



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT HOMA BAY

JUDICIAL REVIEW CAUSE NO.6 OF 2018

IN THE MATTER OF THE LAW REFORM ACT (CAP 26) LAWS OF KENYA

AND

IN THE MATTER OF: ARTICLES 25 (C), 27(1), 40, 47, 48

AND 50 OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF: THE COUNTY GOVERNMENTS ACT, LAWS OF KENYA

AND

IN THE MATTER OF: THE COUNTY ASSEMBLIES SERVICE ACT, LAWS OF KENYA

AND

IN THE MATTER OF: SECTION 11 OF THE FAIR ADMINISTRATIVE

ACTION ACT (NO.4 OF 2015), LAWS OF KENYA

BETWEEN

EVANS OMONDI OTIENO.....APPLICANT

VERSUS

THE HOMA BAY COUNTY ASSEMBLY SERVICES BOARD.....1ST RESPONDENT

THE SPEAKER, HOMA BAY COUNTY ASSEMBLY.....2ND RESPONDENT

BOB KEPHAS OTIENO.....INTERESTED PARTY

AND

ETHICS & ANTI-CORRUPTION COMMISSION...INTENDED INTERESTED PARTY

RULING

1. This whole matter is founded on the chamber summons dated 2nd October 2018, filed herein by the applicant, **EVANS OMONDI OTIENO**, a Homa Bay County activist interested in good county governance, protection of human rights and promotion of Public Interest in which he sought leave to apply for an order of **Prohibition** against the Homa Bay County Assembly Service Board (**first respondent**) and the Speaker of the Homa Bay County Assembly (**second respondent**) and enjoined **BOB KEPHAS OTIENO** as an interested party. He also sought an order of **Certiorari** against the first respondent and indicated that his intention was to challenge the decision of the respondents in interdicting the interested party from his employment as the clerk of the County assembly of Homa Bay.

2. The applicant contended that the action by the respondents against the interested party went against the provisions of the constitution and the County Assembly Services Act, 2017, especially in failing to comply with **Articles 10, 27 and 47** of the **Constitution** thereby affecting the functions of the County Assembly of Homa Bay.

On the 16th October 2018, this court granted the necessary leave ex-parte to the respondents but, ordered that the prayer for the leave to operate as stay be heard on the 20th October 2018. In the meantime, the leader of majority in the County Assembly of Homa Bay, **Walter were Muok**, applied vide a notice of motion dated 23rd October 2018, to be enjoined as the second interested party in this matter. A similar application was made by the **Ethics and Anti-Corruption Commission (EACC)** vide its notice of motion dated 24th October 2018.

3. However, the application by the ex-parte applicant in the chamber summons for leave to apply as stay (i.e. prayer (d) of the application) was given priority and heard by way of written submissions. The court rendered its ruling in respect thereof on 23rd January 2019 and declined to grant the prayer but on its own motion, enjoined the Ethics and Anti-Corruption Commission (E.A.C.C.) as the second interested party in this matter. The Director of Public Prosecution (DPP) was also enjoined as the third interested party notwithstanding his pending application in that regard dated 15th January 2019.

Further, to its application dated 24th October 2018, to be enjoined as an interested party in this matter, the second interested party (EACC) also applied for transfer of the matter to the Anti-Corruption and Economic Crimes Division of the High Court.

4. In that regard, the contention by the second interested party is that the subject matter in this case touches on the enforcement of **Section 62** of the **Anti-Corruption and Economic Crimes Act 2003** and it (EACC) is mandated to enforce **Chapter Six** of the **Constitution** on Leadership and Integrity. That, on this 9th December 2016 the Chief Justice made practice directions pursuant to **Section 5** of the **Judicial Service Act No.1 of 2011** and **Section 16** of the **High Court (Organization and Administration) Act No.27 of 2015**, directing that all petitions and judicial review applications on claims of infringement or threatened infringement of constitutional rights relating to corruption and/or economic crimes be heard by the Anti-Corruption and Economic Crimes Division of the High Court. That, under Gazette Notice No.7262, the Chief Justice on the 20th July 2018, further directed that all new Anti-Corruption and Economic Crimes matters be filed in the principle registry of the division for hearing and determination. Therefore, this matter is proper for hearing and disposal by the Anti-Corruption & Economic Crimes Division of the High Court.

5. Indeed, this is a new matter whose genesis is the interdiction and/or suspension of the first interested party from performing his role as the clerk of the County Assembly of Homa Bay on account of allegations of corruption and related matters made against him by the second interested party. Vide the practice directions made by the Chief Justice on the 9th December 2016 pursuant to the provisions of the Judicial Service Act and the High Court (Organization and Administration) Act as well as the contents of gazette notice No.7262 of the 20th July 2018, matter relating to corruption and economic crimes ought to be presented to the Anti-Corruption and Economic Crimes Division of the High Court. This case, is one such matter and ought therefore have been filed in the said division without prejudice to this court's jurisdiction to deal with it.

6. On practice directions, they are to be obeyed just as the ordinary rules of the court as they have the force of law in the same way as the rules of the court. They are regarded as a written explanation of how to proceed in a particular area of law in a particular court and essentially do direct the practice of the court in a particular area of procedure of the court (see, "**The Rules of Justice and the Justice of the Rules – Appraisal of the Rules of Court in the dispensation of justice in Nigeria**" – **Journal of Contemporary Legal Issue 2013 Vol. 5 – 119**).

The Supreme Court of Nigeria in **UNIVERSITY OF LAGOS & ANOTHER –VS- AIGORO (1984) NSCC 745**, held that Rules of Court and Practice Directions are rules touching the administration of justice and are established for attaining justice with ease, certainty and dispatch.

7. No doubt practice directions are basically an administrative loot for effective and efficient administration of justice. They facilitate and provide guidance on proper case management and expeditious disposal of cases.

It is for all the foregoing reasons that the present application by the second interested party is merited and is hereby allowed to the extent that this Judicial Review Case No.6 of 2018 be and is hereby transferred to the Anti-Corruption and Economic Crimes Division of the High Court for hearing and final disposal. Costs of the application to the applicant.

Ordered accordingly.

J.R. KARANJAH

JUDGE

02.04.2019

[Dated and signed this 2nd day of April, 2019].