



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW NO. 1300 OF 2007

DR. JACK KAGUU GITHAE PLAINTIFF/APPLICANT

VERSUS

**THE ATTORNEY GENERAL
& ANOTHER DEFENDANTS/RESPONDENTS**

RULING

On 7th October, 2010 this matter was mentioned before the Hon. Lady Justice Gacheche in the presence of Mr. Kiplagat who was holding brief for Mr. Gikaria for the petitioner and Miss Natome for the respondent. The court fixed the petition for hearing on 20th December, 2010.

Come that day, a Mr. Omondi appearing for the petitioner went before the same judge. There was no appearance for the respondent. The judge disqualified herself from hearing the petition, stating that she was well known to the petitioner. She directed that the file be placed before this court on 24th January, 2011 for directions. The court further directed that a mention notice be served upon the respondent.

On 24th January, 2011, Mr. Omondi advocate appeared for the petitioner but no counsel attended court on behalf of the respondents. The court record does not contain any affidavit of service of a mention notice upon the Attorney General's office. The court directed that the petition be heard on 24th March, 2011 and the Attorney General was ordered to file his submissions within 30 days from the said date. The petitioner's counsel was also directed to serve a hearing notice.

On 24th March, 2011 Mr. Omondi was before this court again. No one showed up for the respondents and neither had any submissions been filed by the respondents. On the other hand, the petitioner had filed his submissions. Mr. Omondi told the court that he was relying entirely on his submissions and asked the court to deliver a judgment on the basis thereof.

Inadvertently, the court, without having ascertained whether the respondent had been served with a hearing notice, fixed the date for judgment as 19th May, 2011.

In the course of perusing the file for purposes of crafting a judgment, it was realized that the respondent had not been served with a hearing notice in respect of the mention of 24th January, 2011 and the hearing of 24th March, 2011.

In the circumstances, the court cannot craft a judgment without giving the respondents an

opportunity to be heard. The respondents had filed grounds of opposition and list of authorities. That was done on 28th July, 2008. That is a clear indication that the respondents intend to defend this petition.

Secondly, the acts that gave rise to this petition were done at Nyeri. The Petitioner stated, *inter alia*, that on 6th February, 2006 the OCS, Nyeri, ordered his arrest and in the process of effecting arrest, the arresting officers seriously assaulted him. Thereafter he was arraigned in Nyeri Chief Magistrate's court on a charge of belonging to an illegal sect.

That being the case, this petition ought to have been filed in the High Court of Kenya at Nyeri. It is ordered that this petition be transferred to that court for hearing and disposal.

DATED AND DELIVERED AT NAIROBI ON THIS 26TH DAY OF SEPTEMBER, 2011.

D. MUSINGA
JUDGE

In the presence of:

Nazi – Court Clerk

Miss Odera for Mr. Gakaria for the Applicant

Mr. Kipkogei for the Respondent