



**Patron Gusii Regional IDPS Steering Committee & IDPS Fraternity v Cabinet Secretary  
Ministry Interior Co-ordination of National Government & another; Chief of Staff  
and Head of Public Service (Third party) (Constitutional Petition 6, 141 & 1 of 2022  
& 167 of 2021 (Consolidated)) [2024] KEHC 7743 (KLR) (28 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 7743 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISII  
CONSTITUTIONAL PETITION 6, 141 & 1 OF 2022 & 167 OF 2021 (CONSOLIDATED)**

**PN GICHOHI, J**

**JUNE 28, 2024**

**BETWEEN**

**THE PATRON GUSII REGIONAL IDPS STEERING COMMITTEE & IDPS  
FRATERNITY ..... PETITIONER**

**AND**

**THE CABINET SECRETARY MINISTRY INTERIOR CO-ORDINATION OF  
NATIONAL GOVERNMENT ..... 1<sup>ST</sup> RESPONDENT**

**THE PRINCIPAL SECRETARY MINISTRY OF INTERIOR CO-ORDINATION  
OF THE NATIONAL GOVERNMENT ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**THE CHIEF OF STAFF AND HEAD OF PUBLIC SERVICE ..... THIRD PARTY**

**JUDGMENT**

1. The Petitioner herein commenced Kisii Constitutional Petition No. 6 of 2022 (formerly Nairobi Constitutional Petition No. 141 of 2022 dated 6/4/2022) and Kisii Constitutional Petition No. 1 of 2022 (formerly Nairobi Constitutional Petition No. 167 of 2021 dated 3/5/2021). Both are headed Abuse of Office and Misuse of Power (position/status) and are drawn by Rev. Brethren Nemwel Momanyi, Patron IDPs. The two petitions were consolidated and the Court issued directions that the same be disposed by way of written submissions.
2. In the petition dated 6/4/2022 the Petitioner states that they are “destitute group catered by the law under Kenya Gazette Supplement 2012 No. 220 Acts 56” and were in that predicament due to election violence of 2007/2008; that “the situation was caused by the same persons who are in the race for



elections of 2022” and that “the same government being asked to act on the Gazette Supplement 2012 No. 220 Acts 56 to protect , prevent , assist the Petitioner has been discriminative to the entire citizens.”

3. The Petitioner states that:-

The 2 state officers CS and PS Ministry of Interior of National Government involved themselves in fraud , embezzlement , corruption to GOK compensations by use of their status and position hence meaning offices have been informed and asked to compensate the Petitioner through formal procedure but all in vain , supported by documents proven by verification letter addressed to a chosen county being annexed herein.”The Respondents and Third Parties overlooked Notice 13 A of Government Proceedings Cap 40 which has activated this Petition annexed herein.The Petitioner have been in the door of justice for 13 years this being the 14<sup>th</sup> year but even though all the traditional courts have been requested to act which are : Lower Court, High Court, Court of Appeal, Supreme Court but no progress had come due to interference of the entire government in place.The entire 2 houses the Senate and the National Assembly and other agencies have the information but all in vain due to government intervention.GOK compensations ended to be paid to non- deserving persons (*boda boda* riders) by cartelship proven by annexed documentation.”

4. The Petitioner therefore seeks the following reliefs:-

- a. A declaration of rights.
- b. A declaration of GOK compensation which the Petitioner are in demand.
- c. An injunction to election 2022.
- d. A conservatory Order.
- e. A declaration of invalidity of any law that denies, violates, infringes or threatens a right of fundamental freedom in the Bill of Rights and is not justified under Article 24.
- f. An Order for compensation and;-
- g. An Order for judicial review.

5. In the Petition dated 3/5/2021, the Petitioner urged the Court to:-

“Issue (NNTS) Notice Not To Show Cause for contempt of court and paving way for an investigations to the Respondents due to abuse of office and misuse of positions / status and use of technicalities , subversive acts to write verification letter for IDPs payments using Kericho County instead of Kisii /Nyamira Counties and did payment to non -IDPs who are *boda- boda* riders and left the real IDPPs that removed money from KCB Banks to Equity Banks which had a stay and stoppage by court’s order.”

6. The Petitioner further states that

“ when the 1<sup>st</sup> Respondent found there was an order and application in court, he decided to transfer by then County Commissioner Isaiah Nakoru to Embu and brought the current County Commissioner”

and this forced him (the Petitioner) to file Petition No. 81 of 2019 in Milimani Law Courts which is still ongoing.



