



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**

**PETITION NO.137 OF 2014**

**BETWEEN**

**KULRAJ SINGH BHANGRA.....PETITIONER**

**AND**

**THE DIRECTOR GENERAL, KENYA CITIZENS AND FOREIGN**

**NATIONALS MANAGEMENT SERVICE.....RESPONDENT**

**JUDGMENT**

1. In the Petition dated 5<sup>th</sup> march 2014, the Petitioner, Kulraj Singh Bhangra claimed that he was born on 4<sup>th</sup> June 1983 and has lived in Kenya all his life although his parents were British Nationals. That he is the holder of a Kenyan Identification Card Number 24722194 issued on 19<sup>th</sup> May 2009 but that when he applied for a Kenyan Passport twelve years (12) ago, he was informed (verbally) that he was a stateless person. Despite that verbal information, he applied for Kenyan Citizenship on 7<sup>th</sup> February 2013 but since then, the office of the Respondent has not communicated its decision on that Application but in verbal communication, he was informed that the Application could take upwards of five years to be determined. The reason for such a delay was never given to him and yet he verily believes that he is entitled to Kenyan citizenship. Aggrieved, therefore, he filed the present Petition seeking the following orders;

***“(1) A declaration that the Respondent has violated the rights of the Petitioner under Article 47(1) to administrative action that is efficient, lawful reasonable and procedurally fair.***

***(2) A declaration that the Respondent has violated the rights of the Petitioner under Article 47(2) to be notified in writing of any adverse actions against him.***

***(3) A declaration that the Respondent has violated the rights of the Petitioner under Article 27 in respect of equality and freedom from discrimination in failing to process his application for Kenyan Citizenship.***

***(4) A declaration that the Respondent has violated the Petitioner’s right to human dignity under Article 28 of the Constitution.***

***(5) A declaration that the Respondent has violated the rights of the Petitioner under Article 39 of the Constitution in respect of freedom of movement and residence.***

(6) *A declaration that the Petitioner is a Kenyan Citizen.*

(7) *An order of Mandamus directing the Respondent to process the Petitioner's Application for Kenyan Citizenship and issue him with a Certificate of Citizenship and a Kenyan Passport.*

(8) *Costs of the Petition.*

(9) *Such other orders the Honorable Judge deems fit."*

### **Petitioner's Case**

2. The Petitioner's case is contained in the Petition aforesaid, a Supporting Affidavit sworn on 5<sup>th</sup> March 2014 together with its annexures as well as Submissions by Mr. Khan, learned Counsel for the Petitioner, filed on 7<sup>th</sup> July 2014. His case is that his father was born in Kenya on 16<sup>th</sup> October 1951 and as was the law at the time, he was registered as a British citizen but he renounced that citizenship on 2<sup>nd</sup> September 1987 having been issued with a Certificate of Registration as a Citizen of Kenya on 12<sup>th</sup> August 1987. He had previously married the Petitioner's mother in Kericho on 13<sup>th</sup> March 1977 and the Petitioner was born, grew up and lived in Kenya with a Kenyan Identity Card issued at Makadara, Nairobi.

3. According to him, his troubles begun when he was issued with a temporary permit to travel to East African Countries on 18<sup>th</sup> April 2012 but at Namanga, he was turned back and his documents confiscated. His Application filed thereafter, to be registered as a citizen has not been acted upon since he lodged it and his complaint in that regard is that his right to fair, expeditious and procedural administrative action under **Article 47** of the **Constitution** was thereby violated.

4. Further, it is his case that the absence of any formal notification of the rejection of his Application for citizenship was unreasonable, irrational, unfair and unlawful. That as a result of the Respondent's actions, he risks arrest, deportation and loss of his investments in Kenya contrary to the rules of natural justice, yet he has met all the legal requirements for grant of citizenship.

5. In addition, he has urged the point that refusal to grant him citizenship has violated his right to equality and freedom from discrimination contrary to **Article 27** of the **Constitution**, right to human dignity under **Article 28** of the **Constitution** and right to freedom of movement contrary to **Article 39** of the **Constitution**.

