REPUBLIC OF KENYA

IN THE HIGH COURT AT MALINDI

PETITION NUMBER 9 OF 2014

(FORMERLY NAIROBI HCC NO. 587 OF 2014)

LAW SOCIETY OF KENYA
….....PETITIONER

VERSUS

INSPECTOR GENERAL – KENYA NATIONAL POLICE SERVICE ….....1ST RESPONDENT

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

CABINET SECRETARY, MINISTRY OF INTERIOR &

CO-ORDINATION OF NATIONAL
GOVERNEMNT.....3RD RESPONDENT

CABINET SECRETARY FOR DEFENCE ….....4TH RESPONDENT

RULING

BACKGROUND

On the 15th of June, 2014 at about 8.45pm Mpeketoni Town in Lamu County was attacked by gunmen estimated to be about thirty (30) in number. The Mpeketoni police station as well as the Administration Police Divisional Headquarters were also attacked. According to the report by the Independent Police Oversight Authority (IPOA), sixty (60) people were killed. The attackers also invaded Kijijoni village on 16th June, 2014. The breakdown of those who were killed was given as 37 Kikuyu, 10 Giriama, 5 Kambas, 3 Kalenjin, 2 Luo, 2 Meru and 1 Kisii. All except one were male.

Following the attacks, on 20th June, 2014, the Inspector General of Police imposed a curfew in Lamu area that was to be effected for thirty (30) days from 6.30pm to 6.30am. The initial period was subsequently extended.

The Applicant's Case

The Petitioner filed the notice of motion on 1st December, 2014. The motion was subsequently amended on 5th December, 2014. The prayers being sought are that pending the hearing of the petition this court be pleased to issue conservatory order restraining the 1st and 3rd Respondents, officers, representatives,

servants and/or its agents from continuing with or giving effect to or enforcing and or continuing to impose a curfew in Lamu and its environs pursuant to the gazette notice by the 1st Respondent and barring the involvement and or any further military operations in Lamu Island pursuant to the imposed dusk to dawn curfew.

The application is supported by the affidavit of Apollo Mboya sworn on 5th December, 2014. Mr. Oluoch, Counsel for the Petitioner, relied on the application and its supporting affidavit. Counsel further submitted that the Inspector General of Police imposed a dusk to dawn curfew which is illegal, unconstitutional and punitive. The 6th Respondent deployed the Kenya defence forces to Lamu contrary to the provisions of Article 241 (b) and (c) which requires the authority of the National Assembly. The curfew breaches several Articles of the Constitution as the people of Lamu have been denied their rights to economic well being. Tourism which is the main economic activity has been effected by the curfew.

Mr. Oluoch contends that the daily 12 hours of curfew is subjecting the people of Lamu to human indignity. The curfew has lasted for six (6) months and has restricted the freedom of movement and association of the residents. Article 238 of the Constitution requires that national security be pursued in compliance with the rule of Law and fundamental freedoms. Other parts of the country like Baragoi, Nairobi and Mandera were attacked but no curfew was imposed. It is Mr. Oluoch's position that the people of Lamu are being segregated. Further, the curfew breaches the principle of proportionality as the lengthy period of the curfew is unfair.

The Respondents' Case

The Respondents filed a replying affidavit sworn by Ephantus K. Kuria, a Commissioner of Police, on the 16th December, 2014. Mr. Eredi, State Counsel, opposed the application and relied on that affidavit. Counsel further contends that the petitioners have no *locus standi* to file the application. The people the Petitioner wishes to represent have already gone to court and filed Petition Number 62 of 2014 before the Mombasa court. Those who filed the current application are based in Nairobi, and the allegations being raised are not attributed to anyone. No names are given of the Lamu people who are opposed to the curfew. The information given by the Applicant is just hearsay.

Mr. Eredi further contends that the Applicants have no *prima facie* case. The curfew is expected to end on 24th December, 2014. Section 24 of the Police Service Act Number 11A of 2011 and Sections 2 and 3 of the Preservation of Public Security Act gives the Inspector General of Police powers to impose measures that are aimed at preventing criminal activities; the curfew was imposed within the law. Counsel maintains that the Public Order Act, Cap 56 Laws of Kenya, Sections 8 and 9 gives powers to the Inspector General of Police to impose a curfew. It is further submitted that the Petitioner's rights must be balanced with the public interest. The fact that Lamu was attacked is not denied and those who imposed the curfew are security professionals. The curfew has worked as suspects were arrested and investigations are being done. The rights of the victims and the survivors have to be looked into.

