



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

JUDICIAL REVIEW NO. 5 OF 2019

IN THE MATTER OF ORDER 53 RULE 1 OF THE CIVIL PROCEDURE ACT

AND

IN THE MATTER OF THE KENYA NATIONAL UNION OF TEACHERS CONSTITUTION OF RULES AND REGULATIONS

AND

IN THE MATTER OF VIHIGA TEACHERS BENEVOLENT FUND

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

VIHIGA TEACHERS BENEVOLENT

EXECUTIVE COMMITTEE.....1ST RESPONDENT

BENSON AMUGUNE NGODA.....2ND RESPONDENT

BONIFACE YIDAH MUJIVANE.....3RD RESPONDENT

JOSHUA ADARO AGANYA.....4TH RESPONDENT

EX-PARTE:

1. ERASTUS INGARA

2. SOLOMON MUKANGAI

3. JOB CHANZU

4. COSSAM IGESA

5. REUBEN ORIEDO

6. LOUISA IJIIMBA

7. KENETH MUHAVI

8. PETER MUNUBI

9. DAVID OMWELA

RULING

1. The applicants had on the 3rd April, 2019 filed an application seeking for leave to apply for judicial review orders against the respondents. The court granted leave on the 4th April, 2019. The court further granted orders for stay of elections scheduled for 17th April, 2019.
2. On the 15th August, 2019 the applicants filed an application seeking to have the respondents cited for contempt for carrying out elections contrary to the orders of the court issued on 4th April, 2019. The respondents in turn filed a notice of preliminary objection dated 13th September, 2019 terming the application dated 15th August, 2019 as incompetent and disclosing no grounds.
3. The advocates for the applicants proceeded to file submissions in respect to the application for judicial review dated 3rd April, 2019 and the contempt of court application dated 15th August, 2019. The advocates for the respondents filed submissions in respect to the two applications. I have perused the court file and noted that no application for judicial review orders was filed after leave was granted. This means that there is currently no suit pending before court. It is preposterous to note that the applicant's submissions were on the application dated 4th April, 2019, which application had already been allowed by the court.
4. Order 53 Rule 3 (1) fixes the time for filing of an application for judicial review after leave is granted at 21 days. The respondents are said to have conducted elections on the 4th May and 6th July, 2019. The stay orders issued on 4/4/2019 only stopped the holding of elections scheduled for 17/4/2019. In my considered view the stay orders granted by the court at the time when leave was granted lapsed at the time when the applicants failed to file the application for judicial review within 21 days. There cannot be any contempt of court for any elections held by the respondents after the end of 21 days.
5. In the foregoing there is no suit for judicial review pending before court. There was no contempt of court by the respondents. The upshot is that the application dated 15th August, 2019 is dismissed with costs to the respondents.

Delivered, dated and signed at Kakamega this 5th day of June, 2020.

J. N. NJAGI

JUDGE

Representation:

No appearance for Applicant

No appearance for Respondents

No appearance for Ex-parte Applicants

Ex-parte Applicants - Absent

Court Assistant - Polycap

30 days right of appeal.