



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

JUDICIAL REVIEW NO 3 OF 2018

SALOME KENDI.....APPLICANT

VERSUS

1. COUNTY GOVERNMENT OF LAIKIPIA

2. LAIKIPIA COUNTY PUBLIC ADMINISTRATION

AND SERVICE MANAGEMENT BOARD.....RESPONDENTS

R U L I N G

1. On 25/07/2019 this court granted the *Ex Parte* Applicant leave to apply for judicial review to seek *certiorari*, *mandamus* and *prohibition* in respect of the decision of the 2nd Respondent of 06/07/2018 by which the *Ex Parte* Applicant's license to operate her club called *Silver Wind* was suspended.

2. The court also directed the *Ex Parte* Applicant to file and serve the substantive notice of motion as provided for in the *Civil Procedure Rules*. Thus, under Order 53, Rule 3(1) of the Rules, the substantive notice of motion should have been filed within twenty-one (21) days of the grant of leave and be served at least eight (8) clear days before the day of hearing named in the motion.

3. As it happened no substantive notice of motion was filed in time, and on 03/12/2019 the *Ex Parte* Applicant filed an application of the same date seeking extension of time to file the substantive notice of motion. That application is the subject of this ruling.

4. The application is stated to be brought under **Articles 47(1) & 23(3)** of the *Constitution of Kenya, 2010*, **section 59** of the *Interpretation and General Provisions Act*, **sections 63(e)** and **95** of the Civil Procedures Act, and also under Order 50, Rule 6 of the Civil Procedure Rules, 2010.

5. The grounds for the application stated on the face thereof are –

(i) That the Applicant did not understand the substantive application had time constraints under the Civil Procedure Rules.

(ii) That the Applicant was also facing financial challenges “as she had a child who was about to sit for her *Kenya Certificate of Primary Education* and another in High School, and could not afford to give instructions to an advocate to present the application for her.”

(iii) That the Respondents stand to suffer no prejudice if the extension of time sought is granted.

(iv) That it is in the interest of justice that the extension of time sought be granted.

The application is supported by an affidavit sworn by the *Ex Parte* Applicant

6. The Respondent opposed the application by grounds filed on 03/02/2020. Those grounds amount to this one ground:

That Order 53, Rule 3(1) of the Rules is couched in mandatory terms, and that the existing law is that the 21 days limited by that sub-rule to file the substantive notice of motion cannot be extended by the court.

7. I heard the application on 03/03/2020 and reserved ruling for 26/03/2020, but then the *Covid-19 Pandemic* happened, and in the ensuing fear and uncertainty, preparation and delivery of this ruling was delayed. The delay is regretted.

8. I have considered the submissions of the learned counsels appearing. The main case of the *Ex Parte* Applicant is that the court has jurisdiction to extend the time prescribed by Order 53, Rule 3(1) of the Rules, and that it should exercise its discretion in her favour. Learned counsel for the *Ex Parte* Applicant relied mainly upon the ruling of *Mativo, J* delivered on 16/11/2018 in the case of ***Republic –vs- Kenya Revenue Authority Ex Parte Stanley Mombo Amuti (2018) eKLR***. In that decision the learned judge ruled that the court had both the jurisdiction and discretion to extend the time set by Order 53, Rule 3(1) of the Rules.

9. Learned counsel for the Respondents on the other hand submitted that the court had no jurisdiction or discretion to extend the time set by that subrule. He relied on the decision of the same *Mativo, J* delivered 2½ months later on 01/02/2019 in the case of ***Republic –Vs- Mer Security & Communications System Ltd/Megason Electronics & Control 1978 (JV) & Another (Interested Parties) Ex Parte M*** (Unreported). In this decision *Mativo, J* held, *inter alia*, that the provisions of Order 53, Rule 3(1) of the Rules being couched in mandatory terms, and being based on **sections 8 and 9** of the ***Law Reform Act, Cap 26***, must be complied with, and that the time set by that subrule cannot be extended under Order 50, Rule 6 of the Rules.

10. I have read the two decisions of *Mativo, J*, and I am persuaded by the latter decision. Like him I also hold that the court has no jurisdiction to extend the time set by Order 53, Rule 3(1) of the Rules. In the result the application by the *Ex Parte* Applicant is misconceived and is hereby dismissed with costs. It is so ordered.

DATED AND SIGNED AT NANYUKI THIS 14TH DAY OF SEPTEMBER 2021

H P G WAWERU

JUDGE

DELIVERED AT NANYUKI THIS 21ST DAY OF OCTOBER 2021