



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA AT GARISSA
CONSTITUTIONAL PETITION NO. 3 OF 2017**

IBRAHIM DAHIR JILLOW.....1ST PETITIONER

IBRAHIM ABDI MOHAMED... 2ND PETITIONER

VERSUS

COUNTY ASSEMBLY OF MANDERA..... 1ST RESPONDENT

SPEAKER OF THE COUNTY ASSEMBLY OF MANDERA... 2ND RESPONDENT

THE GOVERNOR OF MANDERA COUNTY.....3RD RESPONDENT

HON. ATTORNEY GENERAL..... 4TH RESPONDENT

RULING

1. Before me is a Notice of Motion dated 20th March 2017 filed by Omboga and company advocates for the applicants petitioners. The application was filed with a constitutional petition on the same 20th March 2017.
2. The application was filed under certificate of urgency and Mr. Omboga insisted on addressing the court for the grant of interim conservatory orders. This court on the same 20th March 2017, after hearing the submissions of Mr. Omboga, declined to issue any interim conservatory orders, and ordered that the application be served for interparty hearing, and fixed it for hearing on 27th March 2017 in the presence of Mr. Omboga.
3. On the 27th of March, 2017 neither Mr. Omboga nor his clients attended court. Ms. Awuor who held brief for prof Ojienda for the 1st and 2nd respondents, and also for Mr. Peter Wanyama for the third respondent appeared in court.
4. Ms Awuor stated that they had been served with the petition and application and had filed their notice of appointment as well as grounds of opposition and list of authorities together with copies of the authorities.
5. On the file, there was nothing to indicate that the applicants or the advocates had filed any additional document. The court thus proceeded to hear the submissions of Miss Awuor on the grounds of opposition.
6. The grounds of opposition are as follows-

1. That the applicants/petitioners belong to a group of busy bodies and mischief makers from Mandera county, who have perfected the art of employing the judicial process for their own

selfish political expediency.

2. That an application dated 16th March, 2017 was filed at Senior Resident Magistrate Court at Mandera and Hon. PN Areri upon hearing counsel for applicants issued ex parte order of temporary injunction compelling the Speaker of the County Assembly of Mandera to suspend all proceedings relating to the supplementary budget for the year 2016/2017 and ordered parties to maintain the status quo pending hearing and determination of the said application. (Annexed and marked CAM-1 is the said application)
3. That the application therein had the very prayers in this application and infant was drawn and filed by the same law firm.
4. That on 21st March, 2017 when the matter came up for interpartes hearing the applicants therein filed a notice of withdrawal. The application and suit was marked as withdrawn with costs.(Annexed and marked CAM-2 is the said notice of withdrawal)
5. That it is therefore obvious that the very people are being used to abuse the judicial process through filing of various applications in different courts with the sole purpose of curtailing the County Assembly from performing its constitutionally assigned roles.
6. That the application herein dated 20th March, 2017 is scandalous, frivolous, vexatious and blatant abuse of the court process.
7. That the application/petition herein intends to obstruct and interfere with the statutory and constitutional mandate of the 1st and 2nd respondents.
1. That the application/petition herein lacks merit as it intend to stay a supplementary budget that is never pending before the Mandera County Assembly.
9. That the applicants/petitioners have not established a case for granting a temporary injunction.
10. The subsisting suit is in blatant contravention of section 29 of the National Assembly(Privileges and Immunities) Act, or (section 10 and 11 of the County Assemblies Powers and Privileges Act 2017)
11. The application is premature and the courts supervisory role under Article 165 of the Constitution would be to quash the resolution if it is found to be illegal as held in Petition 424 of 2015- Narok County Government versus Senate and Another(2015) eKLR and Civil Application No. 289 of 2016-Narok County Government versus Senate and Another(2016) eKLR.
12. That according to the principle of separation of powers, the executive, the legislature, and the judiciary constitute three separate and independent branches of government. Different organs of state have exclusive and specific responsibilities by virtue of this separation. It is not permissible for any branch to interfere into the others sphere.(Mumo Matemu versus Trusted Society of Human Rights Alliance-Civil Appeal No. 290 of 2012)
13. That the applicants application be dismissed with costs.
14. That the petitioners petition dated 20th March, 2017 lacks merit and ought to be dismissed with exemplarily costs.