It is Mr. Eredi's contention that the security organs are established by the Constitution. When such organs are executing their statutory mandate, no one should invite the court to interfere. Counsel relies on the case of **NATIONAL CONSERVATION FORUM -V- MINISTER OF STATE FOR PROVINCIAL ADMINISTRATION AND INTERNAL SECURITY & 2 OTHERS Nairobi Constitutional Petition No. 31 of 2013**. Counsel also relies on the case of **MUMO MATEMU -VS- TRUSTED SOCIETY OF HUMAN RIGHTS ALLIANCE & OTHERS: Nairobi Court of Appeal Civil Appeal No. 290 of 2012** where the court held that the Constitution must be read contexualy. According to Mr. Eredi, the application does not meet the threshold for the granting of conservatory orders as held in **Mombasa Petition Number 47 of 2011, HARUN BARKY YATOR -VS- JUDICIAL SERVICE COMMISSION**.

ANALYSIS

Whereas the Petitioner contends that the imposition of the curfew in Lamu has led to violation of the rights of Lamu residents, the Respondents' position is that the curfew is quite important for purposes of

security. Mr. Eredi informed the court that the curfew was to end on 24th December, 2014. It is not clear whether the curfew was extended or not. Mr. Oluoch for the Petitioner urged the court to expunge the replying affidavit as it was sworn by someone who is not a party to the suit. The affidavit was sworn by EPHANTUS K. KIURA who is the Lamu County Police Commander. The Inspector General, Kenya National Police Service, is the 1st Respondent. The dispute involves the curfew in Lamu County. Since MR. KIURA Is the representative of the 1st Respondent in Lamu, it was not necessary for the 1st Respondent to personally swear the replying affidavit. Mr. Kiura is well versed with the facts on the ground and does not need to reveal the source of his information. I do find that the replying affidavit is properly before the court.

The next preliminary issue was raised by Mr. Eredi. He contends that the Petitioner lacks locus to file this Petition. The Petitioner's executive officer stays in Nairobi and the averments in the affidavit are pure hearsays. He further maintains that the Lamu residents have already filed Petition number 62 of 2014 before the Mombasa Court. Article 22 of the Constitution empowers every person to institute court proceedings whenever it is felt that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed or is threatened. The main objective of this Article is to widen the scope of those people who can approach the court whenever they sense that rights or fundamental freedoms of Kenyans are violated or threatened with violation. Indeed Petition Number 62 of 2014 was filed by Muhuri, a human rights organization, and not the residents of Lamu. At times those people whose rights are being violated may not be aware of such violation or may not be financially capable of pursuing their rights through the court. This being the case, the Petitioner is within the Constitutional cover under Article 22 to file the current Petition. The Petitioner formed a committee which visited Lamu County and prepared a report. Mr. Apollo Mboya is aware of the Petitioner's report and his averments cannot be dismissed as pure hearsay.

The major issues being raised by the application are:

1. Whether the curfew was lawfully imposed.
2. Whether the curfew should be lifted.
3. Whether the deployment of the Kenya Defence Forces to Lamu County was unconstitutional.

The order declaring the curfew reads as follows:

> ***"Due to the rise in insecurity in Lamu County, I DAVID MWOLE KIMAIYO, the Inspector General of the National Police Service (Kenya) in accordance with the provision of Section 8(1) of the Public Order Act Cap 56 Laws of Kenya do hereby issue curfew orders within Lamu County from 10th July, 2014 to 20th August, 2014 from 6.30pm to 6.30am.***
>
> ***Every person residing within Lamu County is directed to remain indoors during the period the curfew order is in force except under and in accordance with terms and conditions of a written permit granted by the police county commander."***

According to the defence counsel, the curfew was lawfully declared. The legal provision allowing the declaration of the curfew orders is Section 8(1) of the Public Order Act. Mr. Eredi further cited Sections 2 and 3 of the Preservation of Public Security Act and Section 24 of the Police Service Act Number 11A of 2011.

