



REPUBLIC OF KENYA

IN THE HIGH COURT

AT MIGORI

PETITION NO. 4 OF 2014

(FORMERLY KISII HC PETITION NO. 19 OF 2013)

BETWEEN

DAVID SHIRA OLE KAKA.....1ST PETITIONER
OLAISUKUNKUI MANANGOI.....2ND PETITIONER
RIORINGE MANANGOI.....3RD PETITIONER
OLE KALEM KERIAKO.....4TH PETITIONER

AND

THE OCS, NTIMARU POLICE STATION.....1ST RESPONDENT
THE COMMANDANT, RAPID DEPLOYMENT UNIT, KURIA DISTRICT....2ND
RESPONDENT
OCPD, KURIA EAST DISTRICT.....3RD RESPONDENT
ATTORNEY GENERAL.....4TH RESPONDENT

AND

SAMWEL CHACHA
WILSON WAGURU
THOMAS POSIRO
RIOBHACHI WAGUI
HELOB GATI
ANNA ROBI

MARY NYASEBA MOTATIRA.....INTERESTED
PARTIES

RULING

1. The facts of this matter are relatively straight forward. The petitioners' case as set out in the petition dated 9th July 2013 is that they are the owners of 16 head of cattle which were seized by the respondents or their agents without lawful cause or excuse and in violation of their fundamental rights and freedoms. The petitioners claim that the respondent breached, inter alia, their right to fair administrative action and the right to a fair hearing and due process under **articles 47** and **50** of the Constitution respectively.

2. The respondents', on their part, contend that the animals were seized as they had been suspected to be stolen and taken to Ntitaru Police Station for identification by their owners. The interested parties claim that the 16 head of cattle belong to them.

3. At the time of filing the petition, the petitioners also filed an application seeking various forms of interim relief. The application was heard by Muriithi J., who, on 26th July 2013, issued an injunction restraining the release of the 16 head of cattle pending the hearing and determination of the petition. The learned judge declined to issue a mandatory injunction. He observed that, "*in view of the perishable nature of the cattle in the event of lack of proper nourishment while the animals are in police custody, the Petition shall be heard on expedited basis on a date to be fixed in consultation with the parties.*"

4. This matter was originally filed at the High Court at Kisii and later transferred to the High Court at Migori on 18th September 2014. It is worth noting that the matter has not been heard since the year 2013. It is unlikely to be heard in the very near future due to the court diary for the High Court at Migori and the impending court vacation.

5. **Article 159(2)(b)** of the Constitution obliges the court to deal with matters expeditiously particularly in such a matter which concerns the violation of fundamental rights and freedoms. It is in such circumstances that I informed the parties that I would issue directions as to the hearing of the matter.

6. I have considered the matter and the claim is in two parts; the first issue is a determination of the owner of the 16 head of cattle which have been at Ntitaru Police Station for a period over a year. This issue is between the petitioners and the interested parties who are each asserting their claims of over the cattle. The second part of the dispute is whether the respondents' violated the petitioners' rights by seizing the cattle contrary to their fundamental rights and freedoms. The second issue, which is between the State and the petitioners, concerns violation of breach of fundamental rights. I believe that the two issues can be bifurcated for purposes of expedition.

7. This court has wide jurisdiction to determine how the matter is to be heard and determined. Under **Article 159(2)(d)** of the Constitution, the Court may resort to alternative dispute resolution which is indeed encouraged. Likewise **rule 31** of the ***Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013*** provides for alternative dispute resolution where a matter is brought to enforce fundamental rights and freedoms. The court could for example refer the matter to a Council of Elders to resolve the issue of ownership of the cattle. It therefore not inconsistent with **Article 22** of the Constitution for the court to direct a subordinate court to deal with an aspect of the case or take any action as is necessary. The issue between the petitioners and the interested parties is within the purview of an ordinary civil suit which can be determined by the Magistrates' Court.

8. I therefore issues the following direction;

a. I direct the **Ag. Senior Resident Magistrate at Kehancha** to take evidence and determine the ownership of the 16 head of cattle which are still at Ntitaru Police Station as between the petitioners and the interested parties.

b. The magistrate shall issue any further and other orders necessary to ensure expeditious determination of the issue.

- c. The matter shall be mentioned on **16th January 2015** before the Magistrate for further orders and directions.
- d. Such determination shall be made within **sixty (60) days** from the date hereof.
- e. Upon filing the determination before this court, the court give further directions regarding the manner in which the petition will be determined.
- f. Either party shall be at liberty to apply for further and other orders.

DATED and **DELIVERED** at **MIGORI** this 10th day of December 2014

D.S. MAJANJA

JUDGE

Mr Onchwangi instructed by Oguttu-Mboya & Company Advocates for the petitioners.

Mr Ogari instructed by B. N. Ogari & Company Advocates for the interested parties.