



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO 204 OF 2015

IBRAHIM NDADEMA ADENYA PETITIONER

VERSUS

THE HONOURABLE ATTORNEY GENERAL

C/O MINISTRY OF FOREIGN AFFAIRS AND

INTERNATIONAL TRADE1ST RESPONDENT

AND

INTERNATIONAL LIVESTOCK

RESEARCH INSTITUTEINTERESTED PARTY

RULING

1. Following the hearing of this petition on 14th December, 2015, a date for Judgment was reserved for 3rd February, 2015. However, the petitioner's advocate sent a letter dated 21st January, 2016 in which he made various submissions and attached a judicial authority in support of the petitioner's case. As I was proceeding on leave, I directed that the matter be mentioned on 15th April, 2016 to enable the respondent and the interested party present their views to the Court with regard to the submissions made in the said letter and the authority annexed thereto prior to rendering judgment on the matter
2. When the matter came up before me on 15th of April 2016, Mr. Muturi for the petitioner submitted that he had raised, both in his oral and written submissions, the issues captured in the authority that he had subsequently supplied to the Court by way of his letter dated 21st January 2016. His submissions were at the time of the hearing based on the Legal Notice purporting to give ILRI diplomatic immunity as well as the Privileges and Immunities Act. He did not then have the authority. His contention was that he later came upon the authority, and as an officer of the Court, he would be failing in his duty if he did not draw to the attention of the Court such an authority.
3. It was also his submission that the respondent and interested party have been given a chance to answer and respond to the authority, and by failing to respond to it, they were prejudicing

themselves.

4. Ms. Kamande, on behalf of the respondent, opposed any reliance being placed on the contents of the letter and the authority filed by Counsel for the petitioner. Her submission was that it seemed that the petitioner was making further submissions after the case had closed, which would force the parties to re-open the issues in the petition. In her view, Counsel for the petitioner had had a chance to make his submissions but had not. In any event, authorities are not binding on the Court but are merely persuasive, and she urged the Court to disregard the authority.
5. On behalf of the interested party, Mr. Ochieng associated himself with the submissions made by Ms. Kamande. His submission was further that this is a Court of law governed by the Constitution and with a procedure provided under **The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (Mutunga Rules)**. Accordingly, parties who wish to file pleadings ought to obey the procedure, and there is no known procedure under which a party can re-open a case in which judgment had already been reserved.
6. Mr. Ochieng also took the view that if the procedure adopted by the petitioner was allowed, cases will never end. Each party had been given a chance to present its case and if a party is not satisfied with the decision to be rendered, he can always file an appeal. Counsel therefore urged the Court to disregard the letter and the authority, noting that it was in the interests of the petitioner to have this case concluded.
7. In asking the parties to comment on the submissions and the letter presented to the Court by Counsel for the petitioner, the Court was impelled by a desire not to dismiss offhand the said letter, but also the need to give the opposing parties a chance to be heard on the propriety or otherwise of considering the belated effort by Counsel for the petitioner to present additional material before the Court.
8. I have considered the views of the parties with respect to the petitioner's letter. Rule 22 of the Mutunga Rules provides that:

1. Each party may file written submissions.

2. Subject to such directions as may be issued by the court, written submissions shall contain the following

a. a brief statement of facts with reference to exhibits, if any, attached to the petition;

b. issues arising for determination; and

c. a concise statement of argument on each issue incorporating the relevant authorities referred to together with the full citation of each authority.

3. Copies of the authorities to be relied on shall be attached to the written submissions.
(Emphasis added)

9. There is thus a clearly defined procedure in the Rules for the filing of submissions and authorities which parties are required to comply with. The record of proceedings in this matter will show that the petitioner had ample opportunity to present all his submissions and authorities before the Court, but did not do so.
10. Article 159 of the Constitution, which vests judicial authority in the Courts, provides at sub-article (2)(d) that ***Justice shall be administered without undue regard to procedural technicalities..*** The operative words in this provision are ***'undue regard'***. While it is important to allow parties to present their entire case before the Court, it would greatly compromise the dispensation of justice if a party, who has had ample opportunity to present his case, wakes up days or weeks after

conclusion of the case and presents additional material for consideration by the Court.

11. Such a practice would lead to unnecessarily prolonging the case, and litigation would never come to an end. Thus, while there is a need not to be bound by procedural technicalities, this must, in my view, apply where the matter has not been heard to its conclusion. Even then, as the Supreme Court opined in the case of **Raila Odinga vs Independent Electoral and Boundaries Commission and Others, Petition No. 5 of 2013, Article 159 (2) (d) of the Constitution** simply means that a court of Law should not pay undue attention to procedural requirements at the expense of substantive justice, and was never meant to oust the obligation of litigants to comply with procedural requirements as they seek justice from the court.

12. Consequently, while I appreciate the effort made by the petitioner's Counsel in obtaining and submitting the authority in question, I must observe that such efforts serve a party best prior to the conclusion of the case.

13. In any event, I will not consider the submissions and authority in determining the substantive petition, which I now turn to consider.

Dated, Delivered and Signed at Nairobi this 11th day of May 2016.

MUMBI NGUGI

JUDGE

Mr. Muturi instructed by the firm of Nelson Harun Muturi & Co. Advocates for the petitioner.

Ms. Kamande instructed by the State Law Office for the respondent.

Mr. Ochieng Owiti instructed by the firm of Sisule Munyi Kilonzo & Co. Associates Advocates for the interested party.