehicle insurance and a valid Kenyan motor vehicle registration number. He thereafter abandoned the motor vehicle at Kilimani Police Station and fled the Country. When police officers contacted the Petitioner, he took possession of the motor vehicle as the holder of a lien but was cautioned by police officers to have the motor vehicle duly registered in his name to avoid further trouble.
6. While the matter should have rested there, the 2nd Interested Party then allegedly lodged a complaint with the police claiming that he never received possession of the motor vehicle from the Petitioner out of the aforesaid sale agreement and alleged that the Petitioner had received funds under false pretence from him. The 1st Interested Party also recorded a statement claiming that she had paid for the motor vehicle but did not get its possession from the Petitioner in accordance with the terms of the sale agreement.
7. Based on the above complaints, the Petitioner was arrested, arraigned before the Chief Magistrate’s Court at Nairobi and charged in **Criminal Case No.1498 of 2010** with three criminal counts as follows;

“COUNT I

OBTAINING MONEY BY FALSE PRETENCE CONTRARY TO SECTION 313 OF THE PENAL CODE

JINNAH NAZIR MOHAMED

On the 14th day of May 2010 at Barclays Bank of Kenya Moi Avenue Branch Nairobi within Nairobi Area with intent to defraud, obtained US Dollars 13,422.00 (Thirteen Thousand Four Hundred Twenty Two US Dollars)(approximately Kshs.One Million) from Peter Rodhe Petersen falsely pretending that a certain motor vehicle registration number KBK 333 E make Mercedes Benz C 200, which he then produced and delivered to the said Peter Rohde Petersen was genuinely registered, a fact he knew to be false.

COUNT II

OBTAINING MONEY BY FALSE PRETENCE CONTRARY TO SECTION 313 OF THE PENAL CODE

JINNAH NAZIR MOHAMED

On the 17th day of June 2010 at Barclays Bank of Kenya Moi Avenue Branch Nairobi within

Nairobi Area with intent to defraud, obtained the sum of US Dollars 7,383.76 (Seven Thousand Three Hundred Eighty Three Dollars and Seventy Six Cents), (approximately Kshs.550,000/- from Peter Rodhe Petersen falsely pretending that a certain motor vehicle registration number KBK 333 E make Mercedes Benz C 200, which he then produced and delivered to the said Peter Rohde Petersen was genuinely registered, a fact he knew to be false.

COUNT III

BEING IN POSSESSION OF UNCUSTOMED GOODS CONTRARY TO SECTION 200(d)(iii) AS READ WITH SECTION 210 (c) OF THE EAST AFRICAN COMMUNITY CUSTOMS MANAGEMENT ACT OF 2004

JINNAH NAZIR MOHAMED

On the 24th day of August 2010 along Nairobi – Kiambu road within Kiambu District of Central Province had in your possession motor vehicle chassis number WDC2030452RO54560 ENGINE NUMBER 11195532384062 make Mercedes Benz bearing Kenyan registration number KBK 333 E valued at Kshs.1,550,000/- (One Million five Hundred Fifty shillings only) which he knew or ought to have reasonably known to be uncustomed goods.”

He pleaded not guilty to each of the charges and was remanded at Industrial Area Prison after he had been denied bail. He was later released from the Prison on 29th September, 2010 after he was granted bail.

8. Concurrently with **Criminal Case No.1498 of 2010**, the 1st Interested Party filed a civil case at the Chief Magistrate’s Court at Milimani in Nairobi being **Civil Case No.5129 of 2010** in which she sought a refund of the money she had allegedly paid the Petitioner. An attachment before judgment with an order to call for security of decree was issued in the said civil case to Wright Auctioneers dated 15th September, 2010. The Petitioner claimed that he had never been served with any pleadings in the aforesaid civil case and so he knew nothing of the said attachment before judgment.
9. He further claimed that while at Industrial Area Prison, he was informed that on or about 16th September, 2010, his house was forcefully entered into by five men who were accompanied by Alex Gatundu, the 3rd Interested Party herein. Upon entry, they took his property, a motor vehicle, Volkswagen Beetle Convertible, yellow in colour, registration number KBE 472 Y and he learnt later that the 3rd Interested Party had disposed of the said motor vehicle at Kshs.430,000.00 whereas it was valued at Kshs.2,000,000.00 at the time of disposal.
10. The Petitioner further stated that he has filed several applications in **Civil Case No.5129 of 2010** but the Court has ignored his prayers and or refused to act on them therefore abusing its process and as a result, he has lost his motor vehicle registration number KBE 472 Y through an irregular and illegal auction sale conducted by Wright Auctioneers. It is therefore his claim that his right to fair administrative action as guaranteed under **Article 47** of the **Constitution** had been violated for the above reasons and that he is entitled to the following prayers;