6. Mr. Khan on his part submitted as follows;

7. Firstly, that **Article 12** of the **Constitution** entitles every citizen to a Kenyan Passport and the same can only be denied by an Act of Parliament that must, in doing so, satisfy the criteria in **Article 24** of the **Constitution** which provides for limitations to the enjoyment of fundamental rights and freedoms.

8. Secondly, that under the **Kenya Citizenship and Immigration Act No.12 of 2011**, if a person is Stateless, such as the Petitioner has been made to believe that he is, then under **Section 15** of the said **Act**, he is entitled to be registered as a citizen of Kenya since he has met the qualifications set out therein.

9. Thirdly, that in failing to expedite the Petitioner's Application for registration as a citizen of Kenya, then orders of Mandamus can properly issue against him to compel action on the said Application. Reliance in that regard is placed on the decisions in **R vs Cabinet Secretary, Ministry of Interior Co-ordination of National Government & 2 Others ex-parte Olga Honson [2013]eKLR** and **In the matter of an Application by Salt Manufacturers for orders of Mandamus [2013] eKLR** which both cited the earlier decision in **Mutenda & Others vs Muganyiasora & Others [1957]E.A 39**. He also cited the case of **Gutale & Another vs AG & Another [2013] eKLR** where the Court directed the Petitioner to consider the Applicant's

Application for a new generation Identity Card within 45 days of the judgment in that matter.

10. For the above reasons, the Applicant prays for the orders elsewhere set out above.

### **Respondent's Case**

11. The Respondent opposed the Petition and filed a Replying Affidavit sworn on 24<sup>th</sup> April 2014 by Mr. Alfred Omangi Abuya together with annexures thereto. Mr. Kakoi, learned Litigation Counsel also filed written Submissions on 24<sup>th</sup> July 2014 and his case can be summarized as follows;

- i. That whereas it is true that the Petitioner was born in Kenya, at that time, his parents were still British Nationals and his father was only registered as a Kenyan on 21<sup>st</sup> August 1987, three years after the Applicant had been born. That in that regard, citizenship in Kenya is acquired either by birth, based on the principles of *jus sanguinis* or by registration based on *jus soli*.
- ii. That the National Identity Card held by the Petitioner was irregularly issued and was void *ab initio*. That the same therefore ought to be cancelled and deactivated.
- iii. That the process of grant of citizenship is elaborate and includes background checks by bodies such as the National Intelligence Service and that there are no time frames set by the law for such Applications to be processed. That the Petition herein is therefore frivolous, vexatious and is also scandalous and an abuse of Court process and should be dismissed with costs.

12. In addition, Mr. Kakoi submitted that the Petitioner made an Application under **Section 15** of the **Act** as opposed to one under **Section 13(4)** of the **Act**. That the former grants rights to citizens of a recognized State who have been living continually in Kenya since 12<sup>th</sup> December 1963 to apply for Kenyan Citizenship. The latter, on the other hand grants rights to dependants of a biological parent who is a Kenyan by registration to be registered as citizen.

13. On the right to fair administrative action, he submitted that delay in processing the Petitioner's Application cannot be wholly attributable to the Respondent because the process is elaborate and requires background checks including by the National Intelligence Service.

14. Lastly, he submitted that citizenship is not a matter of right and this Court cannot be the forum for acquiring it.

### **Determination**

15. There are only three substantive issues to address so far as I can see and these are;

- i. Whether the Petitioner is a citizen of Kenya and/or is entitled to such citizenship and;
- ii. Whether the Respondent violated the Petitioner's rights under **Articles 27, 28, 39** and **47** of the **Constitution**.
- iii. Whether the Petitioner is entitled to the Prayers in the Petition

### **Whether the Petitioner is a citizen of Kenya**

16. It is not in dispute that the Petitioner applied for Kenyan citizenship on 17<sup>th</sup> February 2013. His complaint is that he has received no formal communication in that regard. That apart from alleged verbal communication that he will not be registered as a citizen, the fact that he was turned away at Namanga Border when he attempted to leave Kenya, and Mr. Abuya's statement in his Replying Affidavit, there is no other evidence that the Application was considered at all.

