



**Likowa v Aluochier & 2 others (Petition (Application)
E008 of 2024) [2024] KESC 79 (KLR) (20 December 2024) (Ruling)**

Neutral citation: [2024] KESC 79 (KLR)

**REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA
PETITION (APPLICATION) E008 OF 2024
MK KOOME, CJ & P, MK IBRAHIM, SC WANJALA, I LENAOLA & W OUKO, SCJJ
DECEMBER 20, 2024**

BETWEEN

CHARLES OWINO LIKOWA PETITIONER

AND

ISAAC ALUOCH POLO ALUOCHIER 1ST RESPONDENT

VINCENSIA AWINO KIONGE 2ND RESPONDENT

COUNTY ASSEMBLY OF MIGORI 3RD RESPONDENT

Jurisdiction of the Supreme Court to admit additional evidence

The application sought admission of additional evidence by the 1st respondent. The court held that it may admit or call for additional evidence in determining an appeal. The court found that the instant application was a replica of the one dated May 20, 2024, which it conclusively determined. The court thus held that the instant application was a blatant abuse of court process.

Reported by Kakai Toili

Jurisdiction – jurisdiction of the Supreme Court – jurisdiction to determine applications for admission of additional evidence - whether the Supreme Court could determine an application for admission of additional evidence where it had dismissed a similar application in the same matter – Supreme Court Act (cap 9B), section 20; Supreme Court Rules, 2020, rule 26.

Brief facts

The 1st respondent sought the admission of additional evidence. The 1st respondent asserted that the instant application was a reiteration of a previous one filed on May 20, 2024, to which the court had allegedly not rendered a decision. It was further asserted that the proposed additional evidence was directly relevant to the issues before the court and had the potential to influence or materially impact on its decision.

The petitioner contended that the jurisdiction of the court to admit additional evidence had not been properly invoked as a similar application dated May 20, 2024, was dismissed with reasons. The petitioner thus claimed that the instant application amounted to an appeal against that ruling and therefore, the 1st respondent’s



remedies lay solely within the court's review jurisdiction. The petitioner stated that the issues intended to be addressed through the additional evidence had been rendered moot as there was no ongoing dispute between the petitioner and the 1st respondent.

Issues

Whether the Supreme Court could determine an application for admission of additional evidence where it had dismissed a similar application in the same matter.

Held

1. Pursuant to section 20 of the Supreme Court Act, Cap 9B as read with rule 26 of the Supreme Court Rules, 2020, the court may admit or call for additional evidence in determining an appeal.
2. The instant application was a replica of the one dated May 20, 2024, which the court conclusively determined in its ruling dated July 26, 2024. In the circumstances, the instant application was a disguised appeal against that ruling and as such the application was a blatant abuse of court process. In any event, having declined to grant the 1st respondent leave to adduce additional evidence, the subject matter of the instant application, was spent.
3. The petitioner had been impeached by the Members of the County Assembly of Migori on April 23, 2024 and a new Speaker was elected on May 28, 2024. Therefore, the 1st respondent's application had been overtaken by events. The issues raised in the instant application did not relate to the appeal before the court. The motion raised a whole new cause of action arising from the Standard Newspaper advertisement dated May 15, 2024 calling for the election of a new Speaker for the County Assembly of Migori following the impeachment.

Application dismissed.

Orders

1st respondent to bear the costs of the application.

Citations

Cases

None referred to

Statutes

Kenya

1. Supreme Court Act (cap 9B) section 20 — (Interpreted)
2. Supreme Court Rules (cap 9B Sub Leg) rule 26 — (Interpreted)

Advocates

Mr MM Omondi for the petitioner.

Ms Agnes Awuor for the 2nd respondent.

Mr Kennedy Okong'o for the 3rd respondent.

