



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CONSTITUTIONAL PETITION NO. 2 OF 2017

GABRIEL OSENO.....APPLICANT

VERSUS

THE GOVERNOR , TRANS NZOIA COUNTY.....1ST RESPONDENT

THE COUNTY GOVERNMENT,

TRANS NZIOA COUNTY.....2ND RESPONDENT

THE COUNTY ASSEMBLY,

TRANS NZOIA COUNTY.....3RD RESPONDENT

J U D G M E N T

1. By the petition dated 2/2/2017 the applicant prayed for the following reliefs;

- a) A declaration that the revenue collection of the County Government of Trans Nzoia for the financial year 2015/2016 and 2016/2017 was illegal.
- b) A conservatory order to stop any further illegal revenue collection.
- c) Costs incidental to the petition.

2. Apparently, when the matter came up under certificate of urgency on 6/2/2017 the court did not deem it urgent and ordered that it be served. The same came up for mention on 6/2/2017 when the applicant counsel stated that they wanted to amend the petition. The court advised that they take appropriate date at registry.

3. On 18/4/2018 the applicant filed another application dated 6/4/2018 under certificate of urgency but the court declined to certify it urgent but that they take a date at registry.

4. Thereafter and after some mentioned the parties agreed to dispense with the applications and deal with the substantive petition.

5. The Respondent did raise a preliminary point of law which I did order that they canvass it contemporaneously with the petition. The respondents have filed their responses and the relevant submissions together with written submissions. I have perused carefully the same as well as the attendant cited authorities.

6. In my view the first issue to consider is whether the amended petition was properly before record. I do not think so. The only remark on court record and contrary to the applicant/petitioner's submissions is that they needed time to amend the petition. I note that by this time, that is on 7/6/2017 the Respondent had entered appearances.

7. Ordinarily therefore it would have been appropriate to seek the leave of the court. In the absence of such leave, then the only logical think is to conclude that the Amended Petition is technically invalid in law and should be struck off record which I hereby do.

8. That leaves the court with the original petition. I have anxiously perused the well thought submissions by all the parties herein. They raise fundamental substantive legal jurisprudence concerning financial management in our counties, more so Trans Nzoia County. The issues raised by the petition are however unsupported by any facts.

9. I state so for the reason that under paragraph 10 of the petition, the petitioner states that;

“ In the financial year 2015/2016 the County Assembly debated the Bill at the 2nd stage but it never went for the Committee stage hence was not passed uptodate, the bill has never been passed.”

10. The said bill was not attached to the supporting affidavit neither the details of the Hanzard. In the absence of such evidence, how would the court make a determination? How would the court issue adverse conservatory orders if there is no evidence that the County Government failed to adhere to fiscal discipline?

11. For the two reasons stated above, I shall decline to deal with the preliminary objection raised or engage in the petition as it stands.

12. The petition is hereby struck out with no order as to costs taking into account that the same is a public interest litigation. The presumption is that the Trans Nzoia County Government is adhering to the relevant Finance status envisaged under the constitution.

Delivered, signed and dated at Kitale this 1st day of November, 2018.

H.K. CHEMITEI

JUDGE

1/11/18

In the presence of:

Kimeu for the 1st Respondent

No appearance for the Petitioner

Court Assistant – Kirong

Judgment read in open court.