



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA NAIROBI

PETITION NUMBER 69 OF 2014

HON. GEORGE M. MUCHAI, EBS, MP.....PETITIONER

VERSUS

FRANCIS ATWOLI

SECRETARY GENERAL (COTU).....1ST RESPONDENT

RAJAB A. MWONDI

CHAIRMAN GENERAL (COTU).....2ND RESPONDENT

REBECCA NYATHOGORA

TREASURER GENERAL (COTU).....3RD RESPONDENT

FRANCIS WANGARA

1ST SIGNING TRUSTEE (COTU).....4TH RESPONDENT

JOSEPH O. NYABIYA

2ND SIGNING TRUSTREE (COTU).....5TH RESPONDENT

WASHINGTON ADONGO ODODA

3RD TRUSTEE (COTU).....6TH RESPONDENT

THE REGISTRAR OF TRADE UNIONS.....7TH RESPONDENT

THE CABINET SECRETARY

MINISTRY OF LABOUR, SOCIAL

SECURITY & SERVICES.....8TH RESPONDENT

THE HONOURABLE ATTORNEY GENERAL.....9TH RESPONDENT

AND

KENYA COMMERCIAL BANK LIMITED.....	1ST INTERESTED PARTY
BARCLAYS BANK OF KENYA LIMITED.....	2ND INTERESTED PARTY
CO-OPERATIVE BANK OF KENYA LTD.....	3RD INTERESTED PARTY
ECOBANK KENYA LIMITED.....	4TH INTERESTED PARTY
KOSIEYO & PARTNERS.....	5TH INTERESTED PARTY
DELOITTE & TOUCHE.....	6TH INTERESTED PARTY
THE DIRECTOR OF PUBLIC PROSECUTIONS.....	7TH INTERESTED PARTY
THE INSPECTOR GENERAL OF POLICE.....	8TH INTERESTED PARTY
CENTRAL ORGANIZATION OF TRADE UNIONS (K).....	9TH INTERESTED PARTY

RULING

1. By a motion filed on 10th November, 2014 the applicant seeks several orders but of relevance and to which this ruling relates, is an order that the Court certify the petition as raising a substantial question of law and to refer the same to the Honourable the Chief Justice for purposes of constituting and assigning an uneven bench of five Judges to hear and determine the matter.
2. I have reviewed the petition and it would seem to me to be making allegations of financial misappropriation thereby requiring the Court to issue orders in the nature of freezing accounts held or associated with the 9th Interested Party, a forensic audit of those accounts and possible prosecution of those found culpable. There are of course other prayers but these constitute a summary of the prayers both in the motion and the petition.
3. It is becoming more or less settled that a Court confronted with an application to refer a matter to the Chief Justice for empanelling of a bench of uneven number of Judges should lean against doing so in the interest of speedy administration of justice unless the matter sought to be referred to a panel of uneven number of Judges raises a substantial question of law.
4. The proper test for determining whether a question of law is raised would be whether the issue is of general public importance and novel or open question in the sense that it has not been finally settled by a case law or a decision of highest Court in the land which in our case is the Supreme Court.
5. The prayer to issue several injunctive reliefs as sought in the motion and the petition are not novel or open issues that require empanelling of more than one Judge bench.
6. It is in public domain that cases of huge financial scandals have been heard and determined by eminent Judges alone without a referral to the Chief Justice. The sheer volume of paper work and numerousness of parties and prayers sought do not qualify as substantial question of law to require a bench of more than one Judge. In any event whether one Judge or several, if of concurrent jurisdiction, their decisions are only of persuasive authority and do not bind either.

7. I have considered the authorities cited by Dr. Khaminwa for the petitioner and they all seem to lean against a referral to the Chief Justice for empanelling of more than one Judge bench for reasons adumbrated above.

8. I would particularly like to echo the sentiments of Majanja J in the case of **Hon. Justice Chemmutut & Others vs. the AG Petition No. 307 of 2012** where the learned Judge observed:

“Each case that deals with interpretation of the Constitution or our expanded bill of rights would be substantial question of law as it is a matter of public interest, affects the rights of the parties, is fairly novel and had not been the subject of pronouncement by the highest Court. This would burden judicial resources to the extent that the value of obtaining justice without delay under article 159 (2) (b) of the Constitution would be imperiled.”

9. From the foregoing I reach the inevitable conclusion that the applicant has not made out a case to justify a referral to the Chief Justice for empanelling a five Judge bench with the consequence that this prayer in the motion dated 5th November, 2014 is hereby dismissed.

10. It is so ordered.

Dated at Nairobi this 30th day of January 2015

Abuodha J. N.

Judge

Delivered this 30th day of January 2015

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge