



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI**

CIVIL SUIT NO. 1338 OF 1997

ABDUL KARIM HASSANALLY.....1ST PLAINTIFF

NYOTA SERVICE STATION LIMITED.....2ND PLAINTIFF

VERSUS

WESTCO KENYA LIMITED.....1ST DEFENDANT

MWAI KIBAKI.....2ND DEFENDANT

KIBAKI MUREITHI.....3RD DEFENDANT

DR. JOHN KABIRU.....4TH DEFENDANT

RULING

This is the oral application by the second defendant for an order that the suit against the second defendants be struck out on the ground that the second defendant being the President of the Republic of Kenya is by virtue of section 14(2) of the Constitution immune from Civil Proceedings.

Section 14(2) of the Constitution provides:

“No civil Proceedings in which relief is claimed in respect of anything done or omitted to be done shall be instituted or continued against the President while he holds office or against any person while he is exercising the functions of the Office of the President.”

Section 14(1) of the Constitution protects the President from any criminal proceedings whatsoever while he holds office . Section 14(3) of the Constitution provides that the period of time during which a person holds or exercises the function of the office of the President shall not be taken into account in calculating any prescribed period of limitation for bringing criminal or Civil Proceedings against a person who becomes the President.

The marginal note to section 14 of the constitution states:

“ Protection of President in respect of legal proceedings during office”

Mr. Ongicho for the plaintiffs submitted, inter alia, that the President is liable in respect of all suits

commenced against him prior to taking office. He further contended that the immunity enjoyed by the president is not absolute and does not extend to matters of private nature.

Section 14(2) of the Constitution construed with the aid of the marginal notes, in my view, means what it says, that Civil Proceedings cannot be instituted against the President while he holds office or if instituted before he became the President such civil Proceedings cannot continue against the President. But Section 14(2) does not absolve the President from Civil Liability in respect of claims arising either before or after he becomes the President. He can still be sued after he leaves office.

That is to say that section 14(2) of the Constitution merely suspends the recovery of any claim of a Civil nature through legal proceedings against a President and denies court jurisdiction against the President while he holds office but does not protect the President from any Civil liability.

Indeed section 14(3) of the Constitution protects any such claims which cannot be brought or continued while the President holds office from being defeated by any law of limitation.

The Constitution is the will of the people and I do not think that the constitutional provisions protecting the President from legal proceedings can be said to be against the Public Policy.

The President has his constitutional rights like everybody else and this court is bound to protect such Constitutional rights from violation.

For the foregoing reasons I allow the oral application and strike out the name of the second defendant from the suit without prejudice to the right of the plaintiffs to reinstitute the suit after the second defendant ceases to be the President of the Republic of Kenya.

Each party will bear his own costs of the application and of the suit.

Dated at Nairobi this 10th day of April, 2003

ERASTUS M. GITHINJI
JUDGE



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