



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CONSTITUTIONAL PETITION NO 2 OF 2020

FRED WALUSE KIMOKOTI.....PETITIONER

VERSUS

1. TOM MAKALE

2. D C I O NANYUKI

3. THE INSPECTOR GENERAL OF POLICE

4. THE DIRECTOR OF PUBLIC PROSECUTION

5. THE ATTORNEY GENERAL.....RESPONDENTS

RULING

1. This ruling concerns the **notice of motion dated 31/03/2021** filed by the Petitioner. The application seeks in essence leave of the court for admittance into the record of the court out of time the written submissions and supplementary affidavit which were in respect to the Petitioner's application by notice of motion dated 14/02/2020. That application sought orders to restrain the Respondents *"from arresting, charging, detaining or in any way interfering or harassing the Petitioner in regards to his previous engagement as an employee at Unique Loo Limited and/or engagement with Mr Tom Makale the 1st Respondent herein"* pending hearing and determination of the petition.

2. The background to the application at hand is as follows. On 28/01/2021, following representations by the learned counsels appearing, the court directed as follows –

"1. The notice of motion dated 14/02/2020 shall be disposed of by way of written submissions.

2. The Petitioner to file and serve his written submissions within seven (7) days of today.

3. The Respondents to file and serve their responses within seven (7) days of service.

4. The Petitioner may, if need be, file a rejoinder within seven (7) days of service of the Respondents' submissions.

5. Mention on 23/02/2021 to take a date for ruling.

6. Interim orders extended to 23/02/2021.

7. Costs in the cause."

3. Come 23/02/2021, and the Petitioner had not filed his written submissions. The explanation given was that the counsel who had conduct of the matter had been unwell. A further 14 days was requested, and granted, to file the submissions. The interim orders were also extended and the matter fixed for mention on 22/03/2021.

4. On 22/03/2021, it turned out that the Petitioner had just that morning filed his submissions, some 13 days out of time! Learned counsels objects to the admission of the Petitioner's submissions out of time, and the court then directed that a formal application be filed. Hence the notice of motion at hand.

5. When the application came up for hearing on 09/11/2021, learned counsels for the Respondents stated that they had no objection after all

to the submissions of the Petitioner being admitted out of time; they however objected to the Petitioner being allowed to file any supplementary affidavit as that would reopen up the matter since the Respondents had in the meantime long filed and served their own submissions in respect to the notice of motion dated 14/02/2020.

6. I respectfully agree with the Respondents' learned counsels that permitting the Petitioner to put in any further pleadings at this state will simply pull back a matter that should have been determined quite a while back as the Respondents' written submissions were long filed and served. This court will not permit that. The Petitioner's submissions in respect to the notice of motion dated 14/02/2020, which were filed late, will however be admitted into the record out of time. It is so ordered.

7. The Respondents will have costs of the notice of motion dated 31/03/2021.

DATED AND SIGNED AT NANYUKI THIS 2ND DAY OF FEBRUARY 2022

H P G WAWERU

JUDGE

DELIVERED AT NANYUKI THIS 3RD DAY OF FEBRUARY, 2022