



**IN THE HIGH COURT AT NAIROBI**  
**MILIMANI LAW COURTS**  
**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**  
**PETITION NO 570 OF 2014**

**BETWEEN**

**KENYA COUNCIL OF EMPLOYMENT**

**AND MIGRATION AGENCY.....1<sup>ST</sup> PETITIONER**

**EVANS NYAMBEGA AKUMA.....2<sup>ND</sup> PETITIONER**

**AND**

**NATIONAL POLICE SERVICE COMMISSION.....1<sup>ST</sup> RESPONDENT**

**NATIONAL POLICE SERVICE (SERVICE BOARD).....2<sup>ND</sup> RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**COMBINED BOARD DECISIONS BOARD**

**MEETING OCTOBER 29<sup>TH</sup>, 2014.....4<sup>TH</sup> RESPONDENT**

**OJANGO OMUMU.....5<sup>TH</sup> RESPONDENT**

**PAUL OJWANG.....6<sup>TH</sup> RESPONDENT**

**JOHNSTON KAVULUDI.....7<sup>TH</sup> RESPONDENT**

**JUDGMENT**

**Introduction**

1. The 1<sup>st</sup> petitioner, Kenya Council of Employment and Migration Agencies, is described in the petition as a duly registered civil society organization within the Republic of Kenya. The 2<sup>nd</sup> petitioner, Mr. Evans Nyambega Akuma is described as its Chairman.
2. The petitioners have filed the present petition against the National Police Service Commission, a

constitutional body established pursuant to Article 243 of the Constitution. The 2<sup>nd</sup> respondent is described as the National Police Service (Service Board), while the 3<sup>rd</sup> respondent is the Attorney General (hereinafter AG) whose office is a creation of Article 156 of the Constitution.

3. The petitioners have also named a Board decision of an unnamed body as the 4<sup>th</sup> respondent, and three individuals, including the Chairman of the National Police Commission, as the 5<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup> respondents.
4. The facts giving rise to the petition are not clear from the pleadings, but it appears that the petitioners were aggrieved by a decision made on 9<sup>th</sup> October, 2014, which they allege is in violation of Articles 10, 232 and 73 of the Constitution. They ask the Court to grant the orders which I reproduce hereunder verbatim:
  1. ***That the declarations of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents decision of Senior Assistant Inspector General did not meet the governance as given in Article 10 and 232 of the Constitution as read together with Articles 232, 22 in particular and Chapter Four in general Constitution of Kenya, 2010.***
  2. ***The decisions of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> respondents is a violation of the petitioners constitutional rights as a Kenyan and public interest as envisaged in Article 47 and 50, 73 and public offices ethics 2003 of the Constitution as a sabotage of the interest of Kenya who went for a referendum to change governance, police transformations in 2010. They have offended national value and principles of patriotism.***
  3. ***That the decision and minutes of October 29<sup>th</sup>, 2014 be declared null and void as it promotes nepotism tribalism anarchy and chaos intolerable betrayal of collective responsibility to respect uphold and defend the constitution which is premised on the rule of law as incidents witnessed in Kapedo Baragoi, hands of terrorists Wajir Mandera Isiolo upsurge of criminal gangs and illegal gangs and many civilians have lost lives and who shall lose lives and livelihood over the years due to security lapses.***
  4. ***That in the absence of confidence and upholding of the rule of law and sanctity and dignity of human life and streamline of governance in the police structures of inspector-general in fostering national unity and execution of the constitution and legal mandates in national security structures without involvement and consultative of other stakeholder will cause violence and defeat liberty and peace as our shield and defender in our National Anthem stanzas of patriotism and nationalism rule of law and human rights.***

