



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Petition 490 of 2012

KENYA SOCIETY FOR THE MENTALLY HANDICAPPED.....PETITIONER

AND

SAMUEL NJUGUNA KABUE.....1ST RESPONDENT

HELLEN MUDORA OBANDE.....2ND RESPONDENT

PHOEBE A NYAGUDI.....3RD RESPONDENT

JOHN S HALAKE.....4TH RESPONDENT

PATIENCE CHOME.....5TH RESPONDENT

PHITALIS WERE MASAKHWE.....6TH RESPONDENT

JULIUS NABENDE.....7TH RESPONDENT

HON JOSEPHINE SINYO.....8TH RESPONDENT

HON JUSTIN MUTURI.....9TH RESPONDENT

MUTHONI KIHARA.....10TH RESPONDENT

JOSEPH M SHIROKO.....11TH RESPONDENT

SIMON J NDUBAI.....12TH RESPONDENT

SUSAN KIRIM A.....13TH RESPONDENT

EUNICE KAHOI.....14TH RESPONDENT

JOSEPH WAMATHAGA.....15TH RESPONDENT

CATHERINE AMUNGA WAMEYO.....16TH RESPONDENT

LYNNETE MUGANDA.....17TH RESPONDENT

BEATRICE ODUNDO.....	18 TH RESPONDENT
CECILIA MBAKA.....	19 TH RESPONDENT
KIZITO OMUKANGA.....	20 TH RESPONDENT
BEATRICE ODUNDO.....	21 ST RESPONDENT
ISAAC SIMIYU MANYONGE.....	22 ND RESPONDENT
JOSEPHINE PAKATA.....	23 RD RESPONDENT
JACKSON LOKWATOM.....	24 TH RESPONDENT
KIZITO OMUKANGA.....	25 TH RESPONDENT
JOHN F OLINGA.....	26 TH RESPONDENT
BEATRICE ODUNDO.....	27 TH RESPONDENT
FRANCIS ASIEMA.....	28 TH RESPONDENT
JAYNE ASUMA.....	29 TH RESPONDENT
CHARLES O ANYANGO.....	30 TH RESPONDENT
RUKIA AHMED.....	31 ST RESPONDENT
SIMON J NDUBAI.....	32 ND RESPONDENT
DAVID OLE SANKOK.....	33 RD RESPONDENT
ANASTACIA MAGOMA.....	34 TH RESPONDENT
SALOME WANJIKU KIMATA.....	35 TH RESPONDENT
TOM GICHUHI.....	36 TH RESPONDENT
PADDY ONYANGO.....	37 TH RESPONDENT
FLORENCE PAKATA.....	38 TH RESPONDENT
GEOFFREY M WATHIGO.....	39 TH RESPONDENT
JOSEPHAT O MUKOBE.....	40 TH RESPONDENT
MBARAK S TWAHIR.....	41 ST RESPONDENT
TITUS M KILIKA.....	42 ND RESPONDENT
ANNE MUTHONI KAGWI.....	43 RD RESPONDENT

ISAAC MUIGUA MWAURA.....44TH RESPONDENT

GODLIVER OMONDI.....45TH RESPONDENT

FATMA WANGARE HAJI.....46TH RESPONDENT

ALICE MITINE.....47TH RESPONDENT

JAMES KARIUKI NDWIGA.....48TH RESPONDENT

PETER WANGO50TH RESPONDENT

RULING

1. The genesis of this matter is a dispute between the Kenya Society for the Mentally Handicapped and the respondents, some of who hold various offices in a statutory body, the National Council for Persons with Disabilities.
2. On 24th January 2013, I granted leave to the petitioner to withdraw the petition with no order as to costs. In view of the said withdrawal, the cross petition remains in place and I directed the respondents to show cause why the cross petition should not be struck out.
3. The cross petition is dated 30th November 2012 and the main grievance is that the petition was filed with malice, ill will and bad faith towards the respondents particularly given the nature of allegations made against them as officers of a statutory body and the fact that the petition was advertised without leave of this court.
4. My position in the matter is that parties have the right to institute proceedings within our courts particularly to vindicate their fundamental rights and freedom. If words are stated that are defamatory in nature, then a party has a right to have the scandalous and embarrassing material struck out and ordinarily the court will award costs. The cross petition, in my view is such an application. I think it would be against public policy and would undermine the right of access to court guaranteed under **Article 22 and 48** to expose a party to legal proceedings to damage merely on account of matters said and done within proceedings. This is why I will disallow the cross-petition.
5. If matters are said outside the court or published, of and concerning the respondents, in a manner that their reputations are sullied, then the law of defamation provides adequate relief as those matters are clearly outside court proceedings and do not enjoy the sanction of the court. As I have stated the cross-petitioner's relief in this matter is limited to an award of costs which in this case are deserved.
6. In my view then the proper orders are as follows;
 - (1) **The cross-petition dated 30th November 2012 be and is hereby struck out.**
 - (2) **The petitioner shall bear the costs of the cross petitioners.**

DATED and DELIVERED at NAIROBI this 11th March 2013.

D.S. MAJANJA

JUDGE

Ms Ashioya instructed by Ashioya and Company Advocates for the respondents.