



REPUBLIC OF KENYA

High Court at Bungoma

Miscellaneous Application 17 of 2011

**IN THE MATTER OF AN APPLICATION FOR ORDERS OF PROHIBITION AND
CERTIORARI**

AND

**IN THE MATTER OF THE LOCAL GOVERNMENT ACT, THE GOVERNMENT
PROCEEDINGS ACT, THE CONSTITUTION OF KENYA 2010, THE INTERNATIONAL
TREATIES AND CONVENTION LAWS, THE LAW REFORM ACT AND THE CIVIL
PROCEDURE RULES**

AND

**IN THE MATTER OF THE VARIOUS WARRANTS OF ARREST IN EXECUTION OF THE
DECREES ISSUED BY THE DEPUTY REGISTRAR IN RESPECT OF MUNICIPAL COUNCIL OF
BUSIA**

AND

**IN THE MATTER OF AN APPLICATION BY JONATHAN KERIO & SYLVANCE OBONDO
IN CAPACITY AS THE CLERK AND TREASURER OF THE MUNICIPAL COUNCIL OF
BUSIA**

BETWEEN

REPUBLIC.....APPLICANT

~VERSUS~

THE DEPUTY REGISTRAR, BUSIA.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

AND

JULIUS MANUARI t/a MANUARI & CO. ADVOCATES.....INTERESTED PARTY

JUDGMENT

The Interested Party provided legal services to the *ex-parte* Applicants following which he taxed his bills. When the fees was not paid he obtained warrants to have the *ex-parte* Applicants arrested in execution. The *ex-parte* Applicants obtained leave and filed this motion seeking to quash the warrants

by order of *Certiorari* and to stop the execution by Order of *Prohibition*. The counsel agreed to present their arguments through written submissions which I have considered.

Under section 263 A (a) of the Local Government Act (Cap.265)

“Where any judgment or order has been obtained against a local authority no execution or attachment or process in the nature therefore shall be issued against the local authority but the clerk of the local authority shall without delay cause to be paid out of the revenue of the local authority such amounts as by the judgment or Order be awarded against the local authority to the person entitled thereto.”

It is quite clear that the Interested Party cannot legally seek to have the *ex-parte* Applicants arrested in execution for not paying his fees. The *ex-parte* Applicants have a duty imposed on them to cause to be paid out from the revenues of their respective local authorities the fees due and they have to do this without delay. If the duty is not performed the Interested Party should come to court and seek an order of *Mandamus* to compel the *ex-parte* Applicants to do that which the Statute requires of them.

It follows that the 1st Respondent had no jurisdiction to issue warrants of arrest against the *ex-parte* Applicants in the matter. The warrants are hereby called into this court by order of *Certiorari* and quashed. The 1st Respondent is by order of *Prohibition* prohibited from issuing any such warrants in the matter. Costs of the motion shall be borne by the Interested Party.

Dated, signed and delivered at Bungoma this 3rd day of October, 2012.

A. O. MUCHELULE
JUDGE