

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

CONSTITUTIONAL PETITION NO. 1 OF 2014

REUBEN LOTIM ANISOMUK & 7 OTHERS.....PETITIONERS/APPLICANTS

VERSUS

THE DIRECTOR OF KENYA FOREST SERVICE AND 5 OTHERS.....RESPONDENTS

R U L I N G

1. On 31/7/2014, the Petitioner's advocate made an oral application seeking to amend prayers 3 and 5 of the chamber summons dated 11/3/2014 by deleting the word “permanent” and replacing the same with the word “temporary”. This application was made immediately after the said chamber summons had been adjourned to 30/10/2014.

2. The advocate for the respondents opposed the application on the grounds that the petitioners advocate had not cited the rule under which he was moving the court. The other ground of objection to the amendment is that the application is not a pleading and as such it cannot be amended.

3. In response to the respondents opposition, the petitioner's advocate stated that he was making the application under Rule 18 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 commonly referred to as Mutunga Rules and section 100 of the Civil Procedure Act.

4. The ruling was reserved for 30/10/2014 to coincide with the date on which the chamber summons is set for hearing. The application which was sought to be amended was made in Petition No. 1 of 2014. The application is seeking interim relief pending the hearing of the petition. The rules referred to in paragraph 3 hereinabove apply to all proceedings made under Article 22 of the constitution. This is clearly stated in Rule 3(1) of the Rules. The overriding objective of these rules is to facilitate access to justice for all persons and they are supposed to be interpreted in accordance with Article 259(1) of the Constitution. The court in its exercise of jurisdiction under the rules is supposed to facilitate expeditious resolution of cases so as to achieve timely disposal of proceedings.

5. The petitioner's lawyer made the application under Rule 18 of the said rules which permit the court to allow a party to the proceedings to amend pleadings at any stage of the proceedings. The rules are clear that they apply to all proceedings brought under Article 22 of the constitution. The rules do not differentiate between an application and a petition. It would therefore be unfair to reject the amendment on the ground that it is affecting an application which is not a pleading. The respondents lawyers wanted the petitioner's advocate to withdraw the application instead. Withdrawal of the application will not be furthering the overriding objective of timely disposal of proceedings at a cost affordable by all parties. I therefore find that the application is well intentioned. It is merely amending one word and replacing it with another. I allow the oral application with the result that prayer 3 and 5 of the chamber summons dated 11/3/2014 are hereby amended by deleting the word “permanent” and replacing it with the word “temporary”.

It is so ordered.

Dated, signed and delivered at Kitale on this 30th day of October, 2014.

E. OBAGA

JUDGE

In the presence of Mr Rono for petitioners, Mr Ngumbi for 4th and 5th respondents – present. Mr Wafula for Professor Sifuna for 1st, 2nd and 3rd respondents – present. Court Clerk – Kassachoon.

E. OBAGA

JUDGE

30/10/2014