



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

PETITION NO. 11 OF 2014

FORMERLY NAIROBI H.C. PET. NO. 90 OF 2014

NICK GITHINJI NDICHU.....PETITIONER

VERSUS

CLERK, KIAMBU COUNTY ASSEMBLY..... 1ST RESPONDENT

KIAMBU COUNTY ASSEMBLY.....2ND RESPONDENT

Mr. Mtange with Mr. Muite for Petitioner

Mr. Kibe with Mr. Ngaywa and Mr. Ngige for the 1st and 2nd Respondent

RULING

1. The Constitution of Kenya (protector of Rights and Fundamental Freedoms) practice and procedure **Rules, 2013**, (herein after ‘The Rules’ apply to all proceedings made under **Article 22** of the Constitution.
2. The Petition was filed at the High Court pursuant to **Article 22** of the Constitution and **Rule 10(1)**. The Respondents filed a reply in terms of **Rule 15(1)**. Subsequently, the Petitioner sought leave to amend the Petition which leave was granted by the Court and an amended petition was filed on 28th March 2014.
3. The Respondent did not file a Response within the 14 days and were granted an extension of 7 days to file a reply which they proceeded to do. When the matter came for allocation of a hearing date on 15th May 2014, the 1st and 2nd Respondents sought further leave to file a cross-petition.
4. In terms of **Rule 15(3)**, the Respondent may file a cross-petition disclosing the matters set out in **Rule 10(2)**. **Rule 15(3)** is silent on the time frame within which the Respondent may file a cross-petition.
5. It is the Court’s view however that **Rule 15(3)** is to be read together with **Rule 15(1)** so that the cross-petition should be filed simultaneously with the Reply to the Petition either as part of the reply itself or as a separate document. The Respondents therefore ought to have filed the cross-petition within the 14 days provided under **Rule 15(1)**.
6. In the present case, the Respondent having failed to comply with **Rule 15(1)** sought leave of the Court to file a Response within a further 7 days which the Court granted and the Respondents duly filed their Reply but did not file any cross-petition.
7. It is now surprising that the Respondents seek further extension of time to introduce a cross-petition whose effect will be to open the pleadings afresh since the Petitioner and the interested party will be inclined to also respond to the cross-petition.
8. The Petitioner and the Interested Party have opposed this application stating that it is an after-thought intended to delay the hearing and conclusion of this matter especially because the status quo orders the Petitioner had sought were refused by the Court placing the Respondents at a comfortable position upon electing a new speaker.
9. **Rule 15(1)** provides in mandatory terms that a reply be filed within 14 days. However, the Court had used its discretion to grant the Respondents a further 7 days to file their Response which they proceeded to do.

10. The Court is now not inclined to exercise its discretionally powers to further dilate this matter by opening the pleadings afresh, since no reasonable cause has been shown for the Court to do so a second time at the expense of the Petitioner.

11. What is sought is not a mere amendment but an attempt to introduce a new cause of action after the pleadings have closed.

The Application for leave to file a cross-petition is therefore refused with costs to the Petitioner.

Dated and Delivered at Nairobi this 30th day of May, 2014

MATHEWS N. NDUMA

PRINCIPAL JUDGE