17. I need not belabor the above point; by applying for citizenship, the Petitioner was admitting that he is not a citizen of Kenya although his father is. That then brings to question the Kenyan National Identity Card that he holds and how it was obtained but since both Parties steered clear of that issue, I will not delve into it. I also do not have sufficient evidence on that issue to make a decision one way or the other and so I will say no more with regard to it.

18. As to whether the Petitioner is entitled to Kenyan citizenship, I decline the invitation to address that matter because the **Kenyan Citizenship and Immigration Act, 2013** has elaborate mechanisms on how that matter should be addressed. Until a formal decision is made by the Respondent in that regards, it would not be prudent for this Court to take its place and make that determination. I say so because **Sections 13 and 15** of that **Act** provides as follows;

**“[13] Lawful residence**

1. *A person who has who has attained the age of majority and capacity who has been lawfully resident in Kenya for a continuous period of at least seven years may on application be registered as a citizen if that person-*
  - a. *Has been ordinarily resident in Kenya for a period of seven years, immediately preceding the date of application;*
  - b. *Has been a resident under the authority of a valid permit or has been exempted by the Cabinet Secretary, in accordance with Section 34(3)(h) and who is not enjoying the privileges and immunities under the Privileges and Immunities Act (Cap. 179)*
  - c. *Has resided in Kenya throughout the period of twelve months immediately preceding the date of the application.*
  - d. *Has an adequate knowledge of Kenya and of the duties and rights of citizens as contained in this Act;*
  - e. *Is able to understand and speak Kiswahili or a local dialect;*
  - f. *Understands the nature of the application under subsection (1);*
  - g. *Has not been convicted of an offence and sentenced to imprisonment for a term of three years or longer;*
  - h. *Satisfied the Cabinet Secretary that he or she intends to reside in Kenya after registration;*
  - i. *Has been determined, through an objective criteria, and the justification made, in writing, that he or she has made or is capable of making a substantive contribution to the progress or advance in any area of national development within Kenya; and*
  - j. *Is not an adjudged bankrupt.*
2. *The Cabinet Secretary shall not register an applicant as a citizen of Kenya under this Section if at the date of making the application applicant’s country of citizenship is at war with Kenya.*
3. *A child of a citizen by registration who was born before the parent acquired citizenship may on application by the parent or legal guardian be registered as a Kenya citizen upon-*
  - a. *Production of documents conferring Kenyan citizenship to any of the parents of the legal guardian;*
  - b. *Production of the child’s or the person with disability’s birth certificate; and*

c. ***Proof of lawful residence of the child or person with disability in Kenya.***”

***“[15] Stateless persons***

1. ***A person who does not have an enforceable claim to the citizenship of any recognized state and has been living in Kenya for a continuous period since 12<sup>th</sup> December, 1963, shall be deemed to have been lawfully resident and may, on application, in the prescribed manner be eligible to be registered as a citizen of Kenya if that person-***
  - a. ***Has adequate knowledge of Kiswahili or a local dialect;***
  - b. ***Has not been convicted of an offence and sentenced to imprisonment for a term of three years or longer;***
  - c. ***Intends upon registration as a citizen to continue to permanently reside in Kenya or to maintain a close and continuing association with Kenya; and***
  - d. ***The person understands the rights and duties of a citizen.***
2. ***Applications under this section shall be made within a period of five years from the date of commencement of this Act and by my notice in the gazette be extended by the Cabinet Secretary for an additional period of three years.”***

19. Further, in the case of ***Narok County Council vs Transmara County Council (2000) 1 AA 161***, the Court stated thus;

***“It seems to me to be plain beyond argument that the jurisdiction of the High Court can only be invoked if the Minister refuses to give a direction or in purporting to do so arrives at a decision which is grossly unfair or perverse. In the later case his decision can be challenged by an application to the High Court for a writ of certiorari because under the relevant Section, the division is to be made on a fair and equitable basis”.***

Further, in ***Speaker of National Assembly vs Njenga Karume 2000) I KLR 425*** the Court held;

***“In our view there is considerable merit that where there is clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed”.***

20. I agree with the above finding and in addition, since the Respondent is the lawful entity granted the mandate to determine who can become a citizen of Kenya, until it makes that decision one way or the other in respect of the Petitioner, this Court should not interfere with that mandate.

