



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

PETITION No. 161 of 2011

**DAVID KARIUKI**

**MUIGUA.....PETITIONER**

**V E R S U S**

**ATTORNEY GENERAL.....1<sup>ST</sup>  
RESPONDENT**

**MINISTER FOR INDUSTRIALIZATION.....2<sup>ND</sup>  
RESPONDENT**

**JUDGMENT**

**Introduction**

1. In his petition dated the 16<sup>th</sup> September, 2011, the petitioner challenged his removal as the Chairman of the Standards Tribunal by the Minister for Industrialisation by Gazette Notice No. 2911 dated 17<sup>th</sup> March, 2011. The petition is supported by the petitioner’s affidavit sworn on 16<sup>th</sup> September 2011. The petitioner had been appointed Chairman on the 6<sup>th</sup> of September 2010 by Gazette Notice No. 10619 of 2010.
2. The petitioner also filed a notice of motion dated 23<sup>rd</sup> September, 2011. The motion was, however abandoned and the parties agreed to proceed with the substantive motion. The parties have both filed written submissions dated 5<sup>th</sup> December, 2011 and 29<sup>th</sup> November respectively.
3. The respondent has in its submissions conceded that there was a violation of the provisions of section 16A (8) and 9 of the Standards Act and that the removal of the petitioner from the Standards Tribunal was unlawful.
4. The question that then remains in light of this concession is whether the violation of the provisions of the Standards Act resulted in a violation of any of the constitutional rights of the petitioner, and if so, what the appropriate relief is in the circumstances.
5. The court notes that upon the removal of the petitioners, a subsequent appointment was made. The party who was appointed upon the revocation of the petitioner’s appointment was not a party to this petition and was therefore not heard even though he would be directly affected by the decision reached in this matter.
6. The petitioner has asked the court to issue orders of certiorari within the meaning of Article 23(3) (f) of the Constitution and to quash Legal Notice No. 2911 of 17<sup>th</sup> March, 2011 as being invalid, illegal, null

and void. He also asks the court to issue a declaration that the actions of the Minister have violated, infringed, breached and or threatened the rights and fundamental freedoms of the petitioner.

7. In the petition and the written submissions, the petitioner alleges the violation of various Articles of the Constitution. He argues that his rights under Article 25 were violated by his removal thus subjecting him to cruel and inhuman treatment; He also cites violation of Articles 33(2)(ii) and (3); 47(1) and (2), 73, 228 and 229 of the constitution.

8. I would agree that the removal of the petitioner via a Gazette Notice revoking his appointment violates the express requirements of the Standards Act. Section 16A (8) provides as follows:

***‘The Minister may terminate the appointment of the Chairman or any member of the Tribunal if a tribunal appointed under this section finds that the Chairman or member of the Tribunal—***

- (a) is unable to perform the functions of his office by reason of a mental or physical infirmity;***
- (b) has been involved in corruption as defined in [the Anti-Corruption and Economic Crimes Act](#); or***
- (c) has been declared bankrupt.***

8. The removal process may be initiated by the National Standards Council established under section 6 of the Standards Act which is empowered, under Section 16A (9) of the Act, to request the Minister to appoint a conduct tribunal for the removal of the Chairman or member of the Tribunal if the Chairman or member is unable to perform the functions of his office by reason of a mental or physical infirmity or is involved in corruption as defined in [the Anti-Corruption and Economic Crimes Act](#).

9. However, I am unable to find any violation of the constitutional rights of the petitioner. The petitioner has an obligation to demonstrate which provisions of the constitution have been violated in relation to him, and how. As the court stated in the case of *ANARITA KARIMI NJERU v REP (1979) KLR 154* at page 156:-

***“We would however again stress that if a person is seeking redress from the High court or an order which invokes a reference to the Constitution, it is important (if only to ensure that justice is done in his case) that he should set out with reasonable degree of precision that of which he complains, the provisions said to be infringed and the manner in which they are alleged to be infringed.”***

Similar sentiments were expressed in the case of *Cyprian Kubai v Stanley Kanyonga Mwenda HMISC 612/02* that:-

***“An Applicant moving the court by virtue of Sections 60, 65 and 84 of the Constitution must be precise and to the point not only in relation to the Section, but also to the subsection and where applicable the paragraph and subparagraph of the Section out of 71 to 83 allegedly contravened plus the relevant act of that contravention so that the Respondent knows the nature and extent of the case to respond to, to enable the Respondent prepare accordingly and also to know the exact extent and nature of the case it is handling.”***

10. This has not been done in the present case. Indeed, the very appointment of the petitioner which forms the basis of his complaint following his unprocedural removal may have been done in violation of the constitution, thereby undermining his claim for constitutional protection. I note, in particular, that the appointment of the petitioner was done by way of Gazette Notice. The Standards Act does not provide a specific mode of appointment and only provides that:

**16A. (1) The Standards Tribunal is hereby established.**

**(2) The Tribunal shall consist of a Chairman and four other members, appointed by the Minister.**

11. However, it would be expected that the Minister, in making the appointments to the Tribunal, would be guided by the national values and principles set out in Article 10 of the Constitution, in particular participation of the people, equity, good governance, integrity, transparency and accountability. Section 7(1) of Schedule 6 provides that

***‘ All law in force immediately before the effective date continues in force and shall be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with this Constitution.’***

Any appointments under the Standards Act should have been done in conformity with the provisions of the constitution and should have observed the national values and principles.

12. From the material before me and as submitted by the respondent, it would appear that not only had the appointment of the petitioner not been in accordance with the Standards Act in view of the fact that it was made for a period of 3 years instead of the 5 year period provided for under Section 16A (7) of the Standards Act, it had not itself followed the constitutional principles set out in the Constitution at Article 10. There is no evidence that there was a competitive process that would enable public participation in the process and show the transparency and accountability required under the Constitution, thereby giving legitimacy to the appointment of the petitioner. Like his successor, the petitioner was appointed on the basis of a Gazette Notice; the basis of the appointment, the criteria followed in appointing him and the other members of the Tribunal was, from all appearances and regrettably so, more in keeping with the pre-new Constitution days when public officers were appointed at the whim of the Minister or President.

13. In the circumstances, I find no violation of the petitioner’s constitutional rights and hereby dismiss the petition.

14. In view of the finding that the revocation of his appointment was in violation of the provisions of the Standards Act, the petitioner shall have the costs of this petition.

**Dated and Delivered at Nairobi this 24<sup>th</sup> day of February 2012.**

**Mumbi Ngugi**

**Judge.**