



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

PETITION NO. 83 OF 2014

IN THE MATTER OF: ARTICLES 1, 2, 3, 10, 19, 22, 47, 48, 50, 159,

160, 165 AND 259 OF THE CONSTITUTION OF KENYA, 2010

IN THE MATTER OF: SECTION 40 OF THE COUNTY GOVERNMENT

ACT, 2012 LAWS OF KENYA

IN THE MATTER OF: ALLEGED CONTRAVENTION OF ARTICLES

47, 50 AND 159 OF THE CONSTITUTION OF KENYA, 2010

IN THE MATTER OF: THE ALLEGED REMOVAL OF SIX COUNTY EXECUTIVE

COMMITTEE MEMBERS DUE TO INCOMPETENCE AND ABUSE OF OFFICE

BETWEEN

1. HON. STEPHEN MRING'A MASAMO

2. HON. JOSEPH MBOGO

3. DR. VINCENT MASAWI

4. ENG. ELIJAH MWANDOE

5. HON. GIFTON MKAYA

6. HON. FLORA M. MTUWETA.....PETITIONERS

AND

1. THE COUNTY ASSEMBLY OF TAITA TAVETA

2. THE SPEAKER OF THE COUNTY ASSEMBLY OF TAITA/TAVETA

3. THE SELECT COMMITTEE OF THE

COUNTY ASSEMBLY OF TAITA TAVETA.....RESPONDENTS

RULING

1. This Ruling relates to the Notice of Motion dated and filed on 8th May, 2015 (the Application) brought by the Respondents for orders that:-

- (a) the application be certified urgent and be heard *ex parte* in the first instance,
- (b) the *ex parte* orders granted on 31st December, 2014 be varied, set aside or stayed,
- (c) in the alternative the Petitioners' application dated 31st December, 2014 be dismissed for lack of diligence, abuse of the court process and for want of prosecution.

2. On 11th May, 2015, I directed counsel for the Respondents/Applicants to serve the Application upon the Petitioners/Respondents in the Application and file an Affidavit of Service. According to the Affidavit of Service sworn on 21st May, 2015 and filed on 22nd May, 2015, the Petitioners were duly served. The service of the Application is confirmed by the Replying Affidavit of Hon. Stephen Mring'a Masamo, the First Petitioner herein, in which the deponent explains the reasons for lack of prosecution of the Petitioner's Notice of Motion dated 31st December, 2014. The deponent attributes the non-prosecution of the Notice of Motion to *inter alia*, the movement of paralegal staff from Mombasa Law Courts, the Courts Vacation upto 5th February, 2015, the demise of the Second Petitioner, and attempts at reconciliation between the Petitioners and the Respondents.

3. I have considered the Petitioners grounds for the delay in prosecuting their Application of 31st December, 2014. Whereas I sympathize and condole with the Petitioners on the demise of the Second Petitioner, I do not with respect, accept the other grounds for the delay. Apart from documented "absences" from the court, the court has been in session since 5th February, 2015, and if the Petitioners had exercised sufficient diligence they would have had their application heard and determined without undue delay.

4. Except for the Christmas Vacation, the Petitioners have had four months within which to prosecute their application. The only plausible reason why they have not felt the urgency to prosecute their application is the existence of the conservatory orders granted by this court on 31st December, 2014.

5. Without determining the Petition, I make reference to Article 195 of the Constitution which grants a County Assembly power to summon witnesses in these terms –

“195(1) A County Assembly or any of its committees, has power to summon any person to appear before it for the purposes of giving evidence or providing information.”

(2) For the purposes of Clause (1) an Assembly has the same powers as the High Court to –

(a) enforce the attendance of witnesses and examining them on oath, affirmation or otherwise;

(b) compel the production of documents; and

(c) issue a commission or request to examine the witnesses abroad.”

6. The power, jurisdiction or authority granted to a County Assembly or a Committee thereof in its oversight authority to summon any person for the purpose of giving evidence or providing information is an express power, jurisdiction and authority. That power is not however an absolute power. It is subject to review under Articles 10 (National Values and Principles of Governance) and 47 (Fair Administrative Action), but review is a process which is subsequent to, and not precedent, to the exercise of power donated to a body under the Constitution.

7. Where there has been a temporary halt to the exercise of such powers, the halt must be treated as indeed temporary in scope and time. In my respectful opinion our national values and principles of governance which include the rule of law, require that disputes at whatever level of Government (national or county) must be resolved with minimum delay. Where a party, a petitioner or petitioners as in this case, obtain a stay of process of resolution of whatever dispute, the court will not allow such stay for an indefinite period. A period of nearly five months since the orders of stay were issued before resolution of the Petitioners' application is both inordinate and excessive. It shows the Petitioners took a holiday once the conservatory orders were granted. That is a situation the court will not allow to subsist.

8. For those reasons the conservatory orders granted on 31st December, 2014 are hereby vacated, with a direction that the Petitioners and Respondents counsel fix a date in the Registry for hearing of the Petition at the earliest available date. I also direct that costs herein will be in the cause.

9. There shall be orders accordingly.

Dated, Signed and Delivered in Mombasa this 29th day of May, 2015.

M. J. ANYARA EMUKULE

JUDGE

In the presence of:

Mr. Bwire for Petitioners

No Appearance or Respondents