



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
CIVIL SUIT NO. 1 OF 2016

GODFREY EGESA ODONGO & 8 OTHERS ----- PLAINTIFFS

VERSUS

LEADER OF MAJORITY COUNTY ASSEMBLY OF BUSIA &

3 OTHERS----- DEFENDANTS

RULING

1. In the case of **Martin Nyaga Wambora Vs The Speaker County Assembly of Embu and 2 Others 2014 eKLR**, the Court made this caveat;

“63 where a Conservatory Order is sought against a Public Agency like a Legislative Assembly that is mandated to carry out certain functions in the normal course of its business, it is only granted with caution. The interruption of the lawful functions of the Legislative Body should take into account the need to allow for the orderly functioning in the public interest. “

The Court then went on to hold:-

65 “The Court will only issue conservatory orders in exceptional circumstances and will be minded of the mandate of other Constitutional Organs in exercise of their Constitutional mandates.”

I bear this in mind as I consider the Plaintiff’s Intermediary Application requested for as follows:-

(2) That pending the hearing of this application interparties, the Defendants be restrained form calling, holding, debating and or adopting the Busia County Supplementary Budget report 2015/16...

(4) That pending the hearing of this application

inter-parties, the 1st and 2nd defendants be restrained from withdrawing the Plaintiffs’ names from the Budget and Appropriation Committee of the Busia County Assembly.

2. Although all Defendants acknowledge that they have been served with the Summons, Plaint and Application, they have requested for time to file their responses to the said Application. An Affidavit of Service Sworn by Richard Okello Mudibo shows that all the Defendants were served on 25th January 2016 which is two days ago. Given the urgency of this matter, I would have

expected some response from the Defendants. This Court is now forced to consider this matter without their input.

3. The Court however notes that the 9th Plaintiff has through Mr. Ashioya denied giving his consent to the filing of this matter. This Court further notes that there is no verifying affidavit to Plaintiff filed by the 9th Plaintiff and no authority or consent by him is filed in support of the Application. For now, I would observe that his allegation may not be idle.
4. In the affidavit in support of the application, the 1st Plaintiff has stated that he was elected Chairman of the Budget and Appropriation Committee of the Busia County Assembly at its inception in April 2013 and that he and his Co-Plaintiff were nominated to the Committee by their respective Political Parties. He avers that on 21st January 2016, the Clerk to the County Assembly together with the Speaker ambushed the County Assembly with a sitting and agenda to Debate and pass a Supplementary Budget for year 2015/2016. He complains that no notice was given of that Special Sitting contrary to Standing Order 187 of the Busia County Assembly Standing Orders. They then protested the action of the Speaker and the Clerk and the Speaker adjourned the Sitting. Following which the 1st Defendant and the 2nd Defendant purported to de-whip the Plaintiffs and to reconstitute the Committee. He says that the Speaker then reconvened a sitting of the Assembly for 22nd January 2016. As he swore his affidavit on 22nd on the same day the 1st Plaintiff has not told Court what became of that sitting. This Court is however told by Counsel Kasamani, from Bar, that the Assembly has not adopted the Budget Report to date.
5. That Affidavit constitutes the entire evidence in support of the application before Court and although not its contents are not controverted, I shall consider whether it reveals any exceptional circumstances that require me to interpose as requested. The substantial complaint by the Plaintiffs is that the Defendants have wrongfully removed them from the Committee contrary to Standing Order 157 of the Busia County Assembly which reads as follows;-

Discharge of a member form a committee

157 (1) The County Assembly party that nominated a member to a Select Committee may give notice, in writing, to the Speaker and the Member is to be discharged from a select committee.

(2) The Speaker shall verify the notice received under paragraph (1) with the relevant County Assembly Party leader

(3) The discharge of a member shall take effect upon receipt by the Speaker of a confirmation under paragraph (2).

Other than the mere averment by the Plaintiffs, there is no documentary or other evidence that the Provisions of Article 157 have been breached.

6. Although this Court is told that the Committee has been reconstituted, Mr. Odongo did not place evidence of who the members of that reconstituted Committee are. This Court notes that under the Provisions of Standing Order 156, any nomination to a Committee of the Busia County Assembly must receive the due approval of the County Assembly. If it were true that the Budget and Appropriation Committee has been reconstituted, then it would be in contravention of the law if it was done without its members getting the approval of the House. However, as stated, this Court has no evidence that the Committee has infact been reconstituted.
7. Given the material before me, I am minded to act cautiously and restrain myself from granting the injunctive orders. I do so because I do not have clear evidence that the Defendants have breached Article 157 of the Standing Orders of the Busia County Assembly. All is not lost for the Plaintiffs because they can still return to Court to challenge whatever decisions shall have been made by the Assembly should it conduct itself in contravention with the Constitution.
8. For those reasons, I decline to grant the interim orders sought. The Plaintiff s' are at liberty to take a date for hearing of his Notice of Motion dated 22nd January 2016 inter-parties.

F. TUIYOTT

J U D G E

28/1/2016