

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI LAW COURTS)

MISC. APP. NO. 612 OF 2002

CYPRIAN KUBAI APPLICANT

VERUS

STANLEY KAIYONGI MWENDA RESPONDENT

R U L I N G

With all due respect I do not agree with what Hon. James Orengo is saying. The Kangwana case was not a constitutional Reference. It was a Judicial Review. The Githunguri case revolved around the Attorney General's exercise of the powers under section 26 of the constitution and section 26 was specifically mentioned in the pleadings and that section, unlike sections 72, 75 and 77 whose subsections, paragraphs and sub-paragraphs each deal with different aspects of human life; section 26 and its subsections are all about the power of the Attorney General.

In my view therefore, as each one of the sections 72, 75 and 77 of the constitution alleged to have been contravened and mentioned in ground number three in the originating summons, has a number of subsections, some of those subsections, in turn, having a number of paragraphs and even sub-paragraphs each dealing with a specific and different aspect of human life, section 70, though included, being a mere introductory section and sections 60, 65 and 84 mentioned in the introductory paragraph of the Originating summons being enabling sections only, the question is:

Precisely which subsection, and where applicable, which paragraph of sections 72, 75 and 77 of the Fundamental Rights and Freedom of The Individual, in the Constitution, is the Applicant alleging contravened?

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 or subparagraph of the section, out of 71 to 83, alleged contravened plus the relevant act of that contravention so that the Respondent knows the nature and extent of the case to respond to enable the said Respondent prepare accordingly and also the court to know the exact extent and nature of the case it is handling an imprecise application like this one before me being, not only prejudicial to the Respondent, but also incompetent and bad in law thereby calling for its discontinuation.

Accordingly, the said originating summons be and is hereby struck out with liberty to the Applicant either to institute and serve fresh proceedings within seven days from to-day or to appeal as provided by the relevant law.

There will be no order as to the costs of this originating summons, the Respondent not having bothered to file and serve his papers and his advocate, Mr. Wachira having failed to attend court to-day.

Dated at Nairobi this 22nd Day of October 2002.

J.M. KHAMONI

JUDGE

