



REPUBLIC OF KENYA
IN THE HIGH COURT
AT NAIROBI
MILIMANI LAW COURTS
Misc Appli 22 of 2004 (OS)

PETER O. NGOGE.....APPLICANT

Versus

HON. FRANCIS OLE KAPARO.....1ST RESPONDENT

THE CLERK OF THE NATIONAL ASSEMBLY.....2ND RESPONDENT

THE ELECTORAL COMMISSION OF KENYA.....3RD RESPONDENT

THE HON. THE ATTORNEY GENERAL.....4TH RESPONDENT

THE CONSTITUTION OF KENYA REVIEW COMMISSION.....5TH RESPONDENT

RULING

The Applicant filed the Chamber Summons dated 8th October 2007 supported by his Affidavit of the same day. It was served on the Respondents on the same day. Mr. Oraro filed a Notice of Preliminary Objection on the same date and it is based on the following grounds;

- (1) that the Chamber Summons Application is an abuse of the process of the Hon. Court;
- (2) It is scandalous and vexatious;
- (3) matters raised therein have been determined by the Hon. Court; and
- (4) the Affidavit in support of the Application is offensive and scandalous.

Ms Keli and Ms Munyi Counsels for the 3rd and 4th Respondents supported the objections raised by Mr. Oraro.

The gist of the Applicants Application is that Mr. Oraro represents a non existent client, that Ms Keli is not properly instructed, that the 1st Respondent is not represented and Ms Munyi is not properly on record.

We have considered all submissions by Counsel both in support of the objection and against and we sustain the objection for the following reasons.

1. Mr. Rabala, litigation Counsel from the Attorney General's Office filed a notice of appointment dated 4th May 2004 to represent the 4th Respondent. Ms Munyi has been appearing for the 4th Respondent and there is no requirement that she files another notice of appointment since there is no doubt she is from the Attorney General's Office.
2. Ms. Keli has been on record for the Electoral Commission of Kenya since this case was filed in 2004. No objection was raised by the Applicant regarding representation and it is not shown what prejudice the Applicant will suffer and especially his right to a fair hearing under S.77 of the Constitution. On the issue of costs, that is speculative and we shall not deal with it at this stage.
3. As regards Mr. Oraro, we made a ruling concerning his representation on 27th June 2007 and we do not wish to revisit it.
4. On the issue of forgery, that is speculation because Mr. Oraro has been on record, with the knowledge of the Attorney General and if there was any issue of dishonesty it should be arising from the Office of the Attorney General, but not the Applicant.
5. We have perused the Affidavit in support of the Chamber Summons and we have found it to be scandalous, frivolous, vexatious, irrelevant, contemptuous and an abuse of the court process especially taking into account that it constitutes an attack on the officer of this court and we must warn advocates in the strongest terms possible from diverting from the real issues and descending into the arena of personal attacks. The court frowns upon that practice and it must cease forthwith.

Judicial time is expensive and should be used to deal with real issues before the court.
6. It is clear to us that the Chamber Summons Application might stall these proceedings at a time when it is common knowledge that Parliament is on the verge of dissolution thereby denying the court and affected parties the opportunity to have a determination on merit.
7. We must of course point out that under the Constitution, no party has a right to articulate his rights to a hearing by trampling on the rights of hearing of others and we find no threat or real violation of the Applicants rights under S.77 of the Constitution.
8. We add that what is at the heart of this Application is the right of representation and the Applicant has no right to chose Counsel for the parties.
9. We do note that there is now representation for the 1st Respondent.
10. For all the above reasons, we hereby strike out the Affidavit sworn by the Applicant in support of the Chamber Summons dated and filed in court on 8th October 2007 for the same reasons we dismiss the Chamber Summons of the same date with costs to the Respondents.
11. We direct that the matter proceeds on merit and Mr. Ngoge do proceed to respond as earlier scheduled.

Dated and delivered this 9th day of October 2007.

J.G. NYAMU

JUDGE

R.P.V. WENDOH

JUDGE

G. DULU

JUDGE