



**REPUBLIC OF KENYA**

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

**PETITION NO. 8 OF 2016**

**IN THE MATTER OF RULE 23 OF THE CONSTITUTION OF KENYA**

**(PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS PRACTICE AND PROCEDURE) RULES, 2010**

**AND**

**IN THE MATTER OF ARTICLES 22,23(1) & 165 (3) OF THE CONSTITUTION**

**AND**

**IN THE MATTER OF THE INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION ACT, 2011**

**AND**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES  
10,21,22,23,27,35,47,89,232 OF THE CONSTITUTION**

**AND**

**IN THE MATTER OF THE NATIONAL ASSEMBLY CONSTITUENCIES AND COUNTY ASSEMBLY WARDS ORDER, 2012  
(LEGAL NOTICE NO. 14 OF 2012)**

**BETWEEN**

**AHMED ISMAEL ADAN & 9 OTHERS.....PETITIONERS**

**AND**

**THE REGIONAL COORDINATOR NORTH**

**EASTERN REGION (NER) & 4 OTHERS.....RESPONDENTS**

**RULING**

1. This is a Notice of Motion dated 10<sup>th</sup> January, 2018 brought by the 5<sup>th</sup> respondent, the Attorney General under Article 156 (4) of the Constitution of Kenya 2010 and Order 17 Rule 2 of the Civil Procedure Rules 2010 as well as the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013, seeking the following orders:-

**1. The instant petition be dismissed for want of prosecution.**

**2. This honourable court do make such further orders and or directions as it may deem necessary in the circumstances.**

2. The application has grounds at the face of the Notice of Motion, which are that the petitioners moved the court on 10<sup>th</sup> September, 2016 through filling the petition under Certificate of Urgency together with a Notice of Motion dated 9<sup>th</sup> September, 2016 seeking a number of conservatory orders.

3. That after the hearing of the said Notice of Motion a ruling was delivered by the court on 13<sup>th</sup> January, 2017 in which the said Notice of Motion was dismissed.

4. That since the petitioner's application for conservatory orders was dismissed, the petitioners had failed to take reasonable steps to have the main petition set down for hearing despite the same having been filed under Certificate of Urgency, and that it had taken an unreasonable amount of time since the last time action was taken by the petitioners in this matter.

5. The present application was filed with a supporting affidavit sworn by Ambassador Mohamud A. Saleh the Regional Co-ordinator North Eastern Region who is the 1<sup>st</sup> respondent.

6. On the hearing date of the application, on 17<sup>th</sup> January, 2018, none of the petitioners appeared in court, nor did their advocates though an affidavit of service sworn by Alex Mutua a process server had been filed.

7. In his submissions in support of the application, Mr. Ogosso learned counsel for the Attorney General, asked this court to allow the application and grant the orders sought as in addition to action not being taken by the petitioners to progress the hearing and disposal of the main petition, the petitioners had failed to file any response to the present application or attend court for the hearing though their counsel was properly served.

8. In counsel's view, therefore, the conduct of the petitioners amounted to abandonment of the petition and demonstrated that they had no interest in prosecuting their case. Counsel thus urged that since there was no reason to let the petition clog the judiciary with unnecessary backlog, and in order to relieve the respondents of the serious allegations currently hanging on their shoulders due to the pending petition herein, the petition be dismissed for want of prosecution.

9. This is an application for dismissal of suit for want of prosecution, which was filed and served and the petitioners neither responded to the same nor did they or their advocate attend court to give their position.

10. This court has powers to dismiss proceedings for want of prosecution under Order 17 Rule 2 of the Civil Procedure Rules which states as follows:-

**“(2) In any suit in which no application has been made or step taken by either party for one year the court may give notice in writing to the parties to show cause why the suit should not be dismissed, and if cause is not shown to its satisfaction, may dismiss the suit.**

**(2) If cause is shown to the satisfaction of the court it may make such orders as it thinks fit to obtain expeditious hearing of the suit**

**(3) Any party to the suit may apply for its dismissal as provided in sub-Rule 1.**

**(4) The court may dismiss the suit for non-compliance with any directions given under this order.”**

11. Indeed, the last activity in relation to the proceedings herein was the ruling, which the court delivered on 13<sup>th</sup> January, 2017 dismissing the application by the petitioners for conservatory orders.

12. The present application was filed on 11<sup>th</sup> January, 2018 which was two days before the lapse of one year, however it was heard on 17<sup>th</sup> January 2018 which was one year and four days from 13<sup>th</sup> January 2017 when this court delivered its ruling dismissing the petitioners application for conservatory orders.

13. In my view, the petitioners have lost interest in progressing the matter, as even by the day of my writing this ruling, the petitioners and their counsel had not filed any document in response to the present application though they were served with the same.

14. It is also true that from 13<sup>th</sup> January, 2017 when this court delivered its ruling dismissing the petitioner's application for conservatory orders, no further action has been recorded on the court file from the petitioners or their advocates. It is thus apparent that the petitioners filed this petition in order to get conservatory orders, and once they failed to get conservatory orders, they lost interest in the matter, and to date they have not shown any interest in progressing the matter.

15. It will thus serve no purpose to retain this petition in the records of the court as a pending matter. The application for dismissal of the petition for want of prosecution not being opposed and with the above in mind I will allow the same.

16. I thus allow the application and order that the proceedings herein commenced through a petition be and are hereby dismissed for want of prosecution. The petitioners will pay the costs of the Attorney General who applied for the dismissal of the petition.

**Dated and delivered at Garissa this 13<sup>th</sup> February, 2018**

**George Dulu**

**JUDGE**