

24th June, 2010

The Registrar
The Interim Independent Constitutional Dispute
Resolution Court
P O Box 103732 - 00101
Nairobi.
2nd Floor
Kenyatta International Conference Centre,
Harambee Avenue
Nairobi.

Dear Sir/Madam,

In the matter of Constitutional Petition No. 3 of 2010 in the Interim Independent Constitutional Dispute Resolution Court at Nairobi

Between

Andrew Omtatah Okoiti.....1st Petitioner
Maximilia Muninzwa..... 2nd Petitioner
Ouma Odera..... 3rd Petitioner
Frederick Odhiambo Awuor Nyatado..... 4th Petitioner
Sarah Nyokabi..... 5th Petitioner
Prof Barrack Otieno Abonyo..... 6th Petitioner

And

The Attorney General.....1st Respondent
The Committee Of Experts..... 2nd Respondent
The Interim Independent Electoral Commission..... 3rd Respondent

INTERVENTION REQUEST

(Under Rules 27(1), 27(2), 27(3), 27(4), 27(5), 27(6), 27(7) and 27(8), Part IV of the Interim Independent Constitutional Dispute Resolution Court (Procedure) Rules, 2010 and section 60A of the Constitution of Kenya)

To: The Interim Independent Constitutional Dispute Resolution Court

I, **Robert George Nyongesa**, whose address for purposes of service is care of Fahamu Trust, 2nd Floor, Block C, Peponi Plaza, Westlands, P. O. Box Number 456 – 00606, Nairobi in the Republic of Kenya, and a holder of electors card number 006/014/1135110354 and holder of Kenyan passport number B070866 hereby **apply to be enjoined as a respondent party** to the abovementioned petition as follows:

1. The petition before the Court seeks to obtain a determination of the Court on various matters, in particular the following issues, that directly affect citizens of Kenya such as myself:
 - a) Whether Kenyans have a sovereign right to replace the current Constitution with a new Constitution, and whether this right includes the right to be wholly

involved in the constituent power of enacting a new constitution through (i) popular consultation; (ii) fully consultative, inclusive and democratic framing of proposals; and (iii) a free and fair national referendum.

- b) Whether the 1st, 2nd and 3rd Respondents, through their various actions, have violated and/or compromised the aforesaid sovereign right and constituent power of Kenyans.
- c) Whether the rights of the Petitioners, as Kenyans, to participate fully in the constitution review process have been, are being or are in imminent danger of being infringed.

2. I request to be joined as respondent in support of the current respondents: the Attorney General, the Committee of Experts and the Interim Independent Electoral Commission in the abovementioned petition on the following grounds:

2.1 THAT this Court is empowered under Section 60A of the Constitution of Kenya and Rule 27(1) of the Interim Independent Constitutional Dispute Resolution Court (Procedure) Rules, 2010 to consider my application and to order that I be joined as a respondent party to the petition and further give such directions relating thereto as may be just;

2.2 THAT as a citizen of Kenya and a registered voter, I have sufficient interest in the outcome of this petition and it is therefore desirable that I be made a respondent party to the petition in accordance with Rule 27(2) of the Interim Independent Constitutional Dispute Resolution Court (Procedure) Rules, 2010;

2.3 THAT as the National Coordinator of Bunge la Mwananchi, a nationwide grassroots social movement and an Executive Council member of the National Civil Society Congress, I have facilitated and participated in civic education in various places in Central Province, Eastern Province, Western Province, Rift Valley Province and Nairobi Province during which I have interacted with a diverse cross-section of Kenyans, both in community forums and on the Bunge la Mwananchi website (www.bungelamwananchi.org) and have been impressed by the urgency with which and the reasons why Kenyans look forward to adopting a new constitution and the mandate that Kenyans have placed upon the 1st, 2nd and 3rd Respondents to facilitate this.

