



IN THE COURT OF APPEAL

AT MOMBASA

(CORAM: W. KARANJA, MUSINGA, GATEMBU J.J.A.)

CIVIL APPEAL NO. 57 OF 2019

BETWEEN

PATRICK KABUNDU.....1<sup>ST</sup> APPELLANT

MUTUMA CALEB MWITI.....2<sup>ND</sup> APPELLANT

CHICHI KIMANI.....3<sup>RD</sup> APPELLANT

AND

MOMBASA COUNTY GOVERNMENT.....1<sup>ST</sup> RESPONDENT

THE GOVERNOR MOMBASA COUNTY.....2<sup>ND</sup> RESPONDENT

MOMBASA COUNTY PUBLIC SERVICE BOARD.....3<sup>RD</sup> RESPONDENT

THE CLERK OF MOMBASA COUNTY ASSEMBLY....4<sup>TH</sup> RESPONDENT

THE MOMBASA COUNTY ASSEMBLY COMMITTEE

ON SECURITY AND ADMINISTRATION

THROUGH CHAIRPERSON.....5<sup>TH</sup> RESPONDENT

THE MOMBASA COUNTY ASSEMBLY

COMMITTEE ON JUSTICE AND

LEGAL AFFAIRS THROUGH CHAIRPERSON.....6<sup>TH</sup> RESPONDENT

MOHAMED AMIR MOMBASA

INSPECTORATES DIRECTOR.....7<sup>TH</sup> RESPONDENT

AND

DIRECTOR OF PUBLIC PROSECUTION.....1<sup>ST</sup> INTERESTED PARTY

THE ATTORNEY GENERAL.....2<sup>ND</sup> INTERESTED PARTY

THE CHIEF MAGISTRATE MOMBASA.....3<sup>RD</sup> INTERESTED PARTY

THE INSPECTOR GENERAL

NATIONAL POLICE SERVICE.....4<sup>TH</sup> INTERESTED PARTY

THE MOMBASA LAW SOCIETY.....5<sup>TH</sup> INTERESTED PARTY

*(Being an appeal from the ruling of the High Court of Kenya at Mombasa (E.K. Ogola, J.) delivered on 9<sup>th</sup> May, 2019*

*in*

*Mombasa High Court Petition No. 195 of 2018)*

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**RULING OF THE COURT**

1. The applicant, Patrick Kabundu, who appears in person, is aggrieved by a ruling of the High Court (*E.K. Ogola, J.*) delivered at Mombasa on 9<sup>th</sup> May 2019 dismissing his application dated 11<sup>th</sup> July 2018 in which he had sought, among other orders, that his petition should be heard by an uneven number of judges; that a temporary injunction should be issued to restrain the respondents “*from collecting any revenue arising out of violation of the county legislation*” et al.
2. He filed a notice of appeal dated 15<sup>th</sup> May 2019 and a draft memorandum of appeal dated 24<sup>th</sup> May 2019 in which he faults the learned Judge for what he terms as failure to implement the directive given by the Registrar of the Judiciary on revenue collection.
3. Thereafter the applicant presented to this Court a Certificate of Urgency dated 24<sup>th</sup> May 2019 without any accompanying application. Although it is not clear what exactly he seeks, we surmise that his certificate of urgency is intended to be an application for the very reliefs that were declined by the High Court.
4. *Paul Buti*, learned counsel for the 1<sup>st</sup> to 4<sup>th</sup> respondents submitted, quite rightly, that there is no application before the Court on the basis of which his clients can respond. For the 5<sup>th</sup> to 7<sup>th</sup> respondent, learned counsel Elizabeth Kisingo submitted, without expounding, that the ‘*application*’ “*has been overtaken by events considering that Appeal No. 91 which relates to the present Appeal.*” We are equally unable to comprehend the latter statement.
5. All in all, it seems to us that what might be open to the applicant, if he is so minded, and if he has not already done so, is to pursue his substantive petition before the lower court or to pursue his appeal from the interlocutory ruling of the High Court of 9<sup>th</sup> May 2019.
6. Assuming therefore that the applicant’s certificate of urgency dated 24<sup>th</sup> May 2019 was intended to be an application, the same is hereby dismissed. We make no orders as to costs.

**DATED AND DELIVERED AT NAIROBI THIS 19TH DAY OF MARCH, 2021.**

**W. KARANJA**

.....

**JUDGE OF APPEAL**

**D.K. MUSINGA**

.....

**JUDGE OF APPEAL**

**S. GATEMBU KAIRU, FCIArb**

.....

**JUDGE OF APPEAL**

*I certify that this is a true copy of the original.*

*Signed*

**DEPUTY REGISTRAR**

