



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT MERU

JUDICIAL REVIEW NO. 14 OF 2017

(Formerly Nyeri ELRC Cause No. 400 of 2017)

IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR

JUDICIAL ORDERS OF CERTIORARI AND PROHIBITION

AND

IN THE MATTER OF THE CONSTITUTION, THE COUNTY GOVERNMENTS ACT, 2012

AND

IN THE MATTER OF THE RESPONDENTS LETTER DATED 20TH FEBRUARY 2017 PURPORTING TO SUSPEND THE APPLICANTS

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

THE COUNTY GOVERNMENT OF ISIOLO.....1ST RESPONDENT

THE ISIOLO COUNTY PUBLIC SERVICE BOARD.....2ND RESPONDENT

EX PARTE

1. HUSSEIN BORU GUYO

2. GIRO LIBAN

3. DAVID KATHURAKU

RULING

1. The *ex parte* Applicants sought the orders of *certiorari* and prohibition and leave therefor was granted on 24th October 2017. The substantive motion for the judicial review orders they sought was to be filed within 21 days. It would seem the application was filed on 2nd November 2017. I say so because the motion does not have an official court stamp to signify the date of filing though the assessment was done on 2nd November 2017. There is a receipt issued which would indicate the motion was indeed filed despite there being no court stamp on the motion. The motion sought an order of judicial review, to bring to this court for purposes of being quashed the decision purporting to suspend or otherwise discipline the 3 *ex parte* Applicants from their respective duties communicated in the letters dated 20th February 2017. The motion was supported by the affidavit of Giro Liban the second *ex parte* Applicant who deponed that they were issued with the letters suspending them from office in February 2017. The suspension was after the *ex parte* Applicants failed to respond to show cause letters issued in December 2016.

2. Grounds for the grant of the judicial review order include instances where the public official did not have jurisdiction or exceeded his or her jurisdiction or acted pursuant to delegated power in violation of a law prohibiting such delegation. Judicial review is additionally permissible where there is bias or there is reasonable suspicion of bias as well as in situations where the affected person was denied a reasonable opportunity to state their case. Other instances for grant of the judicial review orders sought by the *ex parte* Applicants include situations of the non-compliance with mandatory and material procedures and conditions precedent, where there is procedural unfairness and errors of law. Judicial review is available where an public officer acts on ulterior motives calculated to prejudice the rights of the *ex parte* applicant, or where he or she fails to take all relevant considerations into account and acts on the basis of illegal delegation or in bad faith. The impugned decision is susceptible to judicial review where there is no rational connection between the decision made and either the purpose for which it was taken or the reasons given by the public official. Where there is abuse of discretion and a manifest unreasonable delay or failure to act in discharge of a duty imposed under any written law, judicial review may be sought. A decision made by a public official which is unreasonable, disproportionate, or made in violation of legitimate expectation, unjust or unfair or which results from or in furtherance of abuse of power are also amenable to judicial review.

3. In this case, having failed to respond to the issues raised in the letters of show cause, there was no basis for the court to intervene and issue any orders in favour of the *ex parte* Applicants. There is no bias or any of the grounds for judicial review alluded to in the preceding paragraph and therefore the motion before me is devoid of any merit as the conduct of the *ex parte* Applicants suggests a pattern of delaying or deliberately obstructing the process of discipline they were being subjected to despite there being no basis to hold the public officers involved liable for any malpractice or bias. I therefore dismiss the judicial review application with costs of the motion to the Respondents.

It is so ordered.

Dated and delivered at Meru this 7th day of February 2019

Nzioki wa Makau

JUDGE