



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NYERI

ELC JR NO. 10 OF 2014

Formerly Nakuru Judicial Review No. 33 of 2014

IN THE MATTER OF

AN APPLICATION BY LAIKIPIA LAND OWNERS FOR LEAVE

TO APPLY JUDICIAL REVIEW ORDERS OF CERTIORARI

AGAINST THE GOVERNOR LAIKIPIA COUNTY AND

THE EXECUTIVE COMMITTEE LAIKIPIA COUNTY

AND

IN THE MATTER OF

THE COUNTY GOVERNMENT ACT NO. 17 OF 2012,

THE CONSTITUTION OF KENYA AND LAW REFORM ACT CAP 26

LAWS OF KENYA

AND

IN THE MATTER OF

THE LAIKIPIA COUNTY FINANCE ACT, 2013

BETWEEN

PAKUO LESOROGOI1ST APPLICANT

SENGEI LETEPETAA.....2ND APPLICANT

SUPI LESIBIA.....3RD APPLICANT

JULIUS KASUKU.....4TH APPLICANT

HENRY LESINA 5TH APPLICANT

JULIUS LESUUDA.....6TH APPLICANT

JANE MUGAMBI7TH APPLICANT

DAVID LENGERDED8TH APPLICANT
KIFUKU ESTATE LIMITED..... 9TH APPLICANT
MALI RANCH LIMITED.....10TH APPLICANT
MOGWOONI LIMITED.....11TH APPLICANT
OEL NAISHU (2000) LIMITED.....12TH APPLICANT

VERSUS

THE GOVERNOR LAIKIPIA COUNTY1ST RESPONDENT
THE EXECUTIVE COMMITTEE, LAIKIPIA COUNTY.....2ND RESPONDENT

RULING

1. By this Notice of Motion application dated 23rd July 2018, the 12 Applicants herein pray for an order that this court does review, set aside and/or vary its orders made on 21st February, 2018 and issued on 10th July, 2018 and to replace the same with the consent order executed by the parties Advocates on 22nd September, 2016.

2. The application which is supported by an affidavit sworn by George Brian Okello, an Advocate for the Applicants, is premised on the grounds:

(i) *That sometime in September, 2016, the parties herein agreed to mark this suit as settled upon terms inter alia, the at each party shall bear its own costs;*

(ii) *That on 21st February 2018, the suit came up for hearing of a Notice to show cause why the suit should not be dismissed for want of prosecution and the Respondent's Advocates withheld information in ground No. (i) above from the court an fraudulently and maliciously obtained orders dismissing the suit for want of prosecution with costs in favour of their client;*

(iii) *That the Respondent's Advocates have since filed a Party and party Bill of Costs which is fixed for taxation on 31st July, 2018;*

(iv) *That the Applicants only became aware of the orders made on 21st February, 2018 after the Respondents served the Applicant's Advocates with the Bill of costs and were only issued with the dismissal orders on 10th July, 2018; and*

(v) *That it is imperative and in the interest of justice that the orders referred to herein be reviewed, varied and/or set aside as prayed.*

3. The application is opposed by the Respondents. In a Replying Affidavit sworn by their Advocate Joseph Mwangi as filed herein on 24th September, 2018, Counsel concedes that by his letter dated 25th February, 2015, he did request the Applicants' counsel to have the matter marked as settled. He however asserts that the request was rebutted by the Applicants vide their letter of 26th February, 2015.

4. The Respondents counsel further avers that he sent a consent letter to the Applicants' counsel and requested them to sign the same and to have it sent back to himself for filing but the Applicants' Advocates failed to do so and instead held onto the letter for reasons known to themselves.

5. The Respondents further aver that this matter has never been marked as settled. By a Notice to show cause dated 8th December, 2017, the court notified the Advocates on record that the matter would be dismissed for want of prosecution on 21st February, 2018. The Applicants failed to attend court to show cause and having failed to file the consent or return the same for filing, the Respondents had no choice but to urge the court to dismiss the matter with costs to the Respondents.

6. I have carefully perused and considered the application and the response thereto. I have also looked at the record and the submissions filed herein by the Learned Advocates for the parties.

