



REPUBLIC OF KENYA

IN THE HIGH COURT AT HOMA BAY

PETITION NO. 4 OF 2014

(FORMERLY MIGORI HC PETITION NO. 3 OF 2014)

BETWEEN

SAMSON OTIENO BALA T/A

MISSAM ENTERPRISES PETITIONER

AND

KENYA BUREAU OF STANDARDS 1ST RESPONDENT

**JOSHUA NYABICHA 2ND
RESPONDENT**

**ROBINSON SHAKE 3RD
RESPONDENT**

ADMINISTRATION POLICE COMMANDANT HOMA BAY 4TH RESPONDENT

DIRECTOR OF PUBLIC PROSECUTIONS 5TH RESPONDENT

JUDGMENT

1. The petitioner is a businessman dealing in building material and hardware. In his petition lodged on 7th August 2014, he states that he purchased and stocked twisted steel bars for building valued at Kshs. 300,000/-. The gravamen of his claim is that on 21st July 2014 at around 4.30 pm, the 2nd and 3rd respondent being agents from Kenya Bureau of Standards (“KBS”) came to his premises, in his absence, took away the following twisted steel bars; 4 pieces of Y20, 104 Pieces of Y16, 152 pieces of Y10, 18 pieces of Y12 and I piece of Y8. After receiving the report of the seizure, the petitioner reported the matter to Homa Bay Police Station. He avers that the Commanding Officer of the Station was never notified of the seizure.
2. The petitioner further avers that as result of the seizure, his building activities were interrupted and he has suffered loss and damage equivalent of the twisted steel bars he had purchased. He avers that he was not given notice of the seizure and that his right to property protected under the Constitution was violated. In his petition he prays for the following reliefs;

a. *There be an order compelling the Respondents to return the supra mentioned steel bars.*

- b. *Order for General and special damages.*
 - c. *Costs of the petition plus interest at court rates.*
 - d. *Any other relief the Honourable Court deems fit and just to grant.*
3. Counsel for the petitioner submitted that the petitioner's case is that his property was taken away by KBS without notice and to date he has not been charged with any offence. He contended that this was a case where the petitioner's fundamental rights and freedoms were violated and he is entitled to appropriate relief under **Article 23** of the Constitution.
 4. KBS and its agents, the 2nd and 3rd respondents, opposed the petition through the replying affidavit of the 2nd respondent sworn on 11th March 2015. The thrust of their case is that KBS is mandated to ensure that quality standards for good sold in the market are met. KBS contends that there is a standard for the minimum weight requirement for twisted steel bars for reinforcement of concrete stipulated in **KS573:2008** Standard titled, "*High yield steel bars for reinforcement of concrete.*"
 5. The 2nd respondent deponed that after public complaints were raised about sub-standard steel, he investigated the claims and on 21st July he visited the petitioner's premises and seized underweight and substandard twisted bars of different sizes for further analysis. In the course of the inspection, the 3rd respondent avers that he issued a seizure notification but the owner refused to sign it.
 6. The respondents deny violation of the petitioner's rights as they were exercising statutory authority under the **Standards Act** and such they were to seize substandard steel bars for reinforcement of concrete. They therefore submit that the petitioner's rights could not be violated.
 7. The 4th respondent relied on the replying affidavit of Jebel M. Ngere, the County Administration Police Commander, sworn on 10th March 2015. He contended that his office was requested by the 2nd and 3rd respondents to deploy two administration police officers to provide security for them while they performed their legal mandate. Mr Oluoch, counsel for the 4th respondent, submitted that the 4th respondent merely performed its duty to provide security and could not be implicated in any unconstitutional conduct.
 8. The petitioner's claim is squarely a claim for the enforcement of fundamental rights and freedoms brought under **Article 22** of the Constitution. In the cases of **Anarita Karimi Njeru v Attorney General [1979] KLR 54** and **Matiba v Attorney General [1990] KLR 666**, it was held that a person who alleges that his rights have been violated is obliged to state his complaint, the provisions of the Constitution he considers have been infringed in relation to him and the manner in which he believes they have been infringed.
 9. This position was emphasised more recently by the Court of Appeal in **Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others Civil Appeal No. 290 of 2012 [2013] eKLR** where it observed that;

[42] Yet the principle in **Anarita Karimi Njeru** (*supra*) underscores the importance of defining the dispute to be decided by the court. In our view, it is a misconception to claim as it has been in recent times with increased frequency that compliance with rules of procedure is antithetical to **Article 159** of the Constitution and the overriding objective principle under **section 1A and 1B** of the Civil Procedure Act (Cap 21) and **section 3A and 3B** of the Appellate Jurisdiction Act (Cap 9). Procedure is also a handmaiden of just determination of cases. Cases cannot be dealt with justly unless the parties and the court know the issues in controversy. Pleadings assist in that regard and are a tenet of substantive justice, as they give fair notice to the other party. The principle in **Anarita Karimi Njeru** (*supra*) that established the rule that requires reasonable precision in framing of issues in constitutional petitions is an extension of this principle.

10.Regarding the matter before it, which is not dissimilar to the present case, the Court of Appeal continued;

*[43] The petition before the High Court referred to **Articles 1, 2, 3, 4, 10, 19, 20 and 73** of the Constitution in its title. However, the petition provided little or no particulars as to the allegations and the manner of the alleged infringements. For example, in paragraph 2 of the petition, the 1st respondent averred that the appointing organs ignored concerns touching on the integrity of the appellant. No particulars were enumerated. Further, paragraph 4 of the petition alleged that the Government of Kenya had overthrown the Constitution, again, without any particulars. At paragraph 5 of the amended petition, it was alleged that the respondents have no respect for the spirit of the Constitution and the rule of law, without any particulars.*

*[44] We wish to reaffirm the principle holding on this question in **Anarita Karimi Njeru** (supra). In view of this, we find that the petition before the High Court did not meet the threshold established in that case. At the very least, the 1st respondent should have seen the need to amend the petition so as to provide sufficient particulars to which the respondents could reply. Viewed thus, the petition fell short of the very substantive test to which the High Court made reference to. In view of the substantive nature of these shortcomings, it was not enough for the superior court below to lament that the petition before it was not the “epitome of precise, comprehensive, or elegant drafting,” without requiring remedy by the 1st respondent.*

11.The petition, as drawn, is clearly deficient in that it does not cite any particular provision of the Constitution that is violated and demonstrate how it is violated. The title of petition refers to **Articles 2, 3, 19, 20, 21, 22, 23, 24, 25, 27, 28, 33, 50 and 259** of the Constitution. Apart from **Articles 27, 28, 33 and 50** which deal with specific rights and fundamental freedoms protected under the Constitution, the rest of the Articles cited deal with general provisions of the Constitution, its application and interpretation. Even though some of the Articles cited refer to specific fundamental rights and freedoms, the petitioner did not plead how each right has been violated. The body of the petition does not mention or cite any of the fundamental rights which are alleged to have been violated. In the circumstances I must find that the petition is incompetent.

12.I must strike out the petition. It is therefore struck out with no order as to costs.

DATED and DELIVERED at HOMA BAY this 4th day of June 2015.

D.S. MAJANJA

JUDGE

Mr Odero instructed by Agure Odero and Company Advocates for the petitioner.

Mr Ombachi, Moriasi and Company Advocates for the 1st, 2nd and 3rd respondents.

Mr Oluoch, Senior Assistant Director of Public Prosecutions, instructed by the Director of Public Prosecutions for the 4th respondent.