



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**MISC.CIVIL APPLICATION NO. 1 OF 2017**

**IN THE MATTER OF ENFORCEMENT OF THE BILL OF RIGHTS UNDER ARTICLE 229(1) AND (3) (C) OF THE CONSTITUTION OF KENYA, 2010 AND OTHER ENABLING LAWS AND RULES**

**AND**

**IN THE OF APPLICATION FOR COURT FEES WAIVER FOR FILING CASE AGAINST THE COUNTY GOVERNMENT OF TRANS-NZOIA AS A FORMA PAUPER TO THE DEPUTY REGISTRAR**

**(MODE OF PROCEEDINGS: MULTI-TRACK)**

**BETWEEN**

**OGUTU MAKODIANGO**

**THE EXECUTIVE DIRECTOR**

**CENTRE FOR SOCIAL WELFARE**

**JUSTICE & GOVERNANCE - NGO (K) .....APPLICANTS**

**VERSUS**

**THE GOVERNOR**

**COUNTY GOVERNMENT OF TRANS-NZOIA..1<sup>ST</sup> RESPONDENT**

**THE MCA KEIYO WARD.....2<sup>ND</sup> RESPONDENT**

**THE CHIEF OFFICER LANDS DEPARTMENT**

**COUNTY GOVERNMENT OF TRANS-NZOIA.....3<sup>RD</sup> RESPONDENT**

**THE CHIEF OFFICER ENVIRONMENT DEPARTMENT**

**COUNTY GOVERNMENT OF TRANS-NZOIA....4<sup>TH</sup> RESPONDENT**

**THE CHIEF OFFICER ROADS DEPARTMENT**

**COUNTY GOVERNMENT OF TRANS-NZOIA....5<sup>TH</sup> RESPONDENT**

**THE CHIEF OFFICER FINANCE DEPARTMENT**

**COUNTY GOVERNMENT OF TRANS-NZOIA.....6<sup>TH</sup> RESPONDENT**

**THE CHIEF OFFICER LEGALDEPARTMENT**

**COUNTY GOVERNMENT OF TRANS-NZOIA.....7<sup>TH</sup> RESPONDENT**

**THE CHIEF OFFICER EDUCATION**

**COUNTY GOVERNMENT OF TRANS-NZOIA.....8<sup>TH</sup> RESPONDENT**

**THE CHIEF OFFICER PRODUREMENT**

**COUNTY GOVERNMENT OF TRANS-NZOIA.....9<sup>TH</sup> RESPONDENT**

**THE CHIEF OFFICER WORKS DEPARTMENT**

**COUNTY GOVERNMENT OF TRANS-NZOIA....10<sup>TH</sup> RESPONDENT**

### **R U L I N G**

This application dated 31/1/2017 in this matter seeks that court fees be waived in respect of an intended suit. The suit is proposed to be brought by the Centre for Social Welfare, Justice and Governance - NGO (K) under Article 22(1) and 3(c) of the Constitution.

The applicant is one Ogutu Makodiango, the Executive Director, as he refers to himself, of the Centre for Social Welfare, Justice and Governance - NGO (K).

His claim is that the County Government of Trans-Nzoia, acting through the MCA Keiyo Ward is in violation of the Constitution by breaching public utility utilization standing orders. It is alleged that there is “grabbing” and excavation of murram meant for the Keiyo Ward Roads Project from a public land specified for E.C.D. use, known as Kilima SFT Scheme Plot No. 58 in Kapkoi Sub-location without any involvement of public participation. The applicant states that the application is made in good faith and in the best interests of members of public in Keiyo Ward. He alleges that there is ongoing environmental degradation occasioned by the activities of the County Government of Trans-Nzoia on Kilima SFT Scheme Plot No. 58.

However the issue in the current application is whether the applicant deserves to have court fees to be waived in his favour to enable him bring the proceedings that he intends to commence against the defendants.

Article 22(1) of the Constitution provides that every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or is infringed or is threatened. Article 22(2) provides for the institution of proceedings by any other person on behalf of another person who cannot act in their own name, or who is a member of or acting in the interests of a group or class of persons or in the public interest, or an association acting in the interest of one or more of its members.

Article 22(3) provides for the making of Rules providing for the court proceedings envisaged by Article 22. These Rules, according to Article 22 (c) satisfy the criteria that, among others,

“(c) no fee may be charged for commencing the proceedings;”

The applicant has cited numerous provisions of the Constitution of Kenya 2010 Acts of Parliament and Civil Procedure Rules. With regard to the provisions of the Government Proceedings Act and the Income Tax Act stated, I must state that I do not find them relevant to the application. However Order 33 of the Civil Procedure Rules is relevant in so far as it issues guidance on application for a party to be allowed to sue or defend a suit as a pauper.

I also find that application under Order 33 should be heard by the Deputy Registrar. This is confirmed by Order 49 Rule 7(1) (X1). Order 49 (2) provides that the decision of the Registrar issued pursuant to an application made under Order 49 Rule (7) (1) may be appealed against, and that appeal shall be before the Judge in Chambers. The application dated 31/1/2017 is therefore improperly before this court. I hereby dismiss the application with no orders as to costs.

Dated, signed and delivered at Kitale in open court on this **16<sup>th</sup>** day of **February, 2017**.

**M. NJOROGE**

**JUDGE**

**In the presence of:**

**Mr. Ogutu Makodiango - applicant**

**Court Assistant - Isabellah.**

**M. NJOROGE**

**JUDGE**

**16/2/2017**