



**IN THE HIGH COURT AT NAIROBI**

**MILIMANI LAW COURT**

**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION PETITION NO. 111 OF 2014**

**BETWEEN**

**DAVID GITAHU suing as the**

**CHAIRMAN OF OTHAYA RESIDENTS'**

**FOUNDATION ..... PETITIONER**

**AND**

**ATTORNEY GENERAL ..... RESPONDENT**

**JUDGMENT**

1. The petitioner, who was unrepresented in these proceedings, brings the petition dated 17<sup>th</sup> March 2014 seeking the following orders:-
  - i. *Stop the Bible use for Swearing in Public Institutions.*
  - ii. *The president as a servant chosen by God and for the purpose of God having compromised in some areas, on behalf of himself and the country he must repent for oath has no compromise. God is not a respecter of persons. Romans 2: 11-12.*
  - iii. *There is no partiality with God (Verse 12) all who sin outside the law will perish without reference of it, and all who sin under the law will be judged in accordance of it.*
2. As the prayers show the petitioner is aggrieved by the fact that the Bible is used in public institutions to take the oath of office. He marshals biblical arguments and exhortations to shore up his case. The grounds of his case are set out in the petition and set them out verbatim as follows;
  - i. *?To stop the use of the Holy Bible in swearing in the Public Institutions. It is against the Bible. According to James 5:12 and Mathew 5:34-37, "But I say to you, swear not at all, neither by heaven; for it is God's throne nor by earth for it is footstool; neither shall you swear by your head, because you cannot make one hair white or black. But let your communication be yea, yea: Nay for whatsoever is more than this come of evil Yeas, yea- No, no"*
  - ii. *Our leaders who swear with the Bible do not fulfil the oath, hence making the County sinful before God, Mathew 5:33 and Psalms 15:1-4. "In whose eyes a vile person is contemned; but he honours them that fear the Lord He that swears to his own heart and changes not."*
  - iii. *Leviticus 5: 4-13 "Or if a soul swear, pronouncing with his lips to do evil or to do good whatsoever it be that a man shall pronounce with an oath and it be hid from him, when he knows of it, then he shall be guilty of in one of these."*

- iv. *Spiritual problems cannot be identified by academic qualifications or the levels of authority but by the servants of God to whom may be revealed Genesis 41: 16 “And Joseph answered Pharaoh, saying it is not in me: God shall give pharaoh an answer of peace”*
  - v. *Proverbs 31:8-9 says that “Open your mouth for the dumb in the cause of all such as are appointed to destruction. Open your mouth, judge righteously and plead the cause of the poor and needy.”*
  - vi. *Our leaders after living life against the will of God they later take sacrifices in the house of God covering the altar of God with tears, weeping and groaning because he does not accept favorably from their hands. Malachi 2: 13.*
  - vii. *Using the Bible is an evil foundation and traps Christians who don't understand the Bible for the constitution allows those who know to affirm by lifting their hand.*
  - viii. *In our Country this is a new time of leadership and governance and for the fulfilment of the will of God. He has sent me to deal with the spiritual matters affecting our Country.*
3. The respondent filed grounds and written submissions in opposition to the petition. The gist of the response is that the petition lacks merit and does not disclose any constitutional violations. The respondent avers that under **Article 74** of the Constitution, a State Officer must take and subscribe to an oath or affirmation of office before assuming office or performing the functions of office. The form of the oath or affirmation is set out in the **Third Schedule** to the Constitution or prescribed under an Act of Parliament.
  4. It is well established that a petitioner who seeks redress under the Constitution must state his claim with precision by reference to the provisions of the Constitution violated and how they are violated. This principle has been established since the case of **Annarita Karimi Njeru v Attorney General [1979] KLR 54** and was recently re-stated by the Court of Appeal in the case of **Mumo Matemu v Trusted Society of Human Rights Alliance and Others Nairobi CA Civil Appeal No. 290 of 2013[2013] eKLR**. I would also add what was stated in **Meme v Republic [2004] 1 EA 124** that, ?“Where a person is seeking redress from the High Court on a matter which involves a reference to the Constitution, it is important that he should set out with a reasonable degree of precision that of which he complains, the provisions said to have been infringed and the manner in which they are alleged to have been infringed and that the applicant's instant application had not fully complied with the basic test of constitutional references, as it was founded on generalised complains without any focus on fact, law or Constitution, hence it had nothing to do with the constitutional rights of the appellants”
  5. In essence the petitioner seeks to invoke Biblical principles to impugn the legal provisions for taking oaths. The petitioner’s case is not founded on the Constitution or any law. The petitioner has not referred to any Article of the Constitution that has been violated or any law that has been breached. The Court is not competent to make judgments on the religious suitability of taking an oath on the Bible and the spiritual consequences of doing so unless such a requirement is a breach of the Constitution or the law. The petition must therefore fail on this ground.
  6. I would add that the **Oaths and Statutory Declarations Act (Chapter 15 of the Laws of Kenya)** which governs the taking of oaths and affirmation, does not require that every oath be taken on the Christian Bible. Every person has a choice whether in fact he or she should be sworn. **Section 15** thereof provides that, “Every person upon objecting to being sworn, and stating the ground of such objection, either that he has no religious beliefs or that the taking of the oath is contrary to his religious belief shall be permitted to make his solemn affirmation instead of taking an oath in all places and for all purposes where an oath is required by law, which affirmation shall be of the same effect as if he had taken an oath.” Likewise, the **Third Schedule** to the Constitution, which provides the form of oath or affirmation to be taken by State Officers, does not require taking the oath based on the Bible.
  7. The petitioner and others who believe that taking an oath on the Bible is a violation of their sacred principles have the freedom, consistent with **Article 32** of the Constitution which protects freedom of religion, to decline to take an oath that offends their religious beliefs.

8. In light of what I have stated, the petition lacks merit as it is not grounded on any alleged or threatened violation of the Constitution or the Bill of Rights. It is dismissed with no order as to costs.

**DATED and DELIVERED at NAIROBI this 16<sup>th</sup> day of April 2014.**

**D.S. MAJANJA**

**JUDGE**

Mr David Gitahi, the petitioner in person.

Mr Obura, Litigation Counsel, instructed by the State Law Office, for the respondent.