



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
PETITION NO. 47 OF 2012

RAHIMKHAN AFZALKHAN RAHIMKHAN 1ST PETITIONER
SHAMSHAD BEGUM AFZALKHAN RAHIMKHAN 2ND PETITIONER
DANIEL MWANGI 3RD PETITIONER
PAULINE KAVINYA MWONGELA 4TH PETITIONER
SAYED MUSHTAQ HUSSAIN 5TH PETITIONER

VERSUS

CHIEF LAND REGISTRAR 1ST RESPONDENT
ATTORNEY GENERAL 2ND RESPONDENT
COMMISSIONER OF LANDS 3RD RESPONDENT

DIRECTIONS

0. Counsel for the Respondent has sought that the Petition herein be referred to the Hon the Chief Justice under Article 165 (4) of the Constitution for His Lordship to constitute a bench of three judges to hear and determine the petition. Counsel has cited the gravity of the case and the difference of opinion among High Court Judges on the issue whether the new Constitution of Kenya 2010 could be applied retrospectively.
0. Article 165 (4) allows for the reference by the court to the chief justice for constitution of a bench of three or more judges where the court certifies a matter to involve a substantial point of law as follows:

“(4) Any matter certified by the court as raising a substantial question of law under clause (3) (b) or (d) shall be heard by an uneven number of judges, being not less than three, assigned by the Chief Justice.”

0. I do not find in the gravity of the case as reason for referring the matter to the Hon the Chief Justice. The same can be dealt with, and it is in the interest of expedited disposal that the hearing

- proceeds before a single judge of the Court.
0. As regards alleged divergence of opinion as to retroactivity of the Constitution of Kenya 2010, the matter is governed by the authority of the Supreme Court of Kenya in *Samuel Kamau Macharia and Anor v. Kenya Commercial Bank Ltd. and 2 Ors.* (2012) eKLR and there can therefore be no reason to refer the matter to the Chief Justice on that account. See also *Duncan Otienov AG* (2012)eKLR; *Thomas Musyoki Mutuse v. AG* (2013) eKLR; and *Milkah Wanjiku Kinuthia & 2 Ors v. AG* (2013) eKLR applying the old constitution to events occurring before the promulgation of the new Constitution.
 0. Accordingly, I direct that the petition will proceed to hearing before one judge of the court on a date to be fixed in consultation with the parties.

Dated signed and delivered the 27th February 2014

EDWARD M. MURIITHI

JUDGE

In the presence of: -

Miss Amina for Muriithi for the Petitioners

Mr. Ngari for the Respondents

Miss Lilnda - Court Assistant