



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

PETITION 1 OF 2015

KANU STREET TRAVELLERS

SACCO SOCIETY LTD & 2 OTHERS.....PETITIONERS

-VERSUS-

NAKURU COUNTY GOVERNMENT.....RESPONDENT

RULING

1. The application before me dated 15th June, 2017 has been filed by the respondent under **Rule 3 (4), (5), (6), (8) and (9) of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013** and all enabling provisions of the law. It seeks orders that the petition herein be dismissed for want of prosecution and that the costs of the application and petition be borne by the petitioner/respondent. The application is brought on the grounds that:-

- a) The petitioners have failed, refused and or neglected to take any steps in the petition for a period of over 2 years.*
- b) The petitioners have totally lost and have no conceivable interest in the petition herein.*
- c) The continued pendency of the petition herein is prejudicial and vexatious to the respondent and a waste of this Honourable Court's time.*
- d) That in the wider interests of justice the petition herein should be dismissed.*

2. It is the applicant's contention that the petitioners have lost all conceivable interest in the petition. This is contained in the supporting affidavit of **Wilfred Nyaundi Konosi** advocate sworn on 15th June, 2017. Through various averments he states that the petitioners filed the petition on 7th January, 2015 under certificate of urgency. That when the matter came up for hearing the petitioners sought, and were granted, leave to file a supplementary affidavit but failed to do so by the time the matter came up again on 11th February, 2015 and requested more time. The court gave the petitioners leave to file a further affidavit but vacated an earlier order it had granted for the maintenance of the status quo. It directed the petitioners to move the court when ready. Counsel further deponed that the failure by the petitioner to comply with the orders of the court was prejudicial to the respondent.

3. There was no response filed by the petitioner in the instant application. The petitioners also failed to attend court for the hearing of the application despite service. The application was consequently

prosecuted in their absence.

4. I have considered the application. In so doing I have perused the record to confirm the averments in the supporting affidavit with respect to the proceedings. The petition was filed on 7th January, 2015 under certificate of urgency. The Court (**Odero J**) certified the matter urgent on 7th January, 2015 and directed that respondent to file a reply within 7 days. When the matter came up on 15th January, 2015 (wrongly indicated as 2014), **Mr. Kabita** for the petitioners prayed for leave to file a further affidavit. The court granted leave to the petitioner to file a supplementary affidavit in 3 days and also granted a status quo order. When the matter came up again on 11th February, 2015, the petitioner had not filed the supplementary affidavit. The Court (**Mulwa J**) observed that the applicant was not ready to proceed despite having come to court under certificate of urgency. The matter was stood over and the court discharged the status quo orders.

5. There was no activity on the file until 2nd June, 2017 (possibly July) when the respondent took a date being 18th July, 2017 at the registry for the hearing of the present application dated 15th June, 2017. The application did not proceed on that day as the respondent had not been served. Yet another date was taken by the respondent being 23rd January when I heard the application.

6. It is apparent from the record restated above that the petitioners/respondents have done nothing to move the petition and application forward. They did not file the supplementary affidavit as directed by the court and they have not moved the court since 11th February, 2015. Finally they have not responded to the present application for dismissal of their petition. Such inactivity on the part of the petitioners, to my mind demonstrates that they have lost all conceivable interest in the petition and the application. They appear to have lost that interest nearly 3 years ago when the court discharged the status quo orders earlier granted.

7. This court is enjoined under the **Constitution of Kenya (Protection of Rights and Fundamental Freedom) Practice and Procedure Rules, 2013** to deal with matters expeditiously. The relevant sections provide as follows:

4) The Court in exercise of its jurisdiction under these rules shall facilitate the just, expeditious, proportionate and affordable resolution of all cases.

5) For the purpose of furthering the overriding objective, the court shall handle all matters before it to achieve the:-

a. just determination of the proceedings,

b. efficient use of the available and administrative resources;

c. timely disposal of proceedings at a cost affordable by the respective parties; and

d. use of appropriate technology.

Section 6 places a duty on parties to assist the court to further the overriding objective by participating in the processes of the court; and, by complying with the directions of the court.

8. In the present petition, the petitioner has neither fully participated in the court processes nor complied with the directions of the court. In failing to do so, they have left the petition hanging over the head of the respondent while clogging the court registry. It is clear to the court that the petitioner is no longer interested in the petition.

9. In view of the above, I find the application dated 15th June, 2017 merited. The petition dated 7th January, 2015 be and is hereby dismissed for want of prosecution. Each party shall bear its own costs.

Ruling delivered, dated and signed This 15th day of February 2018

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R. LAGAT KORIR

JUDGE

In the presence of:

C/A Emojong

N/A for the petitioners

Ms. Ogange holding brief for Konosi for respondent