### **The Petitioner's Case**

5. The petitioner's case is contained in several pleadings: a Certificate of Urgency; a Chamber Summons application supported by an affidavit sworn by the 2<sup>nd</sup> petitioner on 17<sup>th</sup> November, 2014; an undated and untitled pleading filed on 20<sup>th</sup> November, 2014; an amended statement of facts dated 27<sup>th</sup> November, 2014; a further supporting affidavit sworn by the 2<sup>nd</sup> petitioner on 15<sup>th</sup> June, 2015 and submissions dated 13<sup>th</sup> May, 2015.
6. As I understand their case, the petitioners have moved the Court in the public interest, on behalf of the people who have disabilities, "*insufficient, sufficient persons who are bankrupt and insolvent, minorities, unrepresented, uninformed, illiterate and poor children and women*" due to the direct or indirect impact of Legal Notice No 117 of 28<sup>th</sup> June, 2013.
7. The petitioners allege that on or about 29<sup>th</sup> October, 2014 the respondents met in a boardroom in a hotel to make decisions with regard to the position of Senior Assistant Inspector General. Their allegation is that the Board (it is not clear which Board, although it appears from the context and

the pleadings that the reference is to the National Police Service Commission), through corruption, nepotism, tribalism, clandestine actions, opaque and other factors, nominated their own tribal kinsmen without competitive interviews to various positions thereby contravening Articles 10 and 232 of the Constitution, and as a result denied Kenyans the right choices of officers in governance. The petitioners contend that as a result of the actions of the Board, two tribes dominated the nominations, and that a Saiya William Atswenje who comes from the Luhya community which the Chairman of the 1<sup>st</sup> respondent comes from was nominated, while other nominees were Kitili Joel, Mwei Fred Mbithi, Kimilu Muoki Gedion and Grace Syokau Kaindi, all from the Kamba community.

8. The petitioners further allege that the said appointments were done in the absence of a quorum owing to the fact that a Shadrack, whose second name is not indicated, a commissioner, is on a long-term sick leave, while one Ronald Leposo Musengi, a commissioner, is on interdiction after being arrested and arraigned in a criminal court and hence he cannot sit in meetings until he is cleared. They contend further that the decision was made in the absence of one commissioner, Esther Chui, who is deceased.
9. It is also the petitioner's contention that the decision was reached without any advertisements, and the nominations were made arbitrarily without any interviews or competitive selection. The petitioners argue therefore that the lack of advertisement offends the task force by Justice Philip Ransley of 2009, and that no minutes of the Board have been filed in Court pursuant to Order 16 Rule 7 and Articles 165 (6) and (7) of the Constitution to indicate that the "*rules and regulations of governance were made with score sheets of competence, competition and respect of human rights*" (sic) and that it was inclusive and merited.
10. The petitioners also allege that the respondents' decision was made un-procedurally, illegally, unfairly and without proper administrative action, and the implementation of the said decision shall be detrimental to other tribes.
11. The petitioners also make various allegations about the appointment of the Chief Executive Officer of the Commission, as well as the appointment or secondment of the 5<sup>th</sup> respondent, Mr. Paul Ojwang, to the Commission. They allege that his appointment to the Commission is unprocedural, and that he has been receiving a double salary, from the Office of the Attorney General and the National Police Service Commission. They therefore urge the Court to allow the petition and grant the orders set out above.

### **The 1<sup>st</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents' Case**

12. The 1<sup>st</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> respondents filed two replying affidavits, both sworn on 30<sup>th</sup> January 2015, in opposition to the petition. One was sworn by Mr. Johnstone Kavuludi and the other by Mr. Paul Ojwang.
13. These respondents state that the National Police Service Commission is mandated under Article 246 (3) of the Constitution to recruit and appoint persons to hold or act in offices in the service, confirm appointments and determine promotions and transfers within the National Police Service, and while observing due process, exercise disciplinary control over and remove persons holding or acting in offices within the service. It started the vetting of police officers in November, 2013, starting with the most senior police officers of the ranks of SDCP 1 and 2, DCP, S/ACP and ACP and by the end of February, 2014, it had vetted 198 police officers of the aforementioned ranks.
14. It is its case that after the completion of the said vetting, its next assignment was to have all police officers who were found suitable and competent to continue serving to be substantively appointed to the new ranks as provided in the first schedule of the National Police Service Act which repealed the old ranks of SDCP 1 and 2, DCP, S/ACP and ACP and introduced new ranks of SAIG, AIG and CP.
15. Mr. Kavuludi deposes that the Cabinet Secretary in charge of the Ministry of Interior and Co-

