



**REPUBLIC OF KENYA.**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA.**

**MISCELLANEOUS APPLICATION NO. 6 OF 2016.**

**NON-ALIGNED LEADERS COUNCIL :::::::::::::::::::: PETITIONERS.**

**VERSUS**

**OFFICE OF THE PRESIDENT & OTHERS :::::::::::::::::::: RESPONDENTS.**

**R U L I N G.**

1. The application before me has been brought by way of Notice of Motion. It was filed in court on 15<sup>th</sup> February, 2016. It seeks orders that:-
  - i. *Spent;*
  - ii. *That the court fee required for filing of the said petition be waived as the petitioners are motivated by public interest and cannot afford the said court fee.*
2. The application is premised on the provisions of articles 22 (1), 2 (b) and (c), 3 (b), (c) and (d) and 258 (1) and 2 (b) and (c) of the Constitution and all enabling laws.
3. It is anchored on the following grounds:-
  - i. *The petitioners herein are persons of humble background and motivated purely by public interest;*
  - ii. *The subject matters raised in the petition such as corruption, insecurity, ethnicity, inequity, politically instigated violence, disregard of the rule of law, self-serving politics and politicians among other need to be contained by leaders in all areas of life;*
  - iii. *The said subject matters have risen to such level as threatens to tear down the very foundations of this nation;*
  - iv. *Extraordinary measures proposed in the petition are urgently required to alleviate the suffering of the innocent Kenyans maimed in the ever increasing insecurity and the families robbed of their hope in the sons and daughters (sic) butchered in the violence;*
  - v. *There is an urgent need to suspend general elections which have been hijacked by a ruthless political class and made a life and death issue whose main result is to negate nation building;and*
  - vi. *In the event that general elections continue, there is an urgent need to adopt the formula proposed in the petition of 50%, 40% and 10% sharing of all the politicians fight for in the effort (sic) to promote a win win elections for all Kenyans (plum jobs, Ministries and State Corporations, Tenders, power e.t.c.)*

**Determination of the application.**

The issue for determination is if this court has jurisdiction to issue the orders sought.

4. Article 22 (2) of the Constitution provides that:-

*“In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by –*

- a. *A person acting on behalf of another person who cannot act on their own name;*
- b. *A person acting as a member of, or in the interest of, a group or class of persons;*
- c. *A person acting in the public interest;*
- d. *An association acting in the interest of one or more of its members.”*

5. Article 22 (3) provides that:-

*“The Chief Justice shall make rules providing for the court*

*proceedings referred to in this Article, which shall satisfy the criteria that—*

*(a) the rights of standing provided for in clause (2) are fully facilitated;*

*(b) formalities relating to the proceedings, including commencement of the proceedings, are kept to the minimum,*

*and in particular that the court shall, if necessary, entertain proceedings on the basis of informal documentation;*

*(c) no fee may be charged for commencing the proceedings;*

*(d) the court, while observing the rules of natural justice, shall not be unreasonably restricted by procedural technicalities; and*

*(e) an organisation or individual with particular expertise may, with the leave of the court, appear as a friend of the court.”*

6. The Chief Justice vide Legal Notice No. 117 of 2013 published the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, on 28<sup>th</sup> June, 2013.

7. Rule 34 thereof provides for waiver of court fees. It provides as follows:-

*“34 (1). A person who wishes to be exempted from paying court fees may apply to the Registrar.(emphasis mine)*

*(2) An application under sub-rule (1) may be made by informal documentation ;*

*(3) The reasons for the Registrar’s decision shall be recorded.*

8. The interpretation section of the above rules defines a ‘Registrar’ to include an Assistant and Deputy Registrar in any particular court. In view of the foregoing clear provisions of the above rules, I hold that I have no jurisdiction to grant the orders sought with regard to waiver of court fees in Constitutional petitions.

9. I therefore dismiss the application filed on 15<sup>th</sup> February, 2016 with no order as to costs.

**DELIVERED, DATED and SIGNED** in open court at **KAKAMEGA** on this **23<sup>RD</sup>** day of **MAY**, 2016.

**NJOKI MWANGI.**

**JUDGE.**

**In the presence of:-**

..... **for the Petitioners.**

..... **for the Respondents.**

.....**Court Assistant**