



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

PETITION NO.60 OF 2021

THE LAW SOCIETY OF KENYA..... PETITIONER

VERSUS

THE CABINET SECRETARY, MINISTRY OF AGRICULTURE,

LIVESTOCK, FISHERIES & CO-OPERATIVES.....1ST RESPONDENT

PETER GATIRAU MUNYA.....2ND RESPONDENT

THE HON.ATTORNEY GENERAL.....3RD RESPONDENT

AND

SAMMY KIPKOECH KETER.....1ST INTERESTED PARTY

JULIUS KIARIO INYINGI.....2ND INTERESTED PARTY

RUKIA A MOHAMEND..... 3RD INTERESTED PARTY

THE NYAYO TEA ZONES DEVELOPMENT CORPORATION... 4TH INTERESTED PARTY

RULING

The petitioner filed application dated 1st April, 2021 under the provisions of sections 4 and 5 of the Fair Administrative Actions Act, Article 28 and 47 of the Constitution and Rule 19 of the Constitution of Kenya (protections of Rights and Fundamental Freedoms) Practices and Procedures rules, 2013 and seeking for orders that;

1. Spent;

2. Spent;

3. Spent;

4. Pending hearing and determination of this petition, the court be pleased to issue and order reinstating the 1st interested party as a member of the Board of the 4th interested party;

5. Pending the hearing and determination of this petition, the court be pleased to issue a restraining order against the respondents whether by themselves, agents and servants and whosoever acting under their authority or instruction from preventing the 1st interested party from excreting his responsibility as a member of the board of the 4th interested party;

6. Any other relief that this court may deem fit and just to grant in the interests of justice; and

7. Costs be provided for.

The application is supported by the Supporting Affidavit MERCY WAMBUA save the affidavit filed is that of Sammy Kipkoech Keter.

To this application is the Petition by the Petitioner supported by the Supporting Affidavit of Mercy Wambua. This affidavit is attached.

The respondents and the 4th interested party filed Grounds of Opposition

It is trite that every application must be accompanied and supported by a valid affidavit in support.

Rule 17(8) of the Employment and Labour Relations Court (Procedure) Rules, 2016 directs every applicant to file a Notice of Motion setting out the grounds upon which are to be relied upon and to attach a Supporting Affidavit in support thereof;

(8) A notice of motion shall state in general terms the grounds of the application and where the motion is supported by an affidavit, both the notice of motion and a copy of the affidavit shall be served on the other party.

And even in a Constitutional Petition, similar provisions apply. an application filed through a Notice of Motion must be supported by an Affidavit set out under the grounds on the face of the motion. Rule 19 of the Constitution of Kenya (protections of Rights and Fundamental Freedoms) Practices and Procedures rules, 2013 provides that;

19. A formal application under these rules shall be by Notice of Motion set out in Form D in the schedule and may be supported by an affidavit.

In the instant case, the affidavit in support is different from the Affidavit stated in the grounds in support of the application.

This instant application does not stand the test of law and process. The affidavit in its support is inadmissible for want of form and compliance with the law and the Rules of the court and with regard to constitutional petitions. This must be struck out. See

Maureen Nyambura Ngigi Warui v Board of Directors, Kenya Power & Lighting Company Limited & 2 others [2020] eKLR.

Failure to attach a Replying Affidavit to the Notice of Motion is not a mere technicality that can be cured by the court. this goes to the roots of foundation of the application. The facts are not supported.

For these reasons, I strike out both the motion and the supporting affidavit for being bad in law. Without the affidavit, the Notice of Motion herein cannot stand the test of evidentiary proof as required by law.

The petition is proper and shall be heard on the merits.

Before I conclude, the respondent in the Grounds of Opposition has challenged the *locus standi* of the petitioner pursuant to Article 22(2)(c) and 258(1)(c) of the Constitution and that without proper standing the petition should be struck out. These grounds are essentially filed in opposition to the Notice of Motion herein found defective.

The respondents and interested party shall reply to the petition and the same heard on the merits.

Accordingly, application dated 1st April, 2021 is hereby struck out. No orders on costs.

DELIVERED IN COURT AT NAIROBI THIS 25TH DAY OF NOVEMBER, 2021.

M. MBARU

JUDGE

In the presence of:

Court Assistant: Okodoi

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and