



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
PETITION NUMBER 73 OF 2014

IN THE MATTER OF: ARTICLES 2, 21, 24, 36, 47, AND 50 OF THE CONSTITUTION OF
KENYA

AND

IN THE MATTER OF: SECTION 11 OF THE SOCIETIES ACT CHAPTER 108 LAWS OF KENYA

AND

IN THE MATTER OF: THE PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS
UNDER ARTICLES 21 AND 24 OF THE CONSTITUTION OF KENYA 2010

BETWEEN

1. MORRIS JARHA MARO (Suing on his own behalf and on behalf of other members)
.....1ST PETITIONER

2. COAST PEOPLES DEMOCRATIC MOVEMENT 2ND PETITIONER

AND

1. THE REGISTRAR OF SOCIETIES.....1ST RESPONDENT

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

RULING

THE PETITION

1. This Ruling relates to a Petition dated and filed on 28th November, 2014 (the Petition) by **COAST PEOPLES DEMOCRATIC MOVEMENT** an amorphous group led by one Morris Jarha Maro “(the sponsor”).

2. However when the Court at the first hearing raised the question whether the Movement had the legal competence to institute the Petition, Counsel for the Petitioner filed on 12th February, 2015, a Notice of Motion dated 12th February, 2015 and sought to join the sponsor as the first Petitioner in terms of the Amended Petition annexed to the said Notice of Motion. Though the Notice of Motion was not formally

determined, but because it is on record, I have, for the purposes of dealing with the Petition comprehensively, deemed it to be duly amended, and proceeded to determine it with the sponsor as the First Petitioner and the Movement as the Second Petitioner.

3. The Petitioners seek three Primary orders –

1. **A declaration that the refusal by the first Respondent, the Registrar of Societies, to register the Petitioner’s organization that is the Coast Peoples Democratic Movement(the Movement) is a gross violation of basic fundamental rights of the Petitioner.**
2. **A declaration that the refusal to register the Petitioner’s movement without cause or reason is unconstitutional and void.**
3. **An order of *mandamus* compelling the First Respondent under the aegis of the Second Respondent, to register the movement.**

4. The Petition was supported by the Affidavit of the said Moris Jarha Maro sworn on 18th November, 2014 and the grounds set and in the Petition as amended.

The Petitioner’s Case

5. The Petitioner’s case was argued by Mr. Ambwere, learned counsel for the Petitioner. It is the Petitioner’s case that the Petitioner who described himself as the Executive Chairman of the Movement deponed *inter alia* that despite submitting an Application for registration of the Movement as a Society under Societies Act, (Cap 108 Laws of Kenya), the first Respondent has refused to register the society without assigning any reason for such refusal. Counsel therefore contended that such refusal was a violation of the Constitutional rights of the Petitioner, and other members of the Movement, who have been threatened with criminal prosecution for belonging to an unlawful organization.

6. Simultaneously with the Petition, the Petitioner also filed a Notice of Motion which sought essentially the same orders, and was therefore abandoned in favour of disposal of the Petition itself. I refer to it in this Ruling because the Affidavit in support thereof had annexed to it a bundle of documents marked as “MRM -1”. The bundle contained the application for registration forms duly filled, and dated 3rd January, 2014, and describing the objects of (the movement) as being-

“... civic education on human rights and anti-corruption and drug abuse, conflict resolution, anti-terrorism, representation of the Coastal Communities.”

7. The bundle of documents also contained a form of notification of the registered office or address of the Society as well as a copy of a Bankers cheque issued in favour of the First Respondent- in the sum of Ksh.2000/=. Further annexed to the said Affidavit was a copy of the proposed Constitution of the Society, alongside a “**manifesto**”.

8. The Manifesto, printed in English and Kiswahili, in summary, stated that the reason of the Coast Peoples Democratic Movement was to-

“... secure and realize the aspirations and expectations of the Coastal indigenous communities cherished dream of an independent state.”

9. Its objective as clearly stated was to employ peaceful and legal means to pursue separation or secession of the Coastal region to become an independent state.

10. The deponent also annexed copies of correspondence between the Petitioner and the First Respondent over the delay or refusal of registration, which letters had gone unanswered. These were marked “MRM - 2”, and included a letter addressed to the President of the Republic of Kenya dated 15th August, 2012 on the issue of the right of the Coastal Peoples to demand separation from Kenya, two letters to the Attorney-

General dated 21st September, 2012 and 2nd November, 2012 circulating the manifesto, and expressing their desire to regularize their registration legally. There were also letters dated 9th May, 2013 and 15th August 2013 addressed to the President, still on the issue of secession. Lastly, the letter dated 3rd February, 2014 addressed to the Attorney-General forwarding the Petitioner's application for registration as a Society, follow up on 2nd May 2014 on the registration and a letter to the Registrar of Societies, dated 5th June, 2014 enquiring the status of the application. The Petitioner also annexed a certificate of posting dated 3rd February, 2014.