7. Further, he states that

“ the closeness of the Respondents to the Office of the President results in subversive activities by the Respondents.”
8. He further states that they involved various institutions for follow up being EACC, KNCHR, Attorney General , DPP, Kenya Human Rights Commission and wrote a letter to the President.
9. They therefore seek the following reliefs:-
  - a. Petition be allowed as prayed.
  - b. The petition herein above asking for IDP’s and Steering Committee/ Patron their Plight and their Constitutional rights as the law requires.
  - c. The cost of the Petition.
  - d. Any other relief the Honorable Court deems fit in the interest of justice.
10. By consent of parties, these two petitions were consolidated being Petition No. 6 of 2022. Through DO. Wabwire, Principal Litigation Counsel on behalf of the Attorney General, the Respondents and Third Party filed both Grounds of Opposition and Notice of Preliminary Objection dated 16/7/2022 challenging competence of the petition.
11. It is their position that the petition is incurably defective, incompetent, untenable, frivolous, scandalous, vexatious, devoid of substance and that there are no constitutional issues raised in the pleadings before court and therefore, the petition is an abuse of the Court process and bad law as it offends the well-established doctrine of *res-judicata*.
12. They further state that there is no evidence placed before this Court to prove that the Petitioners are qualified and/or verified IDPs and that the properties were ever destroyed in the aftermath of the post-election violence so as to be entitled to the orders sought.
13. The further state that the Petitioner miserably failed to demonstrate, by evidence or at all, which of their fundamental rights and/or freedoms were violated and therefore, the petition remains unproven, hearsay, devoid of substance and lack specificity.

### **Submissions**

14. Parties filed their respective submissions as agreed in compliance with the Courts directions. In his submissions dated 13/4/2023, the Petitioner states that they were victims of post-election violence of 2007/2008 resulting in their displacement and property destroyed. That the Third Party vide a letter dated 8/4/2020 directed for the disbursement of Kshs.105,600,000/= against a court Order issued on 23/1/2019 in Civil Suit No. 206 of 2018 by Hon. A C Towett which Orders were not varied or set aside.
15. He further submits that the orders were to the effect that there be stay of the then ongoing payments to IDPs pending hearing and determination of an application that was before court. He further submits that the payment done was for the IDPs who are subject of this petition who are entitled to the compensation.
16. The Respondents and Third Party filed their submissions dated 25/4/2023. They submit that the consolidated petitions are devoid of any iota of precision so much so that it is not easy to discern the real issues in contention. That as drafted, the petitions do not pass the threshold of reasonable precision



as highlighted in the case of Anarita Karimi Njeru vs. Republic (1979) KLR 154 and should therefore be dismissed with costs.

17. Further, they submit that the petitions herein are *res judicata* on the account of similar petitions having been filed and competently determined by the Court of equal status. That there are several cases filed by the Petitioner over the same subject matter namely:- Nairobi Constitution Petition No. 81 of 2019 between The Patron Gusii Regional IDPs Steering Committee and the IDPs Fraternity vs County Commissioner Nyamira, KCB Bank and James Evans Misati. Kisii Constitution Petition No. 7 of 2015 between The Patron Internally Displaced Persons & Steering Committee vs Cabinet Secretary Ministry of Devolution and Planning of National Government.
18. They submit that in Kisii Constitutional Petition No. 7 of 2015 between the Patron Internally Displaced Persons & Steering Committee vs Cabinet Secretary Ministry of Devolution and Planning of National Government, the Petitioner and the Respondents are the same and the subject matter remains the same. That the petitions are on violation of Petitioner's rights and seek for compensation as internally displaced persons from Gusii region. That the petitions are therefore *res judicata*.
19. They further submit that the prayers sought in the two petitions are vague, do not disclose any or any semblance of cause of action known in law and that they are actuated by malice to meet the Petitioner and its members' selfish interest.
20. They further submit that the consolidated petitions raise no constitutional issues, lack merit, are purely an afterthought having been filed after 15 years and therefore an abuse of court process. They therefore urge that the petitions be dismissed with costs to the Respondents and Third Parties.
21. In his supplementary submissions filed on 19<sup>th</sup> June 2023, the Petitioner maintains that the petitions meet the threshold in Anarita Karimi Njeru case (*supra*) and urges the Court to grant the reliefs sought.