21. As to whether the Respondent violated the Petitioner’s rights under **Articles 27, 28, 39** and **47** of the **Constitution**, the above **Articles** of the **Constitution** provides as follows;

***[27] (1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.***

***(2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms.***

***(3) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.***

***(4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.***

(5) *A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4).*

(6) *To give full effect to the realisation of the rights guaranteed under this Article, the State shall take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination.*

(7) *Any measure taken under clause (6) shall adequately provide for any benefits to be on the basis of genuine need.*

(8) *In addition to the measures contemplated in clause (6), the State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.”*

*[28] Every person has inherent dignity and the right to have that dignity respected and protected.”*

*[39] (1) Every person has the right to freedom of movement.*

*(2) Every person has the right to leave Kenya.*

*(3) Every citizen has the right to enter, remain in and reside anywhere in Kenya”.*

*[47] (1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.*

*(2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.*

*(3) Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall—*

*(a) provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and*

*(b) promote efficient administration.”*

22. In determining whether any of them have been violated, one must necessarily remember the edict on *Annarita Karimi Njeru (1976-1980) 1 KLR 1272* that when a party pleads any violation of fundamental rights and freedoms, it must do so with sufficient particularity to enable the other party answer the same. One of the particulars must include how the violations were allegedly committed.

23. With that edict in mind, in the Petition, at paragraph 25 thereof, it is pleaded that **“the Respondent’s actions and/or omissions infringe on the Petitioner’s right to equality and freedom from discrimination as enshrined in Article 28 of the Constitution.”** The same approach is taken at paragraphs 26 and 27 with regard to the right to human dignity and freedom of movement and residence under **Articles 28 and 39 of the Constitution**. No particulars thereof are given in support of those depositions and the Supporting Affidavit is wholly silent on all those alleged violations. Similarly, Mr. Khan in his written Submissions steered clear of those issues as did Mr. Kakoi for the Respondent. On what basis then can this Court making a finding of any kind on the alleged violations of Articles 27,28 and 39? I submit none and in the circumstances, I am unable to find any violations as alleged.

24. That leaves the alleged violation of **Article 47(1) and (2) of the Constitution**. The complaint made in that regard is that since February 2013 when he lodged his Application for registration as a citizen, the

Petitioner has received no formal response regarding the same. In response, the Respondent and Mr. Kakoi in his Submissions stated that the delay in responding to the Application was caused by the need to undertake background checks on the Petitioner, including by the National Intelligence Service.

25. On this issue, one can only but agree with the Petitioner. I say so because the High Court has previously dealt with similar matters and addressed the same defence raised by the Respondent and found it to be unsustainable. In that regard, in **Olga Hanson (supra)**, the learned Judge expressed himself thus;

***“Prima facie a delay of 6 months in processing an application for Citizenship, in my view amounts to inordinate delay. It must always be remembered that the delay in processing such an application deprives the applicant from the enjoyment of certain rights conferred upon Citizens hence there ought not to be an undue delay in processing such applications. To state that since there is no time frame for considering the application no amount of delay can be termed as inordinate in my view is irrational”.***

26. Further, the Judge stated as follows with regard to National Intelligence Service reports;

***“Under Section 5(1) it is true the security intelligence is empowered to provide a confidential security report for persons seeking to be registered as citizens of Kenya. It is however a power coupled with a duty; a duty which must be performed when valid grounds justifying the exercise of the power are put forward. The question is whether the Respondents can bypass the requirement for the confidential security report in issuing a certificate of citizenship to a person. Section 5(2) of the said Act provides;***

