



Koimburi v Attorney General & 3 others (Constitutional Petition E018 of 2024) [2025] KEHC 12736 (KLR) (18 September 2025) (Ruling)

Neutral citation: [2025] KEHC 12736 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CONSTITUTIONAL PETITION E018 OF 2024**

**RK LIMO, J
SEPTEMBER 18, 2025**

BETWEEN

BONIFACE NDURA KOIMBURI PETITIONER

AND

THE ATTORNEY GENERAL 1ST RESPONDENT

**KENYA INSTITUTE OF CURRICULUM DEVELOPMENT (KICD) 2ND
RESPONDENT**

CABINET SECRETARY, MINISTRY OF EDUCATION 3RD RESPONDENT

KENYA LAW REFORM COMMISSION 4TH RESPONDENT

RULING

1. The petitioner herein, Boniface Ndura Koimburi, through a Notice of Motion dated 24/3/25 is seeking the following orders namely;
 - i. Spent
 - ii. Spent
 - iii. Spent
 - iv. Spent
 - v. That this honourable court certifies that the petition raises substantial questions of law within the meaning of Article 165(4) of *the Constitution*.
 - vi. That the honourable Chief Justice be pleased to empanel a bench of an uneven number of judges being not less than 3 to hear and determine the petition herein.
 - vii. Any other order this court may deem fit to grant.



2. The main grounds raised in this application is that the amended petition raises substantial questions of law concerning the interpretations and application of *the Constitution* warranting reference to a bench of not less than 3 judges as required under Article 165(4).
 - a. That the issues raised by the petitioner involve novel and weighty questions that may set a precedent on the subject.
 - b. That the petitioner raises matters of general public importance and the determination may have far reaching implications on human rights and the rule of law in Kenya.
 - c. That the complexity of the legal and constitutional issues involved require consideration by a full bench for uniform and jurisprudential clarity.
 - d. That it would be in the interest of justice and fairness that a 3 judge bench be constituted to ensure a robust and comprehensive adjudication of the matter.
3. The applicant has sworn an affidavit dated 24/3/25 in support of his application for empanelment of a 3 judge bench. In his affidavit, the applicant cited various provisions of *the Constitution* as well as Section 171 of the Penal Code as well as section 6(2) and (3) of the *Marriage Act* which he has impugned stating that the issue raised are substantial in his view.
4. In his written submissions dated 18/4/25 done through counsel, the petitioner/applicant contends that he is 78 years old and having married under Christian rites he still holds religious beliefs that accommodates many wives. He says he has contemplated taking a 2nd wife but he is deterred by section 171 of the Penal Code which criminalizes bigamy. He says he fears going to jail and that is the reason why he has decided to challenge the provisions of section 171 of the Penal Code stating that the same infringes on his freedom of religion and freedom of conscience. He says that he feels discriminated as a Christian because other faiths like Islam and customary faiths allow multiple wives.
5. He also finds faults in the Education Curriculum that espouses Christian Marriages to be exclusively monogamous and wants Kenya Institute of Curriculum Development (KICD) to re-design Christian Religious Education (CRE) Syllabus to acknowledge the doctrines of polygamy to align with Article 27, 32, 35, 36 and 53(1)(b) of *the Constitution*.
6. It is in light of the above that the applicant feels that the issues are weighty and should be adjudicated upon by a bench of at least 3 judges. He submits that his petition has reached the threshold to be certified under Article 165(4) to raise substantial questions of law and that the issues touch on general public importance. He relies on the case of Hermanus Philipus Steyn –vs- Giovanni Grechi-Ruscore (2013)eKLR.
7. This court has considered the issues raised by the applicant both in this application and the main amended petition. While it is true that the issues raised are novel and touches on fundamental rights of an individual and whether there are infringements over the same as envisaged under Article 165(3) (b) of *the Constitution*, this court finds that the threshold under Article 165(4) of *the Constitution* has not been met for the following reasons:-
 - a. It is only the 1st Respondent who has responded to the petition vide grounds of opposition dated 7/2/25. There is no response to the amended petition so far as the 1st Respondent has not indicated whether it will file further response to the amended petition or it will rely on the filed grounds. In the absence of the substantive responses by all the named parties it would be speculative to find that issues raised have met the threshold of Article 165(4) of *the Constitution*.



- b. Secondly and more importantly it is not practical to refer any matter touching on fundamental right to the Chief Justice to empanel a bench of 3 or more uneven number of judges. The judiciary's resources are quite limited. It is not practical or desirable to refer any matter touching on Article 165(4) of *the Constitution*.
8. In the case of Harrison Kinyanjui –vs- Attorney General & Another (20123)eKLR, Majanja J had the following observations with regard to empanelment of a bench of uneven number of judges to adjudicate over a matter.
- “The meaning of “substantial question” must take into account the provision of *the Constitution* as a whole and the need to dispense justice without delay particularly given specific situation. In other words each case must be considered on its merit by the judge certifying the matter. It must also be remembered that each High Court judge has authority under Article 165 of *the Constitution* to determine any matter that is within the jurisdiction of the High Court. Furthermore, and notwithstanding the provisions of Article 165(4) the decision of a 3 judge bench is of equal force to that if a single judge exercising the same jurisdiction. A single judge deciding a matter is not obligated to follow a decision of the court delivered by 3 judges”.
9. The provisions of Article 165(3) of *the Constitution* provides as follows:-
- “Subject to clause (5), the High Court shall have—
- (a) unlimited original jurisdiction in criminal and civil matters;
 - (b) jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;
 - (c) jurisdiction to hear an appeal from a decision of a tribunal appointed under this Constitution to consider the removal of a person from office, other than a tribunal appointed under Article 144;
 - (d) jurisdiction to hear any question respecting the interpretation of this Constitution including the determination of—
 - (i) the question whether any law is inconsistent with or in contravention of this Constitution;
 - (ii) the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution;
 - (iii) any matter relating to constitutional powers of State organs in respect of county governments and any matter relating to the constitutional relationship between the levels of government; and
 - (iv) a question relating to conflict of laws under Article 191”.
10. *The Constitution* therefore grants this court even sitting as a single judge the mandate and jurisdiction to determine matters touching the above stipulated rights.



11. While I agree that the issues raised by the petitioner in his amended petition raises substantial questions of law and interesting ones too, I find that the same can be adjudicated by a single judge because after all any party that maybe aggrieved by any determination has liberty to move to the Court of Appeal that is presided over by 3 judges.
12. This court finds that for purposes of expediency as provided under Section 1A and 1B of *Civil Procedure Act* the application for empanelment of a bench of 3 judges is unmerited and is declined. I direct the petitioner to serve the respondents with a mention notice for purposes of directions on the petition. I will not make any order as to costs in this application.

DELIVERED, DATED AND SIGNED AT KITALE THIS 18TH DAY OF SEPTEMBER, 2025.

HON JUSTICE R.K. LIMO

KITALE HIGH COURT

Ruling delivered in the presence of;

Wanyama for the petitioner

No appearance for the A.G

Duke/Chemosop- Court assistants

