



REPUBLIC OF KENYA



KENYA LAW
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Omala & 14 others v Attorney General (Petition 4 of 2017)
[2023] KEELRC 1163 (KLR) (17 May 2023) (Ruling)

Neutral citation: [2023] KEELRC 1163 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
PETITION 4 OF 2017
S RADIDO, J
MAY 17, 2023
IN THE MATTER OF THE CONSTITUTION OF
KENYA
AND
IN THE MATTER OF CONTRAVENTION OF
FUNDAMENTAL RIGHTS
AND FREEDOMS UNDER
SECTIONS 70(A), 72(3),
74(1) AND 77 OF THE
CONSTITUTION OF
KENYA, 1969
AND
IN THE MATTER OF THE ARMED FORCES ACT
(CHAPTER 199 OF THE
LAWS OF KENYA)
AND
IN THE MATTER OF THE CONSTITUTION OF
KENYA (SUPERVISORY
JURISDICTION AND
PROTECTION OF
FUNDAMENTAL RIGHTS
AND FREEDOMS OF THE
INDIVIDUAL) HIGH



**COURT PRACTICE AND
PROCEDURE RULES,
2013**

BETWEEN

PAUL OMALA OMALA	1ST PETITIONER
MATTHEW SAMSON OUMA	2ND PETITIONER
GEORGE ODUNGA AGOLA	3RD PETITIONER
EVANS EBU EPURET	4TH PETITIONER
JOHN RENDALE OMGURAMUNGE	5TH PETITIONER
STEPHEN MAJEBE	6TH PETITIONER
JEREMIAH ODOI EKAKORO	7TH PETITIONER
DEDAN MAENDE OLEKET'	8TH PETITIONER
JOHN CHEPTAI OCHEMO	9TH PETITIONER
PETER ZEPHSON IMOH	10TH PETITIONER
OJANJI OGONGOLA SIBIYA	11TH PETITIONER
FERDINAND KHALITSA SHINANDA	12TH PETITIONER
GAULKEY GEORGE KWEYA	13TH PETITIONER
CHARLES WANJALA OGEMA	14TH PETITIONER
PROTUS WESONGA MUSUMBA	15TH PETITIONER

AND

HON ATTORNEY GENERAL **RESPONDENT**

RULING

1. The 15 Petitioners who were servicemen and officers with the Armed Forces of Kenya until their arrest, and detention for allegedly participating in the coup attempt of 1 August 1982 sued the Honourable Attorney General on 11 January 2017, alleging violation of their bill of rights.
2. The Petitioners sought the following orders:
 - (a) A declaration that the Petitioners' rights and freedoms were violated from the time of arrest till the date of sentencing by the Court.
 - (b) A declaration that the Petitioners' fundamental rights and freedoms under sections 72(3), 72(5) and 74(1) of the *Constitution* of Kenya, 1969 were contravened and grossly violated by the Kenya Army officials and Kenya Prisons officers of the Kenya Government on these dates from 2nd August 1982.



- (c) A declaration that the Petitioners are entitled to payment of damages and compensation (sic) of the fundamental rights and freedoms under the Constitution of Kenya.
 - (d) General, exemplary and aggravated damages under section 84(2) of the Constitution law (sic) for the unconstitutional contract of the government secretary. (sic)
 - (e) Any other further orders unit directors (sic) as it has cost my client fair and expedient is grant in the circumstances. (sic).
 - (f) Cost to the suit.
 - (g) Interest at cost (sic) rates on 27, 28 and 30 above.
3. The Honourable Attorney General was served but did not file an appearance or Response within the prescribed time.
 4. Consequently, on 8 June 2017, the Petitioners filed a Motion seeking leave for judgment against the Respondent. The Motion was accompanied with a Request for Judgment.
 5. However, the Respondent filed a replying affidavit to the Petition on 19 June 2017 without leave.
 6. On 18 July 2017, the Petitioners caused the Petition to be mentioned on 26 September 2017 and on this date, the Court held that the Petition was invalid because it had not been signed.
 7. The Court also noted that the supporting affidavit to the Motion filed with the Petition was sworn by the advocate and not one of the Petitioners.
 8. The Court, therefore struck out the Petition.
 9. The Petitioners applied for copies of proceedings on 24 July 2018 to enable them appeal against the decision striking out the Petition). It is not clear whether an appeal was preferred against the order striking out the Petition.
 10. When the parties next appeared before the Court on 12 April 2018, the Court reiterated that the Petition had been struck out.
 11. On 2 October 2018, the Petitioners filed a Motion seeking an order setting aside or vacating the order striking out the Petition.
 12. The Motion was fixed for hearing on 17 December 2018 at the request of the Petitioners.
 13. The Petitioners did not attend Court on 17 December 2018, and the Court declined the application.
 14. On 23 May 2019, the Petitioners filed a fresh Motion seeking orders setting aside or vacating the order striking out the Petition. The Motion was fixed for hearing on 31 October 2019, but the Court did not sit on that date.
 15. The Deputy Registrar rescheduled the hearing of the Motion to 6 June 2020. The record does not indicate what happened on this date.
 16. The Court, thereafter issued to the Petitioners a Notice to Show Cause why the Petition should not be dismissed, and the parties addressed the Court on it on 27 March 2023, when the Court directed the Respondent to file and serve a response to the Petitioners' Motion filed on 23 May 2023. The parties were also directed to file and exchange submissions.
 17. The Respondent filed his submissions on 15 May 2023 (the Petitioners submissions were not on record by the agreed timelines).



18. The Court has considered the Petitioners' Motion filed in Court on 23 May 2019 and come to the conclusion that the orders sought should be declined.
19. First, the Petitioners did not (and have not attempted) attempt to cure the defects which led the Court to strike out the Petition.
20. Second, Rule 10(2)(f) of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules*, 2013 provide in mandatory terms that a Petition shall be signed by the advocate on record or the Petitioner.
21. The failure to sign a Petition is, therefore, not a curable defect (see [*Vipin Maganlal Shah & another v Investment & Mortgages Bank Limited & 2 Ors*](#) (2001) eKLR and [*Southern Engineering Co. Limited v Heady Berge Limited & Ar*](#) (2019) eKLR).
22. Third, the Petitioners have treated the proceedings casually as they only waited for the Court to issue a Notice to Show Cause before seeking directions on the Motion which had been filed nearly 3 years earlier.
23. The lack of interest and seriousness on the part of the Petitioners is further signified by the failure to comply with the directions issued on 27 March 2023.
24. The Motion dated 7 May 2019 and filed in Court on 23 May 2019 is dismissed.
25. There will be no order on costs as the Respondent failed to file a response within the agreed timelines.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 17TH DAY OF MAY 2023.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Petitioners Agina & Associates Advocates

For Respondent Office of the Attorney General

Court Assistant Chrispo Aura

