



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

Petition 285 of 2012

MORAA

GESICHO.....APPLICANT

VERSUS

ATTORNEY

GENERAL.....RESPONDENT

RULING

1. This matter concerns the Commission of Inquiry into the Accident Involving Aircraft Helicopter Registration 5Y-CDT type AS 350 B3. The petitioner seeks the following orders;

- (1) *That the Notice of Motion filed herein be heard ex-parte in the first instance.*
- (2) *That the petition be certified urgent.*
- (3) *That the petition comprises a matter which is of extreme public interest and a delay in it hearing may undermine the rights of the people of KENYA.*
- (4) *That the petitioner be given directions that the matter be heard as soon as is practicable as any delay may not serve the interest of the people of Kenya.*

2. The Commissioners were appointed by Gazette Notice No. 9043 dated 28th June 2012. The terms of reference were set out in the Gazette Notice No. 9044 as follows;

- (a) *To probe into the procedure surrounding the procurement and purchase of Aircraft Helicopter Registration 5Y-CDT type AS 350 B3.*
- (b) *To probe into the servicing, maintenance, usage and storage of Aircraft Helicopter Registration 5Y-CDT type AS 350 B3 prior to the accident.*
- (c) *To look into the circumstances surrounding the flight control of Aircraft Helicopter Registration 5Y-CDT type AS 350 B3 by Wilson control tower on the morning of 10th June 2012.*
- (d) *To probe into and establish the causes that led to the fatal accident of Aircraft Helicopter Registration 5Y-CDT type AS 350 B3.*
- (e) *To look into any other matter relating or consequential to the accident of Aircraft Helicopter Registration 5Y-CDT type AS 350 B3 and*

(f) To make such recommendations as the Commission may deem appropriate.

3. The petitioner's grievance is that the terms of reference issued by the President to the Commission of Inquiry are in contravention of the preamble to the **Commission of Inquiry Act (Cap 102)** which states as follows "**Act of Parliament to provide for the appointment of Commissioners to inquire into the report on matters of a public nature referred to there by the President and duties, and to provide for matters relating thereto.**"

4. According to the petitioner, only one term of reference i.e. (d) is proper and the other terms may improperly influence the Commission. She argues that under **section 3(2)** it is the Commission that may specify which matters may be inquired into.

5. I am aware that this matter has come before me at an ex-parte stage and I am required to give the petitioner the opportunity to ventilate her case fully. But this right must be balanced against allowing frivolous matter to be allowed to impose costs and burdens upon court time and other public bodies.

6. I am satisfied that the President is the proper authority under the **Commission of Inquiry Act** to appoint a Commission of Inquiry. It is the president to decide the terms of reference of the Commission and there is nothing in the Act that limits the scope or matters which the President may refer to the Commission.

7. I am also satisfied that on the material before me, there is no allegation of breach of the petitioner's fundamental rights and freedoms. A Commission of Inquiry such as the one appointed is an avenue for realisation of the values of the Constitution set out in **Article 10** which include transparency, public participation and good governance. The petitioner has the right and opportunity to appear before the Commission to submit on the terms, nature and extent of the terms of reference so that the Commissioners can divide on them. There is nothing that limits public participation in the commissions work and this Court will not interfere at least at this stage.

8. Finally, the preamble to the Act of itself does not give rise to any legal obligation or right to enable the petitionera cause of action.

9. In the circumstances, the order that is most appropriate is that the petition is struck out with no order as to costs.

DATED and DELIVERED at NAIROBI this 16th day of July 2012

D. MAJANJA

JUDGE