



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

PETITION NO. 18 OF 2017

IN THE MATTER OF ARTICLES 22, 23, 27(1), 40, 47, 50 (1) OF THE CONSTITUTION

BETWEEN

WYCLIFFE ONYANGO OCHIENG.....PETITIONER

VERSUS

OFFICER COMMANDING POLICE STATION,

NGONG POLICE STATION.....1ST RESPONDENT

DEPUTY DIVISIONAL CRIMINAL INVESTIGATION OFFICER,

NGONG POLICE STATION – MR. MALOBA.....2ND RESPONDENT

JUDGMENT

By a Petition dated the 20th June, 2017, the Petitioner prays for the following orders:

- a) A Declaratory Order that the Petitioner's right to fair administrative action as guaranteed under Article 47 of the Constitution has been infringed and is threatened with infringement as a result of the Respondents' action.
- b) A Declaratory Order that the Petitioner's right to dignity guaranteed under Article 28 of the Constitution has been infringed as a result of the Respondents' action.
- c) A Declaratory Order that the Petitioner's right to property has been and continues to be infringed as a result of the actions of the Respondents.
- d) General damages be issued as compensation for the inconvenience and prejudice occasioned by the actions of the Respondents.
- e) The cost of this suit to be borne by the Respondents.
- f) Interest on (d) and (c) above.
- g) Further and any other orders as this Honourable Court may deem fit.

The 2nd Respondent opposed the Petition and filed Grounds of Opposition on 26th July, 2017 where he contended that the Petition is incompetent and lacks merit. Further, that the burden of proving any alleged contravention of Rights and Freedoms lies wholly on the Petitioner at all times. He insists the 2nd Respondent is an Independent Constitutional body established under the Constitution to investigate criminal conduct and the Petitioner herein intends to obstruct as well as interfere with its Statutory and Constitutional Mandate. The 2nd Respondent denies having acted ultra vires nor infringed on the rights of the Petitioner and there is no Constitutional issue raised in the Petition.

On 25th March, 2019, the Court gave directions that the Petition was to be disposed of by way of written submission. The Petitioner filed his submissions but the Respondents failed to do so.

Analysis and Determination

Upon consideration of the Petition including the supporting affidavit and 2nd Respondent's Grounds of Opposition as well as the Petitioner's submissions, the following are the issues for determination;

- **Whether the Petitioner's rights were violated by the Respondents.**
- **Whether the Petitioner is entitled to orders sought in the Petition.**

As to whether the Petitioner's rights were violated by the Respondents. The Petitioner contended that the Respondents were investigating his title to land parcel number NGONG/NGONG/ 17410. Further that they have issued an order denying the Petitioner the right to enjoy quiet and peaceful possession of his land under the guise of undertaking investigations. He claimed the Respondents have denied him a chance to develop his land and failed to give him any written communication or notified him of the investigation pertaining to his land. The Petitioner claims that various rights including rights to equal protection of the law; human dignity; property; and fair administrative action were violated by the Respondents' actions. In his submissions, he has relied on the case of **Michael Monari & Another V Commissioner of Police & 3 others, Misc. Application No. 68 of 2011; Koinange V Attorney General and Others (2007) 2 EA 256** to support the arguments that the Respondents had violated his rights.

The 2nd Respondent had filed Grounds of Opposition where he contended it is an Independent Constitutional body established under the Constitution to investigate criminal conduct and the Petitioner herein intends to obstruct as well as interfere with its Statutory and Constitutional Mandate. It denied having acted ultra vires nor infringed on the rights of the Petitioner. He insists that there is no Constitutional issue raised in the Petition.