“(a) A declaration that the Petitioner’s right to fair administrative action as guaranteed by Article 47 of the Constitution has been and continues to be violated by the actions and/or inactions of the Respondents.

(b) A declaration that the Petitioner’s right to fair administrative action as guaranteed by Article 47 of the Constitution has been and continues to be violated by the actions and/or inactions of the Respondents and more particularly by the conduct of the 1st Respondent.

(c) An order of Mandamus directed at the 2nd and 3rd Respondents directing them to

immediately institute investigations on the conduct of one Alex Gatundu, especially in relation to documents produced in CMCC No.5129 of 2010.

(d) An order that the persons/bodies responsible for violations of the Petitioner's right be liable to and be subjected to appropriate disciplinary and punitive action.

(e) This Honourable Court be pleased to issue any other order that it may deem to be fit and just to ensure that Law and Order is maintained in Church and that the Rule of Law is upheld.

(f) This Honourable Court be pleased to order the production of the Plaintiff and process server for cross-examination and for interparty hearing of the said suit.

(g) Cost of this Petition."

The Petitioner's case

11. The Petitioner's case can be summarized as hereunder.

12. That the 3rd Respondent and the 2nd Interested Party have failed to recognize that the matter subject of **Criminal Case No.1498 of 2010** was a civil claim and not a criminal one and therefore they ought not to have allowed the criminal case against the him to proceed at all.

13. He also claimed that during the criminal trial, the Court issued several summons to the prosecution ordering the production of the 1st and 2nd Interested Parties to appear in Court for cross-examination by the Petitioner, but it failed to do so. That in the event, the 1st and 2nd Interested Parties have absconded their complaint, thus rendering their complaint withdrawn and further rendering the Criminal Case moot as it had no complainant. That the Petitioner has in any event been wrongfully implicated in the non-payment of customs duty by the 1st and 2nd Interested Parties thus causing the motor vehicle in question to be seized by the 2nd Respondent as an exhibit and resulting its transfer to Kenya Revenue Authority (KRA) for purposes of collection of the said duty. That even after he was issued with an order by the Court to fulfil his obligation with KRA, which he did, his motor vehicle could not be registered as the Kenya Bureau of Standards defined it as "**over age**".

14. He added that at the time the motor vehicle was seized, it was not over age as claimed and further claimed that his constitutional rights have been violated by the conduct of the Respondents who facilitated his incarceration.

15. As regards **Civil Case No.5129 of 2010**, the Petitioner claimed that the 1st to 3rd Interested Parties have failed to serve him with the Originating Summons or the pleadings in the said suit and that the process server's affidavit of service made in respect thereto was falsified. That upon his application, the 1st Respondent had issued a stay order of execution of his motor vehicle and also made an order for the cross examination of the process server and the 1st Interested Party and subsequently proceeded to set aside its orders for cross examination and thereby circumvented the Court procedures and rules and thereby further violating the Petitioner's right to fair hearing.

16. He also claimed that in 2011, he learnt that the 3rd Interested Party was representing the Petitioner and making documents without a valid practicing certificate and therefore all his actions on behalf of the 1st and 2nd Interested Parties were unlawful.

17. He also stated that he knew as a fact that the 1st and 2nd Interested Parties had withdrawn their instructions to the 3rd Interested Party relating to the civil and criminal cases against the Petitioner, as they had left jurisdiction, but the 3rd Interested Party has continued with the cases and had become the *de facto* Plaintiff for his own personal benefits. He further claimed that he had

instituted a complaint against the 3rd Interested Party at the Law Society of Kenya, the Office of the Chief Registrar of the Judiciary, Chief Justice's office and the Auctioneers and Licensing Board and the latter found that the Proclamation by the 1st to 3rd Interested Parties was illegal and irregular. He also contended that he has filed several applications before the 1st Respondent, the Court of Appeal and the High Court but he had never been heard on the merits of his case.

