



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KITALE

Misc Civ Appli 138 of 2006

REPUBLIC

APPLICANT

VERSUS

HON. CAPT. DAVIS NAKITARE M.P. SABOTI AND

PATRON OF SABOTI CONSTITUENCY DEVELOPMENT COMMITTEE
1ST RESPONDENT

THE ATTORNEY GENERAL 2ND
RESPONDENT

EX PARTE

ISAAC LUSWETI MASENGELI

RULING

On the 11th January, 2007 in view of the nature and urgency of the issues raised in the application dated 11th December, 2006, Counsel for the parties recorded the following consent before me:-

“Order by Consent

The application dated 29th December, 2006 is hereby settled in the following terms:-

- 1. The Ex parte Application dated 11th December, 2006 shall be heard inter partes on the 31st January, 2007 at Eldoret at 9 a.m.*
- 2. The Ex parte Applicant is at liberty to file and serve a Supplementary Affidavit within the next 10 days.*
- 3. The Ex parte Applicant to serve the hearing Notice on the Attorney General forthwith.*
- 4. In the event, a Judge would have been posted to Kitale High Court then this application shall be heard at the High Court at Kitale on the said date and time.*
- 5. Costs in the cause.”*

On 31st January, 2007 when the matter came up for hearing before me as no Judge had been posted to Kitale by then Mr. Kiarie for the Ex parte Applicant sought the directions of the Court in respect of effect of Gazette Notices Nos. 299 and 300 of 19th January, 2007 which had been made and published by the Honourable Chief Justice.

Mr. Rotich, for the Attorney General on his part submitted that this Court ought to enforce the Gazette Notices in its express terms and also in its intention and spirit. He said that the hearing of the application be stayed and the matter referred to the Central Registry at Nairobi for hearing. He submitted that Order 46 Civil Procedure Rules applies to all civil proceedings and as the Government was a party in these proceedings, the matter could not be tried or heard at Eldoret High Court unless there was a consent of the Attorney General.

Both Mr. Kiarie for the Applicant and Mr. Wafula for the 1st and 3rd Respondent disagreed with Mr. Rotich's position. They opposed the oral application by Mr. Rotich. They submitted that Order 46 of the Civil Procedure Rules do not apply to judicial review proceedings. They relied on the Court of Appeal Case of CIVIL APPEAL NO. 234 OF 1995 – THE COMMISSIONER OF LANDS –V- KUNSTE HOTEL LIMITED.

I have considered the oral application by Mr. Rotich and the submissions by all Counsel in this matter. I do note that the question of High Court Registries has come into play in both Gazette Notices 299 and 300. In the new schedule under Gazette Notice 299, the Honourable Chief Justice has set out the various High Court Registries, Areas of Jurisdiction and District Registries. I think area of jurisdiction herein refers to "territorial jurisdiction" rather than the jurisdiction of the High Court as envisaged by Section 60 of the Constitution of Kenya.

The Area over which the High Court at Eldoret is mandated to cover in performance of its judicial functions are:-

Uasin Gishu,

Elgeyo Marakwet,

Nandi North,

Nandi South,

Baringo,

Koibatek and

Keiyo.

I once again emphasize that I do think that this demarcation is purely for administrative reasons and conveniences of the parties in all respects including financial.

In the light of Gazette Notice No. 299 and the objects thereof, I think that this Court ought to respect the Schedule of Areas each High Court District Registry ought to cover. In order to deliver judicial services to all Kenyans at the nearest possible place and with the least financial expense and other inconveniences, I think that we ought to be guided by the aforesaid Schedule.

The proceedings before me emanate from High Court District Registry at Kitale. The matter came to this Court during the Vacation and under the Vacation Rules. Since there was no Judge in Kitale, this High Court at Eldoret in service to the people has been hearing matters under the Vacation Rules and thereafter under Certificates of Urgency. This was well-intended and we shall continue to do so until the new Judge reports on duty.

This Court is aware that a Judge has now been posted to the High Court at Kitale who is reporting on duty at the end of the month. In the premises, the High Court at Eldoret ought to act with some caution in taking up substantive applications and/or hearings from the Kitale High Court District Registry or from any other District Registry. It should be noted that the Honourable Chief Justice has not mandated this Court to hear matters filed at the Kitale District Registry. Good governance and sense in the administration of justice would dictate that the High Court be guided by the provisions of Order 46 and in Gazette Notice 299 regarding the question of District Registries and territorial jurisdictions.

In view of the serious questions which have been raised by Counsel for the parties herein, considering that this matter is not one for the Registry at Eldoret and that there is no authority from the Honourable Chief Justice that the Judges at Eldoret handle all matters from Kitale, I am not inclined to determine Mr. Rotich's oral application and issues raised on their merit.

Considering that the Learned Judge is due to report shortly to the High Court at Kitale, it is best that the questions raised herein be handled there. Any decision I may possibly make could be contested on the basis of the issues of territorial jurisdiction and lack of mandate from the Chief Justice. The less controversy, the better for all.

I, therefore, decline to make any decision in respect of the issues. The parties are at liberty to canvas the said issues at Kitale before the Honourable Judge there.

This matter shall be placed for Mention before the Honourable Judge at Kitale as soon as he begins his sittings. The matter is stood over generally.

DATED AND DELIVERED AT ELDORET ON THIS 7TH FEBRUARY, 2007.

M. K. IBRAHIM

JUDGE