



Kioga v Meru County Assembly Service Board & another (Constitutional Petition E029 of 2022) [2024] KEHC 3576 (KLR) (21 March 2024) (Ruling)

Neutral citation: [2024] KEHC 3576 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CONSTITUTIONAL PETITION E029 OF 2022**

TW CHERERE, J

MARCH 21, 2024

BETWEEN

KAUMBI KIOGA PETITIONER

AND

MERU COUNTY ASSEMBLY SERVICE BOARD 1ST RESPONDENT

MERU COUNTY ASSEMBLY 2ND RESPONDENT

RULING

1. By orders dated 26th October, 2023, this court issued the following orders:

1. The orders sought in the Petition are declined.

However

2. The Respondents are directed to ensure that the composition of the 1st Respondent complies with the Article 27(8) of *the Constitution* on or before 31st December, 2023

3. In the event that 1st Respondent remains non-compliant after 31st December, 2023, any action or decision that it may be taken thereafter shall be a nullity

4. Each party shall bear its own costs.

2. By notice of motion dated 11th December, 2023, Applicants seek the following orders:

1.Spent

2.Spent

3. That the Respondents/Applicants be granted extension pf time for 6 months from 1st March, 2024 within which to comply with order No. 2 given pursuant to the judgment delivered



on 26th October, 2023 directing them to ensure that the composition of the 1st Respondent complies with Article 27(8) of *the Constitution* of Kenya on or before 31st December, 2023

4. Costs be in the cause
3. The application is based on grounds among others that:
 1. The Respondents/Applicants are willing to comply with the aforementioned court order
 2. The deadline of 31st December, 2023 is not humanly achievable of the circumstances of the re-composition of the 1st Respondent which involves political parties and processes
 3. The MCAs recess commenced on 08th December, 2024 and ended on 12th February, 2024
4. The application is also supported by an affidavit sworn on 11th December, 2023 by Hon. Ayub Bundi Solomon, the Chairperson of the 1st Respondent and Speaker of the 2nd Respondent in which he reiterates the grounds on the face of the application. Annexed to the affidavit is a notice of appeal of this court's judgment, the judgment of the court, evidence that MCAs were engaged with the motion of the impeachment of the Governor between 26th October, 2023 to 09th November, 2023 and gazette notice of calendar of the County Assembly including the long recess that ended on 12th February, 2024 marked ABS 1 to 5 respectively.
5. In his replying affidavit sworn on 20th February, 2024, Petitioner/Respondent urges the court to find that that it became functus officio after it rendered its judgment on 26th October, 2023 and decline to extend time for the Respondents/Applicants who are in breach of its orders.
6. In his supplementary affidavit sworn on 12th March, 2024, Hon. Ayub Bundi Solomon, the Chairperson of the 1st Respondent and Speaker of the 2nd Respondent avers that the 1st Respondent is not in breach having not conducted any business since 31st December, 2023 and that the court has powers and authority to extend time to ensure compliance with its orders.

Analysis and Determination

7. I have considered the application in light of affidavit on record the issue for determination is whether there ought to an extension of orders issued on 26th October, 2023.
8. The Respondents/ Applicants only seeks one prayer from the Court: that it extends time for them to comply with the orders issued on 26th October, 2023.
9. The power to extend time is a discretionary one. However, the discretion must be exercised judiciously and on sound factual and legal basis. (See *Njuguna v Magichu & 73 Others* [2003] KLR 50).
10. In the case of *Nicholas Kiptoo Arap Korir Salat v. IEBC & 7 others*, SC Application No. 16 of 2014; [2014] eKLR, the Supreme Court laid down the criteria for grant or denial of all application for extension of time. The criteria include the question whether the explanation given for any delay is reasonable and credible. That there must also exist extenuating circumstances to enable the Court exercise its unfettered jurisdiction in favour of an applicant. Inordinate delay cannot thus attract favourable exercise of discretion.
11. In *Paul Wanjohi Mathenge v. Duncan Gichane Mathenge* [2013] eKLR the Court of Appeal while referring to other authorities, observed as follows:

“The discretion under Rule 4 is unfettered, but it has to be exercised judicially, not on whim, sympathy or caprice. I take note that in exercising my discretion I ought to be guided by



consideration of the factors stated in previous decisions of this Court including, but not limited to, the period of delay, the reasons for the delay, the degree of prejudice to the respondent and interested parties if the application is granted, and whether the matter raises issues of public importance.”

12. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court. The present application was filed about 1 ½ months after the orders sought to be extended were issued and before the expiry of the timelines for compliance. I therefore find it was filed without delay.
13. Upon consideration of the Respondents/Applicants’ submissions Petitioner/Respondent having not filed any, and evaluation of the record before me, I note that the Respondents/Applicants have in explaining the reason for their non-compliance with the orders of 26th October, 2023 raised a pertinent issue which this Court cannot ignore. They contend, which is not disputed that the re-composition of the 1st Respondent/Applicant is a political process which requires political parties to nominate and substitute members of the Board, involves several political players therefore requires adequate time.
14. It has not been demonstrated that the extension of time for a limited period of time will cause the Petitioner/Respondent any prejudice and I therefore find that it would be in the interest of justice to grant the orders sought.
15. In the result, notice of motion dated 11th December, 2023 is allowed in the following terms:
 1. The Respondents/Applicants be and are hereby granted extension of time for 6 months from 1st March, 2024 within which to comply with order No. 2 given pursuant to the judgment delivered on 26th October, 2023 directing them to ensure that the composition of the 1st Respondent complies with Article 27(8) of the Constitution of Kenya on or before 31st December, 2023
 2. Costs be in the cause

DELIVERED THIS 21st DAY OF March 2024.

WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistants - Kinoti/Munene

For Petitioner/Respondent - Mr. Wambua for Wambugu & Muriuki Advocates

For Respondents/Applicants- Ms. Kimathi for Carpeters Mbaabu & Co. Advocates

