



IN THE MATTER OF AN APPLICATION BY GALERIUS INVESTMENT LIMITED FOR LEAVE TO APPLY FOR ORDERS OF CERTIORARI AND PROHIBITION

AND

IN THE MATTER OF: THE KWALE DISTRICT PHYSICAL PLANNING LIAISON COMMITTEE

REPUBLIC APPLICANT

VERSUS

THE KWALE DISTRICT PHYSICAL PLANNING LIAISON COMMITTEE RESPONDENT

AND

EXPARTE GALERIUS INVESTMENT LIMITED

RULING

Mr. Oruko for the Applicant has orally raised an objection to the filing of a replying affidavit out of time by the Respondents and in any event contrary to O. 50 r. 16 Civil Procedure Rules. The Respondent represented by Ms. Umaru concede that they have only filed and served their replying affidavit to the Applicant’s Notice of Motion dated 26th May 2009 today 15th October 2009 which was the scheduled date for inter-parties hearing of that Notice of Motion. Ms. Umaru for the Respondent argued that this being a Judicial Review matter it is not subject to the Civil Procedure Rules.

I note that the Notice of Motion which the Respondent are now replying to was filed on 26th May 2006 well over three years ago. For all this time the Respondent have not bothered to put in any reply. I do also note from the record that as has been submitted by Mr. Oruko the Respondents have severally been granted leave to file their reply yet have failed to do so only to ambush the Applicant with a reply on the date scheduled for hearing of the application. This behaviour can only be termed mischievous at best and sinister at

its worst. To be sure this is a Judicial Review matter to which the Civil Procedure Rules do not apply but this does not allow the Respondents leeway to act as they wish and as a court I do take great exception to the Respondent's behaviour as it borders on contempt for the court and its processes.

Be that as it may I note that 23rd September 2009 when the matter was last before court, the Respondents were granted leave to file and serve their replying affidavit within 14 days. They have filed and served on the 15th day one day late. I will allow them this delay. Mr. Oruko urges court to expunge this replying affidavit from the record and to deny the Respondents audience in this matter. In my view to do so would be to defeat the very justice that the courts have sworn to uphold. For a fair, just and equitable decision to be reached it is essential that both sides be granted the opportunity to be heard. This court will not send the Respondents away from the fountain of justice thirsty. They have come this far and will be permitted to participate in these proceedings. The replying affidavit dated 15th October 2009 is hereby deemed properly filed out of time. The Applicants are allowed 14 days to respond to the replying affidavit. Due to the age of the matter dates will be granted in court.

Dated and Delivered at Mombasa this 23rd day of October 2009.

M. ODERO

JUDGE

Read in open court

No appearance by either party

M. ODERO

JUDGE

23/10/2009