11. Morris Jarha Maro subsequently sought to be enjoined as Petitioner following an application in that regard dated 12th February 2015. The Affidavit in support of that application was sworn by the said Morris Jarha Maro on the same date, stating that he had been in communication with various government agencies over the ideals of the Coast Peoples' Movement, and in fact their letters had been acknowledged as received by the Clerk of Senate (18th October, 2013) and by the Office of the President of the Republic of Kenya (19th June, 2013) and by the office of the President of the Republic of Kenya (19th June, 2013), copies of which were annexed.

12. He lamented that despite operating within the law in an open and democratic society, he was on 16th January, 2015 charged in Garsen Law Court for managing an unlawful society. The attached charge sheet marked "MJM -3" indicates that on diverse dates between August, 2012 and 26th May, 2014, Morris Jarha Maro and Robert Mjape Lugo at Garsen town in Tana Delta Sub-County published and circulated a report to the effect that "**Coast is not Kenya**" in challenge of the Government of Kenya to prove otherwise, to incite Coastal communities contrary to Section 96(a) of the Penal Code, (Cap 63 Laws of Kenya) published the report which is likely to cause fear and alarm or disturb the public peace contrary to Section 66(1) of the Penal Code as read with Section 36 of the Penal Code, and managed an unlawful society to wit the **Coast People's Democratic Movement**, without registration, contrary to Section 5 of the Societies Act.

13. He concluded that his prosecution was an act of intimidation and harassment. In short, it was in his personal interest that the prayers sought in the Petition be granted.

14. Counsel for the Petitioner therefore submitted that the Respondents have refused to follow the law, as they ought to have acknowledged receipt of the application for registration. The Petitioner's counsel emphasized that based on their communication with various government agencies, it was clear that the Coast People's Democratic Movement was not an underground organization. The Petitioners relied on Article 2, 10, 19, 22, 23, 24 and 47 of the Constitution of Kenya. It was further submitted that it was the duty of the State to prove why any right might be limited, adding that they had also the right to fair hearing under Article 50 of the Constitution of Kenya. The court was urged to find that the failure to register the organization was a breach of the Petitioner's fundamental rights. The Counsel also emphasised that the organization is not political in nature, despite its name, and in any event, it is not the duty of the Registrar to choose a name for any organization, and therefore the name should not be an issue. The court was urged to grant the petition with costs.

15. Ms. Mwongo for the Respondent opposed the Petition stating that the application had not been received by the Registrar of Societies, and neither was there any proof that the Petitioner's banker's cheque had been cashed. It was submitted that had the application been received, the Registrar would have responded appropriately. Counsel also pointed out that the Registrar of Societies had not been copied any of the various letters to the other arms of the government. Counsel further submitted that the name of the organization connotes a political party and not a society or association. Counsel also took issue with the organization's manifesto which clearly indicated that one of its objects was to agitate for an independent state, which objective is a threat to the welfare or interest of the State. Counsel referred to Article 24(1) (d) of the Constitution of Kenya urging that the objective of separating the Coastal region is a threat warranting the limitation of the individual's rights in favour of the rights of other people. The Petition if allowed counsel submitted would cause a serious threat to the Republic of Kenya.

16. The Respondents' counsel finally submitted that the Petitioner's application for registration would be considered if the name and objects of the proposed society would be changed to reflect that of a welfare association, otherwise, the petition ought to be dismissed with costs.

17. Those were the rival arguments by counsel for the Petitioners and the Respondents and I now set out in this and following paragraphs of this Ruling my considered opinion on the Petition as a whole.

18. I have in the title to this Ruling referred to the Petitioners as if there were two Petitioners. In my view however, in our law, a registered society does not have legal existence separate from its members. It therefore sues, and can be sued in the names of its officials. If that be the position in law in respect of registered societies or associations, under the Societies Act, it must follow that an unregistered society has no legal personality, and can only act by its sponsors, the Chairman, Secretary and Treasurer. To the extent that the Petition purports to be brought by the **COAST PEOPLES MOVEMENT**, a non-registered body, the Petition is incompetent, and stands struck out. However the Petition stands in the name of Morris Jarha Maro, who describes himself as the Executive Chairman of the Society proposed; and I therefore proceed to consider the relevant provisions of the Societies Act as in cases where, the Registrar of Societies has received or acknowledges receipt of an Application for registration of a society.

19. Section 11 of the Societies Act provides that the Registrar may refuse to register a society where he has reasonable cause to believe that the society's objects may be prejudicial to or incompatible with the peace, welfare or good order of Kenya. In such instances, rule 6 of the Societies Rules demands that the Registrar shall send to the society a notification of his refusal in form E.

20. In this case, the Registrar of Societies denies having received the Petitioner's application, and adds that such application would nevertheless be likely refused for the reason that its name denotes that of a political party, and its objects are undesirable to the interests of the State. The certificate of posting, and cover letter are both addressed to the Attorney-General, and not the Registrar of Societies. From the evidence at hand, the Petition may indeed be said to be premature since there is no proof that the Registrar has received and rejected the application as alleged.

