



REPUBLIC OF KENYA
HIGH COURT AT NAIROBI
MILIMANI LAW COURTS
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO. 208 OF 2015

BETWEEN

SAMUEL GUNJA SODE 1ST PETITIONER

PAUL DENG UCHE 2ND PETITIONER

AND

THE COUNTY ASSEMBLY OF MARSABIT 1ST RESPONDENT

THE COUNTY GOVERNMENT OF MARSABIT... 2ND RESPONDENT

THE NATIONAL LAND COMMISSION 3RD RESPONDENT

JUDGMENT

Introduction

1. As can be discerned from their petition, the 1st petitioner, Samuel Gunja Sode describes himself as a male adult and a member of the Burji community residing and carrying out business in Marsabit Township, Mountain Location, Saku constituency in Marsabit County while the 2nd petitioner, Paul DengeUche, describes himself as a male adult of sound mind and similarly, a member of the Burji community and hailing from Marsabit Township, Mountain Location. He is a retired military officer.

2. They have filed the petition against the 1st Respondent, the County Assembly of Marsabit, created under Article 177 of the Constitution, the 2nd Respondent, the County Government of Marsabit, created under Article 176 of the Constitution and the 3rd respondent, the National Land Commission (hereafter 'the Commission'), established pursuant to Article 67 of the Constitution.

3. The Petitioners are aggrieved by the decision of the Marsabit County Assembly in regard to the appointments made to the Marsabit County Land Management Board which actions they allege are in contravention of the Constitution.

4. The Petition is resisted.

The Petitioners' Case

5. The Petitioners' case is contained in their petition dated 15th May, 2015 supported by an affidavit sworn by the 1st Petitioner on the same date, and written submissions dated 5th October, 2015.

6. The Petitioners' case was that the Burji are a distinct and relatively small community of about 25,000 people but are principal stakeholders of and play a major role in the agricultural and business sectors of the economy of Marsabit County and further, that the community has been settled in Marsabit County for the last one and a half-centuries with the other major communities being the Borana, Gabra and Rendile. In addition, that the Burji fall for electoral purposes within Saku and Moyale Constituencies and within which constituencies the main wards they occupy, are Central and Heilu/Manyatta of which they have only one elected Member of County Assembly in the Marsabit County Assembly.

7. It was the Petitioners' contention that being aggrieved by the entire decision of the Marsabit County Assembly to substitute the recommendations of the National Land Commission forwarded for approval to the said County Assembly, for County Land Management Board nominees pursuant to the provisions of Article 67 of the Constitution and the National Land Commission Act No. 5 of 2010, vide a letter dated 22nd September, 2014, they filed the present petition.

8. According to the petitioners, the motion forwarded to the Marsabit County Assembly by its Committee for vetting and appointments of nominees to the Marsabit County Land Management Board contained names of persons that were not recommended by the National Land Commission.

9. In that regard, they averred that due to the subsequent gerrymandering and illegal substitutions of nominees' names by the Marsabit County Assembly, the Burji community have no representation in the said Board, despite their dominant and pivotal role in the agricultural sector and economic spheres in Marsabit County.

10. Mr. Gunja deponed that in failing to heed to the advice and recommendation of the National Land Commission, the Marsabit County Assembly failed to appropriately and fairly distribute the nominations to the Board as required by law, wilfully and deliberately discriminated and or side-lined an entire community in blatant and flagrant disregard of the Constitution and the National Land Commission Act, deliberately failed to take into cognizance off and into account the historical, cultural and ethnic circumstances and instances that have affected land use in recent times which has led to heightened tension over land tenure and ownership in Marsabit County, failed to address the issues of inclusivity by having all stakeholders participate in the management of community lands within the County in pursuit of harmony between various ethnic group minorities, failed to take into account of the diversity of the County inhabitants together with the community of interests, historical and cultural ties as required under the Constitution, and failed consult and involve all interested parties.

11. Accordingly, that the entire nomination process was irredeemably flawed as the same contravened the Constitution. Further, the National Land Commission abdicated its constitutional and legal mandate by acquiescing to the substitution of names it had forwarded and that the Commission was *functus officio* once it had interviewed and forwarded the names and as such, the substitution thereof was null and void *ab initio*.

12. It was the Petitioners' case therefore that the aforesaid acts by the Marsabit County Assembly and the National Land Commission amounted to a contravention of the right to fair and adequate representation of the Burji community and hence prejudicial to them in land matters.