2.4 THAT more specifically, with regard to the particular issues raised by the Petitioners as set out in paragraph 1 above:

- a) THAT the greater public interest of the people of Kenya, mine included, may suffer substantial detriment if the current constitutional moment to bring about a better Kenya, is lost. A majority of Kenyans who have borne the brunt of the cost of bringing about a new constitutional dispensation are eager break from the status quo of impunity, corruption, bad governance, human rights abuses, inequality and social injustice. In this regard, Kenyans have over the past two decades been willing to risk losing their limbs, lives and livelihoods, braving police cells and conscientiously paying billions of taxes to the Government towards constitutional review efforts.

- b) THAT as do a majority of Kenyans, I view the Proposed Constitution and the attendant review process as a huge effort towards addressing issues that were identified during the Kenya National Dialogue and Reconciliation and captured in the Agenda items of the National Accord of 2008. I am therefore vigilant to ensure that the process is pursued to a successful end at the Referendum and beyond through the mandated offices of the 1st, 2nd and 3rd Respondents.
- c) THAT I can testify along with other Kenyans that in recognition of our sovereignty and in respecting the principle of a people driven review process, we have been continuously afforded an opportunity to contribute our views right from the consultative forums under the Constitution of Kenya Review Commission led by Professor Yash Pal Ghai to the request by the 2nd Respondent for Kenyans' views on what we perceived to be contentious issues and to this end providing Kenyans with contact points and address details to which we could send our views within a period that was publicly advertised in the national media and holding of meetings with different interest groups representing Kenyans. Subsequently, Kenyans' participation has continued to be encouraged through exercises such as the fresh voter registration campaign and through efforts such as media advertisements and civic education campaigns towards encouraging Kenyans to read the Proposed Constitution and make an informed choice at the Referendum. I am keen to safeguard this right to participation and continue to offer my input towards a new constitution, by participating in these proceedings.
- d) THAT I have interacted with the public both through community platforms, online and on radio and television talk shows and have received feedback that evidences that Kenyans have benefited from receiving copies of the Proposed Constitution to read through and dialogue over in peer groups on the Proposed Constitution. Further, the 2nd Respondent's clarifications in the print and audio visual media over contentious issues have served to demarcate the facts from the propaganda, dispel mounting anxiety based on a lack of or misinformation on the provisions of the Proposed Constitution amongst the public, to offer historical background to the Proposed Constitution's provisions that eliminate prejudices based on lack of or misinformation. The questions raised to me and the responses received from the public in topical discussions in relation to the Proposed Constitution reveal that the civic education process is continuing to help clarify the alleged contentious issues as well as other sectoral and personal areas of interest and it is therefore important to ensure that civic education continues in the run up to the Referendum, rather than be interrupted or put to an end as is likely to be the result of a finding in favour of the Petitioners.
- e) THAT the petition will, if allowed to proceed to determination, undermine my constitutive rights and sovereign power as a citizen of the Republic of Kenya;
- f) THAT in my personal capacity and in my capacity as a civil society activist, I am concerned to impress upon the Court and the Petitioners the urgent interest of all Kenyans to adopt a framework such as is sought to be done by the constitutional review process, through which we can establish a free and


democratic system of Government that guarantees good governance, constitutionalism, the rule of law, human rights, gender equity, gender equality and affirmative action.

I pray that the Court be moved to allow my application to be joined as a respondent party to the petition before the Court.

Dated this 24TH day of JUNE, 2010 at Nairobi.

DRAWN AND FILED BY:

Robert George Nyongesa
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24/6/2010



TO BE SERVED UPON:

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Nairobi.



The Committee of Experts
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P.O. Box 8703-00200
Nairobi



The Interim Independent Electoral Commission
Anniversary Towers, 5th Floor,
Monrovia Street,
P.O. Box 45371-00100
Nairobi



The Attorney General
The Attorney General's Chambers
Sheria House, Harambee Avenue
Nairobi

Andrew Omtatah Okoiti and 5 others
c/o Muma & Kanjama Advocates,
Maendeleo House 3rd floor,
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