21. However, to the extent that the parties have submitted on the suitability of the application as annexed by the Petitioner, and, without prejudice to the decision that the Registrar of Societies may eventually make once an appropriate application is made before him, I find the following issues for determination-

1) whether the proposed society bears a political agenda, and if so, whether this precludes it from being registered under the Societies Act, and

2) whether an association whose objective is to champion secession is unlawful in Kenya.

I will consider these issues in turn.

22. **Firstly**, the proposed society boasts of a detailed manifesto setting out its objects. A "**manifesto**" is defined by Black's Law Dictionary, 8th Edition as:

"a written statement publicly declaring the issuer's principles, policies, or intentions; especially a formal document explaining why a state or nation declared war or took some other significant international action."

23. **Secondly**, one of the principal objectives of the proposed society is to advocate for the secession of the coast region. This in my opinion, is a political agenda and coupled with the name of the proposed society, displaces and removes the **Coast People's Democratic Movement** from the ambit of the Societies Act, though the Act does not expressly restrict itself from registering political associations. In fact Section 15 thereof suggests and envisages certain political associations under the Act (as long as they are Kenyan). However, a political association or an association wishing (like the proposed society) to advance an agenda that is political in nature, is designed by Kenyan legislation to be incorporated and regulated as a Political Party under the **Political Parties Act**, (No. 11 of 2011). Article 91 of the

Constitution of Kenya, goes further to define a political party and characterize what association may be registered as political party. Among other provisions, a political party in Kenya must have a national character, promote national unity and should not be founded on regional basis.

24. An association whose object contravenes the law is considered unlawful. The Preamble of the Constitution of Kenya opens with the declaration of the people of Kenya that they are proud of their “**ethnic, cultural and religious diversity**” and are **determined to live in peace and unity** as one indivisible sovereign nation.” (emphasis added). Consequently, any attempt to establish a government otherwise than in compliance with the Constitution is unlawful, per Article 3(2). Article 5 of the Constitution designates the boundaries of the country, which may not be reduced, save by an amendment of the Constitution. In the premises, the best recourse for any association whose agenda it to seek legal secession would be to seek an amendment of the Constitution.

25. International instruments addressing the right to self-determination such as the **Charter of the United Nations**, the **International Covenant on Civil and Political Rights**, the **International Covenant on Economic, Social and Cultural Rights**, the **African Charter on Human and People’s Rights** (1982), Banjul Charter) and the **1993 Vienna Declaration**, all are intended to apply to people in non-self-governing conditions. In any event, the right to self- determination is subject to the application of *uti possidetis juris* which would mean that any acts done in pursuit of this right would have to be conducted within the law, else they would be considered unlawful, unless through a freely negotiated treaty with the governing/parent state. **In Reference re Secession of Quebec (1998) 84 SCR 15**, the supreme court of Canada observed-: **that in order for a secession from a constitutional liberal democratic state to be legal, it is necessary that it be carried out within the constitutional framework of the parent state.** The government of the parent state would have to negotiate with the secessionists in order to reach a mutually agreed secession, with additional mandatory requirement of a referendum.

26. This court came to the same conclusion in the cases of **Randu Nzai Ruwa & 2 Others vs Internal Security Minister & Another [2012] e KLR (THE MRC (1) Case)**. (Mwera, Kasango 7 Tuiyott, JJ) as follows:

“ 110. Having taken all the circumstances of this case, the parties/arguments and our reasoning aforesaid into consideration, the ultimate question we must dispose of in this matter is this: Are the Applicants, or is the MRC, or are the members comprising MRC, entitled to constitutional protections under the Constitution of Kenya 2010, when such body or person evidently or admittedly is neither a legal entity nor registered nor recognized under any law of the land, and such body or person has, as its inherent fundamental essence, purpose, and object, the purveyance or promotion of an agenda that is expressly unconstitutional albeit clothed in the guise of social-political, economic, or fundamental rights and freedoms? We think not.

111. The upshot of the foregoing is that we hold that neither the Applicants as individuals acting on behalf of MRC, nor the MRC as an unregistered, amorphous body espousing an unconstitutional agenda, has either the locus standi or the legal competency to bring the originating Motion or the Interlocutory Motion, or to be entitled to pursue the reliefs sought.’

27. I adopt and endorse the above reasoning in this case. In addition, there was **firstly** no challenge to the arguments by the Registrar of Societies, that the Registrar had not received the Petitioner’s application. **Secondly**, the Petitioners’ by virtue of their secessionist agenda, lack the competence to seek the protection of the Constitution of Kenya 2010 as their activities are in the present forum illegal.

28. For those reasons, I find and hold that the Petition dated and filed on 28th November, 2014 and as amended is incompetent and is hereby dismissed with a direction that each party bears its own costs.

Dated delivered and signed at Mombasa this 18th day of March, 2015

M.J. ANYARA EMUKULE

JUDGE

In the presence of

Mr. Ambwere for Petitioner

Mr. Ngare for the Respondents

Cyrus Mutisya – Court Assistant