18. It was the Petitioner's other claim that he has been frustrated by the legal process and his motor vehicle, the VW Beetle, is being driven around by unknown persons and it has depreciated unfairly without being preserved by this or any other Court.
19. He also claimed that he is aggrieved as he has not at any time been afforded a fair hearing in both cases and that he has continuously been discriminated against by all the Respondents and his fundamental rights and freedoms have been violated as provided for under **Article 27** of the Constitution. He further claims that his right to property has been violated as he has been denied the use and enjoyment of proceeds from his motor vehicle registration No. KBE 472 Y.
20. For the above reasons, he has sought the orders reproduced elsewhere above.

The 1st, 3rd and 4th Respondents' case

21. The 1st, 3rd and 4th Respondents' opposed the Petition through Grounds of Opposition dated 5th August, 2014 and they are as follows;

“(1) That under Article 160(1) of the Constitution of the Republic of Kenya, 2010, the Judiciary as constituted under Article 161 enjoys absolute independence hence not subject to the directions of any authority or person on how it performs its constitutional mandate.

(2) That an order or Judgment of a competent court of Jurisdiction cannot be deemed to be a contravention of any human right or fundamental freedom or any National Values or rights recognized by any Article of the Constitution of the Republic of Kenya, 2010.

(3) That under Article 159 of the Constitution, the 1st Respondent is a Court of Competent Jurisdiction that is vested with Judicial Authority and guided by the principles enumerated under the same Article.

(4) That although the High Court has wide Jurisdiction under Article 165 (6) & (7) of the Constitution, such Jurisdiction is not intended to take away the ordinary Jurisdiction of the subordinate Court or supplant it.

(5) That both the Petitioner's Notice of Motion and the Petition do not disclose how the various Articles enumerated in them are violated.

(6) That both the Notice of Motion and Petition are unmeritorious due to non-disclosure of constitutional violations in a precise and specific manner.

(7) That both the Notice of Motion and the Petition are [an] abuse of Court process and they [should] be dismissed with costs.”

22. In addition, they filed written submissions dated 9th July, 2015 and it was their case that the Petitioner is not entitled to any of the orders sought in his Petition. They also claimed that under **Article 157(10) and 245(2)(b)** of the **Constitution**, the 2nd Respondent and 3rd Respondents are independent and do not act on the instructions or direction of any person. That in his Petition, the Petitioner has also in essence applied for the Court to micro-manage the Police and the subordinate courts which is in violation of the Constitution. In that regard, they relied on the case of **Pauline Cheron Kenes vs The Chief Magistrate's Court & Another** Petition No.254 of

2013 where it was held that the High Court does not have the authority to supplant its authority over the Subordinate Courts.

23. It was also their submission that the fundamental rights of the Petitioner are not absolute and may be limited within the criteria established under **Article 24** of the **Constitution**.
24. Lastly, they submitted that it was a rule in constitutional litigation that a party ought to plead with some degree of precision what of their rights have been violated and the manner in which they have been violated. They claimed therefore that the Petitioner had failed to plead a single provision of the Constitution that had been violated and even the manner in which it had been violated and that for the above reasons the Petition ought to be dismissed with costs.