13. Further, that this Court in exercising its constitutional and review jurisdiction ought to take judicial notice of the volatile situation prevailing and the clashes that have taken place in Marsabit County over the last three years on account of population movement/ human settlement, scarce resources, land tenure and utilization and politics arising therefrom as a result, the Court needs to bear in mind the interest of

maintaining the peace which can easily be upset leading to renewed hostilities if the current state of affairs arising from the aforesaid skewed and illegal nomination is allowed to subsist.

14. The Petitioners therefore urged the Court to review, set aside and declare the nominations by the Marsabit County Assembly and the National Land Commission null and void in their entirety and order a fresh nomination exercise that will be all inclusive of the minorities with the Burji community having representation to the Marsabit County Land Management Board.

15. Based on the foregoing, the petitioners pray for the following orders:

(1) A declaration that the membership of the Marsabit County Land Management Board as currently constituted is unconstitutional.

(2) A conservatory order that restrains the 2nd and 3rd respondents and the members of the Marsabit County Land Management Board from carrying out any and/or transacting any business as members of the said County Lands Board pending the hearing and determination of this Petition.

(3) An order directing the 3rd respondent to carry out fresh nomination process for membership of the Marsabit County Land Management Board in its entirety and ensure there is representation of the Burji community in the said Board.

(4) Costs of this petition.

(5) Any other relief this Honourable Court shall deem fit and just to grant.

The 1st Respondent's Case

16. The 1st respondent's case is contained in an affidavit sworn in reply on its behalf on 24th June, 2015 by its Clerk, Mohamoud Kamaya, and written submissions dated 16th October, 2015.

17. Its case was that pursuant to section 8 of the County Government Act, on 23rd September, 2014 it received a letter dated 22nd September, 2014 from the County Executive Member for Energy, Lands and Urban Development of Marsabit, forwarding a report on interviews and recommendations of persons nominated by the National Land Commission for vetting and approval so that they be appointed to the Marsabit Land Management Board. In that regard, it was its contention that from the said report, it is clear that the criteria that were adopted by the interview panel of the National Land Commission during the interviews included among other factors merit score of 65%, gender, persons with disabilities, minority communities, regional distribution as per the sub-counties, ethnic balance and youth.

18. That upon receiving the said report, the same was referred to the Marsabit Committee on Appointment and vetting in accordance with section 18 (6) of the National Land Commission Act and the nominees were notified on 24th September, 2014 to appear before the said Committee on 3rd October, 2014.

19. It was its case that the Committee on Appointment considered all the seven nominees, evaluated the interview panel's report and individually vetted each nominee objectively and finally prepared its report dated 3rd October, 2014 which was tabled to the Marsabit County Assembly on the same date.

20. Mr. Kamaya, on behalf of the 1st respondent, in his affidavit, highlighted on the observations made by the Marsabit Committee on Appointments and deponed that the Committee unanimously agreed not to approve the nominees by the National Land Commission, which recommendation was subsequently unanimously supported by the Marsabit County Assembly, which agreed with the Committee of Appointment's report and advised that the nominating authority complies with the requirements of the

law. That on 4th February, 2015, the Marsabit County Assembly received new nominations of Mr. Guyo Duba Gufu and Mr. Joseph SalgiI Ikul from the National Land Commission. The two were then referred to the Committee on Vetting and Appointments wherein they were notified on 26th February, 2014, to appear before the Committee on 6th March, 2013.

21. In that regard, the two appeared before the Committee which considered, and evaluated the interview panel's report and prepared a second report which was tabled before the Marsabit County Assembly which unanimously approved their nominations.

22. The 1st respondent therefore averred that it strictly followed and adhered to the procedure set out under section 18 of the National Land Commission Act and sections 5, 6, 7, 8, 9, 10, 11 and 12 of the Public Appointments (Parliamentary Approval) Act, 2011, in the vetting and the approval of nominees to the Marsabit County Land Management Board. Accordingly, that despite the Committee on Vetting and Appointments considering and evaluating the Interview Panel's report and each nominee objectively, it was impossible to have each ethnic community within Marsabit County represented at the County Land Board considering that there were only seven positions to be filled by over 14 ethnic communities.

23. It was also its averment that the nomination, vetting and appointment took into account the national values under Articles 10 and 232 of the Constitution, pursuant to Article 1 (1) of the Constitution as read with section 9 of the County Government Act and section 18 of the National Land Commission Act, the Members of the County Assembly are not rubber stamps when it comes to vetting and approval of the members to the County Land Management Board and that the County Assembly is a key stakeholder of the appointment process whose views and input must be taken into account and the members have powers to approve or reject the nominees to County public offices.