The curfew order was put in place in line with the provisions of Section 8 of the Public Order Act. Mr. Oluoch was of the view that Chapter 56 was repealed but there is no evidence to that effect. There is a 2012 revised edition fo Chapter 56 Laws of Kenya. The initial curfew order was to last from 20th July, 2014 to 20th august, 2014. The order has been extended subsequently and by the time this application was made on 1st December, 2014 the curfew had subsisted for about six (6) months. Mr. Eredi submitted that the last extension was to end on 24th December, 2014. It is not clear whether the curfew was extended or not. The law requires that a curfew order be published widely so that all persons affected by the curfew are aware. It would be prudent to make the curfew order known to all Kenyans as people

travel from several parts of the country to Lamu.

According to the Applicant, the curfew is denying the Lamu residents their fundamental rights as enshrined in the Constitution. This includes the right to associate and to move freely. Mr. Eredi maintains that the curfew has worked. Counsel contends that since no curfews were imposed in other parts of the country that were affected by acts of terrorists and criminals, it does not mean that the imposition of the curfew in Lamu is discriminatory.

Section 8(1) of the Public Order Act allows the imposition of a curfew. However, under that Act, there is a proviso which gives the longest period of a curfew to be seven (7) days. The underlying objective of a curfew is to enable security personnel to move into an area affected by criminal acts leading to public disorder, or such other acts that affect the normal operations of the residents of the affected area. This therefore means that a curfew is a temporary stop gap measure intended to enable the security officers operate smoothly and calm the situation. It is not the intention of the law to make the curfew a normal daily weekly, or monthly routine of the citizens affected by it.

Section 8(1) of the Act states as follows:

> ***"(1) The Commissioner of the Police or a Provincial Commissioner may, if he considers it necessary in the interests of public order so to do, by order (hereinafter referred to as a curfew order) direct that, within such area (being, in the case of a Provincial Commissioner, within his province) and during such hours as may be specified in the curfew order, every person, or, as the case may be, every member of any class of persons specified in the curfew order, shall, except under and in accordance with the terms and conditions of a written permit granted by an authority or person specified in the curfew order, remain indoors in the premises at which he normally resides, or at such other premises as may be authorized by or under the curfew order.***
>
> ***(a) It shall be a condition of every permit granted under subsection (1) of this section that the holder thereof shall at all times wile acting under the authority thereof during the hours of darkness carry a light visible at a distance of twenty-five feet.***
>
> ***(b) Subject to paragraph (a) of this subsection, a permit under subsection (1) of this section may be granted subject to such conditions, to be specified in the permit, as the authority or person granting it may think fit.***
>
> ***(3) A curfew order shall be published in such manner as the authority making it may think sufficient to bring it to the notice of all persons affected thereby, and shall come into force on such day, being the day of or a day after the making thereof, as may be specified therein, and shall remain in force for the period specified therein or until earlier rescinded by the same authority or by the Minister as hereinafter provided:***
>
> ***Provided that no curfew order which imposes a curfew operating during more than ten consecutive hours of daylight shall remain in force for more than three days, and no curfew order which imposes a curfew operating during any lesser number of consecutive hours of daylight shall remain in force for more than seven days.***

4. ***Every curfew order shall, forthwith on its being made, be reported to the Minister, and the Minister may, if he thinks fit, vary or rescind the curfew order.***

5. ***The variation or rescission of a curfew order shall be published in like manner as that provided in subsection (3) of this section for the publication of a curfew order.***

6. ***Any person who contravenes any of the provisions of a curfew order or any of the terms or conditions of a permit granted to him under subsection (1) of this section shall be guilty of an offence and liable to a fine not exceeding one thousand shillings or to imprisonment for a term***

not exceeding three months, or to both such fine and such imprisonment."

Mr. Eredi submitted that Section 24 of the National Police Service Act number 11A of 2011 empowers the police to take all measures to prevent criminal activities. Section 24 of the Act states as follows:

> ***"The functions of the Administration Police Service shall be the -***
>
> ***(a) provision of assistance to the public when in need;***
>
> ***(b) maintenance of law and order;***
>
> ***(c) preservation of peace;***
>
> ***(d) protection of life and property;***
>
> ***(e) provision of border patrol and border security;***
>
> ***(f) provision of specialized stock theft prevention services;***
>
> ***(g) protection of Government property, vital installations and strategic points as may be directed by the Inspector-General;***
>
> ***(h) rendering of support to Government agencies in the enforcement of administrative functions and the exercise of lawful duties;***
>
> ***(i) co-ordinating with complementing Government agencies in conflict management and peace building;***
>
> ***(j) apprehension of offenders;***
>
> ***(k) performance of any other duties that may be prescribed by the Inspector-General under this Act or any other written law from time to time."***