The 2nd Respondent's case

25. The 2nd Respondent, the Director of Public Prosecution, in opposing the Petition filed a Replying Affidavit sworn on 22nd August 2014 by Inspector of Police Geoffrey Kinyua.
26. According to Inspector Kinyua, he received a complaint from the Petitioner that documents in **Civil Case No.5129 of 2010** had been falsified by Mr. Alex Gatundu practicing law in the name and style of M/s. Gatundu & Company Advocates who had been acting for the Plaintiff in the aforesaid civil case. He had also complained that Mr. Gatundu had represented the Petitioner in the said civil case without a valid practicing certificate and that one Catherine Mugo who had commissioned the affidavits in the aforesaid suit was not authorized to do so since she had not signed the Roll of Commissioners for Oaths.
27. He further deponed that upon receipt of the complaint, he commenced investigations vide **Inquiry No.78 OF 2012** and the issues raised were comprehensively covered and investigations finalized including the making of a request to the Chief Court Administrator to confirm whether Alex Gatundu and one, Catherine Mugo, had committed any offence as per the complaint. Vide letter dated 16th September, 2011, the Chief Court Administrator confirmed that Mr. Gatundu had paid for his practicing certificate for the year 2011 and was therefore authorized to practice law. Further, that Catherine Mugo, Advocate, had been appointed as a Commissioner of Oaths on 6th July, 2006 but had not signed the Roll of Advocates. He however stated that the failure of the said advocate to sign the Roll of Commissioners for Oaths did not amount to a criminal offence and the complaint could only be dealt with administratively by the relevant bodies i.e. the **Law Society of Kenya** and the **Advocates Disciplinary Tribunal**.
28. Further, he contended that the complaint of alleged forgery had been investigated and it was found that it did not meet the required threshold to prove a criminal offence. On the issue of the need for document examination as submitted by the Petitioner, he claimed that the same had been privately procured and did not include the specimen signatures that were alleged to have been forged for comparison as required and therefore the said document could not be relied upon to investigate the allegations of forgery.
29. He concluded that the issues raised by the Petitioner may have amounted to professional misconduct under the **Advocates Act** and the proper body to deal with those issues is the **Advocates Disciplinary Tribunal** as established under the **Advocates Act, Cap. 15 Laws of Kenya**.
30. The DPP also filed written submissions dated 10th July, 2015 and relying on the case of **Anarita Karimi Njeru vs The Republic (1976-1980) KLR 1272** submitted that the Petitioner had failed to establish how his right to fair administrative action had been violated.
31. He also stated that the 2nd Respondent has powers to institute a criminal offence against any individual and the Court can only intervene where it had been demonstrated that the DPP had

acted in contravention of the Constitution. On that submission, he relied on the case of **Beatrice Ngunyo Kamau & 2 Others vs Commissioner of Police and Others Petition No.251 of 2012**.

32.It was also his submission that an order of mandamus cannot be issued against the 2nd Respondent as it had already conducted investigations against the 3rd Interested Party and so there is nothing else that he can be compelled to do. On that submission he relied on the case of **Kenya National Examinations Council vs Republic Civil Appeal No. 266 of 1996** where it was held that mandamus cannot issue where a duty has been performed by the relevant administrative body.

33.For the above reasons, the 2nd Respondent prays that the Petition be dismissed with costs.

The 1st and 2nd Interested Parties' case

34.The 1st and 2nd Interested Parties did not respond to the Petition neither did they file submissions on the same. They did also not appear on any date during hearing and their whereabouts are unknown. At some point it was stated that they were in London, UK and on another occasion, it was said that they were in Accra, Ghana. Attempts at service of the Petition also failed and I decided to conduct the hearing without them.

The 3rd Interested Party's case

35.The 3rd Interested Party, Alex Gatundu, responded to the Petition through his replying affidavit sworn on 24th June, 2014. He also filed written submissions dated 27th January, 2015.

36.It was his case that all the issues raised by the Petitioner are *res judicata* as they were the subject of various cases to wit, **HCCA No.313 of 2013, H.C. Misc. Application No.523 of 2012, HCCA No.746 of 2012, HCCA No.62 of 2014 and H.C. Misc. Application No.83 OF 2011**.

37.He also stated that the Petitioner had raised the same complaints and issues in the Petition to the **Law Society of Kenya** and that the 3rd Interested Party was cleared of any professional wrong doing. He therefore claimed that the Petition was an abuse of the Court process and ought to be struck off.

38.The 3rd Respondent further contended that the Petitioner had failed to inform the Court of the existence of other civil cases in other Courts related to the issues in the Petition in contravention of **Rule 10(e) of the Constitution of Kenya (Fundamental Rights and Freedoms) Practice and Procedure Rules**.

39. Lastly, it was his contention that the summary judgment and decree entered against the Petitioner in **Civil Case No.5129 of 2010** has not been appealed against or set aside and as such it still has the full force of the law. That therefore all the issues raised in the Petition ought to be determined in the aforesaid civil case the Petition is one fit for dismissal with costs.