24. It was finally its case that the appointments to the Marsabit County Land Management Control Board is constitutional and no law was breached, the allegations by the petitioners have no legal basis and should be dismissed, and that the issue of gender was considered by the Interviewing Panel and since only two ladies were interviewed, the one with the minimum requirement in law was nominated to the Board.

The 3rd Respondent's Case

25. The 3rd respondent opposed the petition and filed a replying affidavit sworn on its behalf on 27th July, 2015 by its Commissioner, Mr. Silas Kinoti Muriithi and written submissions dated 27th July, 2015.

26. Mr. Kinoti deponed that the Commission advertised for vacancies for members of the County Land Management Boards and that interviews for the membership to the Marsabit County Land Management Board were held from 16th to 20th June, 2014 jointly with the Marsabit County Government.

27. Mr. Kinoti outlined the report on the performance of the various individuals who were interviewed and reiterated the submissions by the 1st respondent in regard to the steps that were undertaken from the nomination to the subsequent appointments that were made.

28. It was the Commission's position that the Marsabit County Land Management Board is fully and legally constituted and it has continued to discharge its duties effectively and efficiently. Further, that it fulfilled its statutory mandate under section 18 (6) of the National Land Commission Act and did not in any way occasion any breach of the petitioners' rights under the Constitution through its actions and/ or decisions.

29. The Commission maintained that the entire nomination process was not irredeemably flawed as the petitioners have only raised contentions with regard to the dropping of Mr. Solomon Gubo Riwe, a Burji, while they never raised any issues with the names of the other six members of the Board.

30. The Commission contended that it would greatly prejudice public service to members of the public if this Court sets aside or declares the nominations a nullity since that will defeat the solemn tenets of public

interest.

31. Finally, Mr.Kinoti's averment that this Court should not interfere with the Commission's constitutional and statutory mandate unless and until the Commission has performed the mandate in an unconstitutional manner, and that the Court should only step in if and when the Commission has failed to perform its mandate or has performed its mandate in an unlawful manner or in a manner that is contrary to the Constitution and the law.

The Parties Submissions

32. In their written submissions, the petitioners reiterated the contents of the petition and affidavit in support.

33. The 1st respondent on its part submitted that the arguments advanced by the petitioners that by the fact that they are the major land owners in Marsabit County gives them as a way of right an automatic position in the County Lands Management Board is not a legal argument and has no basis in law. That such an argument if adopted has the potential of breeding chaos as each and every community band tribe will claim a stake in every public appointment ever made without appreciating that not every community can be represented in every single sphere of governance.

34. The 1st respondent maintained that the entire nomination and appointment process complied with the provisions of the Constitution, the National Land Commission Act, the County Governments Act, and the Public Appointments (Parliamentary Approval) Act. It was its submission further that the Petitioners have failed and deliberately omitted to frame their case with precision in line with the principle enounced in **Anarita Karimi Njeru -v- Republic (1976-1980) KLR 1272** and that apart from citing omnibus provisions of the Constitution, the petitioners neither provided particulars of the alleged complaints nor the manner of infringements.

35. While relying on **Samuel Muigai Nganga -v- The Minister for Justice, National Cohesion and Constitutional Affairs and Another [2013]eKLR** and **Mumo Matemu -v- Trusted Society of Human Rights Alliance and 5 Others, Civil Appeal No 290 of 2012**, the 1st respondent's further submission was that the only grievance raised by the petitioners is that the lack of a member from the community prejudices and infringes on the interests of the Burji community as such, the statement amounts to a political argument which lacks legal soundness and therefore, no legal injury or breach has been suffered by the petitioners.

36. The 3rd Respondent therefore urged the Court to find the petition lacking in merit, frivolous, generally argumentative and an outright abuse of the court process and thereby dismiss the same with orders that the petitioners bear the costs of this petition.

37. The Commission while reiterating the contents of its affidavit in reply, urged the Court to dismiss the petition with a further order that the petitioners bear the costs of the petition.

Discussion and Determination

38. The main question, in my view , in this petition is whether the nomination process to the Marsabit County Land Mangement Board was undertaken in accordance with the law. A second question is whether in the process the Bhurji community or the Petitioners for that matter were discriminated against. There is also the corollary question as to whether the petition is competent.

