



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 29B OF 2015

SWK Aminor Suing Through GWK (Her Father And Next Friend)1ST PETITIONER

IWK (Minor) Suing Through GWK (Her Father And Next Friend)....2ND PETITIONER

GWK3RD PETITIONER

-Versus-

THE ANGLICAN CHURCH OF KENYA DIOCESE OF MOUNT KENYA SOUTH

ST. JAMES CATHEDRAL KIAMBU..... 1ST RESPONDENT

PARAGON PROPERTY CONSULTANTS LTD2ND RESPONDENT

COUNTY GOVERNMENT OF KIAMBU.....3RD RESPONDENT

RULING

1. GWK 3rd Petitioner filed the motion dated 22/10/2019 whereof he sought to have the motion dated 7th April 2015 amended. When served the 1st, 2nd and 3rd Respondent respectively each filed a replying affidavit to oppose the motion. When the application came up for interpartes hearing the parties presented oral submissions.

2. I have considered the grounds stated on the face of the motion and the facts deponed in the affidavits filed in support and against the application. It is the submission of the 3rd petitioner/ applicant that the court file went missing from 14th May 2015 and resurfaced for his perusal around 14 May 2019. The applicant stated that when he perused the court file he discovered that the file number of the case had changed to 29B and that could be the reason why it took so long to be retrieved.

3. It is further argued that since the circumstances on the ground have changed to warrant the amendment of the petitioner's Notice of Motion dated 7th April 2015 to bring on board Dr. Martin Njogu as the county Secretary of the 3rd Respondent. It is said that the move to file this application could not have been on time because of the circumstances beyond his control.

4. The Respondents opposed the motion arguing that the application was brought four (4) years after the original motion was heard and determined. It was pointed out that the 3rd petitioner cannot purport to seek for leave to amend the application in order to enforce and execute orders that were issued in the year 2015.

5. It is also said that at the time of commencing contempt proceedings against GM, EN and FK as per the orders of 31/3/2015, time to do so had lapsed therefore the motion dated 7th April, 2019 is already time-barred. It is further pointed out that this dispute is that falling within the jurisdiction of the Rent Restriction Tribunal.

6. It is not in dispute that the 3rd Petitioner is seeking to have the motion dated 7th April, 2015 amended, specifically to have the name of FK, the former County Secretary deleted and substituted by that of Dr. Martin Njogu, the current County Secretary.

7. It is also not in dispute that pursuant to the order of leave given on 26th March 2015, the applicant filed the motion dated 7th April 2015. The main reason advanced by the 3rd Petitioner/applicant for not filing the application herein is that this court file went missing between 14th May 2015 Until 14TH May 2019 when the same resurfaced.

8. I critically examined the court file and it is apparent from the proceedings that this file was placed before Lady Justice Aburili on 27th April 2015 whereof the honourable adjourned the matter generally and directed the parties to take hearing dates for the contempt application at the registry.

9. The record shows that no activity took place in the file until 24th March 2017 when the file was placed before the executive officer to fix a hearing date of the application dated 23rd March 2017. The aforesaid motion was fixed for interpartes hearing on 14th June 2017. On the aforesaid date the aforesaid application was allowed as prayed. On 15th July 2019, the 3rd Petitioner/applicant appeared before this court and stated that he never appointed an advocate to represent him. This court agreed with the 3rd Petitioner's assertion that he was not represented by the firm of S.G Wachira and company advocates in its ruling delivered on 9th October 2019.

10. It is clear in my mind that the 3rd Petitioner's assertion that the court file went missing does not hold water. Therefore, the reason advanced by the 3rd Petitioner to explain the delay cannot stand. The delay is unreasonable hence cannot be countenanced.

11. The other issue which was raised is that the 3rd Petitioner seeks to amend an application which was filed out of time. It is apparent from the record that the 3rd Petitioner was given leave of 10 days to take out contempt proceedings. Those proceedings were taken out more than twelve (12) days thereafter. The application sought to be amended was therefore filed out of time hence the same is incompetently before this court. The instant motion therefore was filed out of time and is seeking to amend a motion which is incompetently before this court.

12. In the end, the motion dated 22nd October 2019 is ordered struck out with costs to the Respondent.

Dated, signed and delivered at Nairobi this 18th of December, 2019.

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J. K. SERGON

JUDGE

In the presence of:

..... for the 1st Petitioner

..... for the 2nd Petitioner

..... for the 3rd Petitioner

..... for the 1st Respondent

..... for the 2nd Respondent

..... for the 3rd Respondent