Determination

40.Having set out the parties' respective cases as above, I am of the view that the only issue for determination in this Petition is whether the Petitioner's fundamental right to administrative action as stipulated under **Article 47 of the Constitution** has been violated in the manner he has alleged. I say so because whereas **Articles 27 and 40 of the Constitution** were pleaded, it is unclear how the right not to be subjected to discrimination was violated (i.e. under **Article 27**). As for the right to property under **Article 40**, the same is predicated upon the process leading to the sale of the VW Beetle motor vehicle but that fact is only one in a long chain of events. It cannot stand alone for determination.

41. In determining the main issue identified above therefore, and from the record, it is not contested that there is a summary judgment in **Civil Case No.5129 of 2010** against the Petitioner (issued on the 13th September, 2012). A decree was also extracted detailing a decretal amount of Kshs.2,382,905.00 together with costs at Kshs.178,265.00. That suit had been between the 1st Interested Party as the Plaintiff and the Petitioner as the Defendant. Attachment was later ordered and a motor vehicle, Registration No. KBE 472 Y, owned by the Petitioner, was sold in execution of the said decree on or about 6th October, 2012. In that context, the Petitioner's grave complaint is that he was never heard in **Civil Case No.5129 of 2010** before his motor vehicle Registration aforesaid was attached and sold and he thus claims that his right to fair administrative action has been violated. The right to fair administrative action is provided for under **Article 47** of the **Constitution** in the following terms;

(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

(2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.

42. In that regard, It has been held on more than one occasion by this Court that every person must be heard before a decision can be taken against him and having said so, there is no dispute about the fact that the Petitioner was not heard in **Civil Case No.5129 of 2010**, nor that his interests in motor vehicle Registration No. KBE 742Y were affected by the decision of the Court in the Judgment delivered on 13th September, 2012. The question is whether, in such circumstances, the Petitioner has a basis for claiming a violation of his rights under **Article 47** of the **Constitution** and if so, what remedies are available to him.

43. In my view, the answer will depend on the importance that is placed on the right to be heard in administrative proceedings and whether the fact that a matter has been heard and determined, all doors are closed to a party who ought to have been heard but was not. But the right to be heard in an administrative forum is quite different from the right to be heard in judicial proceedings. The right to the latter is contained in **Article 50(1)** of the **Constitution** which provides as follows;

“(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.

2. ...”

44. In the case of **Pashito Holdings Ltd & Anor vs Paul Nderitu Ndungu & Anor, Civil Appeal No. 138 of 1997**, the Court stated as follows with regard to the right to a hearing in both judicial and administrative proceedings;

“The rule of 'audi alteram partem' which literally means hear the other side, is a rule of natural justice. According to Jowitts Dictionary of English Law (2nd ed) 'It is an indispensable requirement of justice that the party who had to decide shall hear both sides, giving each an opportunity of hearing what is urged against him. There is an unpronounceable Latin Maxim which in simple English means; 'he who shall decide anything without the other side having being heard, although he may have said what is right, will not have done what is right.'”

45. Further, in **AmRaphael Mboghohi Msagha vs Chief Justice of Kenya & 7 Others, Misc Applic No.1062 of 2004**, the Court observed that the principle of natural justice was an essential requirement for the performance of any judicial or quasi judicial function. It stated that;

“A decision is unfair if the decision-maker deprives himself of the view of the person who will be

affected by the decision.”

46. Further, the decision of the Court of Appeal in **Adolf Gitonga Wakahia & 4 Others vs Mwangi Thiong'o (1986-89) EA LR**, in which several defendants in an arbitration pertaining to land had been condemned to lose part of their land and an award of costs had been made against them without their being heard even though they were party to the suit, is particularly apt with regard to the right to accord all parties a hearing. In his judgment, Gachuhi, Ag. J stated as follows;

“As a matter of law, is it just that judgment should be imposed on them without being heard? Their complaint was laid before the judge on an application to review the judgment but the court overlooked this vital allegation that vitiates the judgment. It was up to court, when it was pointed out in an application for review that judgment was entered against some defendants without being heard, to hold that the whole arbitration proceedings were a nullity in the interest of justice and the judgment should be set aside.”

