



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITALE**

**JUDICIAL REVIEW NO. 4 OF 2016**

**IN THE MATTER OF AN APPLICATION BY BUSIA SUGAR INDUSTRY LIMITED THE EXPARTE APPLICANT, FOR THE LEAVE TO APPLY FOR AN ORDER OF PROHIBITION AND MANDUMUS.**

**AND**

**IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT NO. 4 2015.**

**AND**

**IN THE MATTER OF FRIVOLOUS AND VERATIOUS INSTITUTION OF SUITS AGAINST BUSIA SUGAR INDUSTRY LIMITED BY WEST KENYA SUGAR INDUSTRY LIMITED AND ITS PROXIES**

**AND**

**IN THE MATTER OF ABUSE OF THE COURT PROCESS**

**BETWEEN**

**BUSIA SUGAR INDUSTRIES LIMITED.....APPLICANT**

**VERSUS**

**WEST KENYA SUGAR LIMITED.....1ST RESPONDENT**

**TEJVEER SINGH RAI.....2ND RESPONDENT**

**JASWANT SINGH RAI.....3RD RESPONDENT**

**J U D G M E N T**

1. By its notice of motion dated 29/11/2016, the applicant prayed for the following orders;

- 1. An order of mandamus do issue directed at the Respondent to compel it to serve the applicant with notice prior to the institution of any suit against or to a suit that concerns it.**
- 2. An Order of Mandamus do issue directed at the Respondent compelling it to seek leave of court prior to the Institution of any suit howsoever against the applicant or any suit that affects the applicant.**
- 3. An order of prohibition do issue directed at the Respondent, its agent or Representatives from the instituting frivolous vexatious and malicious suits against the applicant.**

2. The above application was filed pursuant to the leave granted on 29/9/2016.

3. The Respondent did file the relevant replies to the motion. When this matter came up for hearing, this court ordered that the parties dispense it by way of written submissions with oral highlighting of pertinent issues.

4. Contemporaneously with this motion was the contempt application by the applicant seeking that the Respondent be punished for disobeying the orders issued during the grant of leave. The same is dated 7/5/2018. Again the parties file the necessary responses and submitted over it.

5. The court promised to deliver 2 sets of rulings in respect to the two applications namely the motion for judicial review order as well as the contempt application.

6. I have heard the parties orally as well as read their lengthy written rival submissions and their attendant authorities. One issue which was raised by the applicant which I find extremely germane to the entire application is the validity of the motion dated 24/10/2016. As a matter of fact the determination of its validity or otherwise shall cause the court to consider whether to determine the other prayers sought.

7. It is apparently clear that the application for leave for judicial review was granted on 26/9/2016. Consequently and pursuant to the provisions of Order 53(3) (1) the substantive motion was to be filed within 21 days. The substantive application was filed on 24/10/2016. Can it be said that the same was filed within 21 days? The Respondents contents otherwise, I have perused the court file and I am satisfied that indeed it was filed on 24/10/2016 as evidenced by the receiving stamp by the registry as well as the payment receipt.

8. Clearly the same was filed after expiry of 25 days. The provisions of Order 50(2) of the Civil Procedure Rules reckon that the only days not to be included in the computation of time are **“Sunday, Christmas Day and Good Friday and any other day appointed as a public holiday-----”**

9. Order 53 (3) (1) clearly stipulates a mandatory 21 days unless the court directs otherwise.

10. There are no provisions for the enlargement of time. Filing the substantive motion after expiry of 25 days was clearly out of time regardless of the reason given by the applicants counsel. The question of service as contended by the applicant in their oral submissions is a moot question for now. The bottom line is that the motion was filed outside the stipulated 21 days.

11. Is there need to determine the other issues raised by the parties? I do not think so. It would have been appropriate to do so if the substratum of the case was holding. Even if I were to make any determination on the two applications, it would be a mere academic exercise.

12. I note the emotive nature of the dispute bedeviling both parties herein. I note the myriad of litigation they have had. Regardless of this observation, the courts hands are tied as the basis of the case is legally faulty.

13. I shall therefore struck out the entire application and set aside any orders earlier granted. Each party shall bear their respective costs.

**Delivered, signed and dated at Kitale this 1<sup>st</sup> day of November, 2018.**

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**H.K. CHEMITEI**

**JUDGE**

**1/11/18**

**In the presence of:**

**Kibe & Olanda for 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondent**

**Hassan for Applicant /Petitioner**

**Court Assistant - Kirong**

**Judgment read in open court**