Mr. Eredi also cited the provisions of Sections 2 and 3 of the Preservation of Public Security Act, Chapter 57 Laws of Kenya. Under this Act, the only person who can bring the provisions of the Act into application is the president. There is no delegated authority to the Inspector General of Police or the Cabinet Secretary in charge of internal security. Section 2 of the Act gives the definition of "the preservation of public security". However, all the acts to be undertaken under this Act have to be sanctioned by the president.

Article 238 (2) of the Kenyan Constitution states as follows:-

"(2) The national security of Kenya shall be promoted and guaranteed in accordance with the following principles -

> ***(a) national security is subject to the authority of this Constitution and Parliament;***
>
> ***(b) national security shall be pursued in compliance with the law and with the utmost respect for the rule of law, democracy, human rights and fundamental freedoms:***
>
> c. ***in performing their functions and exercising their powers, national security organs shall respect the diverse culture of the communities within Kenyan; and***
>
> ***(d) recruitment by the national security organs shall reflect the diversity of the Kenyan people in equitable proportions"***

The essence of all the above provisions is that whenever the security organs are protecting the country from any threats or criminal acts, such actions should be conducted within the law. Mr. Eredi was quite categorical that when the security organs are fulfilling their statutory mandate, no one should invite the court to intervene. The current application has not been brought so as to curtail the statutory mandate of the security organs. The main gist of the application is that the continued existence of the curfew orders is denying the residents of Lamu their Constitutional rights. Article 244(c) requires the National Police Service to comply with constitutional standards of human rights and fundamental freedoms. Any one who feels that the operations of the security organs are affecting Kenyans is at liberty to come to court and seek protection of those rights.

The proviso under Section 8 of the Public Order Act (2012 revised edition) only empowers the imposition of a curfew for not more than seven days. Such is the case where the period of the curfew is less than ten consecutive hours per day. If it is more than ten hours in a day then the curfew should not last for more than three days. The curfew in Lamu has ran for over six (6) months. This is well outside the period provided for under the law. The reasoning behind the seven day period under Section 8 of the Public Order Act is that a curfew has the effect of limiting the time during which the citizens can be pursuing their daily businesses. Curfews reduce the number of hours the affected persons operate in a day. The cumulative effect is to deny those who are affected their rights to pursue economic and social activities during those curfew hours. That being the case, the law only permits a limited period which would enable the security officers restore public order in the affected area. This includes investigations and possible apprehension of those involved in the unrest or criminal acts. A curfew is not intended to be the solution to criminal activities but is merely a stop gap measure to allow operations by the security organs undertaken with much ease. It was not the intention of the law to restrict citizens of a particular area to be indoors for twelve each hours each day for a period of six (6) months. This exceeds the principle of proportionality. There is no explanation by the Respondents as to what has been done during this period. I expected the Respondents to file a report and explain the necessity of maintaining the curfew. The fact that security operations are meant to be conducted secretly cannot justify the lack of explanation on the part of the Respondents. It is contended that the curfew has assisted in restoring peace and public order in Lamu. Investigations have been done and some people have been charged in court. If that has already been done, then why should the curfew be left to continue?

Given the facts of this case, it is clear to me that the curfew in Lamu has outlived its usefulness. According to Mr. Eredi, the last extension was to expire on 24th December, 2014. If that is the case, then the curfew orders must have lapsed. However, if there was any extension of the curfew, I do find that such extension is unlawful and is contrary to the spirit of the Constitution. The denial of the right to move freely under Article 39 of the Constitution cannot be curtailed in perpetuity. Although Article 24 of the Constitution allows the deprivation of rights and fundamental freedoms, such deprivations should be done within the law. Under Article 24, any limitation of a right or fundamental freedom in the Bill of Rights should be reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom. The limitation must also take into account its nature and extent (Article 24(c). To allow security organs a period of six months to investigate, pursue and apprehend offenders while there is a dusk to dawn curfew for all that period is tantamount to depriving the Constitutional rights of the affected citizens. Some socio-economic activities are done at night. This includes fishing, retail, video shows and social gatherings. It would be foolhardy to expect the attackers to be waiting for the curfew to be lifted so that they can attack again. It is the responsibility of the security organs to provide security to Kenyans during the day and at night. Security cannot be maintained by imposition of a curfew for over half a year in any part of Kenya. A curfew is an exceptional legal operation and should not be turned into a routine security process.