- ordination of National Government, upon the advice of the Commission, gazetted the new ranks; that the Commission took cognizance of various values and principles of the Constitution under Articles 243, 232 (1) and (2), and 27 and sections 10, 28 and 11 (1) (b) of the National Police Service Act while preparing for the appointments of the vetted officers to the new ranks; and that the Commission has a well laid down criteria that was uniformly adopted in the appointment of the vetted officers to the new ranks that stated the job description and the criteria for the appointment.
16. The respondents argue the petitioners have not shown by way of evidence or in any other way whatsoever the discrimination they claim to have been committed by the Commission in the said appointments, and that the allegations regarding the appointment of Saiya William Atswenje are unfounded, as are the allegations that the top most apex operation command of the police service consists of Luhya, Meru, Kamba and Luo communities and not other tribes as alleged by the petitioner.
17. The respondents further argue that the petitioners have an obligation to clearly demonstrate to the Court how the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> respondents together with other named persons who have not been joined to the proceedings met to influence the appointment of officers in the new ranks. They have not done this, nor has evidence been placed before the Court to show that the persons appointed and the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> respondents come from the same tribe.
18. The respondents further aver that the appointment of the Chief Executive Officer of the Commission was done in accordance with the law more than a year ago and if the petitioners had any problem with the appointment, they should have raised the issue then.
19. With respect to the allegations made against him personally, Mr. Ojwang deposes that on 8<sup>th</sup> September, 2014, the National Police Service Commission through its Chief Executive Officer requested for his secondment from the office of the AG through its Directorate of Public Service Management, which was granted on the said date, with that of other officers of the Government, with effect from 1<sup>st</sup> October, 2014. The Commission then wrote to the AG's office informing it to stop his salary with effect from the said 1<sup>st</sup> October 2014, and pursuant to this, the AG issued a letter releasing him to the Commission and further advised the Commission to deduct 31% of his basic salary in order to preserve his pension status. Mr. Ojwang further deposes that his last pay certificate was released to the Commission on 10<sup>th</sup> October, 2014, and it is therefore not true that he has been receiving two salaries as alleged by the petitioners. He also denies that he ever sat with the chairperson of the Commission and others in a hotel boardroom to influence the appointment of the officers to the new ranks.
20. The respondents therefore term the present petition defective, incompetent, misconceived, misplaced and an abuse of the court process, noting that the petitioners' rights and fundamental freedoms have not been breached in any manner, and they urge the Court to dismiss it with costs. They also ask the Court, in considering the issue of costs, to take judicial notice of the fact that the petitioners are vexatious litigants who have taken the Commission to court on numerous occasions without any success.
21. In their written submissions, the respondents submit that the petitioners have not demonstrated that there was discrimination in the appointment of officers to the new ranks of the police service, or that the 6<sup>th</sup> respondent was illegally seconded or has been receiving two salaries. It is also their contention that the petitioners have failed to demonstrate the manner in which the appointment of the 5<sup>th</sup> respondent was unprocedural and therefore illegal. They rely on the decision in **Ferdinand Ndung'u Waititu vs Independent Electoral and Boundaries Commission and 8 Others [2013] eKLR; Gandhi Brothers vs H K Njage T/A H K Enterprises, Nairobi HCCC No 1330 of 2001** and **Maria Ciabaitaru M'mairanyi and Others vs Blue Shield Insurance Company Limited, Civil Appeal No 101 of 2000 [2005] 1 EA 280** to submit that the petitioners' case does not meet the requirements of section 107 of the Evidence Act.

22. It is also the respondents' submission that the appointment of the Chief Executive Officer of the Commission was done openly and transparently, and in accordance with Chapter Six of the Constitution and section 15 of the National Police Service Commission Act.

### **The 3<sup>rd</sup> Respondents' Case**

23. The AG, represented by Learned State Counsel Mr. Mohammed, associated himself with the submissions of the 1<sup>st</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> respondents.

### **Determination**

24. As has been observed in other cases dealing with constitutional interpretation and the protection of the fundamental rights and freedoms guaranteed in the Constitution, the 2010 Constitution has widened the right of standing. As a result, any person can lodge a petition in Court alleging violation of the fundamental rights and freedoms of parties who are unable, for some reason, to lodge a claim on their own behalf, or alleging a violation of the Constitution. A number of citizens have therefore taken up constitutional litigation with gusto. Which is a good thing, but also has major shortcomings. This is the case with the present petition.