39. In that regard, I shall firstly address my mind to the preliminary question raised by the 1st respondent, that the petitioners have failed and deliberately omitted to frame their case with precision in line with the principle enounced in **Anarita Karimi Njeru -v- Republic (supra)**.

40. The principle enunciated under the said decision is that a party alleging violation of his constitutional

rights, must plead with precision indicating the provisions of the constitution that are alleged to have been violated and the manner in which it is alleged the provisions have been violated. The precision expected is a reasonable one, not an absolute one.

41. It is now a well-developed principle that in constitutional litigation, a party that alleges violation of his or her rights must plead with reasonable precision in regard to the manner in which there has been such alleged violation. Suffice to reiterate the dictum by the court in **Mumo Matemu -v- Trusted Society of Human Rights Alliance and 5 Others, Civil Appeal No. 290 of 2012**, where the Court of Appeal affirmed the position thus:

“[41] We cannot but emphasize the importance of precise claims in due process, substantive justice, and the exercise of jurisdiction by a court. In essence, due process, substantive justice and the exercise of jurisdiction are a function of precise legal and factual claims. However, we also note that precision is not coterminous with exactitude. Restated, although precision must remain a requirement as it is important, it demands neither formulaic prescription of the factual claims nor formalistic utterance of the constitutional provisions alleged to have been violated. We speak particularly knowing that the whole function of pleadings, hearings, submissions and the judicial decision is to define issues in litigation and adjudication, and to demand exactitude ex ante is to miss the point.

[42] However, our analysis cannot end at that level of generality. It was the High Court’s observation that the petition before it was not the “epitome of precise, comprehensive, or elegant drafting.” Yet the principle in Anarita Karimi Njeru(supra) underscores the importance of defining the dispute to be decided by the court. In our view, it is a misconception to claim as it has been in recent times with increased frequency that compliance with rules of procedure is antithetical to Article 159 of the Constitution and the overriding objective principle under section 1A and 1B of the Civil Procedure Act (Cap 21) and section 3A and 3B of the Appellate Jurisdiction Act (Cap 9). Procedure is also a handmaiden of just determination of cases. Cases cannot be dealt with justly unless the parties and the court know the issues in controversy. Pleadings assist in that regard and are a tenet of substantive justice, as they give fair notice to the other party. The principle in Anarita Karimi Njeru (supra) that established the rule that requires reasonable precision in framing of issues in constitutional petitions is an extension of this principle.” (Emphasis added)

42. In the present case, the petitioners have alleged violation of a number of constitutional provisions. However I was able to easily note that the gist of their case. First is that the appointments to the Marsabit County Land Management Board was not in accordance with the Constitution and secondly, is that the Burji community was discriminated against in the nominations to the appointments to the Marsabit County Land Management Board. I see no reason why the Respondents should state that the Petition lacks the requisite clarity and precision as far as the right to be treated with equality is concerned. I am in that regard, of the view that the petitioners have on a prima facie basis pleaded their case with reasonable precision in regard to alleged violation of their right against discrimination.

43. On other alleged violations of their constitutional rights, based on the pleadings before this Court, I am inclined to agree with the respondents’ contention that the petitioners have not pleaded with precision but have merely raised omnibus arguments pertaining to the same. As a result, I shall only address my mind to questions arising in this petition where the petitioners have pleaded with precision as required of them.

44. That aside, I associate myself with the observations of the Court of Appeal in the cases of **Peter M. Kariuki vs. Attorney General [2014]eKLR** and **Nation Media Group Limited –v- Attorney General [2007] 1 EA 261**. In both cases the court avoided following the decision in **Anarita Karimi Njeru V Republic** line ,hook and sinker. In **Nation Media Group Limited –v- Attorney General (supra)** the court observed as follows:

“A Constitutional Court should be liberal in the manner it goes round dispensing justice. It

should look at the substance rather than technicality. It should not be seen to slavishly follow technicalities as to impede the cause of justice...As long as a party is aware of the case he is to meet and no prejudice is to be caused to him by failure to cite the appropriate section of the law underpinning the application, the application ought to proceed to substantive hearing... Although the application may be vague for citing the whole of Chapter 5 of the Constitution, however the prayers sought are specific and they refer to freedom of expression guaranteed under the Constitution.” (emphasis mine)

45. I now turn to the key questions before me.

46. I must at the onset remind the petitioners the mandate of this Court in matters touching on such nominations or selections to public offices is limited to examining the legality or otherwise of such appointments as was held in **Mohamed Osman Warfa and Others vs The Office of the President and Others, Petition No.77 of 2013**, where the court rendered the position that:

*“I agree with the submission by Mr.Bitta that the institutions and persons involved in the selection and appointment are duty bound to pay attention to and give effect to the provisions of the Constitution and unless it is shown that there is a violation of the Constitution and the Statute, the Court should not intervene. In the *Evans Nyambega Akuma -v- AG and Others Nairobi Petition No.164 of 2013 (unreported)* I stated that ‘it is not for the Court to re-examine these allegations and make its own conclusion. The duty of the Court in reviewing the process of appointment is to ensure that it meets the test of legality. I emphasize what I stated in the cases of *John Waweru Wanjohi & Others vs the AG & Others, Kipngetich Maiyo & Others vs The Kenya Land Commission Selection Panel Nairobi consolidated constitutional Petitions Nos.373 of 2012 and 426 of 2012 (unreported)*, concerning appointment to the National Land commission, the Court must of course be careful not to usurp the powers and functions of the various constitutional and statutory bodies ...these bodies have carried out their functions in accordance with the prescribed procedures and I am satisfied that in this case the process meets constitutional muster. There is nothing in the Petition and deposition to demonstrate that the entire process did not comply with the Constitution and the law.” (Emphasis added)*

47. Turning back to the present dispute, the impugned nominations were conducted pursuant to section 18 of the National Land Commission Act, which mandates the Commission, in consultation and co-operation with the national and County Governments, to establish County Land Management Boards.

48. As regards the process of making the said appointments, section 18 (6) thereof provides that:

The appointment of the members shall be approved by the county assembly and shall take into account the national values referred to in Article 10 and Article 232 of the Constitution and shall reflect gender equity and ethnic diversity within that county.

49. It thus clear that the role of the County Assembly is to approve any such names that have been submitted to it. In that regard, in **Mary Mwaki Masinde -v- County Government of Vihiga and 2 Others, Petition No. 25 of 2014 [2015]eKLR**, it was pointed out that:

“[22] Under sub-section (6), the role of the Assembly is clearly given as ‘to approve the appointment of the Board members’. And, in doing so, the Assembly is to take into account the national values under Articles 10 and 232 of the Constitution and shall also endeavour to reflect gender equity and ethnic diversity within that County. It is hence clear that the Assembly is not interested in the process towards the nomination of the Board Members for only comes in during the approval proceedings and with a clear mandate towards the finalisation of the appointment process...” (Emphasis added)

50. I would adopt the above words as if they were mine.

51. The approval process is thereby guided by section 8(1)(a) of the County Governments Act which

provides that:

The county assembly shall (a) vet and approve nominees for appointment to county public offices as may be provided for in this Act or any other law.

52. As such, any other such law, in my view, includes *the* Public Appointments (Parliamentary Approval) Act which creates provisions governing the approval process. In that context, section 6 thereof, which is entitled ‘**Approval Hearing**’ provides that:

(1) Upon receipt of a notification of appointment, the Clerk shall invite the Committee to hold an approval hearing.

(2) The Committee shall determine the time and place for the holding of the approval hearing and shall inform the Clerk.

(3) The Clerk shall notify a candidate of the time and place for the holding of an approval hearing.

(4) The Committee shall notify the public of the time and place for holding an approval hearing at least seven days prior to the hearing.

(5) Subject to this Act, all Committee proceedings on public appointments shall be open and transparent.

(6) Despite subsection (5), a Committee may, on its own motion or on the application of a candidate or any other concerned person, determine that the whole or part of its sittings shall be held in camera.

(7) An approval hearing shall focus on a candidate’s academic credentials, professional training and experience, personal integrity and background.

(8) The criteria specified in the Schedule shall be used by a Committee during an approval hearing for the purposes of vetting a candidate.

(9) Any person may, prior to the approval hearing, and by written statement on oath, provide the Clerk with evidence contesting the suitability of a candidate to hold the office to which the candidate has been nominated.

(10) A candidate may, at any time, by notice in writing addressed to the Clerk, withdraw from the approval process and the candidate’s nomination shall thereupon lapse.

53. Within that context, Section 7 further stipulates that:

The issues for consideration by the relevant House of Parliament in relation to any nomination shall be—

(a) the procedure used to arrive at the nominee;

(b) any constitutional or statutory requirements relating to the office in question; and

(c) the suitability of the nominee for the appointment proposed having regard to whether the nominee’s abilities, experience and qualities meet the needs of the body to which nomination is being made.

