



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CONSTITUTIONAL PETITION NO. 4 OF 2019

IN THE MATTER OF ARTICLE: 2 (1), 3(1), 10, 19, 20, 21, 22(1) & (2), 23, 73 AND 260 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF SECTION 35(3) (b) OF THE COUNTY GOVERNMENTS ACT, NO. 17 OF 2012

AND

IN THE MATTER OF CHAPTER SIX OF THE CONSTITUTION OF KENYA ON LEADERSHIP AND INTEGRITY

AND

IN THE MATTER OF ANTI-CORRUPTION AND ECONOMIC CRIMES ACT NO. 3 OF 2003

AND

IN THE MATTER OF DANIEL KIOGORA M'INOTI THE POSITION OF COUNTY EXECUTIVE COMMITTEE MEMBER FOR YOUTH AFFAIRS AND SPORTS

AND

IN THE MATTER OF CONSPIRACY BY THE GOVERNOR KIRAITU MURUNGI TO IMPROPERLY CONFER BENEFIT TO THE SAID DANIEL KIOGORA M'INOTI AGAINST SECTION 43 AS READ WITH SECTION 48 OF THE ANTI-CORRUPTION AND ECONOMIC CRIMES ACT NO. 3 OF 2003

BETWEEN

SETH MUTUGI.....PETITIONER

VERSUS

DANIEL KIOGORA M'INOTI.....1ST RESPONDENT

GOVERNOR KIRAITU MURUNGI.....2ND RESPONDENT

ETHICS AND ANTICORRUPTION COMMISSION.....1ST INTERESTED PARTY

J U D G M E N T

1. On 18th February, 2019, the petitioner lodged a Constitutional petition whereby he contended, *inter alia*, that, the 2nd respondent had appointed the 1st respondent as member of the Meru Executive Committee in charge of Youth Affairs and Sports. That the appointment was unlawful and in breach of *section 35 of the County Governments Act, 2012* as the 1st respondent did not hold any degree from any recognized University in Kenya.

2. The petitioner contended that, whilst the 1st respondent presented himself to the County Assembly of Meru County as holding a Bachelor's degree in Commerce, 2nd Upper Accounting Option from the University of Nairobi, the 1st respondent has actually never enrolled in that university.

3. The petitioner proceeded to make serious allegations against the 2nd respondent as the appointing authority. He alleged that in appointing the 1st respondent as a Member of the Meru County Executive Committee in charge of Youth affairs and Sports, the 2nd respondent did so corruptly and to reward cronyism. That the 1st respondent had vied and lost elections in the Abothuguchi Ward – Member of County Assembly.

4. For the foregoing reasons, the petitioner alleged that the 2nd respondent had breached both the law and the Constitution in appointing the 1st respondent as a Member of the Meru Executive Committee. As a consequence thereof, the petitioner prayed for a declaration that the appointment and continued occupation of the 1st respondent as Member of the Meru County Executive Committee for Youth Affairs and Sports was illegal amongst other orders.

5. On being served with the petition, the respondents filed a Notice of Preliminary Objection dated 21st February, 2019 which was dismissed vide a ruling of this court dated 25th April, 2019. On the date of delivery of the said ruling, the court directed the respondents to file and serve their response to the petition within 21 days. The court also directed that the parties thereafter do file and exchange written submissions within specified timelines.

6. Despite as aforesaid, the respondents did not file any response to the petition. As such the allegations in the petition remained uncontroverted. Further, none of the parties filed any submissions as directed by the court.

7. In its directions of 25th April, 2019, both parties were represented by Learned Counsel. The court gave directions as follows:-

“The Respondents to file and serve the response within 21 days. The petition to be heard by way of written submissions. The petitioner to file and serve written submissions within 30 days of service of the Response to the petition.

The Respondents to file and serve written submissions within 30 days of service by the Petitioner. Time is of the essence. ...”

8. From the said directions, it was crystal clear that the petition was to be prosecuted by way of written submissions. The time frames given meant that the respondents had until 16th May, 2019 to file and serve their response to the petition. There is none on record. The petitioner had until the 15th of June, 2019 and the respondents until 15th July, 2019 to file and exchange their respective submissions. Time was ordered to be of the essence.

9. A month later when the court retired to write the judgment, none of the parties had complied with the directions. It meant that the allegations in the petition remained uncontroverted and unchallenged and the prayers sought would have been granted as sought. However, of importance is that the petitioner failed to prosecute his petition by failing to file his submissions as directed. It shows a clear lack of seriousness on the part of the petitioner on a serious matter that he brought to court.

10. When a matter is directed to be heard by way of written submissions, it behooves the claimant to file his submissions if his case is to be heard. Failing to file submissions amounts to non-prosecution of the matter. It is a kin to a party who fails to attend court on the day of the hearing of a matter whereby such matter will be subject to dismissal for non-attendance or non-prosecution. ***See Order 12 Rule 3 of the Civil Procedure Rules.*** As it stands, the Petitioner failed to prosecute his and the same is for dismissal.

11. Accordingly, the petition is hereby dismissed for want of prosecution. Being a matter of public interest, I will not make any order as to costs.

It is so decreed.

DATED and DELIVERED at Meru this 19th day of September, 2019.

A. MABEYA

JUDGE