25. The petitioners appear to be dissatisfied with certain decisions made by the National Police Service Commission in the appointment of police officers to new ranks. They accuse them of various ills, including nepotism, and they allege that the said appointments have been to the detriment of "other tribes". However, the Court must confess to some difficulty in comprehending, from the petitioners' multiple and somewhat convoluted pleadings and submissions, whose rights have been violated, or how the Constitution has been violated.

26. At the hearing of the matter, the 2<sup>nd</sup> petitioner elected to rely on his pleadings and submissions rather than highlight them for the Court, which would have given the Court a chance to seek some clarity on the issues he sought to raise.

27. The petitioners contend that the top most apex operational command of the National Police Service Board will have two Luhyas, two Merus, four Kambas and one Luo making decisions on operational matters against the other 41 tribes in Kenya, a situation they deem to be unconstitutional and in violation of Article 246 (4) of the Constitution. This is because the names of the officers do not reflect the regional and ethnic diversity of the people of Kenya.

28. The respondents reply, in reliance on the decisions in **Paul Ng'ang'a and 2 Others vs Attorney General and 3 Others [2013] eKLR**, and **Young vs Hillary 1895 P 87/90**, **Major TiyeFunza vs Attorney General, Petition No 1 of 2003** and **Mumo Matemo vs Trusted Society of Human Rights Alliance and 5 Others (supra)**, that the petition is not backed by any evidence on the basis of which the Court could come to the conclusion that there has been any violation of the Constitution and issue the orders sought. The respondents also rely on the decision in **Anarita Karimi Njeru vs Republic [1979] KLR 154** and **Trusted Society of Human Rights Alliance vs Attorney General and 2 Others [2012] eKLR** with respect to the petitioners' obligation in a petition such as this, to set out, with a reasonable degree of precision, the provisions of the Constitution violated, and the manner of violation with regard to them.

29. Having considered the pleadings and submissions of the parties, I must agree with the respondents with respect to the need for precision in constitutional litigation. The Court of Appeal in **Mumo Matemo vs Trusted Society of Human Rights Alliance and 5 Others, Civil Appeal No. 290 of 2012** observed as follows with respect to this issue:

**"[41] We cannot but emphasize the importance of precise claims in due process, substantive justice, and the exercise of jurisdiction by a court. In essence, due process, substantive justice and the exercise of jurisdiction are a function of precise legal and factual claims. However, we also note that precision is not conterminous with exactitude. Restated, although precision must**

remain a requirement as it is important, it demands neither formulaic prescription of the factual claims nor formalistic utterance of the constitutional provisions alleged to have been violated. We speak particularly knowing that the whole function of pleadings, hearings, submissions and the judicial decision is to define issues in litigation and adjudication, and to demand exactitude ex ante is to miss the point.

[42] However, our analysis cannot end at that level of generality. It was the High Court's observation that the petition before it was not the "epitome of precise, comprehensive, or elegant drafting." Yet the principle in Anarita Karimi Njeru (supra) underscores the importance of defining the dispute to be decided by the court. In our view, it is a misconception to claim as it has been in recent times with increased frequency that compliance with rules of procedure is antithetical to Article 159 of the Constitution and the overriding objective principle under section 1A and 1B of the Civil Procedure Act (Cap 21) and section 3A and 3B of the Appellate Jurisdiction Act (Cap 9). Procedure is also a handmaiden of just determination of cases. Cases cannot be dealt with justly unless the parties and the court know the issues in controversy. Pleadings assist in that regard and are a tenet of substantive justice, as they give fair notice to the other party. The principle in Anarita Karimi Njeru (supra) that established the rule that requires reasonable precision in framing of issues in constitutional petitions is an extension of this principle. (Emphasis added)

30. Jessel, M.R in the case of *Thorp vs Holdsworth (1876) 3 Ch. D. 637 at 639*, made the following observation with regard to pleadings:

*"The whole object of pleadings is to bring the parties to an issue, and the meaning of the rules... was to prevent the issue being enlarged, which would prevent either party from knowing when the cause came on for trial, what the real point to be discussed and decided was. In fact, the whole meaning of the system is to narrow the parties to define issues, and thereby diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing."*

31. I agree with the principles encapsulated in the above cases. While one need not, as the High Court had observed in the Mumo Matemu case, plead with mathematical precision, one must at the very least place before the court pleadings and evidence on the basis of which it can understand the issues complained of, and the evidential basis on which the claim is founded.

