



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Suit 215 of 2005 (OS)

1. SALAH ABDI SHEIKH
2. KUNOW SHIKH ABDI
3. MOHAMED YUNIS
4. ABDI BILLOW IBRAHIM
5. BISHAR ISMAIL
6. HUSSEIN ABDI BARRE
7. BILLOW MOHAMED DAME
8. AHMED IBRAHIM ALI
9. MOHAMED IBRAHIM ELM I

10. FARUMA IBRAHIM (Suing on behalf of themselves and on behalf of families of victims and survivors of the Wagalla massacre through)

**TRUTH TO BE TOLD NETWORK
PLAINTIF**

VERSUS

**ATTORNEY GENERAL 1ST
DEFENDANT**

**BENSON KAARIA 2ND
DEFENDANT**

RULING

In this matter the Petitioners seek orders and declarations under s 84 ad s 60 of the Constitution. The substantive orders sought are:

- (a) An order that a public inquest under sections 385 and 387 of the Criminal Procedure Code be

conducted

(b) An order that the District Magistrate's Court at Wajir Law Courts do immediately open an inquest file relating to the Wagalla Massacre and the Provincial Police Officer North Eastern Province do initiate the steps necessary to the conduct of the said inquest

(c) An order that the result of the inquest be forwarded to the Honourable Attorney General within 30 days after the conclusion of the inquest. The Attorney General do file with the registrar of this Court a report of action taken by him pursuant to the orders of the subordinate court in the inquest.

(d) Further orders be made by this Honourable Court upon the application by any of the parties to this suit within 30 days after filing of the Report of the Honourable Attorney General

On the other hand the declarations sought are:

(a) A declaration that the events that took place at the Wagalla Airstrip between February 10th 1984 and more particularly described in a Report published by the 1st Plaintiff entitled ***THE WAGALLA MASSACRE REPORT*** and annexed to the 1st plaintiff's affidavit filed together with the Originating Summons expose the Commission of crimes committed by known people serving in the Public Service of the Republic of Kenya

A declaration that the perpetrators of the said crimes be brought to account in a criminal court for their criminal conduct and procedures set out in the International Convention on the Prevention of Genocide be set out in motion forthwith

(c) A declaration that the families of the victims of the crimes committed at the Wagalla Airstrip be compensated.

When the Petition came for hearing on 7th May 2007, we directed that the issue of locus standi or standing be argued on that day and following a brief hearing we set today's date as the date of our ruling on the issue of standing.

After giving the matter considerable thought and attention we have decided to defer any determination on locus or standing. We propose to incorporate our findings in the final judgment after the hearing on merit. We think that the ends of justice will be attained by giving all the parties the opportunity of a hearing on merit. Some of the factors we have considered in reaching this conclusion are:-

I. Orders of joinder by our brothers Hon Justice Makhandia and Hon Justice Ibrahim

II. The prayer for inquest

III. The notion of "victim"

IV. Some issues are linked

V. The novel nature of the claims

VI. That some of the allegations especially on the alleged genocide and crimes against humanity do in turn give rise to the concept of universal jurisdiction

VII. The challenge before the Court could require a restatement of State responsibility under the provisions of s 84

Arising from the above considerations we make the following orders:

(a) That the Petition be heard on merit on a date or dates to be appointed by us immediately

(b) That the 2nd respondent Mr Benson Kaaria as per his earlier inquest, be at liberty to engage a lawyer of his choice. His advocates to file and serve their responses to the Petition including skeleton arguments within 20 days

(c) Petition to be heard on

DATED and delivered at Nairobi this 15th day of May 2007.

J.G. NYAMU

JUDGE

ROSELINE WENDOH

JUDGE

ANYARA EMUKULE

JUDGE