

REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Petition 180 of 2011

JAMES KANYIITA NDERITU PETITIONER

AND

THE ATTORNEY GENERAL 1ST RESPONDENT

THE DIRECTOR OF PUBLIC PROSECUTION 2ND RESPONDENT

RULING

This matter was filed in October 2011. It first came up for directions on 12th October 2011 when the respondents, all of whom were represented, requested for time to file their replying affidavits. Each respondent was given 30 days to do so. The matter was mentioned at least eight times thereafter to confirm that the subordinate court proceedings subject to the case were typed. The respondent was duly represented and was indeed given the opportunity at each stage to file responding depositions.

The matter has now been fixed for hearing today and the counsel for the 1st respondent, the Attorney General, now seeks an adjournment to file a replying affidavit on the ground that this is a monumental matter that involves a large sum of money and that the office of the Attorney General should be granted indulgence.

This matter has been fixed for hearing after intermittent mentions to give the parties an opportunity to put their houses in order. Although this is a 2011 matter, the obligations of the court to deal with matters without delay is well founded in the Constitutional framework particularly **Article 159**. Long gone are the days where a party could argue that since it is a one-year old matter, it should bid its time on the court shelves so that it can gather enough dust to call for attention. It is true that the matter goes back to over twenty years but once it is before the court, the obligation of the court kicks in and the court must dispense justice without delay. The obligation to dispense justice without delay is not imposed on the court alone but on all parties who come before it, the advocates, State organs, Independent offices, and institutions.

The reasons advanced are flimsy and without merit. The magnitude of the matter in fact would require greater diligence from the 1st respondent. This court has a deep well of patience but inevitably it must run dry. The Office of the Attorney General is lucky to sip the last drop in the well. The matter is adjourned on condition that:

- (1) The relying affidavit is filed and served within 14 days from the date hereof.
- (2) The petitioner shall be at liberty to respond thereto within 14 days.
- (3) The respondents shall be at liberty to file written submissions within 7 days of service of the supplementary affidavit.
- (4) The petitioner shall be at liberty to file supplementary submissions if necessary.
- (5) The Office of Attorney General shall pay costs of Kshs.150,000/= to the petitioner before the hearing date.
- (6) The petition shall be heard on 10th December 2012.

DATED and DELIVERED at NAIROBI this 29th day of October 2012

D.S. MAJANJA
JUDGE