32. In the instant petition, what appears to be the petitioners' complaints arise out of alleged decisions of the National Service Commission, as well as the appointment of certain police officers, and of the 5<sup>th</sup> and 6<sup>th</sup> respondents. From there, the pleadings, which are large on quantity but minute in quality, leave the Court somewhat at sea with respect to the petitioners' grievances. The pleadings, as observed elsewhere above, are somewhat convoluted and jumbled up, and though the petitioners were given an opportunity to amend the pleadings to bring some clarity to their case, they failed to do so.

33. Doing the best in the circumstances therefore, I can only address my mind to the one issue that appears to be clear from the morass that is the petitioners' case: whether there has been a violation of Article 246(3) and (4) as read with section 5(a) and (b) of the National Police Service Act.

34. Article 246 of the Constitution provides that:

1. ***There is established the National Police Service Commission.***
2. ...
3. ***The Commission shall-***
  - a. ***Recruit and appoint persons to hold or act in offices in the service, confirm appointments, and determine promotions and transfers within the National Police Service;***

- b. *Observing due process, exercise disciplinary control over and remove persons holding or acting in offices within the Service; and*
  - c. *Perform any other functions prescribed by national legislation.*
4. *The composition of the National Police Service shall reflect the regional and ethnic diversity of the people of Kenya.*

35. Section 5 of the National Police Service Act stipulates that:

*The composition of the Service shall, so as far as is reasonably practicable—*

- a. *uphold the principle that not more than two-thirds of the appointments shall be of the same gender; and*

*(b) reflect the regional and ethnic diversity of the people of Kenya.*

36. The constitutional requirement needs no elaboration: there must be, in any appointments in the National Police Service, as in other public appointments, gender, regional and ethnical diversity. These requirements have been reflected in the provisions of the National Police Service Act set out above, the purpose of which was to have an all-inclusive National Police Service which accords every qualified individual the opportunity to serve the country regardless of their gender, ethnic or regional origin.

37. In the case of *Trusted Society of Human Rights Alliance vs Attorney General and Others, Nairobi Petition 229 of 2012 (Unreported)*, the Court was confronted with the question of the constitutionality of appointments made to public office. The Court expressed itself in the following terms in regard to the role of the Court when faced with such an issue:

*“[77] ... The Court is entitled to review the process of appointments to State or Public Offices for procedural infirmities as well as for legality. A proper review to ensure the procedural soundness of the appointment process includes an examination of the process to determine if the appointing authority conducted a proper inquiry to ensure that the person appointed meets the constitutional requirement. The absence of any evidence that such an inquiry was conducted, or, the availability of evidence that such an inquiry was, in fact, not conducted, would lead to the conclusion that the procedural aspects of this constitutional test have not been satisfied. Additionally, the Court must review the appointment decision itself to determine if it meets the constitutional threshold for appointment. The test here is one of rationality: can it be said that the appointing authority, after applying its mind to the constitutional requirements, reached a rational conclusion that the appointee met the constitutional criterion? While the appointing authority has a sphere of discretion and an entitlement to make the merit analysis and determination of the question whether the appointee actually meets the constitutional criteria, Courts will review that determination where, rationally, a reasonable person would not have reached that determination. The test, then, is one of reasonableness: substantively, the Court will defer to the reasonable determination of the appointing authority that a proposed appointee has satisfied the constitutional criterion. Where such a determination is unreasonable or irrational, however, the Court will review it. To this extent, therefore, the constitutional review is not for error but for legality.”*

38. In *Mohamed Osman Warfa and Others vs The Office of the President and Others H.C Petition No.77 of 2013*, the complaint by the petitioners was that the appointment of members of the Public Service Commission by the President did not *“have any person professing the Islamic faith and an individual from any County situated in the North Eastern Area of the Republic of Kenya”*. In dismissing the petition before him, the learned Judge similarly addressed his mind to the question as to the role of the courts whenever there has been a challenge on such appointments. The Judge opined that:

