



THE REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. E334 OF 2021

HON. JUSTICE SANKALE OLE KANTAI.....PETITIONER

VERSUS

INSPECTOR GENERAL OF THE NATIONAL POLICE SERVICE.....1ST RESPONDENT

DIRECTOR OF CRIMINAL INVESTIGATIONS2ND RESPONDENT

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS.....1ST INTERESTED PARTY

AND

1. GABRIEL HANNAH VAN STRATEN.....2ND INTERESTED PARTY

2.. GRACE ITA NDINDA

(suing for and on behalf of the Estate of Silas M’Njamiu Ita).....3RD INTERESTED PARTY

3. SARAH WAIRIMU KAMOTHO COHEN.....4TH INTERESTED PARTY

4. PETER NJOROGE KARANJA.....5TH INTERESTED PARTY

RULING

1. The following matters namely:

- i. Petition No.E334 of 2021** – Justice Sankale Ole Kantai Vs Inspector General of Police and Director Criminal Investigations (1st and 2nd respondents) and Director of Public Prosecutions and 4 others (Interested Parties)
- ii. Petition Misc No. E037 of 2021** – Noordin Mohamed Haji and another Vs. Gabriel Hannah Van Straten & 2 others (respondents)
- iii. Petition No. E453 of 2021** – Law Society of Kenya Vs. Public Service Commission and 2 others (respondents) and Gabriel Hannah Van Straten & 2 others (Interested Parties)
- iv. Petition No.E459 of 2021** – Justice Sankale Ole Kantai Vs. Public Service Commission (respondent) & Director Public Prosecutions (Interested Party).

Were forwarded to this court for directions by Mrima and Makau JJ. The main issue for consideration is whether or not the four matters should be consolidated for purposes of hearing.

2. Mr. Murgor and Mr. Mbatia for the interested parties were of the view that all the four (4) matters should be consolidated. They argue that there are several issues which are related and therefore, overlapping. Mr. Murgor wants the petitions consolidated with his petition dated 16th March, 2021 in HCCR.No.60/2019.

3. Mr. P. Wanyama and several other counsel were opposed to consolidation. Mr. Wanyama, M/s Mwangi, Mr. Mule were of the view that Pet. No.E334/2021 is distinct from the others and should proceed on its own. They did not mind the other two petitions and the Petition Misc. being heard together or being consolidated.

4. Mrs. Manani, Mr. Taib, M/s Ang'awa were of the view that Petitions No.E453/2021, E459/2021, and Petition Misc No.E037/2021 be consolidated or be heard together. Mr. Wambui asked the court to give priority to Petition Misc No.E037 while the others are held in abeyance. Mrs. Manani opposed any consolidation with Pet. No. E334/2021 since the PSC is not a party to it.

5. A reading of the petition in Pet. No.E334/2021 shows that the petitioners claim is based on his arrest on 21st February, 2020 by officers from the office of the 2nd respondent on allegations of his involvement in the murder of Tob Cohen. Based on this arrest he claims that there was a violation of his constitutional rights, since the Director of Public Prosecutions (DPP) had already vide a letter dated 10th August, 2021 cleared him of any wrong doing.

6. On the other hand petitions No.E453/2021, E459/2021 and Petition Misc. No.E037/2021 are challenging the decision by the Public Service Commission (PSC) to ask the DPP to respond to petitions filed against him for his removal from office, and also to appear before it on account of that. The origin of the petitions filed is the decision made by the DPP, not to charge Justice Sankale Ole Kantai (the petitioner) in Pet.E334/2021 and Pet.E459/2021.

7. Consolidation is not only based on the parties appearing. The main consideration is on the substratum of the suits herein. The common thread flowing from the four (4) matters is the decision made by the DPP not to have Justice Sankale Ole Kantai charged. This is what led to the summons of the DPP by the PSC. It also led to the 2nd respondent in Pet. No.E334/2021 causing the arrest of the Hon. Judge since he did not agree with the DPP's decision. Once this impugned action/decision by the DPP is determined, the other issues emanating from it will fall in place.

8. On the HCCR No.60/2019 I am aware of a petition Pet.E361 of 2020 filed in this division and dealt with by Justice Makau who rendered a ruling on 11th March, 2021. In allowing the preliminary objection and dismissing the petition and the application the Hon. Judge said the issues raised were to be handled in the Criminal Division which was hearing the murder case. Such a petition can only be heard again in this division if Justice Makau's ruling has been overturned by a higher court. I will therefore not call for the said petition from the criminal division. Mr. Murgor also mentioned issues to do with succession matters filed and which are connected with the matters herein. Succession matters have their own docket which is the Family division and that is where they should be heard.

9. Having therefore considered the pleadings in the four (4) files, I am of the view that it is prudent to have them consolidated and heard by one judge for purposes of uniformity of the orders to be issued over the same matter.

10. I therefore consolidate Petition Nos.E334/2021; E453/2021, E459/2021 and Petition Misc. No.E037/2021. The lead file will be Pet. No.E334/2021. The issue of conflict of interest will be dealt with upon filing a formal application before the trial court.

11. This matter is allocated to Hon. Justice A. Mrima for hearing and determination. Mention on 7th December, 2021 before him for direction.

DELIVERED ONLINE, SIGNED AND DATED THIS 2ND DAY OF DECEMBER, 2021 IN OPEN COURT AT MILIMANI NAIROBI.

H. I. ONG'UDI

JUDGE OF THE HIGH COURT