



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

PETITION NO. 10 OF 2012

FRANCIS BUNDI KIMATHI.....PETITIONER

VERSUS

D.C IMENTI NORTH DISTRICT.....RESPONDENT

JUDGEMENT

1. The petitioner FRANCIS BUNDI KIMATHI through a Constitutional petition dated 16th May, 2012 bought pursuant to Article 10 as read with Article 232, 22(1) and (2) as read with Article 358(1),(c) 45, 73 and 75 of the Constitution of Kenya respectively sought the following orders:-
 1. *That the matter be certified as immensely urgent for reasons disclosed to the certificate of urgency and services be dispensed within the first instance*
 2. *That the honourable court be pleased to make an order of removing the defendant from the foregoing public offices as it may deem necessary to grant pending the hearing and determination of this application.*
 3. *That pending the hearing and determination of this application the defendant be ordered to reconstruct the shelter/house which was demolished/destroyed and restore the damaged properties belonging to the family.*
 4. *That the deponent named herein be granted custody vesting legal and actual care and control and physical possession of the alleged piece of land as she is the legal heir to the aforesaid piece of land as auspice by the defendant family.*
 5. *That the honourable court be gratified to order officer in charge-Imenti North Police Division(OCPD) to supervise, execute and enforcement of orders, granted herein by the honourable court.*
 6. *The petitioner avers that there is a similar petition pending before court and it is yet to be heard and determined soon.*
 7. *That the honorable court to make any other such better order which may deem fit to grant in the circumstance where property had been destroyed and life endangered by the defendant knowingly and deliberately to intimidate the aforesaid family/resident of Chugu location.*
 8. *That annexed herewith, this application and produced as document identified No's 1 to 3 are copies of original documents and photographs from the scene.*
2. The petitioner consequently prayed for judgment against the defendant for:-
 - i. *Compelling order against the defendant to expeditiously and conscientiously reconstruct the demolished shelter/house belonging to the aforesaid family forthwith and restore back the damaged properties.*
 - ii. *A declaration that the defendant be removed from public office under Public interest*

owed to incompetence, corruption and other improper motives to avert further ignominy orchestrated by the defendant against the residents of Chugu Location.

iii. *A declaration that the entire Chugu Resident and their basic freedom had been deprived, discriminated, threatened and endangered by the defendant as the petitioner claimed there before for a total overhaul of the defendant offices owned to mistrust office, mischief, incompetence and other motives as much as the omission was meant for vindictive purpose.*

iv. *Any other relief.*

3. Though the grounds on which the application has been premised are not stated in the petition one ESTHER KARAMUTA KINOTI who is apparently the complainant in this petition has sworn a verifying affidavit dated 16th May, 2014 purportedly to confirm the contents of the petition to be true.
4. The State Law Office at Meru was served with the petition and with several hearing and mentions notices but there was no appearance for the defendant during mentions or hearings in this matter save appearance on 5.5.2014 when State Counsel sought time to file their response within 21 days but the same was never filed and court allowed the petitioner to proceed exparte.
5. The petitioner in this petition contrary to his pleadings in the petition dated 16/5/2012 during his submissions prayed that the Assistant Chief of Chungari sub-location, Kiroru location, be suspended from the defendant's offices due to violation of the constitution and cease holding the position of Assistant Chief due to impunity and corruption as the Assistant Chief interfered with Land Parcel No.Nyaki/Chugu/34. The petitioner submitted that he wants the sub-chief and chief of Kiroru location removed from their offices because they were bribed to evict the family of Esther Karamuta Kinoti
6. The petitioner in his submissions averred that Esther Karamuta Kinoti is not related to him and the land in question is property of Gedion M'Kura(deceased) who died 5 years ago and who is not related to the petitioner. He further submitted that he is not a dependent of the deceased, he has not he obtained grant of letters of administration to the deceased estate nor does he have any interest to said estate but he is pursuing the matter for the interest of justice. He admitted that in his petition he has not mentioned the Assistant Chief and chief as parties and that he knows they are employed by public service commission and that he had not laid any complaint against the administrative officers he is seeking adverse orders against; he also admitted that he had not complained to Anti-corruption body or anyone against the said Officers.
7. I have very carefully considered the instant petition and the petitioner's submissions which I have carefully reproduced herein above. It is imperative to note that the present petition has been brought by the petitioner **Francis Bundi Kimathi** herein allegedly on behalf of **Esther Karamuta Kinoti** against **District Commissioner North District**. The petitioner has not disclosed in what capacity he has brought the instant petition nor has he disclosed which District Commissioner, Imenti North District the petition is brought against having been filed on 16th May, 2012.
8. Article 22 of the Constitution of Kenya which deals with enforcement of the Bill of Rights provides as follows:-

22.(1),(2) (a),(b),(c) and (d) Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.

