

IN THE HIGH COURT AT NAIROBI

MILIMANI LAW COURTS

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 172 OF 2013

BETWEEN

JAMES BANGA YANCAN..... PETITIONER

AND

THE ATTORNEY GENERAL1ST RESPONDENT

DIRECTOR OF PUBLIC PROSECUTION.....2ND RESPONDENT

JUDGMENT

1. The petitioner's case is set out in the Amended Petition dated 20th May 2013 and it is straight forward. The petitioner is a shareholder of Embakasi Ranching Company Limited ("the Company"). The Company is a public land buying and resettlement company and owns large tracts of land within Nairobi and the surrounding areas.
2. The petitioner's basis of the petitioner's case is that the Company has fraudulently and criminally disposed of its land in Kajiado to the detriment of the shareholders. Being aggrieved by the Company's action, the petitioner lodged a complaint with the Criminal Investigation Department ("CID") to investigate these matters. This complaint was followed up by letters written by his advocates. The gravamen of the petitioner is that he has not been informed of the outcome of the investigation.
3. The 2nd respondent, the Director of Public Prosecution ("DPP"), does not deny that the petitioner lodged a complaint concerning fraudulent dealing in the affairs of the Company. It asserts that the matter is still under investigation and no final decision has been reached. The 1st respondent adopts the 2nd respondent's position in the case.
4. I have considered the pleadings and depositions in the matter and I find as a fact that the investigations into the complaints by the petitioner are still on going. Indeed in the letter dated 18th January 2012 from the Office of the DPP, the Director of CID was directed to inquire into certain aspects of the case which the DPP considered were crucial to a decision being made. There is another letter dated 3rd December 2012 from the Office of the DPP to the Director of CID raising further questions regarding the investigation. It is also evident that from the depositions that the matter concerning the Company involves complex documentation and transactions, which stretch back several years. It is an investigation that may take some time to conclude.

5. The Office of the Director of Public Prosecutions and that of Inspector General are independent offices under the Constitution and unless there has been shown to be abuse of process or bad faith in the manner in which their powers are exercised, the Court should be reluctant to intervene in operational matters.
6. The petitioner has also not proved that the 2nd respondent has acted contrary to the national values and principles of the Constitution or in any way violated his fundamental rights and freedoms. These Offices are guided by the provisions of the Constitution and I am sure they will comply with their obligations once the investigations are completed.
7. The petition is dismissed with no order as to costs.

DATED and DELIVERED at NAIROBI this 23rd day of September 2013

D.S. MAJANJA

JUDGE

Mr Onyango instructed by A. I. Onyango and Company Advocates for the petitioner.

Ms Spira, Litigation Counsel, instructed by the Office of the Director of Public Prosecutions.

Ms Kungu, Litigation Counsel, instructed by the State Law Officer for the 1st Respondent