7.Ms. Awuor made detailed oral submissions and emphasized that, due of the surrounding circumstances in this matter, as raised in the grounds of opposition, the application is an abuse of the process of the court and an attempt to bring political battles in the Mandera County Government into the court.

8. Counsel submitted that the application does not disclose any prima facie case as no budget was currently under consideration by the Assembly. Counsel relied on several authorities and stated that the County Assembly was immune from interference of the court, unless it had done something wrong or illegal, in which case the court can then be asked to intervene.

9. Counsel closed by informing the court that Mr. Omboga who purported to file the application and petition herein did not appear in the internet list of the advocates practicing in Kenya. I then reserved the ruling for 12th April 2017.

10. After leaving the court room to my Chamber, my court clerk Martin Musau came and informed me that he was handed over a notice to withdraw the petition and the application by Mr. Anyoka advocate at the registry, after we had finished the court hearing.

11. When I inquired from the registry, I was informed by S.K Theri the in charge of the High Court Registry that on 23rd of March, 2017 a middle aged man went to the registry and filed the documents, but the said Mr. Theri did not connect the documents to the file nor hand them over to my court clerk.

12. The said Mr. Theri stated that on 27th March, 2017 at 10.00 Mr. Anyoka went to the High Court registry to file a judicial review matter, and after some conversation, Mr. Theri realised that he still had the notice to act in person and notice to withdraw the petition and application, and then handed the same to Mr. Anyoka who handed it over my clerk Mr. Martin Musau, when the clerk entered the registry after the court hearing. I ensured that both Mr. S. K. Theri and Mr. Martin Musau filed written explanations in this file on this issue, for the record.

13. Having said so, at the time of hearing the application, the notices to act in person and notice to withdraw the application had not been filed in the court file, nor brought to the attention of the court. The court could not thus bring it to the attention of the advocate of the respondents, who attended court and made extensive submissions.

14. This court, being a court of justice and taking into account the principles of accountability, transparency and fair play in the administration of justice emphasized in our Constitution, cannot thus mark the application as withdrawn. That would be unfair practice.

15. I agree with counsel for the respondents that the petitions herein are busy bodies attempting to bring matters in the Mandera political arena to court. They have not shown any prima facie case, nor have they shown any intention of prosecuting this matter. They have clearly been abusing the process of the court, both at Mandera and here at Garissa.

16. From what happened in the registry, any reasonable mind would know or infer that there is an abuse of the process of the court, They filed their notices on 23rd of March, 2017 knowing fully well that the application was coming for hearing on 27th March, 2017. However, none of them appeared in court on 27th March, 2017 to confirm whether their notice to withdraw the application and petition was acted upon. This is clear evidence of abuse of process.

17. I observe that the two notices filed on 23rd March, 2017 were not in original form as they were produced from an electronic machine. Be that it may, I can give the benefit of doubt to the applicants and take it that they were proper documents, which were however not placed before the court by the time of hearing the application. Since the application was argued at length by the respondents advocate, I dismiss the application with costs.

18. As for the petition, it has not been substantively argued nor was it fixed for hearing. The petitioners have now requested that it be marked as withdrawn with no orders as to costs, while the respondents counsel and has urged that it be dismissed with exemplary costs.

19. Though I am not sure whether the notice of withdrawal of the petition has been served, since the petitioners have asked that the petition be marked as withdrawn and the same has not been argued or

fixed for hearing, I mark the petition as withdrawn with costs to the respondents.

To conclude, the application dated 20th March, 2017 is dismissed with costs to the respondents.

The petition herein is marked as withdrawn with costs to the respondents.

Dated and delivered at Garissa this 12th day of April, 2017.

GEORGE DULU

JUDGE