



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CONSTITUTIONAL PETITION NO. 8 OF 2014

DAVID

SIFUNA:.....PETITIONER

VERSUS

1. THE CLERK COUNTY ASSEMBLY OF TRANS – NZOIA:.....1ST RESPONDENT

2. THE COUNTY ASSEMBLY OF TRAN -NZOIA:.....2ND RESPONDENT

RULING

The application dated 17th October 2014 by the petitioner is basically for leave to commence contempt of court proceedings against fifteen (15) individuals including the clerks of the County Assembly of Trans-Nzoia herein named as the first contemnor. It is grounded on the averments contained in a supporting affidavit deponed by the petitioner dated 17th October, 2014 and the facts in the statement of facts also dated 17th October, 2014. Apart from the inherent jurisdiction and powers of the court, the application is also made pursuant to section 5 of the Judicature Act (Cap 8 L.O.K) and Order 52 of the Supreme court of England Rules as well as Order 50 Rule 7 of the Civil Procedure Rules.

Ideally, such application ought to be presented ex-parte but because the respondent/contemnors herein were served with the application through their legal representative, it proceeded “inter-partes.” The petitioner was not prejudiced by that procedure and willingly expressed his intention to proceed. The first respondent opposed the application on the basis of the averments contained in the reply of affidavit dated 21st October, 2014 deponed by himself. The rest of the respondents did not file any response and were not under any obligation to do so at this juncture.

Having considered the application on the basis of the supporting grounds and those in opposition, this court must first and foremost indicate that the application is made within a substantive constitutional petition which is yet to be fully heard and determined. Therefore, if there is any party available for contempt proceedings, then it would be the parties in the petition i.e the petitioner and the first respondent who doubles up as the County Assembly clerk and a representative of the County Assembly of Trans-Nzoia in this matter. The second to the fifteen respondents are not parties to this petition. They ought not have been included in this application. If at all they have conducted themselves in a manner offensive to the dignity and authority of this court, the court may on its own motion summon and cite them for contempt with drastic consequences.

The allegations made herein against them by the petitioner smacks of a criminal transaction which if it was not reported to the police ought to be reported to them for necessary action with a view to preferring criminal charges for malicious damage to property or breaking into and stealing from an office or for theft

or a motor vehicle. It is not for this court to investigate such matters by way of contempt proceedings.

With regard to the first respondent, he is an necessary party not only to the petition but also the intended application to institute contempt proceedings. It is undisputed that on the 30th September, 2014, this court issued an ex-parte informal order against the clerk of the County Assembly of Trans-Nzoia (i.e first respondent herein) and the County Assembly of Trans Nzoia restraining them from carrying out and/or proceeding with impeachment proceedings against the speaker of the Assembly pending hearing and determination of the application inter-partes on 8th October, 2014. The petitioner herein was the targeted speaker. He could not be faulted for the rush to court for purposes of asserting and protecting his constitutional rights. Access to justice is in itself a constitutional right (See, Article 48 Constitution of Kenya, 2010).

The petitioner obtained favourable orders which had to be served and obeyed by the respondent even if they were aggrieved or even if the orders were wrong in law.

The question as to whether the orders were served upon the respondents would be an issue for determination during contempt proceedings.

All that the petitioner was required to do at this juncture was to establish the existence of a valid court order which according to him was deliberately disobeyed by the respondents even after being served and/or having notice or knowledge of the order.

Indeed the petitioner has made out a case which on the face of it (prima facie), provides sufficient grounds for leave to issue against the first respondent. He (petitioner) has shown that a court order was issued on 30th September, 2014 and was indeed acknowledged by the two respondents on the 8th October, 2014 when the petition was to be heard inter-parties and on which date directions were given by the court for purposes of expeditious disposal of the matter. For avoidance of doubt, the order remains valid upto such time that this petition shall be fully heard and determined. Further, the status quo maintainable is that which existed prior to the disputed impeachment.

Otherwise, necessary leave is hereby granted to the petitioner to institute contempt of court proceedings against the first respondent but not the second to fifteen respondents within seven (7) days from this date hereof with regard to the order of 30/9/2014. Ordered accordingly.

J. R. KARANJA

JUDGE

(Read & signed this 22nd day of October, 2014)