



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL PETITION NO. 254 OF 2012

BETWEEN

ISAAC ALUOCH POLO ALUOCHIER/.....PETITIONER

AND

THE ATTORNEY GENERAL 1ST RESPONDENT

THE SPEAKER OF THE NATIONAL ASSEMBLY.....2ND RESPONDENT

THE PARLIAMENTARY SERVICE COMMISSION.. 3RD RESPONDENT

RULING

1. On 1st March 2013 I delivered ruling in this petition in which I struck out the petition. In so doing I found that the former Members of Parliament who are adversely mentioned by the Petitioner are not parties to this suit despite the fact that on 28th September 2012, **Warsame, J** (as he then was) directed that all the affected parties be served which responsibility I found rested with the Petitioner, since the orders sought in this Petition were likely to have far reaching consequences on the Constitutional rights of the former Members of Parliament.
2. I was of the view that to grant the orders against the said persons would not be binding upon them and such orders would be unconstitutional.
3. On 6th May, 2013, the petitioner filed an application dated the same day in which he is seeking an order that the said decision be reviewed. The application itself is not an epitome of impeccable, elegant or paragon drafting. However, as the petitioner is a layman acting in person, I will not blow a lot of hot air around that issue.
4. The application was however supported by an affidavit sworn by him on 6th May, 2013.
5. According to the petitioner, the court's finding that the Members of Parliament who would have been adversely affected by the orders sought against them were not served was incorrect.
6. I have perused the affidavits of service filed herein. In the affidavit of service sworn by **Haggai Ochieng Akelo** on 29th October, 2012, it is clear that the purported service on the Members of Parliament was effected on one **Ms Muthoni**, an alleged Registry In charge. There is no indication at all whether the said person was authorised by the MPs to receive the hearing notices on their behalf. The affidavit itself does not disclose how the process server came to know that the said **Muthoni** was a registry in charge. Did he know her before this date and if not who introduced him to her? I have also noted that some of the hearing notices are not even signed by the said **Muthoni** for example the ones addressed to **Hon. Sophia Abdi, Hon. Odhiambo Millie**. Some of the hearing notices meant for the members of the cabinet such as **Hon. Munyes John, Hon Munya Peter**, it is only indicated that the secretaries declined to sign. The names of the secretaries are not disclosed and there is no disclosure as to how the process server knew the said persons were the

secretaries.

7. Similarly, there is an affidavit of service sworn by **Haggai Ochieng Akelo** on 21st August, 2012 in which this time round he swore that he left the notices to join 101 MPs with Executive Officer, **Ms Muthoni**. Once again there is no allegation that the said person was authorised to receive the said documents. Apart from that the signature of the said recipient does not appear on the said documents save for the name.
8. The petitioner also averred that service was effected by way of newspaper advertisement as ordered by the Court and relied on an affidavit of service sworn by the Petitioner himself on 18th February, 2013. However there were no attachments to the affidavit filed in court.
9. The rest of the affidavits were in respect of service on the respondents rather than on the MPs.
10. As was held by **Warsame, J** (as he then was) in **National Bank of Kenya vs. Peter Oloo Aringo Kisumu HCCC No. 91 of 1998:**

“In order for the Court to validate a mode of service other than personal, which is mandatory, the persons alleging proper service must have and prove in his return of service or otherwise the following: -

[i]. The time when service was effected on the said person.

[ii]. The manner in which the summons were served.

[iii]. The name and address of the person identifying the person served.

[iv]. The exact place where the service was effected.

[v]. Whether or not the person served is known to the person the summons is meant for if the person is not known to the process server.

[vi]. If no personal service, the person should indicate the relationship between the person served and the person summons were directed at.

[vii]. The source of information in vi above must be stated.

[viii]. That he required his signature and response.

Non-compliance with any command of the above would make any such service fatally defective and if there is no proper service there can be no regular judgement..... The process server ought to explain the purpose of visit and the effect of the document served, so that the person served is able to comprehend his action and/or omission on third party.”

11. It is therefore clear that there is no concrete evidence on record that all the Members of Parliament were duly served and it was on the basis of non-service that the petition was struck out rather than being dismissed.
12. In **Mumby’s Food Products Limited & 2 Others vs. Co-Operative Merchant Bank Limited Civil Appeal No. 270 of 2002,** the Court of Appeal held that a review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion. Misconstruing a statute or other provisions of the law cannot be a ground for review.
13. In this case I am not satisfied that there was any error based on the evidence on record that would justify my finding that all the Members of Parliament who would be adversely affected by the orders sought in the petition were duly served.
14. Accordingly, there is no basis upon which the Court would be entitled to review its earlier decision.

15. In the premises, I dismiss the application but with no order as to costs.

Dated at Nairobi this 27th day of February, 2014

G V ODUNGA

JUDGE

Delivered in the presence of:

The Petitioner in person

Ms Lumala for 2nd and 3rd Respondent