



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

PETITION 305 OF 2012

TAMBO MICHAEL OUMA1ST PETITIONER

ELIZABETH WAITHIRA NJUGUNA2ND PETITIONER

JEREMIAH ODHIAMBO AMBASSAH3RD PETITIONER

AND

HON. ATTORNEY GENERAL RESPONDENT

RULING

1. The petition before the Court is dated 18th July 2012. It is brought by three citizens who claim to be acting in public interest. Their case is that on 11th May 2012 the office of the President appointed 47 persons to the office of County Commissioner.
2. After appointment, their positions were challenged vide *Nairobi Petition No. 208 of 2012* and *Nairobi Misc. Appl. JR 207 of 2012*. The challenge was successful and the court by a judgment dated 29th June 2012 declared the appointments null and void on the grounds that the President did not have power to appoint County Commissioners under the Constitution.
3. The basis of this claim is that the dignity of the 47 Commissioners was violated in the sense that the improper appointment and subsequent annulment exposed them to embarrassment and ridicule by appointing authority who should have acted in accordance with the law in order to avoid violation of **Article 28** which protects the right to dignity.
4. The petitioners therefore seek the following reliefs in this matter;
 - (a) *That the 47 persons previously deployed to their respective counties to serve as commissioners by the pronouncement from the office of the President, and the said 47 persons having taken office and later the appointment and or deployment having been declared unconstitutional, null and void, have had their rights to have their inherent dignity respected and protected violated by virtue of having been purportedly elevated in stature by the appointing authority only for their elevation which was in the public domain (sic).*
 - (b) *That a declaration should therefore follow that having had their right under Article 28 violated, the 47 persons previously deployed to their respective counties, which deployment has been held unconstitutional, null and void by the High Court in Constitutional Petition Number 207 are at liberty to pursue their claim personally in a suit for damages.*

5. In my view this matter cannot be allowed to proceed further. Firstly, the matter of appointment has been litigated upon and the High Court on the basis of the Constitution has found the appointments a nullity. To permit these proceedings to go on would amount to a collateral attack or challenge to the decisions delivered by a court of competent jurisdiction.

6. Secondly, the legal process of appointment is always valid until such time it is declared otherwise by the court. Every state or public officer who is appointed pursuant to a law always runs the risk that the court may declare otherwise. This is an incident of the rule of law which is a national value and principle and the dignity of an individual must be balance with this principle.

7. Thirdly, this matter has been instituted by members of the public to assert the rights of 47 commissioners who are employed by the Public Service. They have their rights and are free to vindicate them and prayer No. (b) of the petition is a confirmation of this fact.

8. In making this decision, I am aware that litigants ought to be given an opportunity to make their case to the fullest extent but this must be balanced with the costs and burden that this kind of suits impose on the parties and the court.

9. In the circumstances, the order that commends itself to this Court is one that calls for the termination of these proceedings. The petition is hereby struck out with no order as to costs.

DATED and DELIVERED at NAIROBI this 19th day of July 2012.

D.S. MAJANJA

JUDGE

Mr A. S.Kuloba instructed by Kuloba and Wangila Advocates for the petitioners.

Mr A. T.Oluoch instructed by A. T. Oluoch and Company Advocates for the interested party.