



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NANYUKI

JUDICIAL REVIEW NO 7 OF 2017

BETWEEN

1. PAULINE WANJIKU KIGERA

2. EMILY CHEPKEMOI.....APPLICANTS

AND

1. COUNTY ASSEMBLY OF SAMBURU

2. SPEAKER, COUNTY ASSEMBLY OF SAMBURU

3. CLERK, COUNTY ASSEMBLY OF SAMBURU

4. JENNIFER LETUYA

5. STAFANIA LANGASUNYA

6. INDEPENDENT ELECTORAL &

BOUNDARIES COMMISSION.....RESPONDENTS

RULING

1. Leave to apply for judicial review was granted herein on 27/02/2018. The *Ex Parte* Applicants then filed the **substantive notice of motion dated 28/02/2018**. An issue regarding service of that motion was raised on 21/05/2015 and gain on 16/07/2018.

2. On that latter date the court noted that it appeared that the substantive motion dated 28/02/2018 together with necessary accompanying documents had never been served. The court therefore directed that the motion be served upon all the Respondents within seven (7) days of that date. In default of such service the notice of motion would stand dismissed with costs.

3. On 02/10/2018 the *Ex Parte* Applicants reported to court that the substantive motion had been served upon all the Respondents as directed by the court on 16/07/2018. The 4th Respondent admitted that it had been duly served. The 1st, 2nd and 3rd Respondents however, denied that they had been duly served. The court therefore directed that the *Ex Parte* Applicants do file an affidavit of service as required by **Order 53, Rule 3(3)** of the *Civil Procedure Rules, 2010*.

4. On 06/02/2019 it was reported to court that indeed an affidavit of service had been filed on 09/10/2018 detailing service upon all the Respondents, such service having been directed by the court on 16/7/2018.

5. The 1st, 2nd and 3rd Respondents persisted in their stand that they had not been duly served with the substantive motion as had been directed by the court on 16/07/2018. The *Ex Parte* Applicants then sought time to put in a more detailed affidavit of service.

6. On 03/04/2019 it was reported to court that such detailed affidavit of service was filed on 18/02/2019. On 14/05/2019 the 1st, 2nd and 3rd Respondents sought leave to file an affidavit to challenge the affidavit of service. Leave was granted, and the court directed that such affidavit be **filed and served** within 14 days, that is, on or before 28/05/2019.

7. As it turned out the 1st, 2nd and 3rd Respondents filed their affidavit on 28/05/2019 challenging the affidavit of service – the very last day. Service of the same was effected late on 03/06/2019.

8. As can be seen from the above chronology of events, the issue of service of the substantive motion upon the 1st, 2nd and 3rd Respondents has occupied the court for quite some time and taken up a considerable amount of its time. That is why the court has on at least two occasions set strict timelines within which certain things must be done.

9. Court orders are not made in vain, particularly in the circumstances narrated above. The issues of service upon the 1st, 2nd and 3rd Respondents of the substantive motion has dragged on for far too long occasioning unnecessary delay in these proceedings, and the court will not countenance this delay any more.

10. In the event therefore, and in the interests of expedient disposal of the substantive dispute herein, the affidavit sworn by the counsel for the 1st, 2nd and 3rd Respondents, Lawrence Macharia Karanja, and filed in court on 28/05/2019, is hereby struck out for failure to comply with the order of the court of 14/05/2019 regarding service of the same. The prayer that the process server who served the substantive notice of motion be summoned for cross-examination upon his affidavits of service is refused. It is so ordered.

DATED AND SIGNED AT NANYUKI THIS 23rd DAY OF JULY 2019

H P G WAWERU

JUDGE

DELIVERED AT NANYUKI THIS 25th DAY OF JULY 2019