



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**  
**PETITION CASE NO. 18 OF 2013**

R. M. K.....PETITIONER

VERSUS

K. G.....1<sup>ST</sup> RESPONDENT

ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT

**JUDGEMENT**

1. By way of the petition dated 18<sup>th</sup> January, 2013 and filed in Court on 21<sup>st</sup> January, 2013, the Petitioner RMK prays for judgment against the respondents as follows:

**“a) A declaration that the 1<sup>st</sup> respondent is the petitioner’s biological father.**

**b) A declaration that the 1<sup>st</sup> respondent’s refusal to acknowledge the petitioner as his son and his continuous denial of the petitioner’s use of his name, property and accessibility to the same is unconstitutional.**

**c) An order compelling the 2<sup>nd</sup> respondent to change the petitioner’s documents to include the 1<sup>st</sup> petitioner (sic) family name of KEMBI.**

**d) General damages.**

**e) Costs of this petition.**

**f) Any other relief the court may deem fit to grant.”**

2. The 1<sup>st</sup> Respondent is K. G. and the 2<sup>nd</sup> Respondent is the Attorney General of the Republic of Kenya. A perusal of the petition indicates that these proceedings have been instituted by the Petitioner on his own personal behalf and in the public interest as per Articles 22(2)(c) and 258 of the Constitution on the ground that the Constitution has been contravened.

3. It is the Petitioner’s case that he is the son of the 1<sup>st</sup> Respondent being a product of the union between him and one R.N.K. He avers that he grew up under the custody of his mother until he became of age and sought information about his paternity and that is when he learned that the 1<sup>st</sup> Respondent is his father. He states that the 1<sup>st</sup> Respondent has not denied or rebutted this information but has refused to formally acknowledge the same despite demand.

4. According to the Petitioner, failure by the 1<sup>st</sup> Respondent to acknowledge him has resulted in his suffering dejection, loss, mental anguish, ridicule and odium including:

- “a) The petitioner has been unable to identify with a father figure in his official and social circles whenever so required.**
- b) The petitioner’s official documents are wanting in that the father’s name has not been filled up and as such many of his records are incomplete.**
- c) The petitioner has lacked parental love, consortium and society in his life.**
- d) The petitioner has suffered ridicule, shame by being labeled a bastard and his dignity has been lowered.**
- e) Increasing the petitioner’s likelihood of entering into illegal union within the 6<sup>th</sup> degree of consanguinity due to concealment of his lineage and relations.**
- f) Breaking the petitioner’s lineage and vitiating his right to the respondent’s property including his name and assets which he is entitled in law and custom.**
- g) Concealing information that the petitioner is entitled to and which is only in the custody of the 1<sup>st</sup> respondent.**
- h) Excluding the petitioner from the 1<sup>st</sup> respondent’s list of his children and misrepresenting to the public his family members.”**

5. The Attorney General is accused of aiding and/or abetting the 1<sup>st</sup> Respondent’s actions by failing to include the 1<sup>st</sup> Respondent’s name in the Petitioner’s certificate of birth, keeping incomplete records in regard to the Petitioner and failing to protect the family as enshrined in the Kenyan law. It is the Petitioner’s case therefore that the omissions and acts of the respondents negate, violate and undermine the spirit of the Constitution.

6. The 2<sup>nd</sup> Respondent did not respond to the petition.

7. The 1<sup>st</sup> Respondent opposed the petition through grounds of opposition dated 11<sup>th</sup> February, 2013 and filed on 12<sup>th</sup> February, 2013. The grounds of opposition are:

- “a) The Petition is scandalous, devoid of merit, fatally defective, is an abuse of court process and does not disclose a reasonable cause of action.**
- b. The Petitioner’s grievances outlined in the Petition do not demonstrate in what manner the 1<sup>st</sup> Respondent has violated the Petitioner’s Fundamental rights and freedoms under Article 27, 28, 33, 35 and 45 of the Constitution.**
- c. The Orders herein sought by the Petitioner are incapable of being granted by virtue of Article 24 of the Constitution, as they grossly contravene the 1<sup>st</sup> Respondent’s Constitutional and Fundamental rights and freedoms under Articles 27 (1) and (2), 28, 31(c) and 33(3) of the Constitution.**
- d. There is no basis for this Honourable Court to grant the Orders in the Petition as no evidence has been tendered before this court to support the allegations made by the Petitioner. Further no compelling grounds have been cited to persuade this Court to grant the Orders sought by the Petitioner. The Petition is grounded on scanty facts, hearsay and rumours and the Petitioner appears to be on a fishing expedition as to the identity of his father.**
- e. The Petition as presented will contravene the rights of the 1<sup>st</sup> Respondent’s Family under Article 31(c) and 33(3) of the Constitution.**
- f. The Petition is designed towards embarrassing the 1<sup>st</sup> Respondent and was only filed by the**

