



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Petition 446 of 2012

ISAAC ALUOCH POLO ALUOCHIER PETITIONER

AND

THE ATTORNEY GENERAL RESPONDENT

JUDGMENT

1. The petitioner is a public spirited individual and has moved the Court to determine the culpability of state officers for contravening the Constitution particularly **Article 77(2)** which provides that, “**Any appointed State officer shall not hold office in a political party.**”

2. The petition dated 2nd October 2012 seeks several declarations against state officers for breach of **Article 77(2)** which include, inter alia,

[2] The Court declares, pursuant to Article 77(2) of the Constitution, that any appointed state officer, including by not limited to Vice President, Prime Minister, Assistant Minister and Nominated MP, is prohibited from holding office in a political party vehicle also holding state office.

[5]The Court declares, pursuant to Article 75(3) of the Constitution, that any appointed State officer, including but not limited to Vice-President, Prime Minister, Deputy Prime Minister, Minister, Assistant Minister and Nominated MP, who is dismissed or otherwise removed from office on account of contravening Article 77(2) of the Constitution, is disqualified from holding any other State office.

[6]The Court declares that, pursuant to Articles 99(2)(h), 193(2)(g), 137(1)(b), 148(1), 180(2) and 180(5) the persons listed in the accompanying schedule who have served as State officers and also at the same time have held offices in political parties, at any time commencing 27 August 2010, have contravened Chapter Six of the Constitution and are thereby disqualified from being to any of the following offices: President, Deputy President, Member of Parliament, Governor, Deputy Governor and member of a county assembly.

3. When the matter came up for directions on 3rd December 2012, I noted that, “**the High Court, Kasango, Muriithi and Nzioka (J) in Mombasa Petition No. 17 of 2010, Abdulrahman Ahmed Abdalla & Others v Hon Uhuru Kenyatta and Registrar of Political Parties held that, “It would follow that a State officer cannot hold a political party position because it is outlawed in the Constitution.”**” The petitioner agreed with the position and I agree that the decision represent a proper reading of the Constitution and there is no reason to depart from this position.

4. The petitioner filed detailed written submissions on 13th December 2012 and highlighted them

during the hearing. The thrust of his arguments was that several State officers had breached the provisions of the Constitution and that the Court ought to exercise its jurisdiction as the guardian of the Constitution to enforce the sanctions provided by the Constitution and the relevant Act of Parliament.

5. Although, the petition was not opposed by way of a replying affidavit, I think the issues raised are matters of law and it is the duty of the Court to address itself to the provisions of the Constitution and the law notwithstanding no opposition has been lodged by the State. I have considered the submissions and I take the following view of this matter.

6. **Article 77(2)** cannot be read in isolation but in light of the entire **Chapter Six** titled, **“Leadership and Integrity.”** **Article 79** and **80** provides as follows;

79. Parliament shall enact legislation to establish an independent ethics and anti-corruption commission, which shall be and have the status and powers of a commission under Chapter Fifteen, for purposes of ensuring compliance with, and enforcement of, the provisions of this Chapter.

80. Parliament shall enact legislation—

(a) establishing procedures and mechanisms for the effective administration of this Chapter;

(b) prescribing the penalties, in addition to the penalties referred to in Article 75, that may be imposed for a contravention of this Chapter;

(c) providing for the application of this Chapter, with the necessary modifications, to public officers; and

(d) making any other provision necessary for ensuring the promotion of the principles of leadership and integrity mentioned in this Chapter, and the enforcement of this Chapter.

7. Pursuant to these provisions, Parliament has now enacted the **Ethics and Anti Corruption Act** and the **Leadership and Integrity Act**. These two pieces of legislation provide a framework for enforcement of the provisions of **Chapter Six**. When I asked Mr Aluochier during the hearing, whether any complaint had been raised by him in respect of any breaches to the respective enforcement bodies or authorities, he stated that he had not.

8. In my view, it been shown that any state organ, independent office, commission, person or authority, charged with the responsibility of enforcing **Chapter Six** has failed, refused and or neglected to exercise its jurisdiction in respect of any State officer as provided in the **Leadership and Integrity Act** and the **Ethics and Anti-corruption Act**.

9. I reiterate my sentiments in **Michael Wachira Nderitu and Another v Mary Wambui and Others Nairobi Petition No. 549 of 2012 (Unreported)** that, “[25] Similarly, as concerns **Chapter Six** on **“Leadership and Integrity”** **Article 80** has empowered Parliament to, **“enact legislation establishing procedures and mechanisms for the effective administration of this Chapter.”** **Chapter Six** on **“Leadership and Integrity”** captures the desire of Kenyans to instil values of integrity and leadership in those who are entrusted with the responsibility of state and public officers. These provisions are not self-enforcing as **Article 88(5)** is clear that Parliament is required to enact legislation to give effect to those provisions. These provisions have been given effect by the **Leadership and Integrity Act, 2012** which provides for procedures and mechanisms for enforcement. [26] I have considered the petition and supporting affidavit and I do not think that the petitioner has invoked any of the procedures or mechanisms prescribed by the **Leadership and Integrity Act, 2012** and there is no evidence that the petitioner has lodged any complaint or grievance relating to the 1st respondent assuming, and without deciding, that the Act is applicable to Mary Wambui. In any case, my reading of **Article 99(2)(h)**, relied upon by the petitioners, is clear that if any finding of contravention of **Chapter Six** must be made, it must be in accordance with law enacted for that purpose and that law includes the **Leadership and Integrity Act, 2012.**” [Emphasis mine]

10. As there is no contravention or threatened contravention of the Constitution or breach of petitioner's fundamental rights, I am constrained to dismiss the petition.

11. The petition is dismissed with no order as to costs.

DATED and **DELIVERED** at **NAIROBI** this 21st day of January 2013

D.S. MAJANJA
JUDGE

Isaac Alouch Polo Aluochier, petitioner in person.