Under Article 132 of the Constitution, the president is empowered to declare a state of emergency. Such a declaration is subject to the provisions of Article 58. Under Article 58 2(b) an initial declaration of state of emergency can be effective for a period not longer than fourteen (14) days from the date of declaration, unless the national assembly resolves to extend it. Further, the national assembly under Article 58(3) (b) can only extend the state of emergency period of fourteen (14) days for not longer than two months at a time. Such extension must gain the support of at least two thirds of **all the members** of the national assembly and subsequent extensions require the support of three quarters of the members of the national

assembly.

The essence of the provisions of Article 58 is that a declaration of State of emergency has the effect of denying citizens their constitutional rights. Stringent measures have to be put in place to justify such declarations as well as their extensions whenever the state of emergency declarations are made. A declaration of state of emergency affects the entire nation. A curfew is limited to a specific area. The main issue then is, if the powers of the president to declare a state of emergency is subjected to stringent conditions and is subject to parliamentary approval and cannot be extended for more than two months at any given time, why then would a curfew be continuously extended without any explanation or report as to the situation on the ground. That is why the Public Order Act only allows a period of seven (7) days for the curfew orders to last. The imposition of the curfew is lawful as it is allowed by the law. However, the curfew orders cannot continue to exist in perpetuity as the orders are denying the residents of Lamu their constitutional rights. This is not in line with the provisions of Article 24 (c) whereby the nature and extent of the limitation must be taken into account.

The next issue involves the deployment of the Kenya Defence Forces in Lamu. The applicant contends that the deployment was unconstitutional as the permission of the National Assembly was not sought. Gazette notice number 4778 of 15th July, 2014 by the Cabinet Secretary, Ministry of Defence, reads as follows:

> ***"PURSUANT to Article 241(3) (b) of the Constitution of Kenya, as read with sections 33 (1) and 34(2) of the Kenya Defence Forces Act, 2012, notice is given that on 7th July, 2014, the Kenya Defence Forces deployed in support of the national Police Service in response to the security emergency situation in Lamu County"***

Article 241 (3) of the Constitution states as follows:

> ***"(3) The Defence Forces -***
>
> ***(a) are responsible for the defence and protection of the sovereignty and territorial integrity of the Republic;***
>
> ***(b) shall assist and cooperate with other authorities in situations of emergency or disaster, and report to the National Assembly whenever deployed in such circumstances; and***
>
> ***(c) may be deployed to restore peace in any part of Kenya affected by unrest or instability only with the approval of the National Assembly."***

Sections 33 and 34 of the Kenyan Defence Forces Act, Chapter 199 Laws of Kenya are cited in the gazette notice. Section 33 states as follows:

> ***"33. Deployment in support of National Police Service***
>
> 1. ***The Defence Forces may be deployed in a joint operation and in support of the National Police Service in situations of emergency or disaster.***
>
> 2. ***The Defence Forces may, with the approval of the National Assembly, be deployed to restore peace in any part of Kenya.***
>
> ***(3) Whenever the Defence Forces are deployed pursuant to subsection (2), the Inspector-General of the National Police Service shall be responsible for the administration, command, control and overall superintendence of the operation. "***

The deployment of the defence forces was made under Article 241 3(b) of the Constitution and Section 33 (d) and 34(2) of the Kenya Defence Forces Act. It is clear that the approval of the National Assembly

whenever the Kenya Defence Forces are deployed is only mandatory when such deployment is made under Article 241 (3) (c). Article 241 (3) (b) does not include the requirement of approval of the National Assembly before the deployment is done. All what is required is that a report should be made to the National Assembly whenever the Defence forces are deployed in situations of emergency or disaster: when the defence forces are deployed to restore peace in any part of Kenya affected by unrest and instability under Article 241 (3) (c), then prior approval of the National Assembly is required.

