



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURT
CONSTITUTIONAL & HUMAN RIGHTS DIVISION
PETITION NO. 286 OF 2014

IN THE MATTER OF INTERPRETATION & ENFORCEMENT OF THE CONSTITUTION

AND

INT HE MATTER OF ARTICLE 2, 3, 19, 20, 22, 23, 25, 28, 47, 50 (1), 156, 165, 258, 259 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF CONTRAVENTION AND/OR EXPECTED VIOLATION OF FUNDAMENTAL HUMAN RIGHTS OF THE OFFICE & PERSON OF THE ATTORNEY GENERAL

AND

IN THE MATTER OF THE LAW SOCIETY OF KENYA ACT

THE HON. ATTORNEY GENERAL.....PETITIONER

-VERSUS-

THE LAW SOCIETY OF KENYA.....1ST RESPONDENT

THE COUNCIL FOR THE LAW SOCIETY OF KENYA.....2ND RESPONDENT

RULING

1. On 14th July, 2014, we gave directions on the hearing of this petition and listed the same for hearing today, 30th July, 2014.
2. When the matter was called out for hearing **Mr. Gatundu** learned counsel informed the Court that he had been instructed by some members of the 1st Respondent herein, The Law Society of Kenya to apply under Article 22 and 47 of the Constitution for their joinder to these proceedings as interested parties.
3. According to him the said interested parties had justiciable issues which they intended to bring to the attention of the Court which would assist the Court in arriving at a just determination of this petition. Although he had drafted the application for the said purpose, learned counsel informed

- the Court that there were some signatures which were still to be appended to the said application. In his view the Court would require the input of the said parties towards the disposal of this petition.
4. From **Mr. Gatundu's** submissions it was clear that the said interested parties would be seeking to support the petition though he was emphatic that the protagonists in the petition are only the Petitioner and the Respondents herein. He was of the view that before taking the action which provoked this petition the Respondents ought to have consulted the membership of the 1st Respondent.
 5. **Mr. Gatundu** therefore sought for more time to make the said application. In the alternative he prayed that if the court was not amenable to the grant of the adjournment sought then the Court ought to give directions to the effect that he be allowed to participate in these proceedings and be heard on the issues he and his clients intend to raise informally.
 6. This application was supported by **Mr. Waweru Gatonye** learned counsel for the Petitioner who submitted that the issue which is before this Court is of great public interest to the members and if a group of members want to be heard there should be no impediment to that. Since the issue of certificate of dishonour is unprecedented in our jurisdiction the Court ought to entertain the broadest argument on the issue.
 7. Apart from supporting the application, **Mr. Gatonye** applied for adjournment of the hearing of the petition. According to learned counsel, on 18th June, 2014 when the Petitioner's advocates appeared before the 2nd Respondent certain proceedings took place for the whole day in which issues of jurisdiction were raised. However the said issues were overruled. Thereafter, they requested to be supplied with copies of the proceedings for the said day. However despite the Chairman of the 1st Respondent promising to do so within two or three days, the same were neither supplied nor were their subsequent requests in writing responded to.
 8. Accordingly, it was counsel's submissions that the Petitioner would be handicapped in properly presenting his case since these proceedings form an integral part of the petitioner's case as the petitioner is alleging violation of rights.
 9. The second ground for seeking the adjournment was that on 28th July, 2014, the Petitioner was served with the Respondent's Submissions running into 400 pages and hence was unable to adequately prepare for the hearing of the petition as 29th July, 2014 was a public holiday. Apart from that although the Respondents were directed to file and serve their response by 18th July, 2014, it was not until 22nd July, 2014 when the Respondents filed the same and served on 23rd July, 2014.
 10. Learned counsel therefore sought two weeks to enable him prepare and also sought an order that the respondents supply the petitioner with the proceedings for the 18th June, 2014.
 11. On his part **Mr. Ahmednasir**, learned counsel for the Respondents opposed both applications. According to him since it is the petitioner who brought his petition, he ought to be prepared to proceed with it. In his view the application for adjournment is a strategy to delay the hearing of the petition taking into account the fact that the petitioner is enjoying conservatory orders granted herein. He submitted that though the parties were directed to file their submissions concurrently, the Petitioner had failed to file his submissions.
 12. According to learned counsel, there is no public interest issue involved in this petition since the 2nd Respondent summons its members on a daily basis. Learned counsel submitted that when the Petitioner came to court he never sought to be supplied with any proceedings and instead sought complete orders. According to him, there are no proceedings to be supplied since the advocates who appeared before the 2nd Respondent were overruled. Since the Respondents have not filed any affidavit, he contended there are no issues of fact in the matter to justify the request for the said proceedings.
 13. On the issue of joinder learned counsel submitted that Article 22 of the Constitution does not allow for the joinder of the interested parties since the said Article deals with the enforcement of the Bill of Rights and infringement thereof. He reiterated that the Petitioner is litigating his individual rights and there are no public law issues involved.
 14. According to him, all the lawyers are represented by the Law Society of Kenya and that the Law Society of Kenya has faced many instances in which its decisions have been challenged and if the interested parties feel that they are not ably represented they are free to join the petition as

- assisting counsel.
15. We have considered the submissions of counsel.
16. On the issue of joinder of the intended interested parties we are alive to the fact that the said interested parties are members of the 1st Respondent herein. Whereas we are cognizant of the fact that they may have divergent views on the matter herein we are not satisfied that the issues being raised in this petition may not be adequately argued without their input. We are further of the view that taking into account the fact that the 1st Respondent is composed of many members with a divergence of views, to allow each group with different views to be joined to these proceedings would unnecessarily delay the hearing and determination of this Petition. However, had we been convinced that the interests of the intended interested parties would not be adequately catered without their being joined to these proceedings, we would have, in the interests of justice allowed them to be joined. In order for the Court to allow parties to be joined to the proceedings it is our view that the Court ought to consider the wider interests of justice including the delay and whether or not the interest of the said parties cannot be properly ventilated unless they are allowed to participate in the said proceedings. We have not been convinced that this is the case in this petition. Accordingly we decline to allow the said intended interested parties to be joined to these proceedings.
17. On the issue of the adjournment, it is clear that the Respondents did not strictly comply with our directions with respect to the filing and service of the response in this matter. Whereas we appreciate the fact that the application for proceedings ought to have been made at the time of the giving of the directions we are cognizant of the fact that in matters of this nature there is usually a need to disclose as much material as possible.
18. From the submissions of counsel there seems to have been some proceedings of sorts which went on 18th June 2014. Whereas we cannot say with certainty how important to this petition those proceedings are, it is clear that the same have some bearing on this petition. We do not see the reason why the same were not availed to the Petitioner at his request. In this era of transparency and in light of the provisions of Article 35 of the Constitution, we do not see any reason why the same ought not to have been availed to the Petitioner for whatever they are worth.
19. Taking into account the wider interests of justice and the importance of this matter to the parties herein, we direct that the Respondent furnishes the said proceedings to the Petitioner within 7 days, the costs thereof, if any, to be borne the Petitioner. It follows that the hearing of this petition is adjourned.
20. On the issue of vacation of the orders, considering the fact that none of parties to the petition can be said to be completely blameless, we do not think that it is proper that the conservatory orders granted herein be vacated at this stage. It is our view that the matter can be dealt with by fixing the matter for hearing within the shortest time available to the Court and to the parties.

Ruling read, signed and delivered in court this 30th day of July 2014

W. KORIR

JUDGE

M. NGUGI

JUDGE

G.V. ODUNGA

JUDGE