47. The learned Judge went on to observe that;

“It is basic law that no one should be condemned, to a judgment passed against him without being afforded a chance of being heard: Ruithibo v Nyingi CA 21 of 1982 unreported. The chance is by being summoned but if he is served and chose not to attend, then he should be bound by the judgment unless he can show cause why he failed to attend. Roboi Holdings Ltd vs Sita 11 CA 50 of 1982. (unreported).”

48. I adopt the above expressions of the law and I note that the Petitioner has invoked **Article 47** of the **Constitution** and not **Article 50(1)** which is really relevant to his proceedings because the matters he complains of are matters before the subordinate court and not any administrative body. Notwithstanding that fact, as I understand it, today's constitutional dispensation is such that where a Court can glean that a right has been violated and the facts points to a particular right, the said Court must determine the claim on that basis.

49. In that context, I reiterate that the Petitioner was not heard by the Magistrate's Court although he was a party to the proceedings, and so the Court did not have the benefit of hearing what arguments he would have made with regard to the issues before it. The Court however entered summary judgment against him in accordance with the provisions of the **Civil Procedure Rules Cap 21** Laws of Kenya and the question that arises is whether this Court, by a constitutional Petition, can find that his right to be heard was violated and In the alternative, should he have filed an appeal or not?

50. The Respondents and the 3rd Interested Party have argued in that regard that the Petitioner had the option of appealing the subordinate Court's orders of 13th September, 2012 or that he should have filed an application for review of the decision of the court. Indeed, it is evident from the record that there exist several cases as regards the issues in the Petition. There is for example **H.C Misc. Appl. No.523 of 2012**, which remains undetermined and challenging the execution process in relation to **Civil Case No.5129 of 2010** and the fact is that all matters he is raising in the present Petition relating to summary judgment and the execution process are matters that ought to be canvassed in **Civil Case No.5129 of 2010** and also through legal avenues available in law such as an appeal, review and or setting aside.

51. In addition to the above, all issue relating to either **Article 47** (which I have said is irrelevant) and **Article 50(1)** can properly be canvassed in all the other pending matters before the High Court's Civil Division. To file separate proceedings under the Constitution is to erroneously presuppose that this Division has a special jurisdiction outside that conferred on the High Court by **Article 165** of the **Constitution**. It does not and since the Civil Division is seized of the substratum of the dispute between the parties, to attempt to settle it in the present proceeding would be an error on the part of this Court. The Petitioner has already exercised his rights to review and appeal and the only remedy available to him is the conclusion of those proceedings in his favour and not the

present Petition. In the circumstances, how can I find that he was never heard when both the Subordinate Court and the High Court addressed all his complaints and are still seized of the said complaints? It is obvious that I cannot and for that reasons alone, the Petition must fail.

52. Turning back to the prayers in the Petition, it is obvious that prayers (a) and (b) cannot be granted as I see no violation of **Article 47** of the **Constitution**.

53. As regards prayer (c), this Court has no reason to issue a mandamus directed at the DPP for investigations into the conduct of the 3rd Interested Party because those are issues for agencies other than this Court.

54. Prayers (d), (e) and (f) are consequential and once the other orders are denied, they too cannot be granted.

55. As for costs, let each party bear its own costs in view of the nature of the Petition and the Petitioner's circumstances.

56. Lastly, I owe my profound apologies to the Parties for the delay in delivery of this judgment due to exigencies of my judicial duties here and elsewhere.

57. Orders accordingly

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22ND DAY OF JANUARY, 2016

ISAAC LENAOLA

JUDGE

In the presence of:

Muriuki – Court clerk

Mr. Gatundu for 3rd Interested Party

No appearance for 2nd Interested Party

DR. Khaminwa for Petitioner

By Court

I have seen the Application dated 20th January 2016 and having read the record of Court including the orders of 10th July 2015 and 16th July 2015, and noting the delay in finalizing this matter, I will deliver my Judgment and Parties shall be at liberty to take whatever action they deem fit thereafter.

Orders accordingly.

ISAAC LENAOLA

JUDGE

Further orders

A copy of the judgment to be delivered to the parties.

ISAAC LENAOLA

JUDGE