



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**

**PETITION NO. 173 OF 2011**

**FRANCIS BUNDI KIMATHI.....PETITIONER**

**VERSUS**

**PROVINCIAL ADMIN AND INTERNAL SECURITY...DEFENDANT**

**J U D G M E N T**

1. The petitioner Francis Bundi Kimathi in his petition dated 19<sup>th</sup> December, 2011 against what he referred to as the State for Internal Security, and Provincial Administration sought the following orders:-

- 1) That a scrutiny, over credibility and accreditation of the local chief and his counterpart the assistant chiefs beside the three short listed candidates for Chungari assistant chief post revealed.*
- 2) An order requiring the respondent to overhaul Chugu location chief office over office gross mis-conduct and violation of human rights, freedom and a breach to national values and principles of governance.*
- 3) That initially the selection had been cautioned hence over irregularities and other improprieties where by the respondent imposed a temporarily lift freeze whereby the respondent inducted the incumbency seriously which also have been cautioned.*
- 4) The Petitioner avers there is no pending petition as there have been no previous proceedings between the petitioner and the defendant over the same matter.*
- 5) Any further given order that the Honourable court may deem fit to grant in a matter where the constitution has been seriously breached by the defendant.*

2. The petitioner further in his petition prayed for judgment against the defendant for and as follows:-

*a. restraining order against the respondent contrary to the newly inducted Assistant Chief to discontinue from handling office matters until the petition is heard and determined.*

*b. A declaration that the emblem of National Unity be fled by the residents of Chugu/Chung'ari sub location by calling this flawed appointed null and void and a fresh advert re advertised as it was publicly announced there before.*

3. The petition is supported by verifying affidavit dated 19<sup>th</sup> September, 2011 in which the petitioner deponed that he is of sound mind and the contents of the petition are true.

4. The court directed that the petition be determined by way of written submissions. The petitioner filed several submissions, however on 15<sup>th</sup> October, 2014 he informed the court he was replying on his submissions dated 29<sup>th</sup> September 2014 titled "Supplementary Application Submission" Mr. Kieti learned Sate counsel appearing for respondent relied on submission dated 14<sup>th</sup> July, 2014 and affidavit dated 11<sup>th</sup> July, 2012, which replying affidavit the court was unable to trace in the court file.

5. The petition however is home drawn and the court has quoted verbatim the orders the petitioner is seeking and the judgment prayed for. As the orders sought appears in the petition and judgment sought, I have to point out it is not easy to understand what the petitioner is seeking but on serious consideration of the petition it appears the petitioner is challenging the induction of administrative officials of Chugu/Chungari sub-location referring to the same as flawed appointment of the said officers and seems to seek to have the same declared null and void so as to give way for fresh advertisement. He further contests the Chugu/Chungari residents rights and freedom has been denied, threatened and totally discriminated by the respondent and sought to have the whole location office overhauled. I have taken pain to understand the petitioner's petition being home drawn and the court has done its best so as to get what the petitioner's petition is all about.

6. The court has very carefully considered the petitioner's petition. The submissions by both the petitioner and counsel for the respondent. The issue for consideration from the petition as drawn and filed is whether there is any constitutional violation of the petitioner's rights or of the residents of Chugu/Chungari sub-location in appointment of the administrative Officials.

Article 165(3) (b) of the Constitution of Kenya 2010 Provides:-

***(3) Subject to clause (5), the High Court shall have—***

***(b) jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;***

7. In determining whether there exist a Constitutional violation of the petitioner's fundamental freedom in the Bill of Rights this court has to go to the petition itself and find out what the petitioner's complaints are; the articles said to be infringed, or violated or threatened and the manner in which such rights are alleged to have been violated, or denied or infringed by the respondent. The petitioner in the instant petition is not supposed to generalize the alleged violation, he is expected to specify the relevant Articles and sub-articles of the constitution which he alleges to have been violated as the constitution is very specific on fundamental freedom in the Bill of Rights. He is required to elaborate the acts attributable to the respondent which resulted in violation or denial or infringement of the fundamental freedom in the Bill of Rights.

8. A perusal of the petition as drawn and as it stands the petitioner did not take any pain or any attempt to cite any single act which is attributable to respondent and which resulted to violation or denial or infringement of his or residents fundamental freedom of Bill of Rights. The petitioner did not meet the criteria set out in proving the existence of constitutional violation or denial or infringement of constitutional right (See ***Anarita Karemi Njeru vs. The Republic (1976-1980) I KLR 1272 and Nairobi HCC Misc. 413 of 2005 Kenya Bus Services & 2 Others vs. The Hon. Attorney General & Others*** .

9. This court has to point out that an allegation of constitutional violation, or denial or infringement of fundamental freedom of Bill of Rights is a serious matter involving a constitutional jurisdiction and in the absence of alleged constitutional violation, the court would not consider granting prayers sought where the allegations are ambiguous. There has to be specific and clear allegation of contravention before court grants such prayers otherwise court should not entertain a petition based on generalized allegation of contravention of the fundamental freedom in the Bill of Rights. A generalized petition is otherwise frivolous, vexatious and an abuse of court process.

10. The upshot is that the petitioner's petition lacks merit and discloses no cause of action. The same is dismissed with costs.

**DATED, SIGNED AND DELIVERED AT MERU THIS 13TH DAY OF NOVEMBER, 2014**

**J. A. MAKAU**

**JUDGE**

**Delivered in open court in presence of:-**

1. Mr. Kieti for Respondent
2. Petitioner in person

**J. A. MAKAU**

**JUDGE**