



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW DIVISION
JR. CASE NO 282 OF 2013

REPUBLICAPPLICANT

VERSUS

HON. ELIAS BARRE SHILL.....1ST RESPONDENT

CONSTITUENCY DEVELOPMENT

FUND BOARD.....2ND RESPONDENT

ATTORNEY GENERAL3RD RESPONDENT

CABINET SECRETARY, MINISTRY OF

DEVOLUTION & PLANNING4TH RESPONDENT

EX-PARTE

MUHAMED ABDI BULLE

RULING

On 2nd August, 2013 Ngugi, J granted leave to the ex-parte Applicant, Muhamed Abdi Bulle, to commence judicial review proceedings in the terms of his chamber summons application dated 1st August, 2013. She directed that prayer No. 5 of the said application be served for inter-partes hearing. Through the said prayer the Applicant seeks the following order:-

“THAT the leave so granted do operate as stay of any recognition or further recognition, operation, or the 1st Respondent’s designation of FAFI CONSTITUENCY CDF Committee as constituting the members described in that part of GAZETTE NOTICE No. 7496 of 2013 published on 4th June 2013 specifying the said CDF Committee, and there be a stay of the operation, withdrawal, disbursement, or interference by the said Fafi CDF Committee of the Fafi Constituency Fund Account with the 2nd Respondent,

pending the hearing of the interlocutory application and until the determination of the substantive Notice of Motion application filed in these proceedings.”

The gist of the Applicant’s case is that the appointment of Fafi CDF Committee was in breach of Section 24(3)(a) of the Constituencies Development Fund Act, 2013 (the Act) and consequently the national values and principles of governance found in Article 10 of the Constitution. It is the Applicant’s case that allowing the committee to remain in office and execute its mandate would amount to condoning an illegality. The Applicant submitted that although Section 49 of the Act provides for a dispute resolution mechanism there is need to stay the operations of the Committee as the Constituency Development Fund Board (the Board) engages the arbitration process provided in the Act.

Counsel for the Applicant cited Section 6 of the Arbitration Act, 1995 and argued that the said Section allows a party to an agreement containing an arbitration clause to invoke the court’s jurisdiction so as to obtain interlocutory relief pending the invocation of the arbitral process. With respect Mr. Kinyanjui for the Applicant, I will straight away observe that he has completely misconstrued the meaning of Section 6 of the Arbitration Act. That Section is not relevant to this matter.

The 1st Respondent, Hon. Elias Barre Shill and the 2nd Respondent, the Board did not file any papers in response to the application.

The 3rd Respondent, the Honourable Attorney General and the 4th Respondent, the Cabinet Secretary, Ministry of Devolution and Planning opposed the application by way grounds of opposition dated 15th August, 2013. The grounds of opposition can be condensed into two grounds.

The first objection is that the Applicant ought to have pursued the alternative remedy availed by Section 49 of the Act. I will address this ground of objection straight away. The Applicant has submitted that he addressed a letter of complaint to the Board but the Board has not responded to his complaint and neither has it engaged the arbitration process. If the Board does not want to execute its statutory mandate, then the Applicant cannot be left without a remedy. He is entitled to approach this court for a solution. I think that explains why he was granted leave in the first instance. This cannot be a reason for denying stay if stay is deserved.

The second ground of opposition is that granting stay would paralyze the operations of Fafi CDF Committee. It is the 3rd and 4th respondents’ assertion that it is in the public interest that the operations of the Committee should be allowed to continue. They submit that the claims by the Applicant that the law was not complied with are mere allegations at this stage and it would be unfair to grant stay based on mere allegations. I concur with the 3rd and 4th respondents that harm would be inflicted on the innocent people of Fafi Constituency if the operations of their CDF Committee are halted. The solution would be to hear this matter expeditiously and make a decision once and for all.

In the circumstances of this case, I find that stay is not merited. The application for stay is rejected and dismissed. For the benefit of the Applicant, directions will be issued with a view to hearing and determining this matter within the shortest time possible.

Date, signed and delivered at Nairobi this 28th day of August, 2013

W. K. KORIR,

JUDGE