



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**PETITION NO. 6 OF 2014**

IN THE MATTER OF ALLEGED VIOLATION OF THE FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES 28, 29 (C) (D) (F), 47, (1),(2) OF THE CONSTITUTION OF KENYA, 2010

**AND**

IN THE APPLICATION FOR BILL OF RIGHTS AND FUNDAMENTAL FREEDOMS UNDER ARTICLES 20(1) (2)(3) &(4)

**AND**

IN THE MATTER OF IMPLEMENTATION OF THE BILL OF RIGHTS AND FUNDAMENTAL FREEDOMS UNDER ARTICLES 21(1), 3, & 4.

**AND**

IN THE MATTER OF RULE 3,4,(A) OF THE CONSTITUTION OF KENYA( PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS AND ENFORCEMENT OF THE CONSTITUTION) PRACTICE AND PROCEDURE RULES 2012 AND ALL OTHER ENABLING POWERS AND PROVISIONS OF THE LAW.

**AND**

IN THE MATTER OF ARTICLES 5, 7, 8 AND 25 OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

**AND**

IN THE MATTER OF SECTION 18 (1) OF THE POLICE ACT, CAP 84 LAWS OF KENYA

**BETWEEN**

**DAVID MULE KATWIWA(SUING THROUGH HIS LAWFUL WIFE)**

**ESTHER K.MULE.....1<sup>ST</sup> PETITIONER/ APPLICANT**

**ESTHER KALONDU MULE.....2<sup>ND</sup> PETITIONER/APPLICANT**

## VERSUS

THE INSPECTOR GENERAL.....1<sup>ST</sup> RESPONDENT  
THE CABINET SECRETARY MINISTRY OF INTERIOR AND  
COORDINATION OF NATIONAL GOVERNMENT.....2<sup>ND</sup> RESPONDENT  
THE HON. ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT  
STANLEY TALAM.....4<sup>TH</sup> RESPONDENT  
SAMUEL MATI .....5<sup>TH</sup> RESPONDENT

## RULING

1. The application dated **31<sup>st</sup> March, 2014** is brought pursuant to the provisions of Article **5,7, 8 & 25** of the Universal Declaration of Human Rights and **Section 18(1)** of the **Police Act, Cap 84 Laws of Kenya**. It seeks orders as follows:-
  - i. **That** the honourable court do allow for the addition of the 2<sup>nd</sup> petitioner/applicant, **Esther Kalondu Mule** to be enjoined into the suit as a co-petitioner suing on her on right as spouse of the 1<sup>st</sup> petitioner as well as on behalf of the 1<sup>st</sup> petitioner who has since lost his memory, and therefore legally incapacitated, unable to act in his own name and person;
  - ii. **That** the Honourable Court do allow for the substitution of the names ‘Commissioner of Police’ and ‘**Stanley Talam**’ as captured in the statutory notice served on the Hon. Attorney General, on the 16/3/12 with those of ‘Inspector General’ and ‘**Geoffrey Talam**’ respectively;
  - iii. **That** the Honourable Court do grant leave for the addition of the cabinet Secretary, Ministry of Internal Security to be enjoined as respondent in this suit.;
  - iv. **That** the changes prayed for in (i)(ii) and (iii) above, be subsumed within the statutory notice served on the 3<sup>rd</sup> respondent on the **16/3/2012** and the resultant changes therein be deemed as sufficiently, duly and properly served;
  - v. **That** costs of this application be provided for;
  - vi. **That** the officer commanding station (OCS) Kangundo, be compelled to issue the Petitioner/ applicants herein with a duly filed P3 form.
2. The application is supported by grounds that:-
  - i. The 3<sup>rd</sup> respondent herein was served with a statutory notice where the 1<sup>st</sup> Petitioner/Applicant was the only proposed plaintiff.
  - ii. The 1<sup>st</sup> proposed plaintiff in the statutory notice has since lost his memory and is unable to speak.
  - iii. The 2<sup>nd</sup> Petitioner being the lawful wife of the 1<sup>st</sup> petitioner as of right is entitled to pursue the matter on his behalf;
  - iv. Further, the 2<sup>nd</sup> petitioner is desirous to pursue her own distinct claim against the respondent;
  - v. Per the search done at the Registrar of Motor-vehicles on 9/8/2012, the subject motor-vehicle was owned by the office of the President, an equivalent of the ministerial docket headed by the 4<sup>th</sup> respondent which necessitates the 4<sup>th</sup> respondent being enjoined to the suit;
  - vi. Following changes per the Constitution of Kenya 2010, the designation of Commissioner of Police is non-existent;
  - vii. The name of the 4<sup>th</sup> respondent differs from the one captured in the statutory notice; and the 1<sup>st</sup> petitioner has not been issued with a P3 form.
3. In an affidavit in support of the application the applicant depones that she is the lawful wife of the

- 1<sup>st</sup> petitioner who was hit by a motor-vehicle Registration **Number GK A 979D** branded '*Tala Police Post*'. A search carried out at the Registrar of Motor-vehicles, Nairobi indicated the vehicle is owned by the Office of the President, currently Ministry of Interior and Coordination of National Government.
4. Further, he states that investigations carried out reveal that the Officer incharge of Kangundo, **Samuel Mati** was in the motor-vehicle on the date of the accident. Notices served upon him seeking issuance of P3 form and O.B number were ignored. At the time of serving of the statutory notice, the names of the driver were erroneously captured as '*Stanley Talam*' instead of '*Geoffrey Talam*.'
  5. He states that per the constitutional requirement the designation of the 2<sup>nd</sup> respondent has changed to the **Inspector General**.
  6. The issue to be addressed is whether orders sought should be granted. This is- an application in which the applicant herein seeks to be enjoined as a party to the suit in order to pursue redress to her right as well as that of the 1<sup>st</sup> petitioner. The law allows a party to be enjoined in a suit for purposes of determining the real matter in issue ( see **Order I Rule 10** of the **Civil Procedure Rule**. There having been no opposition to the order sought, this court would not decline to grant such an order.
  7. Following the provisions of the **Constitution of Kenya 2010**, the Office of Commissioner of Police is non-existent.
  8. It has been demonstrated that police have not been cooperative in the matter. Information sought by the Petitioner's lawyer was not availed hence erroneous indication of the name of the person who was said to be driving the motor vehicle alleged to have caused the accident.
  9. A copy of records from the Registrar of motor-vehicles established ownership of the motor-vehicle. Adding such a party to the suit will also enable the court determine issues raised.
  10. This court has been asked to grant leave to enable changes to be made to be subsumed in the statutory notice already served pursuant to **Section 13A** of the **Government Proceedings Act**. It has been held that **Section 13A** of the **Government Proceedings Act** violates **Article 48** of the Constitution (see *Kenya Bus service Ltd & another versus Minister for Transport & 2 Others [2012] eKLR*). In this matter a statutory notice had been given in accordance with the law, amendment of the same to suit the position sought will be in the interest of justice.
  11. Having considered the application I do, grant the applicant leave;-
    - i. To be enjoined as party in the petition to sue on her own behalf and that of her ailing husband who is incapacitated.
    - ii. To have the title 'Commissioner of Police' substituted by that of 'Inspector General'.
    - iii. To add the Cabinet Secretary Ministry of Internal Security as a respondent to the suit.
    - iv. The said changes shall be deemed to be subsumed within the statutory notice.
    - v. OCS Kangundo shall issue the applicant with a P3 form.
    - vi. No order as to costs.

**DATED, SIGNED and DELIVERED at MACHAKOS this 30<sup>TH</sup> day of JUNE, 2014.**

**L.N. MUTENDE**

**JUDGE**