**Petitioner when it became public knowledge that the 1<sup>st</sup> Respondent intended to run for the Murang'a Senatorial seat.**

- g. **The Petitioner is an adult and should take charge and responsibility for his own life. It is evident from the Petition that the Petition is brought with a view of laying a claim to inheritance and property.”**
8. At the outset, it is important to note that the Petitioner's attitude to this case has not been enthusiastic. This matter did not proceed on several occasions because the Petitioner was not ready to prosecute his case. On 3<sup>rd</sup> February, 2015 when the matter came up for hearing Ms Mungai who was holding brief for the Petitioner's advocate Mr Gikunda Miriti indicated that the Petitioner's advocate had asked for time allocation as he had gone to Kibera Law Courts for another matter. She suggested that the matter could be heard between 11.00 a.m. and 12.00 p.m. The matter was fixed for hearing at 11.30 a.m. and when the matter was called out, the Petitioner's counsel was not in Court. The matter therefore proceeded in the absence of the Petitioner and his counsel.
9. Earlier on, counsel for the Petitioner had asked for time to file submissions but had not done so by the time the matter came up for hearing. What is therefore before this Court for consideration is the petition alone. No evidence either orally or by way of affidavit was tendered in Court to support the petitioner's assertion that the 1<sup>st</sup> Respondent is his father. The Petitioner's supporting affidavit sworn on 18<sup>th</sup> January, 2013 simply states that he was brought up by a single parent. Nowhere in that affidavit does he depose who informed him that the 1<sup>st</sup> Respondent his father.
10. In paragraph 6 of his affidavit he simply avers that:

**“The petitioner grew up under custody of the mother until he became of age and sought information of his paternity and the 1<sup>st</sup> respondent was named as the father which fact the respondent has not rebutted or denied. Nevertheless the 1<sup>st</sup> respondent has refused to acknowledge the same formally to the petitioner and continues to withhold such acknowledgment and information despite demand from the petitioner.”**

The said paragraph does not disclose the source of the petitioner's information that the 1<sup>st</sup> Respondent is his father.

11. There is also another supporting affidavit sworn by the Petitioner in support of his notice of motion dated 7<sup>th</sup> June, 2013. The notice of motion was asking the Court to issue an order compelling the 1<sup>st</sup> Respondent to undergo a D.N.A. test. The application was dismissed in a ruling delivered on 23<sup>rd</sup> July, 2013 by D.S. Majanja, J. Nothing in that affidavit shows why the Petitioner believes the 1<sup>st</sup> Respondent is his father.
12. Although the Petitioner alleged violation of constitutional rights he did not cite a single provision of the Constitution allegedly violated by the respondents. He also never disclosed in what manner the respondents' alleged actions had violated the Constitution. A person who alleges a breach of fundamental rights and freedoms must state and identify the right infringed and the manner in which the infringement relates to him – see **Anarita K Njeru v Republic (No. 1) (1979) KLR 154.**
13. It is not enough for one to allege violation of constitutional rights. The law requires prove of the alleged violation. What has been alleged in this Court by the Petitioner is that the 1<sup>st</sup> Respondent is his father. No iota of evidence has been adduced to back up this claim. I cannot tell from the documents before the Court why and how the Petitioner believes his rights have been violated.
14. The 1<sup>st</sup> Respondent has vehemently denied the allegations. There is nothing on record to contradict his denial. Actually, there is really nothing before the Court upon which it can determine the Petitioner's claims. He has not proved his relationship to the 1<sup>st</sup> Respondent and neither has he established any loss and/or suffering sustained as a result of alleged denial of paternity by the 1<sup>st</sup> Respondent.
15. Nothing has been placed before the Court to show that the 2<sup>nd</sup> Respondent failed in his duty as the

recorder and keeper of the information relating to the birth of the Petitioner.  
16. The only conclusion is that this petition fails. The same is dismissed but there will be no order as to costs.

Dated, signed and delivered at Nairobi this 30<sup>th</sup> day of April, 2015

**W. KORIR,**

**JUDGE OF THE HIGH COURT**