



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT GARISSA**  
**PETITION NO. 6 OF 2015**

**HAKI NA SHERIA INITIATIVE ..... PETITIONER**

**V E R S U S**

- 1. INSPECTOR GENERAL ..... 1ST RESPONDENT**
- 2. CABINET SECRETARY FOR INTERNAL SECURITY ..... 2ND RESPONDENT**
- 3. HON. ATTORNEY GENERAL..... 3RD RESPONDENT**
- 4. KNHR & EQUALITY COMMISSION ..... 4TH RESPONDENT**

**RULING**

Before me is a Notice of Motion dated 22nd May 2015, filed by the petitioner, whose prayers are as follows:-

1. That the application is certified as urgent and the same be heard *ex parte* on the first instance.
2. That pending the hearing and determination of this application, this Honourable court be pleased to issue conservatory orders restraining the first and second respondents, their officers, representatives, servants and or their agents from continuing with or giving effect to or enforcing and or continuing to impose a curfew in Garissa, Wajir, Mandera and Tana River counties pursuant to the curfew declaration by the first and second respondents.
3. That pending the hearing and determination of this petition, this honourable court be pleased to issue conservatory orders restraining the first and second respondents, officers, representatives, servants and or their agents from continuing with or giving effect to or enforcing and or continuing to impose a curfew in Garissa, Wajir, Mandera and Tana River counties pursuant to the curfew declaration by the first and second respondents.
4. That the costs of this application be in the cause.

The application has grounds on the face of the Notice of Motion. The grounds are that on 3rd April 2015 the first respondent imposed a dawn to dusk curfew in the four counties which was illegal and unconstitutional and punitive. That the first and second respondent did not have powers to extend the curfew for a whole month until 16th June 2015. That the Constitutional rights of the residents to movement under Article 39 and worship under Article 32 of the Constitution had been and continue to be violated by the continued enforcement of the curfew. That the curfew was only meant to be a stop gap measure and was not meant to be an everyday occurrence. That Article 238 of the Constitution required that National Security be pursued in compliance with the Rule of Law and protection of the fundamental freedom. That the enforcement of the curfew daily for 12 hours had subjected the communities in the four counties to human indignity and severely affected the socio economic well being of the residents. That a County like Tana River where the curfew had been imposed had not been affected by terrorist attacks. That unless this court granted the conservatory orders pending the hearing and determination of the petition, there was real danger that the residents of the four counties would suffer prejudice through

violation of the Constitution.

The application was filed with an affidavit sworn by Barre Adan Kerrow described as the coordinator in Garrisa county of the petitioner. It was deponed in the said affidavit that he was a community member from the area living in Garrisa. It was deponed also that on the 2nd April 2015 he was in Garrisa when the University was attacked by terrorist leading to the loss of over 148 Kenyans. That he watched television and witnessed the 1st respondent the Inspector General of Police declare a curfew from 6.30 Pm to 6.30 Am from 3rd April to 16th April 2015. That the curfew had since been imposed and a number of individuals arrested. That later the Cabinet Secretary who is the 2nd Respondent, extended the curfew to 16th June 2015 through a Gazette Notice dated 15th May 2015. That several reports of violation of human rights including torture, extortion and disappearances had occurred in the name of enforcing the curfew. That the curfew had severely limited the hours of operation of shops, hotels and other establishments causing serious losses. That the curfew had seriously affected the evening prayers and was likely to affect the religious requirements in the coming month of Ramadhan. That the President had not declared a state of emergency under Article 58 (2) of the Constitution.

Before the application was served, Mr. Bashir Learned counsel for the petitioner sought to address the court on prayers 1, and 2. Counsel submitted that the curfew had severely curtailed the right to movement and freedom of worship of the residents of the four counties. He further submitted that the 1st and 2nd respondents did not have powers to extend the curfew beyond 7 consecutive days under Section 8 of the Public Order Act. Counsel relied on the case of Law **Society of Kenya -vs- Inspector General Kenya National Police service and 3 others 2015 EKLR.** Counsel emphasise that the curfew affected business in the four counties. In addition counsel submitted that the 1st and 2nd Respondent extended the curfew without any consultation with the residents of the area who would be affected by the curfew as required under Article 10 of the Constitution. Counsel emphasised that this court had an obligation under the Constitution to protect the rights of residents in this four counties, and urged the court to grant prayers 1 and 2 of the Notice of Motion before service on the Respondent.

Having considered the application, and the submissions of counsel, I have no hesitation to certify the application as urgent I will however not grant prayer 2. The first reason is that granting the stay orders sought in the Notice of Motion will actually determine the main issue in contest and will have the effect of determining the substantive prayers in the petition at a preliminary stage.

Secondly in my view this being a matter of great public importance that is security, it will be inappropriate to grant such an order before hearing the parties who are the respondents and who are the makers of the order in contest. The case authority relied upon that is **Law Society of Kenya -vs- Inspector General of Police** (Supra) was a decision made after all the parties were served and heard. In my view in our present case, it is necessary to hear the position of all the respondents before a decision can be made in one way or the other. This is not a matter where the curfew is intended. It is a matter where the curfew is already in operation. Therefore in my view this court needs to hear the other side to be able to make its decision one way or the other.

In effect I certify the application as urgent. I however decline to grant the exparte conservatory orders requested. Instead I order that the Notice of Motion be served forthwith on the respondents. I will fix a near hearing date, since the matter has been certified as urgent. I make no order as to costs in the meantime.

Dated and delivered at Garissa this 26th day of May 2015.

**GEORGE DULU**

**JUDGE**