The provisions of Section 33 (1) and 33 (2) of the Kenya Defence Forces Act are in line with the provisions of Article 241 of the Constitution. The deployment was done under the provisions of the law which do not require prior approval by the National Assembly and therefore the Kenya Defence Forces were properly deployed. All what should be done is a report to be sent to the National Assembly by the concerned cabinet secretary. There is no indication as to when and after how long after the deployment is done, should the report to the National Assembly be done. However, the cabinet secretary for defence is duty bound to send a report to parliament as per the law.

The provisions of Section 33 (1) and 33 (2) of the Kenya Defence Forces Act are that:

Determination

The application herein is seeking a conservatory order. I need not reproduce the several authorities which have dealt with the circumstances under which a conservatory order can be granted. The Petitioner's case is arguable and is not frivolous. If no orders are granted, the rights and fundamental freedoms of the people of Lamu will be violated in the period before the Petition is fully heard. The balance of convenience is in favour of the Applicant. The security organs could have used less restrictive measures to achieve the same purpose. Such measures could have included adjustment of the curfew hours so that as the security operation was going on, the curfew hours were reduced until the curfew was ultimately eliminated. The long hours of the curfew and the many months the curfew has ran leads to derogation from the core and essential content of the right to free movement, assembly, associate and earn a good living. In the case of **Gitaru Peter Munya V Dickson Mwenda Kithinji & Others, Supreme Court Application No. 5 of 2014,** the Supreme Court differentiated conservatory orders with orders of injunction as follows:

> ***"Conservatory orders" bear a more decided public-law connotation: for these are orders to facilitate ordered functioning with public agencies, as well as to uphold the adjudicatory authority of the court, in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private-party issues as "the prospects of irreparable harm" occurring during the pendency of a case, or "high probability of success" in the supplicant's case for orders of stay. Conservatory orders, consequently, should be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes."***

In the case of **CREAW & OTHERS V THE A.G. [2011] 1. EA 84,** the Court held as follows:

> ***"a party seeking a conservatory order only requires demonstrating that he has a prima facie case with a likelihood of success and that unless the court grants the conservatory order, there is real danger that he will suffer prejudice as a result of the violation of threatened violation of the Constitution"***

From the above authorities, it is clear to me that the Applicant deserves being granted a conservatory order. The Respondents have not indicated when they intend to end the curfew. In essence, therefore, the rights of the people of Lamu will continue to be violated due to the long hours of curfew which has existed since 20th June, 2014. The Applicant has demonstrated that it has a prima facie case and unless the conservatory order is granted, the people of Lamu will continue to suffer prejudice. That is why Article 23 (3) (c) allows the court to grant a conservatory order in such situations.

It is evident that there was an attack at Mpeketoni on 15th June, 2014. Many people lost their lives. The Inspector General of Police imposed the curfew. The curfew started on 20th June, 2014 although the annexed curfew order ran from 20th July to 20th August, 2014. The imposition of the curfew was lawful as it enabled the security organ carry out their mandate of restoring peace and security without any disturbance. However, the continued extension of the curfew is contrary to the spirit of the law and is unlawful. Perpetual extension of the curfew should not be allowed in any open and democratic society based on human dignity, equality and freedom. This is contrary to the provisions relating to state of emergency under the Constitution which limit the presidential powers to impose a state of emergency to only fourteen days. Subsequent extensions of state of emergency is left to the National Parliament. The imposition and subsequent extension of curfew orders cannot be a one man show with no responsibility for an explanation to the affected citizens. The spirit of the Constitution is that public servants endowed with certain responsibilities must be accountable to the Kenyans. Under Article (1) of the Constitution, all sovereign power belongs to the people. The people of Lamu are part of the sovereign power and cannot be subjected to twelve hours of indoor life in perpetuity. This is so irrespective of the initial cause which triggered the curfew orders – the attack at Mpeketoni. I do find that the initial curfew period was to last for only seven days as provided under Section 8 of Chapter 56. The subsequent extension required proper explanation to the *wananchi* and could not have lasted up to December, 2014. This is not proportional.

In the end, I do find that the application dated 5th December, 2014 in relation to the imposition of the curfew is merited and is hereby allowed. The prayer relating to the barring of the involvement of the military organs in Lamu is not allowed. The extension of the curfew in Lamu is hereby declared unlawful and contrary to the spirit and intent of the law. The curfew in Lamu County should end forthwith as prayed in the application. There shall be no orders as to costs.

Delivered and dated at Malindi this **10th** day of **April, 2015.**

Said J. Chitembwe

JUDGE