



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**JUDICIAL REVIEW APPLICATION NO. 45 OF 2019**

**REPUBLIC.....APPLICANT**

**VERSUS**

**CLERK OF THE COUNTY ASSEMBLY OF KAKAMEGA.....1<sup>ST</sup> RESPONDENT**

**COUNTY GOVERNMENT OF KAKAMEGA.....2<sup>ND</sup> RESPONDENT**

**EX PARTE: ROBERT LUTATWA LUBWA & 40 OTHERS**

**RULING**

1. These proceedings commenced on 9<sup>th</sup> April 2019, when the *ex parte* applicants lodged a chamber summons, dated 5<sup>th</sup> April 2019, seeking leave to apply for orders of prohibition and *mandamus*.
2. The chamber summons, dated 5<sup>th</sup> April 2019, was placed before me on 24<sup>th</sup> April 2019, under a certificate of urgency, dated 5<sup>th</sup> April 2019. I granted leave to the *ex parte* applicants to apply for the orders of prohibition and *mandamus*, and directed that the substantive Motion be filed within 21 days, in keeping with order 53 Rule 3(1) of the Civil Procedure Rules.
3. The substantive Motion, dated 12<sup>th</sup> June 2019, was lodged at the registry on 9<sup>th</sup> August 2019. That would mean that it was filed way outside the 21 days that I had granted on 24<sup>th</sup> April 2019. 21 calendar days from 24<sup>th</sup> April 2019 expired on 15<sup>th</sup> May 2019. When the 21 days are reckoned excluding weekends and public holidays, the expiry date was 27<sup>th</sup> May 2019. In short, the Motion should have been filed within the course of the month of May 2019.
4. I have closely and scrupulously perused through the record before me, and I have not come across any order by this court extending time for filing the Motion beyond the 21 days allowed by the court on 24<sup>th</sup> April 2019. The Motion was filed outside the period allowed in the court order, and was filed without an order having been made to have the period extended.
5. I, therefore, find merit in the preliminary objection dated, 25<sup>th</sup> November 2019. The preliminary objection is upheld. The Motion dated 12<sup>th</sup> June 2019 is not properly before me. It is a nullity. It is hereby struck out. The respondents shall have the costs.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 30TH DAY OF APRIL, 2020**

**W. MUSYOKA**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic, and in light of the directions issued by His Lordship, the Chief Justice, on 15<sup>th</sup> March 2020, this ruling/judgment has been delivered to the parties online with their consent. They have waived compliance with Order 21 rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159 (2) (d) of the Constitution which requires the court to eschew technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 18 of the Civil Procedure Act, Cap 21, Laws of Kenya, which impose on this court the duty to use, inter alia, suitable technology to enhance the overriding objective, which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**W. MUSYOKA**

**JUDGE**