



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MURANG'A
CONSTITUTIONAL PETITION NO 2 OF 2016

MWANGI WA IRIA.....PETITIONER

VERSUS

1. ETHICS AND ANTI-CORRUPTION COMMISSION
2. DIRECTOR OF PUBLIC PROSECUTIONS
3. CHIEF MAGISTRATE, MAKADARA LAW COURTS
4. ATTORNEY-GENERAL.....RESPONDENTS

AND

MURANG'A COUNTY GOVERNMENT.....APPLICANT

R U L I N G

1. The Petitioner herein, **Mwangi wa Iria**, is the Governor of Murang'a County. Following application by the 1st Respondent, the **Ethics and Anti-Corruption Commission**, in **Makadara CM Miscellaneous Criminal Application No 41 of 2016**, that court on 19/01/2016 issued a warrant of search in respect to the Petitioner's homes, offices and business premises in connection with a criminal investigation regarding alleged misappropriation of public funds and other offenses. The Petitioner has challenged the constitutional and legal validity of that search warrant by the present petition, which is pending disposal. He has also challenged the consequences of execution of the warrant at his home. There are temporary orders in place in respect to the search warrant pending disposal of the petition.

2. **Murang'a County Government** has now applied by **chamber summons dated 04/05/2016** for the main order that it be joined in these proceedings as Interested Party. The grounds for the application appearing on the face thereof include –

- (i) That the search warrant was obtained without due process and without notice to the Petitioner.
- (ii) That the warrant was unlawfully and illegally executed on 19/01/2016 at the Petitioner's home at Gatanga and documents and her materials belonging to Murang'a County Government taken.
- (iii) That the Murang'a County Government has never been notified of any investigations against it by the 1st Respondent, and has never been required to produce any documents.

(iv) That the Petitioner is in law the chief executive officer of Murang'a County Government, and in that capacity he had custody of official documents on the running and operations of the county government. The action of the 1st Respondent in taking away documents from the Petitioner's home has this "...seriously prejudiced and impeded the operations and processes of the county government.

(v) That it is thus in the interests of justice that Murang'a County Government be joined in these proceedings "to enable the court adjudicate upon and settle the matter".

The application is supported by the affidavit of one P.K. Mukuria, who has described himself as the County Secretary and Head of the Public Service of Murang'a County Government.

3. All the Respondents have opposed the application. The 1st Respondent filed a replying affidavit on 10/05/2016. It is sworn by one Francis Kamwara who has described himself as an investigator with the 1st Respondent. He has deponed that he is the investigating officer in the case of obstruction of the 1st Respondent's officers by the Petitioner and has described in detail what happened on 21/01/2016 at the home of the Petitioner when the officers went to execute the search warrant.

4. The 2nd, 3rd and 4th Respondents filed grounds of opposition dated 24/05/2016. Those grounds include

(i) That the Petitioner is being investigated and if necessary will be prosecuted under section 66 of the Anti-corruption and Economic Crimes Act, 2003 in his personal and individual capacity, and not as a representative of Murang'a County Government.

(ii) That the present application is an attempt by Murang'a County Government to shield the Petitioner, and is thus in bad faith and in breach of the Murang'a County Government's obligation to safeguard the public interest.

(iii) That the offences of corruption, abuse of office and others under the Official Secrets Act for which the Petitioner is being investigated clearly affect the Murang'a County Government and it should not appear to be shielding the Petitioner.

(iv) That the Murang'a County Government is not being investigated by the 1st Respondent for any offence, and none of its premises have been searched.

(v) That the Murang'a County Government has no interest whatsoever beyond being a witness in the investigation and possible prosecution of the Petitioner.

(vi) That the present application is an attempt to delay the investigation and possible prosecution of the Petitioner and thus foster the culture of impunity.

5. I have considered the submissions of the learned counsels appearing, including the cases cited. Under **Rule 7 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013** (hereinafter the **Rules**) the court may join any person in proceedings as an interested party. The present application is made under that rule.

6. "Interested Party" is defined in **Rule 2** of the Rules as –

"...a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings, or may not be directly involved in the litigation."

What the court has to determine therefore is ***whether Murang'a County Government has an identifiable stake or legal interest or duty in the present proceedings.***

7. The Petitioner in the petition herein challenges the legal validity of the search warrant aforesaid issued against him and the consequences of its execution at his home. He also seeks certain orders in judicial review and damages.

8. A perusal of the proceeding before the Makadara Chief Magistrate's Court that resulted in the challenged search warrant shows that the same was sought against the Petitioner in his personal and individual capacity as **Francis Mwangi Wa Iria**, not as Governor of Murang'a County Government. There was an attempt to execute the warrant at the home (not county offices) of the Petitioner which the 1st Respondent alleges was obstructed in its latter stages by the Petitioner and his supporters.

9. The matters being investigated by the 1st Respondent against the Petitioner are criminal offences under the *Anti-Corruption and Economic Crimes Act, 2003*; they are not civil matters. The offence of obstruction resulting from the events surrounding execution of the search warrant at the Petitioner's home is also criminal in nature, not civil.

10. The Petitioner has alleged infringement of his constitutional rights and fundamental freedoms in this petition in respect to the issuance and execution of the search warrant. All the reliefs he has sought in the petition are personal to him as an individual, not as Governor of Murang'a County Government.

11. In these circumstances, I do not find any identifiable stake or legal interest or duty in the present proceedings on the part of *Murang'a County Government*. The chamber summons dated 04/05/2016 is therefore refused. It is dismissed with costs to the Respondents. It is so ordered.

DATED AND SIGNED AT MURANG'A THIS 16TH DAY OF FEBRUARY 2017

H P G WAWERU

JUDGE

DEELIVERED AT MURANG'A THIS 17TH DAY OF FEBRUARY 2017