



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA

PETITION NO 8 OF 2016

IN THE MATTER OF CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS

UNDER SECTIONS 70(a), 72(3), 74(1) & 77 OF THE CONSTITUTION OF KENYA, 1969

AND

IN THE MATTER OF THE ARMED FORCES ACT, 1968 (NOW REPEALED)

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF FUNDAMENTAL RIGHTS

AND FREEDOMS OF THE INDIVIDUAL) HIGH COURT PRACTICE AND PROCEDURE RULES, 2013

BETWEEN

ESSAU KIORA MJOMBA.....1ST PETITIONER

DAUDI JOHN MULIWA.....2ND PETITIONER

ARMOGUST AURELIUS MAGANGA.....3RD PETITIONER

VICTOR KOOFA RHOVA.....4TH PETITIONER

ALI OMAR MWARAMOYO.....5TH PETITIONER

HASSAN MOHAMED HASSAN.....6TH PETITIONER

MICHAEL BATEO LENGA.....7TH PETITIONER

SHADRACK MCHOWALA CHASO.....8TH PETITIONER

SIMEON ONESMUS ZANI.....9TH PETITIONER

HAGINSON MWADIME MGANGA.....10TH PETITIONER

SAMSON RIGHA MWASHIGADI.....11TH PETITIONER

AMBROSE CHARO MWATSILA.....12TH PETITIONER

ALI HASSAN NGARE.....13TH PETITIONER

MWAKUTU SALIMU SALIMU.....14TH PETITIONER

WINSTONE SIRYA EKESHEH.....15TH PETITIONER

RASHID MWAYEYA ABDALLAH.....	16 TH	PETITIONER
SALIM BOY BAMBAULO.....	17 TH	PETITIONER
MICHAEL CAMILUS SANDYS KIPUNDE.....	18 TH	PETITIONER
JAMES KIVULI CHANZU.....	19 TH	PETITIONER
HASSAN DIRIBO ALL.....	20 TH	PETITIONER
EMMANUEL MWAJEFWA CHIWAL.....	21 ST	PETITIONER
HUSSEIN AMBROSE MWATSILA.....	22 ND	PETITIONER
RAMADHAN JUA MWAROME.....	23 RD	PETITIONER
SAMSON RICHARD BAYA.....	24 TH	PETITIONER
SILVANOS IDEN GUNYI.....	25 TH	PETITIONER
BAJUMA FAKI.....	26 TH	PETITIONER
AHMED JUMA SAID.....	27 TH	PETITIONER
DENNIS MTIMBA NGALA.....	28 TH	PETITIONER
JAMES KAINGU CHARO.....	29 TH	PETITIONER
PETER SAFAI KAINGU.....	30 TH	PETITIONER
ALI RASHID MLALANARO.....	31 ST	PETITIONER
EDDY JEFWA MWANGO.....	32 ND	PETITIONER
JULIUS HINZANO MUMBA.....	33 RD	PETITIONER
RHOPHUS MALINGI DZOMBO.....	34 TH	PETITIONER

VS

THE ATTORNEY GENERAL.....RESPONDENT

RULING

1. By his Notice of Motion dated and filed in court on 8th April 2021, the Respondent seeks the following orders:

- a) A finding that Paul Kalama Mwakodi, Newland Ngome Akilimali, Stephen Charo Koi, Peter Karwigi Migwi and Kuuza Omari Mutta are strangers to this Petition;
- b) An order striking out the supplementary and supporting affidavits sworn by Paul Kalama Mwakodi, Newland Ngome Akilimali, Stephen Charo Koi, Peter Karwigi Migwi and Kuuza Omari Mutta;
- c) An order striking out the Petitions filed by Winston Sirya Pekesheh, Michael Camilus Sandys Kipunde and Emmanuel Michael as they are also Petitioners in *Mombasa High Court Constitutional Petition No 182 of 2019*. The cause of action in the two Petitions is the same and the parties seek similar reliefs.

2. The Motion is supported by an affidavit sworn by Special State Counsel, G.K Angwenyi and is based on the following grounds:

- a) That this Petition was filed before this Court on 16th November 2016;

- b) That the said Petition was amended on 20th January 2020, to enjoin more Petitioners;
- c) That the number of Petitioners in the amended Petition is thirty-five (35);
- d) That on 3rd March 2021, the Respondent was served with supporting affidavits, supplementary affidavits and list of documents drawn by Counsel for the Petitioners;
- e) That among the supplementary affidavits served on the Respondent are supplementary affidavits sworn by Paul Kalama Mwakodi, Newland Ngome Akilimali, Stephen Charo Koi and Peter Karwigi Migwi;
- f) That the said persons; Paul Kalama Mwakodi, Newland Ngome Akilimali, Stephen Charo Koi and Peter Karwigi Migwi are strangers to this Petition, hence the said supplementary affidavits should be struck off the court record;
- g) That further, the Respondent was served with a supporting affidavit sworn by one Kuuza Omari Mutta, who is also a stranger to the Petition;
- h) That the supporting affidavit sworn by the said Kuuza Omari Mutta should be struck out off the court record;
- i) That sneaking in strangers as parties to the Petition, without making a formal application, is misleading the Court and amounts to a fishing expedition towards finding the Respondent culpable at all costs;
- j) That Petitioners numbers 15,18 and 21 namely; Winston Sirya Pekesheh, Michael Camilus Sandys Kipunde and Emmanuel Michael are also Petitioners in *Mombasa High Court Constitutional Petition No 182 of 2019*. The cause of action in the two Petitions is the same and the parties seek similar reliefs;
- k) That it is in the interest of justice that the application be allowed as prayed and further, no prejudice will be occasioned to the Petitioners.

3. The Petitioners did not respond to the Respondent's Motion.

4. On the face of it, Paul Kalama Mwakodi, Newland Ngome Akilimali, Stephen Charo Koi, Peter Karwigi Migwi and Kuuza Omari Mutta are not party to the Petition herein. Their affidavits are therefore stray and are struck out.

5. The Respondent did not avail the pleadings in *Mombasa High Court Constitutional Petition No 182 of 2019* to support his averment that Winston Sirya Pekesheh, Michael Camilus Sandys Kipunde and Emmanuel Michael are parties to the High Court Petition.

6. The prayer to strike out the names of Winston Sirya Pekesheh, Michael Camilus Sandys Kipunde and Emmanuel Michael from the Petition filed in this Court is therefore declined.

7. I make no order for costs.

DATED SIGNED AND DELIVERED AT MOMBASA THIS 29TH DAY JULY 2021

LINNET NDOLO

JUDGE

ORDER

In view of restrictions in physical court operations occasioned by the COVID-19 Pandemic, this ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of court fees.

LINNET NDOLO

JUDGE

Appearance:

No appearance for the Petitioners

Ms. Angwenyi for the Respondent