***The provisions of Sub-section (1) shall not be construed as-***

- a. ***Depriving any person or authority any power, duty or function conferred upon that person or authority under the Constitution or any other written law; or***
- b. ***Limiting the performance of an intelligence related function by a State organ, department or agency.***

***It is therefore clear that the mere fact that the Intelligence Service is in the process of undertaking to provide a confidential security report for an Applicant for Kenyan citizenship, does not bar the Respondents from carrying out their statutory or Constitutional obligations especially where the said report is not forthcoming.***

***For security intelligence to sit on such a report for an unnecessarily and unjustified long period of time would fall foul of Article 47 of the Constitution and would in my view amount to an abuse of power.”***

27. In addition Warsame, J. (as he then was) in **Kana vs AG, Nairobi Petition No.544 of 2010** found that it was necessary for security agencies (such as the National Intelligence Service) to understand and appreciate the Bill of Rights and deprecated the apparent impunity of yester years that was still thriving in the Executive.

28. I am of the same mind as the learned Judges’ in both decisions above. I say so because a delay of one year and a half and still counting in determining the Petitioner’s Application is inordinate. I expected that during these proceedings, at the very least, I would be told the stage at which the consideration of the Application had reached. Save for the contradictory statements elsewhere reproduced above, all I received were empty excuses.

29. It would seem therefore that the words **“expeditious, efficient, lawful, reasonable and procedurally fair”** in **Article 47(1)** of the **Constitution** have no meaning to the Respondent. How can such a delay attract those words in any event? **Article 47(2)** of the **Constitution** similarly provides that **“written reasons for [an] action must be given.”** In the present case, the Petitioner has never received written reasons for all the things Mr. Abuya deponed to in his Affidavit including the Petitioner being turned away at Namanga and his identity Card being threatened with withdrawal, whatever my views may be on that document. It is obvious to me therefore that there was a clear violation of **Article 47(1)** and **(2)**

of the **Constitution** and so I find.

**Whether the Petitioner is entitled to the Prayers sought**

30. Elsewhere above, I reproduced the prayers made in the Petition. I have found that complaints made in respect of **Articles 27, 28 and 39** of the **Constitution** cannot stand and it follows that Prayers 3, 4 and 5 of the Petition cannot be granted and are instead dismissed.

31. As for Prayers 6 and 7 of the Petition, I have said that as long as the Petitioner's Application for registration as a citizen is pending, that prayer cannot be granted and is also dismissed. Having however found in favour of the Petition as regards his complaints centered on **Article 47** of the **Constitution**, it follows that Prayers 1 and 2 must be granted and in addition, I will grant other orders in the interests of justice and in line with Prayer 9 of the Petition.

**Conclusion**

32. Having held as of above, it follows the final orders to be made are as follows;

(1) A declaration is hereby issued that the Respondent has violated the rights of the Petitioner under **Article 47(1)** to administrative action that is efficient, lawful reasonable and procedurally fair.

(2) A declaration is hereby issued that the Respondent has violated the rights of the Petitioner under **Article 47(2)** to be notified in writing of any adverse actions against him.

(3) An order of Mandamus is hereby issued directing the Respondent within 45 days of today's date to consider the Petitioner's Application as a citizen of Kenya and thereafter comply with **Article 47(2) of the Constitution**.

(4) The Petitioner upon the Respondent's compliance with 3 above is at liberty to take such further legal or other lawful action as he deems fit.

(5) Let each Party bear its own costs as none has wholly succeeded.

36. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 5<sup>TH</sup> DAY OF DECEMBER, 2014**

**ISAAC LENAOLA**

**JUDGE**

**In the presence of:**

Kariuki – Court clerk

Mr. Khan for Petitioner

No appearance for Respondent

**Order**

Judgment duly delivered.

**ISAAC LENAOLA**

**JUDGE**