Article 244 of the Constitution provides the Objects and functions of the National Police Service and state that the service shall: '**(a) strive for the highest standards of professionalism and discipline among its members;(b) prevent corruption and promote and practice transparency and accountability;(c) comply with constitutional standards of human rights and fundamental freedoms;(d) train staff to the highest possible standards of competence and integrity and to respect human rights and fundamental freedoms and dignity; and (e) foster and promote relationships with the broader society.**'

Further, the National Police Service Act at section 24 provides some of the functions of the Kenya Police Service to include:

- (a) provision of assistance to the public when in need;**
- (b) maintenance of law and order;**
- (c) preservation of peace;**
- (d) protection of life and property;**
- (e) investigation of crimes;**
- (f) collection of criminal intelligence;**
- (g) prevention and detection of crime;**

The Petitioner submitted that the Respondents violated his rights by investigating his title to land and failing to provide him with written information on the same.

The Court of Appeal in **Mumo Matemo v Trusted Society of Human Rights alliance [2014] eKLR**, in addressing the issue on how to frame Constitutional Petitions stated that:

"...the principle in Anarita Karimi Njeru (supra) underscores the importance of defining the dispute to be decided by the court... 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"

In the current case, the Petitioner did not furnish to court proof of how the Respondents restrained him from using his land. Further, he did not adduce evidence on whether as a result of the investigations, the Respondents ordered for cancellation of his title. In the circumstance and in relying on the authority cited above, I find that the Petitioner has provided generalized complaints against the Respondents and failed to demonstrate in precision how his Constitutional Rights were violated while the Respondents were investigating his title. In the case of **David Ndolo Ngali & 2 others Vs Directorate of Criminal Investigations & 4 others (2015) eKLR** wherein the Honourable Court favourably cited the case of **Erick Kibiwott & 2 others Vs. DPP & 2 Others Judicial Review Civil Application No.89 of 2010**, the Honourable Judge observed that:

'The Police have a duty to investigate on any complaint once a complaint is made. Indeed the Police would be failing in their constitutional mandate to detect and prevent crime. The Police only need to establish reasonable suspicion before preferring charges. The rest is left to the trial court...as long as the prosecution and those charged with the responsibility of making decisions to charge act in a reasonable manner, the high court would be reluctant to intervene.'

In associating myself with the above case, I find that the Respondents herein have a right to carry out investigation on the title to the suit land while the Petitioner is under a duty of care to cooperate with them so long as he is provided with all the details of the investigations. As a Court, I cannot bar them from investigating a complaint over the title to the suit land. In the circumstance, I hold that the Petitioner has not fully complied with the basic tenets of constitutional reference to prove that his rights as enshrined in Articles 27, 28, 40, 47 48 and 50 of the Constitution have been violated.

As to whether the Petitioner is entitled to orders sought in the Petition. The Petitioner sought for a Declaratory Order that the Petitioner's right to fair administrative action as guaranteed under Article 47 of the Constitution has been infringed and is threatened with infringement as a result of the Respondent's action; a Declaratory Order that the Petitioner's right to dignity guaranteed under Article 28 of the Constitution has been infringed as a result of the Respondent's action; A Declaratory Order that the Petitioner's right to property has been and continues to be infringed as a result of the actions of the Respondents; General damages be issued as compensation for the inconvenience and prejudice occasioned by the actions of the Respondents; Costs of the suit and Interest. He submitted that he was entitled to award of damages and relied on the case of **Florence Amunga Omukanda & Another V the Minister of Safety and Security and Mackeigan V Hickman (1989) SCR 796** to buttress his arguments. From the Petitioner's averment, he never tendered any evidence to prove the damages he had suffered as a result of the Respondents acts of investigating the title. The burden of proof was upon him to adduce evidence to this effect but since he failed to do so . I am unable to award him any damages. As for the declaratory orders sought, from the evidence presented in the affidavit, I am unable to decipher how his rights to fair administrative action, property and dignity was infringed upon. Except for the investigation, there was no order issued by the Respondents to invalidate the Petitioner's title.

From my findings above, I find that the Petition dated the 20th June, 2017 is not merited and dismiss it. Each party to bear their own costs.

Dated signed and delivered in open court at Kajiado this 11th November, 2019

CHRISTINE OCHIENG

JUDGE