



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ELC .NO. 183 OF 2014

KENYA COUNCIL OF

EMPLOYMENT &

MIGRATION AGENCIES.....1ST

DEFENDANT

=VERUS=

JOHN MBUTHIA KARIUKI.....1ST

OBJECTOR

LILIAN WAMBUI.....2ND

OBJECTOR

WANYOIKE & MACHARIA & CO.ADVOCATES.....1ST

RESPONDENT

KIMANDU GICHOHI & CO.ADVOCATES.....2ND

RESPONDENT

ABSOLOM KAMARA CHEGE.....3RD

RESPONDENT

ABDALLAH ONYANGO.....4TH

RESPONDENT

ANDERICUS ADOUR ODONGO.....5TH

RESPONDENT

VITALIS OTULO WANGOWE.....6TH

RESPONDENT

STEPHEN OCHIENG JAORO.....7TH

RESPONDENT

RULING:

The Petitioner herein *Kenya Council of Employment and Migration Agencies* through one *Evans Nyambega Akuma* has filed this *Misc Application* on behalf of 1st and 2nd objectors seeking for

Orders under various articles of the Constitution. Among the prayers sought are:

- i. ***That the Court do Order that the 1st and 2nd objectors be allowed into their land until this matter is heard and determined.***
- ii. ***That the 1st Respondent has violated and breached the provisions of the Advocates Act and together with the other Respondents should be ordered to pay costs of this suit.***
- iii. ***Further, that all the Respondents should pay a deposit in Court of Kshs.3, 000,000 before being given audience and also costs incurred by the 1st and 2nd objectors.***

The application is supported by the Affidavit of ***Evans Nyambega Akuma*** which is very difficult to understand on what he really meant to communicate across.

The Respondents did file a Notice of Preliminary Objection and averred that the petitioner has no ***locus standi*** in the matter. That the Objectors have filed numerous suits including ***CMCC No. 8141 of 2012*** and ***Misc. Application No. 80 of 2014*** and now the present suit and that action amounts to abuse of the Court process. It was further averred that the Petition herein is ***frivolous*** and ***vexatious***.

The parties filed their written submissions which I have now considered. I have considered all the Orders sought by the Petitioner, and I find them frivolous and they do not properly lie.

The Petitioner has brought the application under various articles of the Constitution. The quoting of the many articles of the Constitution is very confusing and the Court is not able to decipher what really the Petitioner is seeking from the Court. Among the ***Articles*** quoted by the Petitioner is ***Article 22*** of the Constitution which provides that;

“Every person has a right to institute Court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed or is threatened,

Further Article 22 (1) provides that;

“ in addition to a person acting in their own interest , Court proceedings vide clause (1) may be instituted by;

- a. ***a person acting on behalf of another person who cannot act in their own name.***
- b. ***a person acting as a member in the interest group or class of persons.***
- c. ***A person acting in the public interest***
- d. ***Association acting in the interest of one or more of its members.***

In the instant case, the Petitioner herein is an Agency acting for the objectors. I have noted that the 1st Objector has filed Misc. application No. 80/2014 on her own. It cannot be said that she cannot act on her name. It is not clear if objectors are members of the Petitioner herein so that the Petitioner can act in their interest. It is not very clear why the Petitioner has brought this Petition on behalf of the Objectors. There are two other suits where the 1st objector has filed on her own name and the court finds no reason why the Petitioner herein should file this Petition on behalf of the Objectors.

I will concur with the Respondents submissions that the Petitioner chairman is a busy body who lacks ***Locus Standi*** to file this Petition on behalf of the Objectors. Indeed this Petition is an abuse of the Court process as it seeks very ***ambiguous orders***. There are two other suits pending in Court as the present application is an abuse of the Court process and the Orders sought are ***vague*** and it is not clear what really is before the Court. The Petitioner has not brought a claim to Court within the acceptable

minimum Procedural laws and the substance of the claim does not reveal what the real issues are being sought out by the Objectors.

Having now considered the Petitioner's case, the Court finds that the said ***ELC Misc. Petition No. 183 of 2014*** is frivolous and vexatious, the Petitioner has no **locus standi** and is a busy body, and the whole Petition is an abuse of the court process. It is therefore ordered that;

a. ***The ELC Misc. Petition No. 183 of 2014 is hereby struck out in its entirety.***

b. ***No Orders as to costs.***

It is so ordered.

Dated, Signed and delivered this ***2nd day of December, 2014***

L. GACHERU

JUDGE

In the Presence of:-

Evans Nyambega Akumo the petitioner

Mr Mwaura holding brief for all the Respondents.

Kamau: Court Clerk

L. GACHERU

JUDGE

2/12/2014

Court:

Ruling read in open Court in the presence of ***Mr. Nyambega*** on behalf of the Petitioner, the objectors and ***Mr Mwaura*** holding brief for ***Mr.Maina*** for all the Respondents.

L. GACHERU

JUDGE

2/12/2014

Nyambega : We seek for leave to appeal.

L. GACHERU

JUDGE

2/12/2014

Court:

Leave to appeal is granted.

L. GACHERU

JUDGE

2/12/2014