(2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by—
 - a. *a person acting on behalf of another person who cannot act in their own name;*

- b. ***a person acting as a member of, or in the interest of, a group or class of persons;***
- c. ***a person acting in the public interest; or***
- d. ***an association acting in the interest of one or more of its members.”***

9. The petitioner in the petition and in his submissions failed to adduce any evidence to proof any of the grounds enumerated in Article 22(2) of the Constitution to show why the instant petition has been brought in his own name as opposed to the alleged complainant one Esther Karamuta Kinoti. Significantly the said Esther Karamuta Kinoti described herself as a deponent in her affidavit and did not disclose her interest in this cause nor did she disclose why she made the affidavit.

10. The petitioner's complaint in the petition is against the then undisclosed District Commissioner, Imenti North District as of undisclosed time, most probably as of 16th May, 2012, however at the time of the petitioner's submission he shifted his complaint from the District Commissioner, Imenti North District to that of Assistant Chief of Chung'ari Sub-location and Chief of Kiroru location who the petitioner has not complained against in his petition and who had not been made parties to the petition and such petition is against the rules of natural justice.

11. A perusal of the petitioner's complaint in this petition reveals that it is twofold in that it is both criminal and civil in nature against the defendant. The petitioner in his submissions raised similar complaint against the assistant chief and chief who are not parties. The petitioner submitted that the Assistant Chief and chief were employees of Public Service Commission and that the acts of corruption and bribery he alluded to against the two officers were not reported to any of the authorities, be it police or their employers or anti-corruption body and action not taken. It has been constantly stated by the courts of this country that where there exists sufficient and adequate mechanisms to deal with a specific dispute or complaint, the jurisdiction of the court should not be invoked until such mechanism have been exhausted (see **PETER OCHARA ANAN & OTHERS KISII PETITION NO. 3 OF 2010**) unreported 2011(Eklr) in which case Hon. Justice Makhandia, as he then was stated thus:-

- i. ***It has been stated constantly that where there exists sufficient and adequate legal Avenue, a party ought not to trivialize the jurisdiction of the court pursuant to the Constitution. Indeed such a party ought to seek redress under the relevant statutory provision; otherwise such available statutory provisions will be rendered otiose.”***

12. The petitioner did not report the complaint against the assistant chief, chief or the District Commissioner to the Public Service Commission for action and the Public Commission refused to take action. On the alleged bribery the petitioner did not report to the OCPD (Meru) or any police station and action was not taken. The petitioner never reported the alleged corruption to Anti-corruption body and action not taken. The alleged malicious damage to property was not reported to police and action not taken. The petitioner in the instant petition admitted that he did not report to nay authority of the alleged offences and action not taken and therefore he ought not to have invoked the Constitutional provisions as he had done in this petition.

13. Article 23(3) of the Constitution provides the remedies available to the petitioner as hereunder:

(3) In any proceedings brought under Article 22, a court may grant appropriate relief, including—

(a) a declaration of rights;

(b) an injunction;

(c) a conservatory order;

(d) a declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights and is not justified under Article 24;

(e) an order for compensation; and

(f) an order of judicial review

14. The orders sought in the petitioner's petition are untenable. The prayer for a declaration that the defendant be removed from public office cannot be granted as the particular party's ought to be removed is not disclosed and no specific allegation were made and proved against the alleged party, and further there is existing and sufficient legal avenue that the petitioner ought to have pursued in ventilating his complaint against the defendant which he did not attempt to pursue at all. This court do not have power in addition to the above to grant orders sought since this court is not the appointing authority. There are as pointed out in this judgment proper channels to be followed if indeed the petitioner is aggrieved by the defendant's actions and is seeking his removal from the office.

15. In view of the above and having come to the above conclusion I find the instant petition to be incompetent and without any basis and the same is accordingly struck out with no order as to costs.

16. That before I conclude this matter, I wish to decry the casual approach with which the State Law Office in Meru handles court matters. In most cases just like the instant case, the State Law Office never respond when served with court papers despite being given adequate time to do so always. This is a habit that should stop forthwith to ensure that tax payer's money is not constantly lost in litigation and especially in matters involving colossal sum. It is also for the society to get value for their money and see justice being done to all irrespective of their status (see Article 159) of the Constitution.

DATED, SIGNED AND DELIVERED AT MERU THIS 26TH JUNE, 2014.

J. A. MAKAU

JUDGE

DELIVERED IN OPEN COURT IN THE PRESENCE OF:

Petitioner in person – present

Defendant – absent

J. A. MAKAU

JUDGE