



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO

MISC. APPL. NO. 17 OF 2012(JR)

PETER KIPKIRUI TANUI 1ST EXPARTE APPLICANT/RESPONDENT

MERCY JEBET CHELASHAW.....2ND EXPARTE APPLICANT/RESPONDENT

VERSUS

COUNTY COUNCIL OF KIPSIGIS RESPONDENT

AND

COUNTY GOVERNMENT OF KERICHO APPLICANT

RULING

The subject matter of this ruling is the motion dated 17th October, 2013 in which the County Government of Kericho hereinafter referred to as the Applicant sought for the following orders:

1. **This application be certified as urgent and be heard ex-parte in the first instance.**
2. **There be a stay of execution and/or proceedings pending the hearing and determination of this application.**
3. **The firm of Messrs J.K. Bosek & Company Advocates be hereby granted leave to act for the County Government of Kericho.**
4. **There be a review of the Court Order made on 9th May, 2013 and the same be set aside.**
5. **The costs of this application be provided for.**

The motion is supported by the affidavit of **Wesley Kipngetch**, the Applicant's Secretary. When served, **Peter Kipkurui Tanui** and **Mary Chebet Chelashaw** hereinafter referred to as the Exparte Applicants/Respondents filed grounds of opposition to resist the motion. When the motion came up for interpartes hearing, learned counsels with the approval of this agreed to have the application disposed of by written submissions. At the time of writing this ruling, the Respondents were the only parties who had filed their submissions.

I have considered the grounds set out on the face of the motion and the facts deponed in affidavit filed in support. I have further considered the grounds of opposition. Prayers 1 and 3 of the motion were given at the the initial stages while prayer 2 remains spent. What remains to be determined are prayers 4 and 5. The questions to be answered are two fold:

i. **Whether or not the order given on 9th May, 2013 should be reviewed and set aside?**

ii. **Who should pay for costs?**

I think the question relating to costs will depend on the outcome of the first question since the award of costs follows the event. It is the submission of the Applicant that since the County Council of Kipsigis no-longer exists and the Applicant has not substituted the defunct entity, the orders cannot be enforced against it. It is also argued that since the issues raised relate to land then the matter falls within the jurisdiction of **Environment and Land Court**. This court was therefore urged to find that there is an error on the face of record hence there is need to review and set aside the orders of this court. The Exparte Applicants/Respondents on the other hand are of the view that the motion is incompetent, unmeritorious and is an abuse of the court process since the concerns raised by the Applicant are catered for under **Section 18** of the **sixth Schedule** to the **Constitution** and **Section 59** of the **Urban Areas and Cities Act, 2011**. I have also taken into account the written submissions of the Respondents. The substantive matter in these proceedings is the Notice of Motion dated 11th September, 2012 in which the Exparte Applicants/Respondents have sought for orders of prohibition to restrain the County Council of Kipsigis from evicting them, interfering with, demolishing and or continuing with its plans to demolish or repossession of the Respondents' proprietary interest in plot no 631/378, Kericho Municipality. When the aforesaid motion came up for interpartes hearing on 11th April, 2013, the same was allowed as prayed when it became apparent that the same had been duly serve upon the County Council of Kipsigis which failed to file a response nor attend court during the interpartes hearing of the motion. That is the order or orders the Applicant is now seeking to be set aside by way of review. The provisions of **Section 18** of the **sixth Schedule** to the **Constitution** provides as follows:

“All local Authorities established under the Local Government Act (Cap 265) existing immediately before the effective date shall continue to exist subject to any law that might be enacted.”

Parliament thereafter enacted the **Transition to Devolved Government Act, 2012** to provide a legal framework for a coordinated transition of the previous local authorities to the devolved system of Government while at the same time ensuring that there is continued delivery of services by the defunct bodies to the people. It means that the local authorities continued to exist for a while. Another important piece of Legislation which was enacted is the **Urban Areas and Cities Act, 2011**. **Section 55** of the aforesaid Act provides as follows:

“All rights, assets and liabilities accrued in respect of the properties vested in the local authorities established under the local Government Act(Cap 265) which shall stand repealed after the first election under the Constitution shall be dealt with as provided by the law.”

In my view the law envisaged by the above provision is the **Urban Areas and Cities Act No. 13 of 2011** and the **County Government Act No. 17 of 2012**. I will specifically refer to **Section 59** of the **Urban Areas and Cities Act** which provides as follows:

“Any legal rights accrued, cause of action commenced in any court of law or tribunal established under any written law in force or any defence, appeal, reference howsoever filed by or against any local authority shall continue to be sustained in the same manner in which they were prior to the commencement of this Act against a body established by law.”

A plain reading of the above provision answers the concerns raised in the Applicant's motion dated 17th October, 2013. It is therefore clear in my mind that the motion has no merit and should in the result be dismissed which I hereby order with costs to the Respondents.

Dated, signed and delivered in open court this 21st day of March, 2014.

J.K. SERGON

JUDGE

In the presence of

O. Langat holding brief for Bosek for Applicant

Mr. Orina advocate for Respondent