RULING

Mr MM Omondi for the Petitioner(Omondi Abande & Company Advocates)

Mr Isaac Aluochier appearing in person (Appearing in person)

Ms Agnes Awuor for the 2nd respondent(Agnes Awuor Advocate)

Mr Kennedy Okong'o for the 3rd respondent(Okong'o Wandago & Company Advocates)

1. Upon perusing the notice of motion dated July 30, 2024 by the 1st respondent, filed on July 31, 2024 and seeking the admission of additional evidence; and



2. Upon perusing the grounds on the face of the application, the affidavit sworn by the 1st respondent on July 30, 2024 in support thereof, and the submissions of even date, wherein it is asserted that the present application is a reiteration of a previous one filed on May 20, 2024, to which the court has allegedly not rendered a decision; that the request for the admission of additional evidence is made pursuant to section 20 of the *Supreme Court Act*, cap 9B, the said evidence comprising of the returned nomination papers of eight (8) candidates who duly submitted their papers within the nomination period, which closed at 9:00 AM on September 19, 2022; that the proposed additional evidence is directly relevant to the issues before the court and has the potential to influence or materially impact its decision; that the additional evidence emerged following the parties' engagement in an out of court settlement; that this evidence removes any ambiguity or uncertainty surrounding the case, is credible, has merit and was previously withheld by the 2nd and 3rd respondents and furthermore, it reveals deliberate deception to the Court; and
3. Taking into account the petitioner's grounds of opposition dated August 20, 2024 and submissions of even date to the effect that the jurisdiction of the court to admit additional evidence has not been properly invoked, as a similar application dated May 20, 2024, was dismissed with reasons provided in a ruling dated July 26, 2024; consequently, the subsequent Motion amounts to an appeal against that ruling and therefore, the 1st respondent's remedies lie solely within the court's review jurisdiction; and in any case, the issues intended to be addressed through the additional evidence have been rendered moot, as there is no ongoing dispute between the petitioner and the 1st respondent, the petitioner having vacated the office of Speaker of the County Assembly of Migori, and Christopher Odhiambo Rusana elected to the position on May 28, 2024; and
4. Noting the written submissions of the 3rd respondent dated August 20, 2024 wherein they reiterate the sentiments of the petitioner save to add that the application constitutes a gross abuse of the court process; that no additional evidence is required for this court to render a merit-based decision on the remaining issues in the present appeal, particularly in light of the changed circumstances; that the 1st respondent, failed to present any evidence before the trial court to support his constitutional petition and consequently, the matter of introducing additional evidence does not arise; that while the court has powers under rule 26 of the *Supreme Court Rules 2020* to admit and or call for additional evidence, that power is exercised sparingly and on a case by case basis and a party must lay a basis for the same; that the court can still pronounce itself on the issues which the 1st respondent had raised without resorting to the additional evidence; that the appeal dated March 18, 2024, along with the cross-appeal, constitute second appeals, wherein only issues of law may be raised, however, the so-called additional evidence is being introduced in a second appeal and pertains to matters of fact; that therefore the motion is frivolous, vexatious and ought to be dismissed with costs; and
5. Appreciating that pursuant to section 20 of the *Supreme Court Act*, cap 9B as read with rule 26 of the *Supreme Court Rules, 2020*, this court may admit or call for additional evidence in determining an appeal;
6. We now opine as follows:
 - i. We take cognizance of the fact that the present application is a replica of the one dated May 20, 2024, which this court conclusively determined by its ruling dated July 26, 2024. In the circumstances, the instant application is a disguised appeal against the said ruling and as such the application is a blatant abuse of court process. In any event, having already declined to grant the 1st respondent leave to adduce additional evidence, the subject matter of the present application, is spent.



- ii. Furthermore, we can only reaffirm our findings in the ruling dated July 26, 2024, emphasizing that the petitioner having been impeached by the Members of the County Assembly of Migori on April 23, 2024 followed by the election of a new Speaker on May 28, 2024, the 1st respondent's application has been overtaken by events. It is also clear that the issues raised in the present application do not relate to the appeal before us. The motion raises a whole new cause of action arising from the Standard Newspaper advertisement dated May 15, 2024 calling for the election of a new Speaker for the County Assembly of Migori following the impeachment.

7. Consequently, and for the reasons aforesaid, we make the following Orders:

- i. The notice of motion dated July 30, 2024 and filed on July 31, 2024 is hereby dismissed.
- ii. The 1st respondent shall bear the costs of this application.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 20TH DAY OF DECEMBER, 2024.

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M. K. KOOME

CHIEF JUSTICE & PRESIDENT OF THE SUPREME COURT

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M. K. IBRAHIM

JUSTICE OF THE SUPREME COURT

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S. C. WANJALA

JUSTICE OF THE SUPREME COURT

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I. LENAOLA

JUSTICE OF THE SUPREME COURT

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W. OUKO

JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

REGISTRAR

SUPREME COURT OF KENYA

