



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAMIRA

MISC. JUDICIAL REVIEW NO: 02 OF 2019

REPUBLIC.....APPLICANT

=VRS=

1. THE COUNTY ASSEMBLY OF NYAMIRA

COMMITTEE OF POWERS & PRIVILEGES.....1ST RESPONDENT

2. THE COUNTY ASSEMBLY SERVICE BOARD

NYAMIRA COUNTY.....2ND RESPONDENT

3. THE NYAMIRA COUNTY ASSEMBLY.....3RD RESPONDENT

4. THE HON. SPEAKER

NYAMIRA COUNTY ASSEMBLY.....4TH RESPONDENT

5. THE CLERK OF COUNTY ASSEMBLY

NYAMIRA COUNTY.....5TH RESPONDENT

EX-PARTE

1. HON. THADDEUS NYABARO.....1ST EX-PARTE APPLICANT

2. HON. VIOLET NYAKORA.....2ND EX-PARTE APPLICANT

RULING

The Ex-parte Applicants approached this court vide the Chamber Summons dated 19th September 2019 and after hearing Counsel for the parties on a **preliminary objection** and finding that this court has jurisdiction to hear and determine the judicial review proceedings, this court granted leave to the Ex-parte applicants to bring the Judicial Review Proceedings. This court however left the issue of whether the leave granted would operate as stay, of the impugned acts and or decision of the respondents, to be canvassed inter-partes. Counsel for the parties agreed to canvass the issue through written submissions which this court has duly received. What is in issue between the parties is “**A REPORT OF THE JOINT COMMITTEE OF THE POWERS AND PRIVILEGES AND CASB ON THE INQUIRY INTO ALLEGED ASSAULT UPON MS. DORAH SIRO (MEMBERS OF STAFF) BY HON. THADDEUS NYABARO (MEMBER OF COUNTY ASSEMBLY, EKERENYO WARD)**” whose findings according to the Ex-parte applicants the respondents have implemented before its debate and adoption by the County Assembly pursuant to **Sections 15 and 17 of the County Assemblies Powers and Privileges Act**. In their verifying affidavits in support of the Chamber Summons both dated 19th September 2019 and which are identical word for word, the Ex-parte applicants depose as follows: -

“10. THAT further committees are allowed under the Standing Orders of the 3rd Respondent to have meetings during recess of the 3rd Respondent as long as there are businesses to be transacted. The issue of inquiry herein was a proper business that could be transacted by the 1st and 2nd Respondents during the recess of the 3rd Respondent.

11. THAT its fallacious that the 5th Respondent being the Clerk of the 3rd Respondent is the memory and custodian and legal adviser of the Respondents and further the 3rd Respondent has three able legal officers inclusive Deputy Clerk who is a

lawyer, failed to accordingly advise the 3rd Respondent thereby allowing the Respondents to unprocedurally and unlawfully execute their mandates with regards to the issues being the subject matter of this Judicial Review Application. The Respondents have implemented the illegal Report dated 8th August, 2019 by denying me and my colleague our Constitutional duty in the Assembly and committees thereby deny the people I and my colleague represent in the 3rd Respondent.

12. **THAT** I verily believe that this Application is not premature, ill-advised, rash since the Respondents have/ are implementing an illegal Report and are unlikely to bring on the floor of the House for debate, approval and adoption with or without amendments, a report which is ultra vires, illegal, unlawful and unprocedurally made. I have been denied participation in the debates in the House and committee meetings on the recommendation of my suspension by the 1st and 2nd Respondents.

13. **THAT** I have been credibly advised by my Advocates on record and I believe to be sound, that the intention of Parliament in enacting Section 15(7) of the County Assemblies Powers & Privileges Act, 2017 is to further subject the Recommendations contained in a Committee Report to scrutiny by the Honourable Members of the Assembly and in the same vain afford me further opportunity to be heard. The Respondents in implementing the said Recommendations before any debate, approval and adoption by the 3rd respondent, are denying the House opportunity to further subject, the said Recommendations to Scrutiny and denying me the right of being heard.

14. **THAT** it is whimsical that the 5th Respondent being the Legal Adviser to the 4th Respondent has failed to give advice on such simple legal procedure of the Assembly and the breach of my fundamental freedoms and Rights as envisaged in the Constitution of Kenya, 2010.

15. **THAT** I verily know that Ms. Dorah Siro voluntarily withdrew the criminal charge against the 1st Exparte Applicant in court and was not forced by him or any other person and the facts as deponed in paragraph 14 of the Replying Affidavit are hearsay and distorted and are facts not within the knowledge of the 5th Respondent.

16. **THAT** I further verily believe that facts deponed in paragraphs 14, 15 and 16 of the Replying Affidavit are not within the knowledge of the 5th Respondent as they mount to hearsay and should be expunged.

17. **THAT** I verily believe that the 5th Respondent cannot constitute himself a court of law as to the culpability in the complaint by Ms. Dorah Siro as the 5th Respondent was not a witness to the alleged assault.

18. **THAT** contents of paragraphs 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 33, 35, 36, 37, 38, 39, 40, 41, 42, 43 & 44 of the Replying Affidavit are wholly and vehemently denied. The Respondents having failed to commence inquiry into the complaint within 14days from 21st June, 2019 and having commenced the same on 23rd Jul, 2019, nineteen (19) days after expiry of the mandatory 14days in accordance with Section 15(5) of the County Assemblies Powers & Privileges Act, 2017, had no jurisdiction to do so therefore acted ultra vires and contrary to the law.

19. **THAT** I reiterate all contents of my Supporting Affidavit sworn on 26th September, 2019 in Support of this Notice of Motion herein.

20. **THAT** what I have deposed to hereinabove is true and within my knowledge, save where otherwise stated in which event, same is true and correct to the best of my information and belief, sources thereof disclosed.”

The further deponed that if implemented the effect of the report would be to impose a fine upon the Ex-parte applicants, to give them a warning, to reprimand them from the Assembly for 2 months effective Thursday 8th August 2019 and to remove them from the committees of which they are members for an unknown period effective from 8th August 2019. From a reading of the grounds on the face of the Chamber Summons, the supporting affidavits of the Ex-parte applicants and the submissions of Counsel the gist of the application is that the inquiry into the complaint giving rise to the impugned report was not conducted within the period stipulated in the County Assemblies Powers and Privileges Act; that it is irrational; an abuse of power; oppressive; punitive; grossly unlawful and actuated with malice and further that the respondents have gone ahead and implemented it before it was debated, adopted and approved by the County Assembly in accordance with its standing orders.

The test at this stage of the proceedings is whether the Ex-parte applicants have demonstrated a prima facie case and I am satisfied that they have. It is clear from the response filed by the respondents that the joint report has not been debated by the County Assembly. **Section 15 (7) of the County Assemblies Powers & Privileges Act** requires the County Assembly to consider the report and the recommendations thereon in accordance with its standing orders before it can be implemented. I am satisfied therefore that the applicants are deserving of the orders sought and in the circumstances the leave granted herein on 25th September 2019 shall operate as stay in terms of prayer 3 of the Chamber Summons pending hearing and determination of the substantive motion.

Dated, signed and delivered in Nyamira this 14th day of October 2019.

E. N. MAINA

JUDGE