



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU
CIVIL CASE NO. 3 OF 2013
ANDREW IRERI NJERU (CHAIRMAN OF EMBU
NYAGI NDIIRIRI COUNSEL OF ELDERS).....APPLICANT
VERSUS
THE HON. ATTORNEY GENERAL.....RESPONDENT

R U L I N G

This is an application dated 19th March 2013 seeking for interlocutory judgment in Form No. 13 Appendix A of the Civil Procedure Rules. It also seeks that the suit be set down for hearing.

The supporting affidavit of one Andrew ireri Njeru does not give any reasons in support of this application. Instead it seeks in paragraph 4 that “leave of the court be granted”. Further perusal of the application shows that the leave sought is for interlocutory judgment to be entered in favour of the applicant.

The respondent filed grounds of opposition which were argued by the State Counsel Mr. Kiongo. He submitted that the application is incompetent in that it is brought under the wrong provisions of the law. He also argued that the Constitution does not provide for interlocutory judgment to be entered by the court before the petition is heard. The applicant purports to bring the petition and the application on behalf of other people without the requisite authority. It follows that he lacks capacity to represent the said Embu elders. It is also argued that there is no cause of action that has been shown against the Attorney General.

Mr. Kiongo further argued that the applicant is a vexatious litigant with so many cases in various courts including Kerugoya and Embu High Courts. Almost all the cases which have been determined have not ended in the favour of the applicant. He asked the court to give directions that the applicant should always seek the leave of the court in filing any case against the Attorney General to save the time of the court.

In response, the applicant said he is the elected chairman of the Embu Nyangi Ndiiriri elders and in that official capacity he need not seek leave of the court to file the petition. He said that his application is competent and ought to be looked into separately from the petition. He asked the court in his further affidavit to strike out the grounds of opposition because the respondent has never entered appearance to file defence. He relied on Article 159(3), 20(3)(a) and 22(3)(c) of the Constitution as he urged the court to allow his application.

The applicant seeks for interlocutory judgment under Form 13 of Appendix A of the Civil Procedure Rules. The matter before the court is as a Civil Application going by its sub-heading “Civil Application No. 3 of 2013”. However, the heading of the suit is “Petition”. The Civil Procedure Act does not provide for filing of petitions. The applicant has not indicated under which provision or rule he is approaching the court.

It is difficult to comprehend the type of action the applicant presented before the court since it is not based on any provision of the law. The respondent argues that the petition (as he preferred to call it) is not tenable and discloses no legal action against the Attorney General.

Looking at the document filed in court, it cites Article 22(3)(e) of the Constitution of Kenya in its body. The Article provides:-

“The Chief Justice shall make rules providing for the court the court proceedings referred to in this Article, which shall satisfy the criteria that:-

(e) an organization or individual with particular expertise may with the leave of the court, appear as a friend of the court”.

Article 22 refers to enforcement of the Bill of Rights. The matter may then be referred to a constitutional petition by virtue of the article cited by the Applicant.

The applicant states in the petition that he is the chairman of the Embu Nyangi Ndiiriri Group of elders. He is seeking to be granted a letter to be appearing in the following cases as a friend of the court:-

- (a) Land case filed in the court*
- (b) Land boundaries cases filed in the court*
- (c) Families conflict cases filed in the court*
- (d) Dowry on customary law cases filed in the court*
- (e) To interpret the different Embu tribe names*

The only ground in his affidavit supporting the petition is framed as follows:-

“The fact is that there is nobody who can be called by the judge or magistrate of any court of Kenya who can assist Court accordingly relating the matter quoted in paragraph (2) of the the chamber summons”.

Although Article 22(3)e) calls for an organization or an individual with expertise to be allowed to appear as a friend of the court, such a person must demonstrate that he possess some expertise in a certain area. He must also show that the court in a specific matter is in need of such expertise. The applicant has not annexed any evidence to the petition or made any averments to show what expertise the applicant and the people he seeks to represent possess. Neither has he pointed to any specific case requiring any such expertise.

It is also noted that the applicant has not explained in the petition who the people he represents are and whether it is a legally registered society or welfare group which would give it the authority to deal with certain matters as a society or welfare group. If he is seeking enforcement of any rights of a group, that group has to be identified and its objectives spelt out clearly in its constitution. The group also requires to give the applicant authority to act for it. There is no such authority annexed to the petition.

Article 22 provides for enforcement of Bill of Rights. The petition against the Attorney General does not spell out what these rights are that require to be enforced and neither does it connect the Attorney General

with the petition. There is no allegation of violation or likely violation of the group's rights by the Attorney General. There is no prayer in the petition that is sought against the Attorney General.

The applicant in his petition has cited about (7) cases which he has filed in various courts seeking for orders to be allowed to represent parties. He has not stated what the outcome of those applications or suits were assuming that most of them dating back to 2010 have been determined. From perusal of the pleadings, I reach a conclusion that the applicant is a lay person and not qualified in legal or any other profession to qualify in offering any expertise or to represent any person in any judicial proceedings. Even if the applicant was an expert in whatever field, he cannot be given a blanket order to appear as a friend of the court in all the types of cases he has listed in the petition.

The application is not brought under any provisions of the law. However, Order 10 Rule 9 of the Civil Procedure Rules provides for request of judgment where the defendant has failed to enter appearance or file defence. The provision has been cited in the body of this application. It is important to note that the Civil Procedure Act is not applicable in constitutional petitions. The application seeks for judgment against the Attorney General whereas the petition does not seek for any orders against the said respondent. What kind of judgment does the applicant want the court to enter against the Attorney General?

The petition seeks for orders that a letter of authority to appear in almost all suits as a friend of the court be issued to the applicant. This prayer does not concern the Attorney General in any way. Neither has the applicant demonstrated existence of any nexus between the petition and the Attorney General. There is no law in this country let alone the constitution which grants the remedy sought in this petition.

It is my considered opinion that the petition is incompetent and must fail.

As for the claim of the respondent that the applicant is a vexatious litigant, I opine that the contents of this petition and the number of suits pending in Embu High Court with some already transferred to Environmental and Land Court including the ones listed in this petition, clearly confirm the respondent's claim.

However, I decline to issue the order sought by the respondent that the applicant be ordered to seek leave of the court in any suit he seeks to file for the reason that there was no cross-petition for such an order. Each case must be treated on its own facts.

In conclusion, I find that the application and the petition are incompetent, defective and an abuse of the due process of the court.

The petition is therefore struck out with costs to the respondent.

DELIVERED, DATED AND SIGNED AT EMBU THIS 6TH DAY OF MAY, 2015.

F. MUCHEMI

JUDGE

In the presence of the Applicant in person.