



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT NAROK

CONSTITUTIONAL PET NO. 3 OF 2019

**IN THE MATTER OF THE CONSTITUTION OF KENYA ARTICLE 22 RELATING TO THE VIOLATION OF
FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES 50(1)**

(FAIR HEARING), 48(Access of Justice), 40(Protection of Right to Property) AND 27 (1)

AND

**IN THE MATTER OF THE SUPERVISORY JURISDICTION OF THE HIGH COURT UNDER ARTICLE 165 (6 AND 7) OF THE
CONSTITUTION OVER SUBORDINATE COURT OR ANY PERSON EXERCISING JUDICIAL FUNCTIONS**

**IN THE MATTER OF DENIAL OF ENJOYMENT OF THE FRUITS OF THE JUDGMENT DELIVERED ON THE 28TH APRIL
2015 IN THE DEFENDANTS FAVOUR IN NAROK CMCC NO. 1 OF 2007**

AND

**IN THE MATTER OF EVICTION ORDERS ISSUED BY THE SENIOR PRINCIPAL MAGISTRATE AGAINST THE
SUCCESSFUL PARTY IN NAROK CMCC NO. 1 OF 2007**

SAMUEL K. NGERECHI.....1ST PETITIONER

RICHARD K. BOSEK.....2ND PETITIONER

WILSON K. SANG.....3RD PETITIONER

JOSEPH MOSONIK.....4TH PETITIONER

VERSUS

SENIOR PRINCIPAL MAGISTRATE NAROK

HON. T. GESORA.....1ST RESPONDENT

HON. ATTORNEY GENERAL OF KENYA.....2ND RESPONDENT

JOSEPH KIPKOECH NGERECHI.....INTERESTED PARTY

RULING

The 2nd Interested party had by a Notice of Preliminary Objection dated 4th March, 2019 raised the Petition offends the provision of Article 160 (5) of the Constitution of Kenya 2010 as a member or a Judicial Officer is not liable for action or in a suit in respect of anything done or omitted to be in good faith in the performance of his judicial functions and thus the petition is grossly incompetent and an abuse of the court process.

The petitioners answer to the petition and in his submission states that the petition is properly before the court and thus Honourable Tito Gesora is not individually sued but cited as the Senior Principal Magistrate Narok who made the disputed order for eviction and that there is no specific prayer in the petition of the Magistrate to incur personal liability or an order to be made against him. The petitioner further submitted that judicial officers are not above and are bound by the provisions of Article 20 (1).

I have considered the Notice of Preliminary Objection and the submissions filed by the petitioners together with the petition. What constitutes a preliminary objection is now well settled as contained in the case of Mukisa Biscuits Manufacturing Limited -Versus- West end Distributors Limited (1969) as a pecuniary point which when acquired will dispose of the matter.

The preliminary objection on point raised by the 1st Respondent is to effect that the same offends the provisions of Article 160 (5) of the Constitution of Kenya 2010 in so far as a member of the judiciary or Judicial Officer in the performance of his duties shall not be liable in any suit. From the petition and the submissions, it is clear that the Honourable Tito Gesora was only included as a party to the petition pursuant to orders he had issued and the taking of proceedings before his court. Matter which he undertook in pursuance of the function of his office as a judicial officer and in lieu of the above I find that the function of the 1st respondent is only protected under the provisions of Article 160 (1) of the Constitution of Kenya and therefore his inclusion as respondent in the petition is untenable.

From the above I find that the preliminary objection is merited and I thus direct the name of Honourable Mr. Tito Gesora as the 1st Respondent be expunged.

Orders accordingly.

DATED, SIGNED and DELIVERED in open court at **NAROK** on this **5TH** day of **MARCH, 2020**

Mohammed Kullow

Judge

5/3/2020

In the presence of:-

CA:Chuma/Kimiriny

Mr Kamwaro for the 1st respondent

Ms Maritim for the interested party

N/A for the petitioners

Mohammed Kullow

Judge

5/3/2020