



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

PET. NO.10 OF 2020

LABAN OMUSUNDI NANZUSHI.....APPLICANT

-VERSUS-

NAKURU COUNTY GOVERNMENT EXECUTIVE MEMBER OF

FINANCE AND ECONOMIC PLANNING.....1ST RESPONDENT

NAKURU COUNTY ASSEMBLY.....2ND RESPONDENT

RULING

1. This is a ruling on two applications seeking to enjoin the applicants as interested parties. Application dated 13th July 2020 seeks to enjoin **Robert Njenga** and **Vincent Tonui** as interested parties while application dated 27th July 2020 seeks to enjoin **Edwards King Onyancha** as an interested party in this petition. Grounds in the application dated 13th July 2020 of the two proposed interested parties reside in Nakuru County and are active citizens in matters of democracy and good governance, public participation, access to information constitutionalism.
2. They further submit that they have been involved in monitoring County budget process; that the Public Notice placed on Standard Newspaper on 12th June 2020 was insufficient as it gave only 5 days' notice 12th to 19th June 2020.
3. The application is supported by affidavit sworn by **Robert Njenga** dated 13th July 2020. He restated grounds of the application and listed legal provisions that recognize public participation and the benefits of subjecting budget process to public participation.
4. Grounds on the face of the application dated 29th July 2020 is that the applicant is a resident voter within Nakuru County and if allowed, the applicant will make full pertinent material facts disclosing the failure on public participation in the budget making within County of Nakuru of fiscal years 2017/2018 to fiscal year 2020/2021; that the letter dated 15th June 2020 by the County Executive Committee Member of Finance and Economic Planning confirm that this application is not frivolous, scandalous nor vexatious.
5. The application is supported by affidavit sworn by the applicant on 29th July 2020. He averred that he is a resident voter registered by IEBC Nakuru Office at Lenana Polling Station.
6. He further averred that there is an internal memo made on 18th February 2012 by Senior Accountant in Municipal Council of Nakuru on kshs 4.2Million excluding kshs 292,367 allegedly deducted as exhibited by EKOM-02. Further that there is a letter dated 12th June 2020 from Matra International Associates to County of Nakuru demanding settlement of outstanding debt claim amounting to kshs 45 Million which includes 292,367 money allegedly deducted illegally against payment made to Matra as shown in EKOM-3.
7. He averred that the alleged budget has not been made subject to public participation and it is only equitable, fair administrative action and just to provide for and involve public participation on County budget making process but no public participation was made available for public of Nakuru County including the applicant in the County budget making for the year 2017/2018 to date.
8. He averred that the budget making process for Nakuru County Government for 2020/2021 is tainted in impugned and violation of rights and freedoms of the applicant amongst other tax payers as enshrined under the constitution.
9. In response the 2nd respondent filed grounds of opposition dated 5th November 2020 and replying affidavit dated 9th November 2020.
10. Grounds raised by the 2nd respondent are that; the applicant has not met the legal threshold required for him to be allowed to be enjoined

as an interested party in the pending petition; that the applicants main ground being that he is a resident voter is not the basis that an interested party can rely on to be enjoined.

11. The 2nd respondent contend that the applicant has not raised any new issue but is merely a replica of what the petitioner has raised in the petition. That the argument that he was never invited to participate in budget making process is ridiculous and devoid of truth; that the 2nd respondent fully adhered to and complied with the law.

12. The 2nd respondents replying affidavit sworn by **Joseph Malinda** the Clerk of Nakuru County Assembly on 9th November 2020 restate the grounds of opposing captured above.

13. He further averred that his reasonable belief is that the 2nd respondent disseminated information to the public by way of print media, local radio stations and advertisement and that it is impracticable that a personal invitation will be given to every individual within Nakuru County and what is paramount is major concerns of different sectors of the public which should be communicated and taken into account which the 2nd respondent clearly did as no objection was raised by the participants.

ANALYSIS AND DETERMINATION

14. I have considered arguments by both parties herein. I wish to consider whether the applicant herein has demonstrated that he meets the legal requirements to be enjoined as an interested party in this petition. The issue of joinder of parties to a suit is provided by **Order 1 Rule 10 (2)** of the **Civil Procedure Rules (CPR)** as follows: -

“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

15. Further in **J M K –Vs- M W M & Another [2015] eKLR** the Court stated as follows:

"Commenting on this provision, the learned authors of Sarkar's Code of Civil Procedure (11th Ed. Reprint, 2011, Vol. 1 P. 887), state that:

“The section should be interpreted liberally and widely and should not be restricted merely to the parties involved in the suit, but all persons necessary for a complete adjudication should be made parties”

16. From the above, there is no doubt that the test would be whether the applicant is a necessary party to the suit. My view is that the Court must consider whether there is something new the party will add which will enable the Court to adjudicate the matter in an effectual manner.

17. In respect to the application dated 13th July 2020, I note their role in the County as shown from the grounds and averments in the supporting affidavit. On the face of the application, the two applicant wish to be granted an opportunity to do written and oral arguments in this petition. Further from the affidavit, I note that they seized with the facts that relate to process undertaken by the respondents during the budget process and the legal provisions that guide the process. In my view, their participation will enrich the adjudication process and assist the Court in arriving at a just and fair determination. I see merit in their application to be enjoined as interested parties in this petition.

18. In respect to the 2nd application dated 29th July 2020, I have perused the petition herein and note that the issues raised by the petitioner are the same ones raised by the applicant herein. Both are residents in Nakuru County. Averments in the applicants supporting affidavit have been raised by the petitioner herein. In my view, the applicant in application dated 29th July 2020 has not demonstrated that he has new materials that will assist this court to effectually adjudicate on all issues raised in this petition; I therefore see no merit in the application herein.

FINAL ORDERS

1. Application dated 13th July 2020 is hereby allowed.

2. Application dated 29th July 2020 is hereby dismissed.

3. The applicant in application dated 29th July 2020 to pay respondents costs of the application.

Ruling dated, signed and delivered via zoom at Nakuru

This 28th day of January 2021

RACHEL NGETICH

JUDGE

In the presence of:

Jeniffer - Court Assistant

Ms. Litunda for 1st Respondent

Ms. Daye holding brief for Mr. Chege for the 1st Respondent

Robert Njenga Intended interested party Present

Petitioner in person absent (bereaved)

Edward Kings Maina intended interested party