



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC PETITION NO 1 OF 2019

MUTHITHI INVESTMENTS LIMITED.....PETITIONER

= VERSUS=

GIDEON MBUVI SONKO.....RESPONDENT

RULING

1. Before court for determination is a notice of motion dated 12/6/2020 through which the respondent, Mike Mbuvi Sonko, seeks leave of the court to file a response to this petition. The application was prompted by an order made on 27/1/2020. The order reads as follows:

- 1) The respondent shall file and serve a response within 14 days. In default, this petition shall proceed as an undefended cause.***
- 2) Should the respondent file a response within 14 days as directed, the petitioner shall have leave to file and serve a supporting affidavit within 14 days from the date of service.***
- 3) The respondent shall similarly have 14 days from date of service of the petitioner's written submissions within which to file and serve his written submissions***
- 4) Highlighting of written submissions shall be on 27/5/2020***

2. The respondent did not comply with the said order of 27/1/2020. Consequently, the petition was set down for highlighting of submissions as an undefended cause on 20/7/2020. In the intervening period, the applicant brought the present application. The application was not expressed as having been supported by any affidavit. However, filed with the application was an affidavit sworn by S G Mwangi, a chief officer in the Nairobi City County Government.

3. I have considered the application together with the applicant's written submissions. I have also considered the replying affidavit sworn on 23/9/2020 by Mike Maina Kamau and written submissions filed by the petitioner's advocates.

4. The petitioner urged the court to dismiss the application on the ground that it was not supported by an affidavit. I have reflected on that contention. In my view, the wording of **rule 19 of the Constitution of Kenya (Protection of Rights & Fundamental Freedoms) Practice and Procedure Rules 2013** does not make it mandatory for a formal application under the Rules to be supported by an affidavit. The words used are "*may be supported by an affidavit.*" A supporting affidavit is therefore not a mandatory requirement in the circumstances.

5. The single question to be answered in this application is whether the applicant has satisfied the criteria upon which our courts exercise discretion to extend time for filing pleadings in response to a suit.

6. Jurisdiction to extend the time within which to file pleadings is a discretionary one and is exercised on clear principles. Kenya's superior courts under the Constitution of Kenya 2010 have been categorical that a court of law should be hesitant to shut a litigant out of the seat of justice, more so when the plea for leave to file pleadings is made before a suit is conclusively heard and determined [see **Charles Karanja Kiiru v Charles Githinji Muigwa [2017] eKLR**]. Secondly, this discretionary jurisdiction is not intended to assist a party who is bent on obstructing justice.

7. The record before me indicates that on not less than four occasions, between September 2019 and January 2020, the court indulged the applicant and granted him the opportunity to file and serve a response to the petition. The applicant ignored the orders of the court. It is therefore apparent that the applicant has deliberately engaged in conduct that is intended to frustrate the hearing and determination of this petition. He is therefore undeserving of the discretion he seeks.

8. Solely because this application has been made before close of hearing of the petition, the court will reluctantly grant the applicant fourteen (14) days within which to file and serve a response to the petition. The applicant will be condemned to indemnify the petitioner through

payment of costs of the application, assessed at Kenya Shillings Thirty Thousand (Kshs 30,000).

9. The applicant sought leave to file the annexed affidavit of S G Mwangi as a response to the petition. I will not grant the plea as framed because, firstly, S G Mwangi is not a party to the petition. Similarly, the Country Government of Nairobi is not a party to this petition. Thirdly, the applicant is no longer the Governor of Nairobi. Fourthly, the petition and the allegations therein are directed against the applicant; not against the County Government, and not against Mr S G Mwangi. It will be up to the applicant to file a response which complies with the rules relating to constitutional petitions. The court will not dictate to him or select for him the deponent of the response. Suffice it to say that the response should comply with the requirements of the law.

10. In the end, the notice of motion dated 12/6/2020 is disposed in the following terms:

- a) The respondent in the petition is granted 14 days within which to file and serve a response to the petition.*
- b) The respondent in the petition shall pay the petitioners' advocates throw away costs of Kshs 30,000 within 14 days from today.*
- c) In default of either (a) or (b) above, the leave granted herein shall stand vacated and any response filed shall stand struck out and the petition herein shall proceed for disposal as an undefended cause.*
- d) The petitioner shall have 14 days from the date of service of the response, within which to file a supplementary affidavit together with supplementary written submissions.*
- e) The respondent shall similarly have 14 days thereafter, within which to file and serve written submissions.*
- f) At the time of reading the ruling, the matter will be set down for highlighting of the written submissions.*

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 3RD DAY OF FEBRUARY 2021.

B M EBOSO

JUDGE

In the presence of:-

Mr Ouma holding brief for Mr Ochieng Oduol for the Petitioner

June Nafula - Court Clerk