#### **Determination**

22. From the material before Court as presented by both parties, the issues for determination are:-
  1. Whether issues raised in the consolidated petition are *res judicata*.
  2. Whether the consolidated petition is merited.
23. The threshold for proving the applicability of the doctrine of *res judicata* was restated in John Florence Maritime Services Limited & Another v Cabinet Secretary for Transport and Infrastructure & 3 Others [2021] eKLR, where the Supreme Court held at paragraph 86:-

“We restate the elements that must be proven before a court may arrive at the conclusion that a matter is *res judicata*. For *res judicata* to be invoked in a civil matter the following elements must be demonstrated:

  - a) There is a former Judgment or order which was final;
  - b) The Judgment or order was on merit;
  - c) The Judgment or order was rendered by a court having jurisdiction over the subject matter and the parties; and
  - d) There must be between the first and the second action identical parties, subject matter and cause of action.”



24. On this issue, this Court has looked at the two petitions being :-Nairobi Constitution Petition No. 81 of 2019 between The *Patron Gusii Regional IDPs Steering Committee and the IDPs Fraternity vs County Commissioner Nyamira, KCB Bank and James Evans Misati*.Kisii Constitution Petition No. 7 of 2015 between The *Patron Internally Displaced Persons & Steering Committee vs Cabinet Secretary Ministry of Devolution and Planning of National Government*.
25. Though the two matters they were filed by the same Petitioner, there is no evidence that the issues raised there and those raised in consolidated petitions are the same hence *res judicata*. The Petitioner herein is complaining about specific actions undertaken after issuance of a Court Order by Hon. Towett on 23/1/2019.
26. On whether the petitions are merited, the line of submissions by the Respondent and Third Party that the two petitions were filed 15 years later and therefore an abuse of court process does not hold. There are no timelines for filing a constitutional petition.
27. The issue is whether the consolidated petitions meet the constitutional threshold as set out in *Anarita Karimi Njeru vs The Republic* [1979] eKLR where High Court held:-
- “We would, however, again stress that if a person is seeking redress from the High Court on a matter which involves a reference to the *Constitution*, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed.”
28. In *Mumo Matemo v Trusted Society of Human Rights Alliance & 5 others* [2013] eKLR case , the Court of Appeal reaffirmed the principle in *Anarita Karimi case* (*supra*) when the Court at paragraph 87(3) of the judgment stated as follows: -
- “It is our finding that the petition before the High Court was not pleaded with precision as required in Constitutional Petitions. Having reviewed the petition and supporting affidavit we have concluded, that they did not provide adequate particulars of the claims relating to the alleged violations of the *Constitution* of Kenya and the *Ethics and Anti-Corruption Commission Act, 2011*, accordingly the petition did not meet the standard enunciated in the *Anarita Karimi Njeru case*.”
- “We would, however, again stress that if a person is seeking redress from the High Court on a matter which involves a reference to the *Constitution*, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed.”
29. It is clear the material put in the consolidated petitions is haphazard and jumbled up making the petitions vague. The Petitioner alleges that the State officers of the Respondent have involved themselves on fraud, embezzlement, and corruption and have compensated people who do not meet the status of the Internally Displaced Persons. That the purported disbursement of Kshs.105,600,000/= was a flagrant disobedience of the court orders issued on 23/1/2019 by Hon. A.C Towett thereby violating the rights of the rightful beneficiary of the sum disbursed. That the Petitioners are entitled to be compensated by the Respondent.



30. There is no evidence that the said orders were appealed against, varied or set aside. Section 10 (3) of *Magistrates Courts Act* No. 26 of 2015 clothe the Trial Magistrate with power to deal with contempt of its orders, decree or judgment.
31. There is no evidence that any application was filed before the trial court in that regard. It is the Trial Court that has original jurisdiction to deal with the issue of the alleged contempt of its orders.
32. The orders sought in consolidated petitions are incapable of being granted by this Court. The elections have since been held. It is not clear which laws the Petitioner wants this Court to declare unconstitutional and what rights have been violated. The Petitioner has not demonstrated any *bona-fide* and genuine constitutional issue through clear and concise pleadings.
33. From the foregoing, there is no disclosure or demonstration of a constitutional dispute for determination by this Court.
34. Inconclusion:-
  1. The consolidated petitions are incompetent and therefore stuck out.
  2. There are no orders as to costs.

**DATED, SIGNED AND DELIVERED (VIRTUALLY) AT KISII THIS 26<sup>TH</sup> DAY OF JUNE, 2024.**

**PATRICIA GICHOHI**

**JUDGE**

In the presence of

Rev. Nemwel Momany Patron/ Petitioner

Mr. Rana for Respondents and Third Party

Ruto/ Aphline- Court Assistant

