



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CONSTITUTIONAL & HUMAN RIGHTS DIVISION
PETITION NO. 254 OF 2015

BETWEEN

PETER MICHOBO MUIRU.....PETITIONER

AND

BARCLAYS BANK OF KENYA LTD.....1ST RESPONDENT

THE HON. ATTORNEY GENERAL.....2ND RESPONDENT

RULING

1. The Petitioner commenced action on 17th June 2015. He then appeared in court on 7th July 2015 and was urged by Hon Mr. Justice Lenaola to relook at the Petition and amend the same if necessary. The judge reserved the giving of directions as to the hearing of the Petition. Subsequently, on 14th October 2015 the Petitioner filed an amended Petition.

2. On 28th January 2016, the 1st Respondent filed a Notice of Preliminary Objection stating, inter alia, that the Petition was an abuse of the process as the Petitioner had failed to set out with reasonable precision that of which he complained as well as the provisions of the Constitution allegedly infringed and the manner of infringement. The Respondents also complained that the Petitioner's claim was barred for having been commenced so late after the cause of action had accrued.

3. The Preliminary objection is the subject of this ruling.

4. Two issues arise for determination. First, whether the objections as raised constitute a proper preliminary objection. Secondly, whether there is merit in the Preliminary Objection.

5. Mr. Kigata, appearing for the 1st Respondent, in urging the preliminary objection stated that the objections would be limited to the competency of the Petition and not any other issue which went to the merits of any of the Petitioner's claims.

6. The law in respect of preliminary objections is relatively clear. A preliminary point ought to constitute a demurrer. It ought to be such as not to invite the courts discretion or a determination of any facts by the

court. It also ought to be one that is capable of immediately determining the claim with finality: see **Mukisa Biscuits Manufacturing Company Ltd –v- West End Distributors Ltd [1969] EA 696**.

7. The point raised by the Preliminary objection in this case goes to the very root of the Petition itself. If successful and upheld, the Preliminary objection will see to it that the end of the Petition is not just nigh but real. The nature of the objection taken equates a demurrer. I view it that the threshold of a preliminary objection has been met.

8. It is now a settled principle of the law that a complainant in constitutional petitions must plead his case with reasonable precision to enable the court as well as the Respondent(s) to understand clearly and appreciate the complainant's constitutional issue(s). The petitioner must with reasonable precision state the specific provisions of the Constitution and the rights allegedly violated. The Petitioner must also state the manner of infringement: see the case of **Anarita Karimi Njeru –v- The Republic (No. 1) [1978] KLR 154** as well as **Mumo Matemu -v- Trusted Society of Human Rights Alliance & 5 Others [2013] eKLR**.

9. The principle, as this court has previously stated, does not however equate absolute precision. There is no need for absolute and artificial specificity: see **Kevin Turunga Ithagi –v- Hon. Justice Fred Ochieng & 5 Others (No.1) HCCP No.442 of 2015 [2015]eKLR**. The general approach should be that each case must be independently viewed and understood by the court and where the court as well as the Respondent can painlessly identify and understand the petitioner's case as well as the constitutional trajectory the case takes, then the merits of the case ought to be ventured into. Stalling the case through the technicality of want of formal competence will take a back seat. As was stated in the case of **Donovan Earl Hamilton –v- Ian Hayles (Claim No. 2009 HCV 04623)** by the Supreme Court of Judicature in Jamaica, the striking out of pleadings in constitutional petitions should be done only in the clearest of cases.

10. The principle established in the *Anarita Karimi Njeru's* case should thus not be applied line hook and sinker and the court must always be cautious to avoid impeding the course of justice by denying a party access to the court : see **Samuel Gunja Sode & Another –v- The County Assembly of Marsabit & 2 others [2016]eKLR**, **Nation Media Group Ltd –v- Attorney General [2007] 1 EA 261** as well as the Court of Appeal decision in **Peter M. Kariuki –v- Attorney General [2014]eKLR**.

11. The Respondents in the instant case argue that the claim as drawn ought not to stand. They state that it lacks the requisite precision. They also contend that the claim is time barred having been filed more than twenty years after the event. In urging the preliminary objection Mr. Kigata urged the court to apply the principles in the cases of **Anarita Karimi Njeru –v- Republic (Supra)** and **Omar Awadh –v- Attorney General of Uganda [2013]eKLR**. Mr. Sekwe, appearing for the 2nd Respondent also urged likewise and added that there was no justification for the delay in filing the Petition since 1993.

12. I have read the Petition. I also read the Amended Petition. I have likewise reviewed the record of the proceedings.

13. It is apparent that the Amended Petition was filed at the prompting of the court. The court's observations of 7th July 2016 must have prompted the Petitioner to amend his Petition.

14. The amendments, in my view did not however improve the face of the Petition. The particulars as to the manner of violation of the Petitioner's guaranteed rights have not been articulated. The Petitioner failed again to state with reasonable specificity any Article of the Constitution allegedly impinged. The Petitioner recites in detail how he was arrested and detained but fails to illustrate how that may amount to a violation of his rights. It is clear that the Petition as amended is patently defective. It is not easy to discern what the Petitioner's claim in relation to the Constitution truly and clearly is. The consequent result is that the Petition even as amended fails the competency test.

15. I appreciate that striking out of claims naturally leads to locking out parties from the judicial process. However it is a power that has and can be exercised in clear, genuine and serious cases. The instant case,

in my view, falls into this category. The Petitioner was prompted by the court to rectify an obvious deficiency. Despite taking the chance the purported rectification through amendment still did not cure the defect. I hold the view that the amended Petition is hopelessly bad. It is deficient in both form and substance. It ought to be struck out to prevent any further abuse of the court process.

16. In view of my finding that the amended Petition is fatally deficient, I see no reason why I should venture into the merits of the second limb of the preliminary objection that the delay on the part of the Petitioner is also fatal.

17. In sum, I strike out the Amended Petition.

18. As to costs, I will exercise my discretion and order that each party will bear its own costs of the Petition.

19. Orders accordingly.

Dated, signed and delivered at Nairobi this 29th day April, 2016

J.L.ONGUTO

JUDGE