



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW NO. 279 OF 2016

IN THE MATTER OF: AN APPLICATION FOR JUDICIAL REVIEW

AND

**IN THE MATTER OF: AN APPLICATION FOR JUDICIAL REVIEW PROCEEDINGS FOR
ORDERS OF CERTIORARI, MANDAMUS AND PROHIBITION.**

AND

IN THE MATTER OF: THE SOCIETIES ACT (CAP 108) LAWS OF KENYA

**IN THE MATTER OF: THE MEDICAL LABORATORY TECHNICIANS AND
TECHNOLOGISTS ACT (CAP 233A) LAWS OF KENYA**

AND

IN THE MATTER OF: THE FAIR ADMINISTRATIVE ACTION ACT, 2015, LAWS OF KENYA

AND

**IN THE MATTER OF: THE BY-LAWS (CONSTITUTION) OF THE ASSOCIATION OF
KENYA MEDICAL LABORATORY SCIENTIFIC OFFICERS**

AND

**IN THE MATTER OF: DECISION BY THE REGISTRAR OF SOCIETIES ALLEGING
CONTRAVENTIONS SECTION 31(4) AND 30(4) OF THE SOCIETIES ACT (CAP 108)
LAWS OF KENYA CONTAINED IN LETTERS DATED 16.3. 2016 AND 22.3.2016
RESPECTIVELY.**

AND

**IN THE MATTER OF: DECISION BY THE REGISTRAR OF SOCIETIES TO THE
APPLICANTS CONTAINED IN A LETTER DATED 21.4.2016 CALLING FOR A
CONVENING OF THE ANNUAL GENERAL MEETING AND ELECTION OF NEW
OFFICIALS WITHIN THE NEXT 60 DAYS.**

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

REGISTRAR OF SOCIETIESRESPONDENT

AND

ASSOCIATION OF MEDICAL LABORATORY

SCIENTIFIC OFFICERS1ST INTERESTED PARTY

DANIEL C.A. SANGA.....2ND INTERESTED PARTY

KIPRONO CHEPKOK.....3RD INTERESTED PARTY

CALISTUS SABINI BUTIYA.....4TH INTERESTED PARTY

RULING

1. By notice of motion dated 3rd November 2016 and filed on the same date supported by the affidavit sworn by Mr Steven Nzaku advocate for the exparte applicants, counsel sought for leave of court to cease acting for his clients. The grounds are on the face of the record, principally, that counsel was constrained to cease acting for his clients after this court struck out their replying affidavit to the application for contempt proceedings which were due for hearing today and that he was only permitted to address the court on points of law.

2. In his view, contempt proceedings are criminal in nature and that it goes without saying that an interrogation of affidavits by the applicants on the contempt application and process server thereof is critical. Further, that as all the alleged contemnors having been in court and having acceded to his ceasing to act for them, he should be allowed to let go the matter.

3. The advocate for the interested parties, the respondent and the exparte applicants present do not oppose the application by Mr Nzaku to recuse himself from representing the exparte applicants. However, Mr Chebii and Miss Mwangi counsels had a rider on the ground and deposition by Mr Nzaku intimating that his clients were not given a chance to seek leave to validate the replying affidavit. They submitted in agreement that the court had, before striking out the replying affidavit probed counsel urging him to decide whether, despite filing the affidavits out of time, he still wished to proceed with it in that manner and that Mr Nzaku had adamantly refused to seek leave of court to validate or regularize the said affidavits.

4. I have carefully considered the application by the exparte applicant's counsel brought under Article 25(b) of the Constitution and or any other enabling legislation.

5. Although counsel alleges that he has sought to cease acting for his clients after his client's replying affidavits were struck out, he has himself to blame and this court shall not share in that blame. Counsel was on 17th October 2016 granted 7 days which he had asked within which to file a replying affidavit on behalf of his clients and he did not. He filed on 1st November 2016 well out of time and when he appeared today, he declined to seek to validate the said affidavits.

6. The law is clear that a replying affidavit or grounds of opposition must be filed and served 3 clear days before the hearing date. However, where it is clear that the court gave 7 days, it was imperative upon the party to file the affidavit within 7 days as stipulated in the order, or apply to court orally or in writing for enlargement of time under Order 50 Rule 6 of the Civil Procedure Rules.

7. Counsel for the ex parte applicants did not see that need. Nonetheless, he now wishes to shift the blame to court for his own deeds. Be as it may, as the application is not opposed, and as his ceasing to act for the ex parte applicants will not in any way prejudice the ex parte applicants who have an opportunity to be represented by another advocate of their own choice, this court hereby grants the orders sought in the application by Mr Nzaku dated 3rd November 2016 without any orders as to costs.

8. Having so granted the leave to cease acting for the ex parte applicants, counsel is hereby directed to formally file a notice of cessation to act for his clients.

9. This court does recognize the parties' rights to accessing justice under Article 48 of the Constitution, as well as their right to a fair hearing as stipulated in Article 50 of the Constitution, which right cannot be limited. Accordingly, as prayed by the ex parte applicants they are hereby granted 14 days from the date hereof, within which to seek services of another advocate of their own choice, to effectively represent them in this matter.

10. Indeed, contempt of court proceedings are quasi criminal in nature but that does not mean that the alleged contemnors are guilty as charged. The applicant is under a heavy burden to prove the allegations and therefore the alleged contemnors have an opportunity to be adequately represented at the hearing.

11. In the circumstances, I exercise my discretion under Sections 1, 1A, 3 and 3A of the Civil Procedure Act and Article 159 of the Constitution and vacate my orders on hearing of the contempt application today and direct that the ex parte applicants do file and serve upon the respondents and the interested parties a replying affidavit(s) to the application for contempt within 14 days from the date hereof. Mention on 23rd November 2016 for directions.

Orders accordingly.

R.E. ABURILI

JUDGE

3/11/2016