



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**

**AT NAIROBI**

**PETITION NO. 118 OF 2019**

**PETERSON K. MUTHATHIA .....PETITIONER**

**VERSUS**

**COUNTY PUBLIC SERVICE BOARD CONSULTATIVE FORUM...1<sup>ST</sup> RESPONDENT**

**PHILIP KUNGU.....2<sup>ND</sup> RESPONDENT**

**RODAH MASAVIRU.....3<sup>RD</sup> RESPONDENT**

**CLAIRE KAGWIRIA.....4<sup>TH</sup> RESPONDENT**

**DAVID KOMBO ONDIMU.....5<sup>TH</sup> RESPONDENT**

**RULING**

1. The petitioner through a Notice of Motion dated 25<sup>th</sup> March 2019 and filed on even date seeks an order that pending the hearing and determination of the Application herein the court do issue conservatory orders staying and/or to stay/suspend the purported Resumption of the 2018 Annual General Meeting scheduled for 27<sup>th</sup> March, 2019 and the special General meeting scheduled for 28<sup>th</sup> March 2019.
2. On 26<sup>th</sup> March 2019 this court at around 12.00 noon gave clear directions certifying the application urgent and directed the Petitioner to serve both the Application and Petition and the matter be mentioned on 27<sup>th</sup> March 2019 at 9.00 a.m for directions and any necessary orders in the interest of justice.
3. The Petitioner in complete disregard to the court's orders, as per his affidavit of service dated 27<sup>th</sup> March 2019, served the 2<sup>nd</sup> Respondent with the court's order and mention notice instead of serving upon the Respondents the Application and Petition and further failed to appear before court at 9.00 a.m as ordered but at 11.30 a.m when the court had already set the matter for mention on 3/4/2019 and purported to urge the matter seeking conservatory orders.
4. Mr. Nyawara, learned Advocate appearing for the Respondents urged that he was not served with the Application and Petition as ordered and as such he is unable to know the nature of the subject matter before court. He further submitted the process started on Monday 25/3/2019, as a notice of meeting was issued on 13<sup>th</sup> March 2019. He requested that he be served as directed by the court to enable him file the Respondents' response. The service he urged was effected at 7.00 p.m on 26<sup>th</sup> March 2019.
5. The Counsel for Petitioner urges they were instructed on 22/3/2019 and filed the petition and Application on 25/3/2019. She urged the notice issued for the meeting was illegally issued by the chairman as it is contrary to the Constitution of the 1st Respondent.
6. In the instant application the Petitioner avers that the notice was issued on 12<sup>th</sup> March 2019, 13 days to the Resumption of the 2018 Annual General meeting scheduled for 27<sup>th</sup> March 2019 and the special General Meeting scheduled for 28<sup>th</sup> March 2019. From 12<sup>th</sup> March 2019 to date is a long time, within which the Petitioner should have taken appropriate action to have the orders sought herein granted. The meeting was not called suddenly as the Petitioner was aware of the **AGM** and special General Meeting being a process and not an event. The Petitioner did not raise any objection but choose to sit and wait to strike at the last hour by filing the Petition 2 days to **AGM** and Special **AGM** seeking conservatory orders. The petitioner has not given any good reason for delay in filing the application and petition since 12<sup>th</sup> March 2019 when notice of the meeting was issued.

7. The Petitioner herein, is clear has not come to this court, with clean hands, as of now he has not obeyed the court's order directing service. He has not shown what prevented him from complying with the court's order. Similarly he has not demonstrated what prevented him from filing his petition for equitable reliefs sought in good time since 12<sup>th</sup> March 2019.

8. I find that the Petitioner, has come to court too late in the day and if the application is granted the Respondents who have as of today started the **AGM** and have set arrangements for special **AGM** on 28/3/2019, would stand to suffer substantial loss and damages if the meeting is stayed.

9. I have considered the Petition and I am alive to the fact, that if the Petition succeeds upon hearing and determination of the same, there would be nothing stopping the court from nullifying what the Respondents would have done or passed, if the process was carried out not in accordance with the dictates of the 1st Respondent's constitution, as there is no damage that shall have been suffered by the Petitioner, if any, which does not have a remedy instead of staying the meeting which is still ongoing and to proceed on the following day.

10. In view of the above, and noting the Respondents are yet to be served with the Application and the Petition, I direct the Respondents be served promptly and not later than 28<sup>th</sup> March 2019.

11. I decline to grant the orders sought by Petitioner/Applicant in the application dated 25<sup>th</sup> March 2019.

12. I order that costs be in the cause.

**Dated, signed and delivered at Nairobi this 27<sup>th</sup> day of March, 2019.**

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**J .A. MAKAU**

**JUDGE**