*“I agree with the submission by Mr. Bitta that the institutions and persons involved in the selection and appointment are duty bound to pay attention to and give effect to the provisions of the Constitution and unless it is shown that there is a violation of the Constitution and the Statute, the Court should not intervene. In the Evans Nyambega Akuma vs AG and Others Nairobi Petition No.164 of 2013 (unreported) I stated that, “[15]‘it is not for the Court to re-examine these allegations and make its own conclusion. The duty of the Court in reviewing the process of appointment is to ensure that it meets the test of legality. I emphasize what I stated in the cases of John Waweru Wanjohi & Others vs the AG & Others, Kipngetich Maiyo & Others vs The Kenya Land Commission Selection Panel Nairobi consolidated constitutional Petitions Nos. 373 of 2012 and 426 of 2012 (unreported), concerning appointment to the National Land Commission, “the Court must of course be careful not to usurp the powers and functions of the various constitutional and statutory bodies...”These bodies have carried out their functions in accordance with the prescribed procedures and I am satisfied that in this case the process meets constitutional muster.” There is nothing in the Petition and deposition to demonstrate that the entire process did not comply with the Constitution and the law.”*

39. In *Consortium for the Empowerment and Development of Marginalised Communities & Others vs Chairman the Selection Panel for appointment of chairperson and Commissioner to the Kenya National Human Rights Commission*, High Court Petition No. 385 of 2012, the Court had this to say on the same question;

*”As correctly argued by the Respondents, the Constitution has now divided the Country into 47 Counties, so that the administrative units known as provinces or regions on which this Petition is based are no longer in existence. Would regional diversity require that all the 47 Counties have representation in every commission? Does consideration of regional and ethnic diversity demand that every tribe in Kenya is represented in every institution that is established under the Constitution in order for the institution to be deemed to have been constituted in compliance with the Constitution? What happens, were that argument to be carried to its logical conclusion, when an institution under the Constitution requires only a specific, limited, number of persons, in this particular cases, only five positions?”*

40. The learned Judge answered the above questions by stating that:

*“Happily, with regard to constitutional commissions and independent offices, the Constitution itself provides an answer in Article 250(4), which is worth setting out again:*

*Appointments to commissions and independent offices shall take into account the national values mentioned in Article 10, and the principle that the composition of the commissions and offices, taken as a whole, shall reflect the regional and ethnic diversity of the people of Kenya.*

*I believe that the operative words in this provision are ‘taken as a whole’, implying that one cannot take a single constitutional commission or independent office and argue that because a particular region or ethnic group has not been represented, or the appointee(s) are not from particular ethnic groups or regions, then there has been a breach of the Constitution. To hold otherwise is to lead to an absurdity, and to make the composition of any commission or appointment to an office well-nigh impossible.”*

41. In my view, the above principles apply with equal force with regard to any appointments to be made in the National Police Service. I also bear in mind the fact that *the duty of this Court in reviewing the process of appointment is to ensure that it meets the test of legality and the Court must of course be careful not to usurp the powers and functions of the various constitutional and statutory bodies, in this case the National Police Service Commission.*

42. With regard to the matters complained of in this petition, I note that in a Gazette Notice dated 11<sup>th</sup>

July, 2014, the Cabinet Secretary in charge of the Ministry of Interior and Co-ordination of National Government duly gazetted the new ranks that had been introduced in the structure of the National Police Service. Annexed to the affidavit of Johnstone Kavuludi is a Guide by the National Police Service Commission that was used in the vetting of officers to be appointed to the said ranks. While the petitioners allege that the respondents met in a hotel boardroom and in a process marked by, inter alia, corruption, nepotism, and tribalism, made the appointments in question, they have not placed anything before the Court that leads to this conclusion.

43. In any event, should there indeed have been evidence of corruption and other malpractices, the Court is not the forum for carrying out an inquiry into such allegations. There is in place an established body, the Ethics and Anti-corruption Commission, which has the mandate to carry out such investigation where there is evidence of corruption. For as long as the process of recruitment of the persons into the various ranks meets the requirements of due process, it is not for this Court to interfere with it.

44. In the circumstances, I am unable to find any merit in the petition. It is therefore dismissed, but with no order as to costs.

**Dated Delivered and Signed at Nairobi this 28<sup>th</sup> day of January, 2016**

**MUMBI NGUGI**

**JUDGE**