



Taireni Association of Mijikenda v Hon. Cabinet Secretary Ministry of Finance and National Treasury & 3 others (Petition 2 of 2023) [2024] KEHC 2090 (KLR) (4 March 2024) (Ruling)

Neutral citation: [2024] KEHC 2090 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
PETITION 2 OF 2023
OA SEWE, G MUTAI & F WANGARI, JJ
MARCH 4, 2024**

IN THE MATTER OF: ARTICLES 1, 2, 3, 6, 10, 19, 20, 21, 22, 43, 73, 74, 94, 95, 96, 109, 129, 130, 159, 152, 153, 201, 258 AND 259 OF THE CONSTITUTION OF KENYA, 2010

IN THE MATTER OF: PUBLIC FINANCE ACT, LAWS OF KENYA

IN THE MATTER OF: KENYA PORTS AUTHORITY ACT, CAP 391, LAWS OF KENYA

IN THE MATTER OF: PUBLIC PRIVATE PARTNERSHIP ACT, LAWS OF KENYA

IN THE MATTER OF: MERCHANT SHIPPING ACT, LAWS OF KENYA,

AND

IN THE MATTER OF: PUBLIC PROCUREMENT AND ASSETS DISPOSAL ACT

BETWEEN

TAIRENI ASSOCIATION OF MIJIKENDA PETITIONER

AND

HON. CABINET SECRETARY MINISTRY OF FINANCE AND NATIONAL TREASURY 1ST RESPONDENT

HON CABINET SECTRETARY MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING URBAN DEVELOPMENT AND PUBLIC WORKS 2ND RESPONDENT

THE HON ATTORNEY GENERAL 3RD RESPONDENT

KENYA PORTS AUTHORITY 4TH RESPONDENT



RULING

1. We have considered the oral application of Ms. Gichuhi, learned counsel for the Petitioner and the responses by Ms. Lang'at for the 1st, 2nd and 3rd Respondents and Mr. Hassan for the 4th Respondent.
2. The Petitioner seeks to have the Replying Affidavit sworn on 19th February 2024 and said to have been served on 26th February 2024 expunged on the grounds that it was filed without leave and outside the timelines given by the court. Counsel submits that it would be prejudicial to the Petitioner's case if the same is admitted.
3. In the alternative counsel sought leave to file a Supplementary Affidavit in response to the 4th Respondent's Replying Affidavit, within 14 days. She prayed that the 4th Respondent be condemned to pay the Petitioner's costs.
4. Ms. Lang'at, learned counsel for the 1st, 2nd and 3rd Respondents opposed the application. She urged the court to consider the public interest and submitted that as the petition revolves around the operation of the 4th Respondent expunging the impugned affidavit would be prejudicial to the public interest.
5. Mr. Hassan for the 4th Respondent also opposed the application. He argued that allowing the application would amount to condemning the 4th Respondent unheard. He further argued that the impugned affidavit responds to the issues in dispute in this matter. Counsel urged that what the Petitioner was actually seeking was an adjournment of the matter. In his view the Petitioner would not be prejudiced if the affidavit is admitted.
6. We have considered the application. In our opinion the 4th Respondent did not require leave to file a Replying Affidavit given the directions we issued on 12th February 2024. The 4th Respondent should however have filed the said response within 7 days. We have perused the e-filing portal and established that the said document was filed on 26th February 2024 which date was outside the timeline given by the court. Given the nature of the matter and the public interest in it, we agree that it would not be in the public interest to expunge the impugned Replying Affidavit. Article 159(2)(d) of the Constitution calls on this court to administer justice without undue regard to procedural technicalities.
7. In the interest of justice the Petitioner shall have leave to file a Supplementary Affidavit within 7 days.
8. Given the nature of the matter we make no orders as to costs.

Orders accordingly.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MOMBASA THIS 4TH DAY OF MARCH 2024

OLGA SEWE

JUDGE

GREGORY MUTAI

JUDGE

F. WANGARI

JUDGE