7. The Applicants herein moved this court vide a Judicial Review application dated 22nd September, 2014 for *inter alia*, an order of certiorari to remove to the court and quash the decision of the Respondents as promulgated in the **Laikipia County Gazette Supplement Nos. 10 and 11 (Acts No. 2)** which were both designated as the Laikipia County Finance Act, 2013. It was the Applicants' contention that if the bills were to be gazetted and implemented, the residents of Laikipia County stood to suffer harm through double taxation and capricious increment of rates.

8. Having filed a Replying Affidavit to the application on 3rd December, 2014, the Respondents subsequently did write to the Applicants Advocates on 25th February, 2015 informing them that the County Assembly of Laikipia had already enacted the Laikipia County Finance

Act, 2014. In view of that development, the Respondents were of the view that the Laikipia County Finance Act, 2013 had been rendered obsolete and the matter before the court had been overtaken by events. Accordingly, the Respondents Advocates proposed at Paragraph 3 of their said letter as follows:

“In view of these new developments, we do believe that we can only exercise two options which are:

(a) We record a consent marking matter as settled with each party bearing own costs.

(b) Bring to the attention of the court that the legislation which the applicants seek to challenge through these proceedings has been repealed and it would be a mere academic exercise to proceed with what matter and have the matter marked as overtaken by events.”

9. At the end of the said letter, the Respondents exhorted the Applicants Advocates as follows:

“We have instructions to record a consent marking the matter as settled with each party bearing own costs.

Kindly may we have your confirmation to enable us revert with an appropriate consent letter.”

10. The Applicant responded to the said letter by their own dated 24th February, 2015 wherein they rejected the contention that the matter has been overtaken by events and asserted that the passage of the Laikipia Finance Act, 2014 was a clear admission that the Respondents were wrong to have effected the irrational charges and rates complained of. The Applicants went on to demand that the Respondents draft a consent declaring that the applicable rates for the year 2013 -2014 were the rates and charges obtaining before the enactment of the Laikipia Finance Act, 2013 in order to restrain the Respondent from in future demanding payments based on the rates that had been gazetted.

11. It would appear the parties thereafter went into some subtle negotiations and engaged in correspondence by way of emails. Some one and a half years later, the Respondents counsel wrote to the Applicants on 22nd September, 2016 as follows:

“We do refer to above captured matter and write further to our email sent to yourselves on 1st April, 2015 (Copy enclosed).

Kindly find enclosed the consent letter in triplicate for necessary action on your part.

Upon signing the consent letter kindly forward the three (3) copies to us for filing subsequent whereto we shall favour you with duly signed copy. We would appreciate your prompt response since it is for the benefit of our respective client(s) to bring closure to this matter.”

12. The said consent letter forwarded vide the letter was already executed by the Respondents Advocates and reads as follows:

“CONSENT ORDER

1. That the exparte Applicants’ Notice of Motion dated 16th January, 2015 be and is hereby allowed in terms of Prayer 1 (ii) only.

2. That the applicable land rates, herein for the period 2013-2014 for purposes of the disputed rates in this suit be the rates applicable before the enactment of the Laikipia Finance Act of 2013.

3. That each party do bear own costs.

13. The Applicants have annexed a copy of the consent order with the dates inserted therein indicating it was executed by themselves on 27th September, 2016. That would be a week after they received the Respondents’ letter forwarding the consent. There is however nowhere in the Supporting Affidavit of George Brian Okello in which

he makes any reference to forwarding the executed consent to the Respondents’ counsel for filing. The consent letter was accordingly never filed and the same had not been adopted as at the time the matter came up in court for dismissal for want of prosecution.

14. As it were, a consent letter which is not filed in court and adopted as an order of the court remains just that, a mere expression of intent. In the matter herein, there was no valid consent on record and the suit remained pending until its dismissal for want of prosecution on 21st February, 2018.

15. At Paragraph 5 of the Supporting Affidavit, it is apparent that the Applicants were aware the matter came up on that date for dismissal for want of prosecution. They have not explained any steps they took to show cause why the matter should not have been dismissed and they cannot turn around and blame the Respondents for taking advantage of their absence to successfully plead for costs.

16. Accordingly, I did not find any merit in the Motion dated 23rd July, 2018. I dismiss the same with no order as to costs.

JUDGMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AT NYERI THIS 16TH DAY OF DECEMBER, 2021.

In the presence of:

MR. OMONDI FOR THE APPLICANTS

MR. THUKU HOLDING BRIEF FOR MWANGI FOR THE RESPONDENTS

COURT ASSISTANT - WARIO

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J. O. OLOLA

JUDGE