



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT THIKA**

**ELC CONSTITUTION PETITION NO.8 OF 2018**

**IN THE MATTER OF: ARTICLES 1, 2, 3, 10, 20, 23, 50, 93, 95, 229, 124,  
159, 164 AND 164 OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF: THE CONTRAVENTION OF ARTICLES 2, 10,  
50, 95, 119 AND 159 OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF: PETITION TO PARLIAMENT  
(PROCEDURE) ACT CHAPTER 7C LAWS OF KENYA**

**AND**

**IN THE MATTER OF: THE STANDING  
ORDERS OF THE NATIONAL ASSEMBLY**

**BETWEEN**

**TATU CITY LIMITED.....1<sup>ST</sup> PETITIONER**

**KOFINAF COMPANY LIMITED.....2<sup>ND</sup> PETITIONER**

**-VERSUS-**

**THE NATIONAL ASSEMBLY.....RESPONDENT**

**AND**

**STEPHEN MBUGUA MWAGIRU.....1<sup>ST</sup> INTERESTED PARTY**

**WINFRED WANJIKU GITONGA.....2<sup>ND</sup> INTERESTED PARTY**

**DIRECTIONS**

The Petitioners herein filed this *Constitution Petition* dated *11<sup>th</sup> June 2018* and sought for various reliefs from the Respondent and interested parties among them that the Petition presented by *Winfred Wanjiku Gitonga* before the *National Assembly* had been brought in bad faith and otherwise amounts to abuse of the right to petition Parliament under *Article 119(1)* of the *Constitution of Kenya 2010* and the process of the *National Assembly* because it relates to matters outside the authority of the *National Assembly*.

Simultaneously, the Petitioner also filed a **Notice of Motion** application even dated and sought for **conservatory orders** by way of an **Order of Prohibition** to restrain the **National Assembly**, the Respondent and **Departmental Committees** from **considering, deliberating, debating** and/or making any recommendations on the **Petition** dated **28<sup>th</sup> May 2018** presented by **Winfred Wanjiku Gitonga**, the 2<sup>nd</sup> Interested Party herein.

Interim orders were granted in terms of **prayer no.2** and the application was set down for hearing on **18<sup>th</sup> June 2018**.

On the **18<sup>th</sup> June 2018**, the Petitioners were represented by **Mr. Issa**. **Mr. Mwendwa** appeared for the Respondent and **Mr. Osundwa** appeared for the Interested Parties. However, **Mr. Issa** informed the court that from the **Replying Affidavit** by **Mr. Sialai** for the Respondent, he has confirmed that the said **Petition** to the **National Assembly** was rejected. He further submitted that he had earlier urged the **National Assembly** to reject the said **Petition** and since that confirmation was not forthcoming, the Petitioners decided to file the instant **Petition** to safeguard their interests. However, with the confirmation that the **Petition** was now rejected, **Mr. Issa** found no need of proceeding with the Petition and he sought to withdraw it with no orders as to costs or alternatively that each party should bear its own costs.

**Mr. Osundwa** however argued that if the Petition was to be withdrawn, it had to be withdrawn with costs.

**Mr. Mwendwa** too for the Respondent urged the Court to withdraw the Petition with costs to the Respondent.

However, **Mr. Issa** submitted that the Petitioners should not be condemned to pay costs as the **National Assembly** compelled them to file the instant **Petition** because of their inaction over the elaborate letter written to the **Clerk of the National Assembly** on why the **Petition** was an abuse of the Parliamentary privileges and which threatened the Incorporation of Companies in Kenya to carry out business.

In the final analysis, the Court allowed the withdrawal of the **Petition** and **Notice of Motion** application filed by the Petitioners but reserved the directions on costs to a further date.

The matter herein was brought as a **Constitution Petition** wherein the Petitioners argued that there was a violation of their rights as the **Petition** filed at the **National Assembly** was against **Standing Order No.89(1)** of the **National Assembly** on Subjudice Rule.

If the **Notice of Motion** application had been anchored under the **Civil Procedure Act** and **Rules**, the Court would have been guided by **Section 27** of the said **Act** which provides that costs of the suit shall be granted at the

discretion of the court and costs of any action shall follow the event.

However, this is a **Constitution Petition** and the Court will be guided by numerous decided cases which have settled the issues of cost in **Constitution References or Petitions**. The Petitioners herein came to court because they felt their rights were being violated and in determining whether to award costs or not, this Court will borrow the words used by the **South African Constitutional Court** which observed that:-

**“an award of costs may have a chilling effect on the who might wish to vindicate their constitutional rights”**

The above words were quoted by **Mativo J Constitutional Petition No.86 of 2017** and I would agree and concur with them entirely.

For the above reasons, the court finds that the Petitioners were entitled to withdraw the instant **Petition** and the accompanying **Notice of Motion** application which were withdrawn entirely on **18<sup>th</sup> June 2018**.

However, on the issue of costs, the Court directs that each party to bear its own costs.

It is so ordered.

**Dated, Signed and Delivered at Thika this 19<sup>th</sup> day of October 2018.**

**L. GACHERU**

**JUDGE**

In the presence of

Mr. Maina holding brief for Mr. Issa for Petitioners

No appearance for Respondent

Mr. Ngira holding brief for Mr. Osundwa for 1<sup>st</sup> Interested Party

2<sup>nd</sup> Interested Party

Lucy - Court clerk.

**L. GACHERU**

**JUDGE**

**Court** – Directions read in open court in the presence of the above stated advocates.

**L. GACHERU**

**JUDGE**

**19/10/2018**