



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
CONSOLIDATED PETITIONS NO. 56, 58 & 59 OF 2019

BETWEEN

NUBIAN RIGHTS FORUM1ST PETITIONER
KENYA HUMAN RIGHTS COMMISSION 2ND PETITIONER
KENYA NATIONAL COMMISSION ON
HUMAN RIGHTS3RD PETITIONER

AND

THE HON. ATTORNEY-GENERAL 1ST RESPONDENT
THE CABINET SECRETARY, MINISTRY OF INTERIOR
& CO-ORDINATION OF NATIONAL GOVERNMENT ...2ND RESPONDENT
THE PRINCIPAL SECRETARY, MINISTRY OF INTERIOR
& CO-ORDINATION OF NATIONAL GOVERNMENT3RD RESPONDENT
THE DIRECTOR NATIONAL REGISTRATION4TH RESPONDENT

THE CABINET SECRETARY, MINISTRY OF INFORMATION,
COMMUNICATION & TECHNOLOGY5TH RESPONDENT
THE SPEAKER, NATIONAL ASSEMBLY6TH RESPONDENT
KENYA LAW REFORM COMMISSION7TH RESPONDENT

AND

CHILD WELFARE SOCIETY1ST INTERESTED PARTY
AJIBIKA SOCIETY2ND INTERESTED PARTY
MUSLIMS FOR HUMAN RIGHTS INITIATIVE3RD INTERESTED PARTY
HAKI CENTRE4TH INTERESTED PARTY
LAW SOCIETY OF KENYA5TH INTERESTED PARTY
INFORM ACTION6TH INTERESTED PARTY
BUNGE LA WANAINCHI7TH INTERESTED PARTY
INTERNATIONAL POLICY GROUP8TH INTERESTED PARTY
TERROR VICTIMS SUPPORT INITIATIVE9TH INTERESTED PARTY

AND

SUMMARY OF FINDINGS AND ORDERS

Introduction

1. On 20th November 2018 the National Assembly voted in favour of the enactment into law of the Statute Law (Miscellaneous Amendment) Act No. 18 of 2018. On 31st December 2018, the President of the Republic of Kenya assented the said Act into law, and the same commenced operation as such on the 18th January 2019. The effect of the Act was *inter-alia* to amend several provisions of a number of existing statutes among them the Registration of Persons Act (Cap 107 Laws of Kenya). The amendments to the Registration of Persons Act establishes a National Integrated Information Management System (hereinafter "NIIMS") that is intended to be a single source of personal information of all Kenyans as well as foreigners resident in Kenya.
2. The Nubian Rights Forum (the 1st Petitioner), the Kenya Human Rights Commission (the 2nd Petitioner), and the Kenya National Commission on Human Rights (the 3rd Petitioner), are aggrieved with the amendments made to the Registration of Persons Act, which they claim were passed in violation of the Constitution and in bad faith, and pose serious and immediate threats to fundamental rights and freedoms protected under the Bill of Rights. The three Petitioners therefore respectively filed Petitions in this Court, namely Nairobi High Court Petition No 56 of 2019, Nairobi High Court Petition No 58 of 2019

and Nairobi High Court Petition No 59 of 2019, which petitions were subsequently consolidated for hearing by this Bench. The Respondents in the consolidated Petitions are the Honourable Attorney General; the Cabinet Secretary, Ministry of Interior and Co-ordination of National Government; the Permanent Secretary, Ministry of Interior and Co-ordination of National Government; the Director of National Registration; the Cabinet Secretary for Information, Communication and Technology; the Speaker of National Assembly, and the Kenya Law Reform Commission.

3. The 1st, 2nd and 3rd Petitioners also filed applications for various conservatory orders simultaneously with the Petitions. The 3rd, 4th, 5th and 6th Interested Parties supported the applications for conservatory orders. The Respondents in turn filed various responses opposing the applications, and were supported by the 1st, 2nd, 7th, 8th and 9th Interested Parties.

The Issues For Determination

4. We have read and carefully considered the pleadings and submissions by the parties, details of which will be set out in our final ruling. There are two issues for determination. The first is whether the amendments to the Registration of Persons Act Cap 107 Laws of Kenya vide Statute Law (Miscellaneous Amendment) Act No. 18 of 2018 should be suspended pending the hearing and determination of the Petitions filed herein. Second, whether, pending the hearing and determination of the said Petition, the Respondents should be restrained from installing and

implementing the National Integrated Information Management System (NIIMS).

5. We have found that the Petitioners have established, and the Respondents have conceded that there is a risk of prejudice being caused to members of the public and their right to privacy by the disclosure of certain types of personal information, in the absence of proposals on how that data will be protected. The 2nd and 3rd Respondents in this regard submitted and made an undertaking that they would not be collecting personal information on DNA and on the Global Positioning System co-ordinates.
6. It is also our finding that it is in the public interest to have an efficient and organised system of registration of persons, and the responsible use of resources in the process, in light of the socio-economic gains of the system that have been illustrated by the Respondents. There is however also a public interest in ensuring that the said system does not infringe on fundamental rights and freedoms. There is thus a need for a balancing of the competing public interest rights while the Consolidated Petitions are heard, so as to safeguard rights and resources, and ensure that the Petitions are not rendered nugatory.
7. While we have found that a *prima facie* case has been made out as regards some elements of the Petitioners' case, we are not satisfied that the conservatory orders should issue in the terms prayed by the Petitioners. In order to avoid any violation of rights to privacy, and to

preserve the sub-stratum of the Petition, we accordingly make the following orders:

1. The inclusion of Deoxyribonucleic Acid (DNA) as one of the unique identifiers or attributes in the definition of "biometric" in section 3 of the Registration of Persons Act be and is hereby suspended, pending the hearing and determination of the consolidated Petitions herein. For the avoidance of doubt the remaining unique identifiers and attributes contained in the definition of "biometric" in section 3 and section 5 of the Registration of Persons Act shall continue to apply and be in operation.
2. The definition of "Global Positioning System co-ordinates" in section 3 of the Registration of Persons Act and the inclusion of "Global Positioning System co-ordinates" in section 5 (g) of the said Act be and are hereby suspended, pending the hearing and determination of the consolidated Petitions herein.
3. The Respondents shall be at liberty to proceed with the collection of personal information and data under the National Integrated Information Management System (NIIMS) pursuant to the operational provisions of the Registration of Persons Act. However, pending the hearing and determination of the Consolidated Petitions, the Respondents shall not:
 - a) Compel any member of the public to participate in the collection of personal information and data in NIIMS.
 - b) Set any time restrictions or deadlines as regards the collection of the said personal information and data in NIIMS.

- c) Set the collection of personal information and data in NIIMS as a condition precedent for the provision of any Government or public services, or access to any government or public facilities.
 - d) Share or disseminate any of the personal information or data collected in NIIMS with any other national or international government or non-governmental agencies or any person.
4. The Costs of the 1st, 2nd and 3rd Petitioners' Notices of Motion dated 24th February 2019 and 18th February 2019 shall be in the cause.

8. Orders accordingly.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS 1ST DAY OF
APRIL 2019**

**P. NYAMWEYA
JUDGE**

**MUMBI NGUGI
JUDGE**

**W. KORIR
JUDGE**