54. From the foregoing, it is therefore clear that the County Assembly is given much wider powers and furthermore, in relation to any such nominations, the County Assembly evaluates the procedure used to

arrive to such nominations, any constitutional or statutory requirements relating to the office in question and the suitability of the nominee having regard to whether the nominee's abilities, experience and qualities meet the needs of the body to which nomination is being made.

55. In addition to the above, the Public Appointments (Parliamentary Approval) Act, 2011 stipulates further under section 8 on the period of consideration and reporting upon the conduct of an approval hearing, while sections 10 and 11 address the questions of rejection of nomination, and notification of the decision to the appointing authority by the Clerk of the House, respectively.

56. In the present case, based on the evidence before this Court, I note that a report on interviews and recommendations of persons nominated by the Commission to the membership of the Marsabit Land Management Board was submitted to the Marsabit County Assembly for approval. The same was referred to the Committee on Appointment and Vetting of the County Assembly of Marsabit which thereby considered the said report and vetted each nominee and finally prepared its report, which was subsequently tabled to the County Assembly. I note further that the said Committee on Appointment and Vetting dropped the name of Mr. Solomon Gubo Riwe on the basis of the merit. Based on the foregoing, I am satisfied that the entire nomination process relating to the nominations of persons to be appointed to the Marsabit Land Management Board was done in accordance with the law.

57. It therefore follows that the petitioners' allegations that the process was fundamentally flawed must fail.

58. Can it then be said that the petitioners' community, the Burji, was discriminated against? My answer to this question must surely be in the negative. Whereas Article 232 of the Constitution acknowledges that in affording adequate and equal opportunities for appointment, training and advancement, at all levels of the public service, consideration must be given to the members of all ethnic groups among others, it is untenable to have all ethnic groups in certain offices especially where the composition of such a body, for instance the Land Management Boards, is limited to a membership of seven persons. I must reiterate the holding by Mumbi Ngugi J. in **Consortium for the Empowerment and Development of Marginalised Communities and Others vs Chairman the Selection Panel for Appointment of chairperson and Commissioner to the Kenya National Human Rights Commission, Petition No.385 of 2012** where the Learned Judge rendered the position that:

"As correctly argued by the Respondents, the Constitution has now divided the Country into 47 Counties, so that the administrative units known as provinces or regions on which this Petition is based are no longer in existence. Would regional diversity require that all the 47 Counties have representation in every commission? Does consideration of regional and ethnic diversity demand that every tribe in Kenya is represented in every institution that is established under the Constitution in order for the institution to be deemed to have been constituted in compliance with the Constitution? What happens, were that argument to be carried to its logical conclusion, when an institution under the Constitution requires only a specific, limited, number of persons, in this particular cases, only five positions?"

59. The Learned judge went on to state thus:

"Happily, with regard to constitutional commissions and independent offices, the Constitution itself provides an answer in Article 250(4), which is worth setting out again;

Appointments to commissions and independent offices shall take into account the national values mentioned in Article 10, and the principle that the composition of the commissions and offices, taken as a whole, shall reflect the regional and ethnic diversity of the people of Kenya

I believe that the operative words in this provision are 'taken as a whole', implying that one cannot take a single constitutional commission or independent office and argue that because a particular region or ethnic group has not been represented, or the appointee(s) are not from particular ethnic groups or regions, then there has been a breach of the Constitution. To hold

otherwise is to lead to an absurdity, and to make the composition of any commission or appointment to an office well-nigh impossible.”

60. I am in agreement with the above reasoning and I must add that in the appointment to public offices the question of ethnicity is not the solitary determining factor as Article 232 (1) (g) of the Constitution stipulates that ***the values and principles of public service include, subject to paragraphs (h) and (i), fair competition and merit as the basis of appointments and promotions.***

61. On that basis, I am unable to reach the conclusion that the Burji community has been discriminated against in any way.

Disposition

62. Having reached the conclusion that the process leading to the nominations for appointments to the Marsabit County Land Management Board was in accordance with the law, I am inclined to dismiss the instant petition much as it may be want to sympathize with non representation of the Bhurji community in the County Land Management Board. The petition is hereby dismissed

63. While costs usually follow the events, the matters raised in the present petition were of great public interest more so to the people of Marsabit County and as such, I shall order each party to bear its own costs.

Dated, signed and delivered at Nairobi this 30th day March, 2016

J.L.ONGUTO

JUDGE