



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

CONSTITUTIONAL PETITION NO. 1 OF 2019

IN THE MATTER OF ENFORCEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS ARTICLES 19, 20, 21, 22, 23, 24, 25, 258, 259 AND 260 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF ALLEGED VIOLATION OF THE RIGHT TO PROPERTY UNDER ARTICLES 36 AND 40 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF INFRINGEMENT OF NON-DEROGABLE RIGHT TO A FAIR HEARING ENSHRINED UNDER ARTICLES 49 AND 50 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF INFRINGEMENT OF THE RIGHT TO A FAIR ADMINISTRATION ACTION ENSHRINED IN ARTICLES 10 AND 47 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF ARTICLES 23, 159 AND 165(3) OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF CONSTITUTION OF KENYA/PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOM) PRACTICE AND PROCEDURE RULES, 2013

BETWEEN

JAFORD KIRIMI MUKURU.....PETITIONER

AND

THE COUNTY CRIMINAL INVESTIGATIONS OFFICER

THARAKA NITHI COUNTY.....1ST RESPONDENT

THE COUNTY CRIMINAL INVESTIGATIONS OFFICER

MERU COUNTY.....2ND RESPONDENT

THE OFFICER COMMANDING STATION MERU POLICE STATION...3RD RESPONDENT

THE DIRECTOR OF PUBLIC PROSECUTIONS MERU COUNTY.....4TH RESPONDENT

THE HONOURABLE ATTORNEY GENERAL MERU.....5TH RESPONDENT

J U D G M E N T

1. Before me is an undated and unsigned petition filed on 28th January, 2019. The petition seeks the following relief:-

- a) A declaration that the detention of the Petitioner's vehicle registration number KBY 939 L is illegal, unlawful and is tantamount to contravention of the Petitioner's inherent inalienable, fundamental and constitutional rights.
- b) A declaration that the petitioner has suffered loss and damage as a result of the Respondent's acts.
- c) A declaration that motor vehicle No. KBY 939 L is the property of the Petitioner.
- d) A declaration that motor vehicle KBY 939 L is forthwith released with no conditions to the custody of the Petitioner pending the hearing and determination of this matter or further such orders.
- e) This honourable court do declare that the deprivation of the Petitioner's property can only be implemented under the due process of the law and the said action is inconsistent with **Article 40** and **259** of the **Constitution** of Kenya.
- f) This court do issue a conservancy order restraining the Respondents from summoning , reporting, arresting, charging and/or prosecuting the Petitioner or hinder his free movement pending the hearing and determination of this matter or further orders of this honourable court.
- g) This honourable court do issue a conservancy order restraining the Respondents from detaining the Petitioner's motor vehicle Registration No. KBY 939 L or hinder its free movement and operations and/or daily business pending the hearing and determination of this matter or further orders of this honourable court.
- h) An order for payment to the Petitioner of damages and such sums as may be found due from the Respondents jointly and severally or more particularly averred herein above on account of the 1st, - 2nd and 3rd Respondent's arbitrary actions from such date deemed just by the Honourable court with due regard to the events in any paragraph hereof until payment in full.
- i) This Honourable court be pleased to make any orders or directions within its jurisdiction.
- j) The Petitioner be awarded the costs of this petition.

2. This court has perused at the petition filed herein and as I have observed above, the petition is both undated and unsigned perhaps due to some fatal oversight by the Petitioner's Counsel. I deem it fatal because under the provisions of **Order 2 Rule 16 Civil Procedure Rule** the rules provide as follows:-

" Every pleading shall be signed by an advocate or recognized agent (as defined by Order 9 Rule 2) or by the party if he sues or defends in person."

The importance of signature in any document leave alone a pleading in a court of law cannot be overemphasized. I am afraid that failure to date and indeed sign the pleadings filed in this court renders it incompetent and fatally defective. There is nothing I can possibly do about it. This court only learnt about the defect when it retired to write the judgment. While it is true that the petition is unopposed, I find that the same is incompetent and fatally defective for the aforesaid reasons and in the circumstances the only option is to give another chance to the Petitioner to lodge a competent petition. For now the petition before me is struck out for being incompetent and fatally defective. I shall however make no order as to costs because the same was unopposed.

Dated, signed and delivered at Chuka this 8th day of October, 2019.

R. K. LIMO

JUDGE

8/10/2019

Judgment signed, dated and delivered in court in presence of Kirimi for Petitioner and Ithiga for Respondent.

R.K. LIMO

JUDGE

8/10/2019