REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO E300 OF 2021

IN THE MATTER OF THE CONSTITUTION OF KENYA ENFORCEMENT

AND INTERPRETATION OF THE CONSTITUTION RULES 2013

AND

IN THE MATTER OF ENFORCEMENT OF FUNDAMENTAL

RIGHTS AND FREEDOMS

AND

IN THE MATTER OF ARTICLES 1, 2(1), 10, 19, 20, 22, 23, 35, 36,

47, 50, 165, 232, 258 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF SECTION 4 OF THE FAIR ADMINISTRATIVE ACTIONS ACT

AD

IN THE MATTER OF NYAHURURU SPORTS CLUB

BETWEEN

IAAC N. GITHUI.....PETITIONER

VERSUS

SAMUEL MUNYUA

FRED MUNYEKI

Being sued as the Chairman, Secretary and Treasurer of the

Board of Management of Nyahururu Sports Club.....RESPONDENTS

RULING

APPLICATION

1. The Respondents in a Preliminary Objection dated 1st September 2021 objects to this Court's jurisdiction urging that this Court lacks

territorial jurisdiction to hear and determine the amended Petition on the grounds that Nyahururu Sports Club is situated in Nyahururu Town – in Laikipia County within the Local limits of the High Court at Nyahururu. Further it is averred the cause of action founded on the letter dated 12th June 2021 by the Respondents arose in Nyahururu Town within the local limits of the High Court at Nyahururu.

2. The Petitioner is opposed to the Preliminary Objection and contends that this Court has jurisdiction to hear and determine this amended Petition.

3. Mr. Waichungo, learned Advocate for the Respondents urged that this Court lacks jurisdiction as the cause of action according to the Respondents is based on a letter dated 12th June 2021 authored by the Respondents suspending the Petitioner from membership of the Respondents club. It is contended that this fact is admitted in paragraph 2 of the amended Petition.

4. Further the officials of the Respondents club are said to be resident of Nyahururu where the cause of action arose. However the Petitioner filed the Petition in Nairobi. The filing of the suit in Nairobi High Court is urged to have been in clear violation of ***Section 15 of the Civil Procedure Act***.

5. In view of the above the Respondents pray that the Petition be struck out with costs for want of jurisdiction.

6. Miss Nasambu, learned Counsel in opposing the Preliminary Objection sought reliance in the Replying Affidavit and further urged under ***Article 165(3) of the Constitution*** this being a High Court it has unlimited original jurisdiction in Criminal and Civil matters. She urged therefore this Court has jurisdiction to hear and determine both civil and criminal matters falling within its jurisdiction.

7. In the instant Petition there is no dispute that the cause of action arose at Nyahururu. However the Petitioner urges he opted to file Petition in Nairobi due to constant threats or intimidation by the Respondents.

8. The issue for determination is therefore whether this Court has jurisdiction to hear and determine this Petition. Secondly whether this Court can transfer this Petition or strike out the same.

9. The Petition before this Court is a Constitutional Petition whose procedure is governed by the ***Constitution of Kenya (Protection of Rights and Fundamental Freedom) Practice and Procedure Rules, 2013, (otherwise referred to as the Mutunga Rules, 2013***).

10. ***The Mutunga Rules, 2013 under Rule (8),*** provides the place of filing of Petition. ***Rule 8 (1)*** states that every case shall be instituted in the High Court within whose jurisdiction the alleged violation took place. Further ***Rule 8(2)*** provides that despite ***sub-rule (1)*** the High Court may order that the Petition be transferred to another Court of competent jurisdiction either on its own motion or on the application of a party.

11. In view of ***Rule 8 of the Mutunga Rules*** it is clear that this Court has jurisdiction to hear and determine this Petition. Similarly this Court has power on its own motion or on an application to transfer this Petition to a Court competent to hear and determine this Petition. I find striking out the Petition on the ground raised by the Respondents will not only be contrary to clear provisions of the procedure in Constitutional matters but will amount to doing injustice to the Petitioner.

12. ***The upshot is that Preliminary Objection is without merits. It is rejected. Further I find the violation complained of occurred in Nyahururu, where the Petition ought to have been lodged. In the interest of doing substantial justice I will transfer the Petition to Nyahururu High Court for hearing and determination.***

13. ***I direct costs do abide by the outcome of the Petition.***

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 12TH DAY OF OCTOBER, 2021.

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J. A. MAKAU

JUDGE OF THE HIGH COURT OF KENYA