

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

MISCELLANEOUS CIVIL APPLICATION NO. 70 OF 2016

ARTHUR MAINA WACHIRA & 13 OTHERS.....APPLICANTS

-VERSUS-

THE CLERK, COUNTY ASSEMBLY OF NYERI.....1ST RESPONDENT

THE COUNTY ASSEMBLY OF NYERI.....2ND RESPONDENT

RULING

By a chamber summons dated 24th November, 2016, made under **Order 53, Rule 1 and 2** of the **Civil Procedure Rules**, the applicants sought for leave to file an application for the judicial review orders of certiorari and prohibition. The order for certiorari was meant to quash the motion passed apparently by the 2nd respondent, removing the applicants from its various committees and replacing them with other members of the Assembly; the order of prohibition was intended to prohibit the respondents from taking further proceedings or steps with respect to 2nd respondent's committees.

On 28th November, 2016 I certified the application as urgent but also directed that it should be heard *inter partes* before any orders are issued. Despite this certification, the application was not heard soon thereafter as initially envisaged mainly because the applicants' counsel was consistently absent whenever the application came up for hearing.

Parties eventually filed agreed to have the application disposed of by of written submissions; the applicant's submissions were duly filed on 28th March, 2017 but it was not until the 29th June, 2017 that the respondents filed theirs.

By the time the application was mentioned in court again on 2nd October, 2017 the General elections had been held; to be specific, these elections were held on 8th August, 2017.

Though no affidavit was sworn to that extent, it is quite probable that some of or all the applicants may have lost their seats in the general elections and therefore they could not be constituted as members of the 2nd respondent's committees. The election of the 2nd Assembly of the County of Nyeri must have brought with it new members who may have, by now, been constituted as members of the committees that the applicants sought to be part of.

In any case, even if it was to be assumed that the members of the current Assembly are the same members that were in the previous Assembly, there is no evidence that the current membership of the Assembly's Committees is as it was in the previous Assembly and therefore the applicants' grievances still subsist.

In a nutshell, the substratum of the applicants' suit doesn't exist. In the absence of any evidence to the contrary the applicant's themselves may not only have lost the capacity to sue as Members of the County Assembly but also the membership of the Committees by which they were aggrieved may have drastically changed. Simply put, in its present form, the suit has been overtaken by events.

It follows that grant for leave for the judicial review orders in these circumstances will be an exercise in futility and for this reason I dismiss the application with no orders as to costs.

Signed, dated and delivered in open court this 2nd day of February, 2018

Ngaah Jairus

JUDGE