



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KITALE

MISC. APPLICATION NO. 50 OF 2015

REPUBLICAPPLICANT

VERSUS

COUNTY GOVERNMENT OF TRANS – NZOIA..1ST RESPONDENT

REPUBLIC SERVICE BOARD TRANS -NZOIA..2ND RESPONDENT

EX-PARTE MATHEW KORE CHEBOI & 38 OTHERS

J U D G M E N T

By their Motion dated 24/7/2015 the applicant prays for orders that

(a) This court be pleased to issue an order of certiorari to remove into this court and quash the decision of the County Government of Trans -Nzoia, which decision is embodied in the advertisement of the Standard Newspaper of 17th June 2015.

The application is supported by the affidavit of one Mathew Kore Cheboi together with the statement and the verifying affidavit. According to the applicants the respondent has advertised for the 2 post of County Director of Health whose qualifications offends the provisions of the Public Health Act as well as Scheme of service for Public Health Officers. That the respondent has allowed persons not qualified to apply and thus they will be prejudiced.

The respondent on its part has opposed the said application under the grounds of opposition filed on 25th November 2015 which raised various legal grounds namely that the application challenges the merits of the impugned decision rather than the process; the application fails to meet the criteria for applying for a Judicial review proceedings and that this court doesn't have the jurisdiction to determine the matter.

I have perused the entire proceedings together with the able submissions by their counsels, both oral and written. There are three issues raised by the parties which ought to be determined.

First of all is the question whether a newspaper advert can be termed a decision that this court ought to quash. The respondents avers that all that is available is a purely newspaper advert and not a decision. On the Contrary the applicants avers that the same is embodied in the said advertisement.

Black Law Dictionary 8th Edition has defined, “ Advertising” as

“The action of drawing the Public's attention to something to promote its sale; the Practice of producing and circulating advertisements.”

While the same dictionary has defined a “Decision” as

“ A Judicial or agency determination after consideration of the facts and the Law; especially a ruling, order or Judgment pronounced by a court when considering or disposing of a case”

Can it be said that the impugned advert be considered a “decision’ in the strict sense of the word ? I do not respectfully think so. The advertisement is for all and sundry. Every Tom, Dick and Harry are allowed to apply including the applicants as long as they think they meet the qualifications. In my view this advert does not in any way prejudice the applicants.

The advert is open to all. Infact the applicants are at liberty not to apply.

The same in my view is not a decision. Its purely a procedure expected in all institutions such as the respondent. The same is to cushion against such capricious acts of public bodies making choices in breach of the law and in particular rules of natural justice. The applicants have not exhibited anything to demonstrate that they have been disadvantaged.

In any case, the province of Judicial review does not deal with the merits or demerits of such applications but merely on procedure followed. In others words, it inquires whether or not in filling the vacancies advertised proper procedure was accorded to all the applicants.

To curtail this process would mean that this court would have entered into the arena of the decision making process by vetting the applicants whosoever they may be. In any case the relevant Act. The Public Health Act and the County Government Act has provided the Procedure to be followed. This Court has not been shown that the Respondent has failed to follow the relevant procedures laid down. What the applicants have done is putting the horse before the cart.

Presuming that the applicants have problems with the relevant required qualifications, especially if they feel disadvantaged then it is not for this court to intervene. They have to substantially challenged those requirements in another forum but not in this proceedings. Section 77(2) of the County Government Act provides that:

“The commission shall entertain appeals on any decision relating to employment of a person in a County Government including a decision in respect of

(a) recruitment, selection appointment and qualifications attached to any office”

The applicants if they are so aggrieved ought to exhaust the machinery of appeal provided.

For now I do not find any decision to appeal against.

The newspaper advertisement is not a decision but a mere notice to the whole world that the respondent intends to recruit people in the office advertised. There is nothing to absolutely suggest that the applicants have applied and have been refused. Neither is this court expected to ascend into the area of determining the applicants. Parliament in its wisdom provided the relevant qualifications and if the applicants are aggrieved they should challenge the same.

I think I have stated enough to show that the application is not meritorious. There is no decision to be quashed. It will be a waste of precious judicial time to engage on the other grounds raised by the respondent which I think they also have substance.

The upshot is that the application dated 24th July 2015 is hereby disallowed with costs to the respondents.

Delivered this 5th day of October, 2016.

H.K. CHEMITEI

JUDGE

Kisa for Arunga for the applicant

Munialo for Sifuna for Respondent

Kirong – Court Assistant