



IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

FOR ORDERS OF CERTIORARI AND PROHIBITION

BETWEEN

REPUBLIC

AND

THE MINISTER FOR LABOUR AND HUMAN RESOURCE DEVELOPMENT..RESPONDENT

EX-PARTE

CENTRAL ORGANISATION OF TRADE UNION (KENYA) (COTU) (K).....1ST APPLICANT

FRANCIS ATWOLI.....2ND APPLICANT

CORNELIUS OGUTU NYANG'UN.....3RD APPLICANT

JUDGMENT

1. By Notice of Motion dated 13th November 2008 the *ex parte* applicants sought the following orders of judicial review for orders of;

(1) *Certiorari to call up into the High Court and to quash the decision of the Respondent Minister for Labour and Human Resource development embodied in a Press Statement dated 16th October 2008 and in which the respondent stated; “I therefore, dissolve the board of trustees of NSSF with immediate effect.”*

(2) *Prohibition to prohibit the respondent Minister from breaching the law and proceeding further with any action to implement his impugned decision whether by Gazette Notice in the Kenya Gazette or otherwise and to appoint any other trustees in place of the 2nd and 3rd applicants and their fellow trustees on the National Social Security Board of Trustees.*

(3) *Costs of this application for Judicial Review and of the application for leave to apply made on the 23rd October 2008 be provided for.*

2. The Notice of Motion was supported by statement dated 23rd October 2008 and the verifying affidavit of Cornelius OgutuNyang'un sworn on 23rd October 2008.

3. The thrust of the *ex parte* applicant's complaint is that on 16th October 2008 the Minister did by press statement, dissolve the Board of Trustees of the National Social Security Fund established under the ***National Social Security Fund Act (Cap 258 of the Laws of Kenya)***. This action, the *ex parte* applicant contends, was illegal and was *ultra vires* section 7 of ***State Corporations Act (Cap 446 of the Laws of***

Kenya) which provides that it is only the President on the advise of the State Corporations Advisory Committee.

4. By a ruling dated 24th October 2008, Hon Justice Nyamu granted leave to institute judicial review proceedings and granted leave to operate as a stay. In his view, there was merit in the applicants' contention that it is only the President under the **State Corporations Act** who had power to dissolve the Board of NSSF.

5. Unfortunately, this matter could not be heard in the year 2008 for various reasons including the fact that the parties were negotiating settlement but no settlement was forthcoming. Apart from several mentions over the years, the matter never took off for hearing. In fact when, the matter came up for hearing, counsel for the *ex parte* applicant applied for an adjournment which I rejected off-hand in view of the age of the matter. It is now over three years since the order for leave was granted to challenge the decision of the Minister.

6. Under the **National Social Security Act**, the term of the members of the Board of Trustees is limited. Under the **First Schedule** to the Act the Trustees serve for a period of three years. It follows that since these proceedings were lodged, the composition of the Board of Trustees must have been reconstituted. No purpose will be served by dealing with this matter other than for academic purposes. The purpose of the court is to deal with real disputes and not merely academic matters.

7. Furthermore, the purpose of judicial review proceedings is to obtain a quick decision on administrative matters. In the famous case of **O'Reilly v Mackman [1983] 2 AC 237, 280H-281B**, Lord Diplock stated, “[**Judicial review provides**] a very speedy means, available in urgent cases within a matter of days rather than months, for determining whether a disputed decision was valid in law or not.” His Lordship added, “**the public interest in good administration requires that public authorities and third parties should not be kept in suspense as to the validity of a decision the authority has reached in purported exercise of decision making powers for any longer period than is absolutely necessary in fairness to the person affected by the decision.**”

8. In the circumstances of this case, there is a likelihood that an adverse order made after four years may affect the legality of decisions made over the four year period. Consequently the organisation and the public which relies on the decisions of the organisation will be affected negatively. I am fortified by the fact that judicial review remedies are discretionary and the delay in this matter in the circumstances is such that it is not in the interest of the parties to proceed with this matter.

9. As no purpose will be served by these proceedings, the order that commends itself to this court is that the Notice of Motion dated 13th November 2008 is dismissed with no order as to costs.

DATED and DELIVERED at NAIROBI this 30th day of March 2012.

D.S. MAJANJA
JUDGE

Mr Onindo instructed by S. Musalia Mwenesi Advocates for the *ex parte* applicant.

Ms Muchiri, Litigation Counsel, instructed by the State Law Office for the respondent.