



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

[Coram: A.C Mrima, J.]

CONSTITUTIONAL PETITION NO. E425 OF 2020

HON. MIKE MBUVI SONKO.....PETITIONER

VERSUS

THE CLERK,

NAIROBI CITY COUNTY ASSEMBLY.....1ST RESPONDENT

THE SPEAKER,

NAIROBI CITY COUNTY ASSEMBLY.....2ND RESPONDENT

THE NAIROBI CITY COUNTY ASSEMBLY....3RD RESPONDENT

THE CLERK, SENATE OF KENYA.....4TH RESPONDENT

THE SPEAKER, SENATE OF KENYA..... 5TH RESPONDENT

THE SENATE OF KENYA..... 6TH RESPONDENT

HON. ATTORNEY GENERAL.....7TH RESPONDENT

THE INDEPENDENT ELECTORAL AND

BOUNDARIES COMMISSION (IEBC).....8TH RESPONDENT

THE ASSUMPTION OF THE OFFICE

OF THE COUNTY GOVERNOR

COMMITTEE, NAIROBI CITY COUNTY.....9TH RESPONDENT

THE ACTING GOVERNOR.....10TH RESPONDENT

RULING NO. 1

1. The 1st Respondent herein, *The Clerk, Nairobi City County Assembly*, filed an undated Notice of Motion under Article 165(4) of the Constitution Rules 23, 24 & 25 of the Constitution of Kenya Practice and Procedure Rules, Section 1A, 1B, 3A, 63(c) & (e) of the Civil

Procedure Act among other provisions of law. The application sought the following orders: -

- 1) *This Honourable Court be pleased to Order stay of execution of the Order G of the Orders issued by the Hon. Justice Makau on 23rd December 2020 pending the inter partes hearing.*
- 2) *The Honourable Court be pleased to stay proceedings herein pending inter partes hearing of this application.*
- 3) ***The Honourable Court be pleased to discharge, vary, set aside and/or review Order G of the Orders issued by the Hon. Justice J.A Makau on 23rd December, 2020.***
- 4) *This Honourable Court be pleased to certify Nairobi High Court Constitutional Petition No. E425 of 2020 as raising a substantial question of law.*
- 5) *The Honourable Court be pleased to refer the entire Petition herein to the Honourable Chief Justice for the Composition of a bench of uneven number of Judges to hear and determine the dispute.*
- 6) *This Honourable Court be pleased to issue an Order for the Consolidation of HC Petition No. 64 of 2020, HC Pet. No.66 of 2020, HC petition No. 105 of 2020, HC Const. Pet. No. E348 of 2020, HC Const. Petition No. E405 of 2020, HC Pet. No. E425 of 2020, H.C Petition No. E430 of 2020, ELRC Pet. No. 35 of 2020, ELRC Pet. No. 52 of 2020, ACEC Pet. No. 1 of 2020 and any other suit touching on the leadership of Nairobi City County Government (specifically the nomination, appointments, election into the offices of Governor & Dep. Governor), the transfer of functions to the Nairobi Metropolitan Services and Budgeting and appropriation in respect of the County.*
- 7) *This Honourable Court be pleased to make such orders as may be necessary for the ends of justice to prevent an abuse of the process of court.*
- 8) *The costs of the application be provided for.*

2. Before this Court delves into the merits of the application, its attention is drawn to the provisions of **Order 45 Rule 2** of the Civil Procedure Rules. The provision states as follows: -

- (1) *An application for review of a decree or order of a court, upon some ground other than the discovery of such new and important matter or evidence as is referred to in rule 1, or the existence of a clerical or arithmetical mistake or error apparent on the face of the decree, **shall be made only to the judge who passed the decree, or made the order sought to be reviewed.***
- (2) *If the judge who passed the decree or made the order is no longer attached to the court, the application may be heard by any other judge who is attached to that court at the time the application comes for hearing.*
- (3) *If the judge who passed the decree or made the order is still attached to the court but is precluded by absence or other cause for a period of 3 months next after the application for review is lodged, the application may be heard by such other judge as the Chief Justice may designate*

3. Given the state of the law, I hereby issue the following orders: -

a) This matter shall henceforth be dealt with by Hon. Makau, J.

b) In view of the urgency in the matter, the Deputy Registrar to place the matter before that Court on 20th January, 2021.

It is so ordered.

DELIVERED, DATED and SIGNED at NAIROBI this 20th day of January, 2021.

A. C. MRIMA

JUDGE