



REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

(Coram; Mwilu (DCJ & VP), Wanjala, Njoki, Lenaola & Ouko SCJJ)

APPLICATION NO. 10 (E016) OF 2022

– BETWEEN –

GLADYS BOSS SHOLLEI.....PETITIONER

– VERSUS –

JUDICIAL SERVICE COMMISSION.....1ST RESPONDENT

COMMISSION ON ADMINISTRATIVE JUSTICE.....2ND RESPONDENT

(Being an application for enlargement of time to comply with the directions of this Honourable Court in the Judgment delivered on 17th February 2022)

Representation:

Mr Kiragu Kimani for the Petitioner
(Hamilton Harrison & Mathews Advocates)

Mr Issa Mansur for the 1st Respondent
(Issa & Company Advocates)

RULING OF THE COURT

[1] UPON reading the amended Notice of Motion filed by the Judicial Service Commission the 1st respondent/applicant herein, which application is dated

13th October 2022 and filed on 19th October 2022 pursuant to Article 50 and 159 of the Constitution and Rules 15(2) & 31 (6) of the Supreme Court Rules praying for an order that;

This Honourable Court to enlarge time within which the 1st respondent is to publish and publicize procedures for all its disciplinary and investigative processes through the Kenya Gazette by a further period of ninety (90) days from the date of the ruling on the application or consent by the parties.

- [2] **UPON** reading the supporting affidavit sworn on 24th August 2022 by the 1st respondent's Secretary, Anne Amadi; and
- [3] **UPON** considering the 1st respondent's grounds in support of the application wherein it contends that; this Court delivered its Judgment on 17th February 2022 where it directed the 1st respondent to publish and publicize procedures for all its disciplinary and investigative processes through the Kenya Gazette within ninety (90) days from the date of the Judgment; that the various stakeholders engaged by the 1st respondent to comment on the draft manual are yet to submit their responses; and that the application was filed without undue delay and that no prejudice will be occasioned by granting the orders prayed for; and
- [4] **NOTING** this Court's directions issued on 27th October 2022 where the parties were directed to file written submissions addressing the following questions; whether this Court has jurisdiction to entertain this application, the legal provisions under which parties may enter a consent as sought and whether the draft manual attached to the application is the requisite legal instrument anticipated under section 47 of the Judicial Service Act; and
- [5] **UPON** considering the 1st respondent/applicant's submissions filed on 15th November 2022 where it submitted that this Court has jurisdiction to enlarge time pursuant to Rule 15(2) of the Supreme Court Rules; that the

Supreme Court Rules are silent on the mode and manner of recording consent orders and that Article 159 (2) of the Constitution contemplates settling of disputes and any pending judicial proceedings by recording of consents as an alternative dispute resolution mechanism; and that the draft manual attached to assist in facilitating its constitutional disciplinary mandate and developed pursuant to section 47 of the Judicial Service Act which empowers it to make regulations; and

[6] UPON considering the case law cited in support of the 1st respondent/applicant's submissions being ***Nicholas Kiptoo Arap Korir Salat vs Independent Electoral and Boundaries Commission & 7 Others*** [2014] eKLR and ***County Executive of Kisumu vs. County Government of Kisumu & 8 others*** [2017] eKLR and ***Geoffrey M. Asanyo & 3 Others vs Attorney General*** [2018] eKLR; and

[7] UPON considering the petitioner/respondent's written submissions filed on 28th November 2022 in support of the application where she submitted that Rule 15 (2) of the Supreme Court Rules, 2020 vest this court with jurisdiction to enlarge time.

[8] Having considered the 1st respondent's amended Notice of Motion application and submissions by the parties, **WE HOLD** as follows:

On Jurisdiction to extend time:

[9] This Court is now *functus officio*, having rendered its judgment on 17th February 2022 which *inter alia*, directed the 1st respondent/applicant to 'publish and publicize procedures for all its disciplinary and investigative processes, and that such publication be undertaken and effected through the Kenya Gazette, within 90 days from the date of this Judgment.' This Court having made a determination on the issues before it cannot re-open deliberation on its directions; and

[10] Noting that in the case of *Raila Odinga vs IEBC & 3 Others* [2013] eKLR this Court referred to the case of *Jersey Evening Post Limited vs A. Thani* [2002] JLR 542 at pg. 550 where it was stated that:

“A court is functus when it has performed all its duties in a particular case. The doctrine does not prevent the court from correcting clerical errors nor does it prevent a judicial change of mind even when a decision has been communicated to the parties. Proceedings are only fully concluded, and the court functus, when its judgment or order has been perfected. The purpose of the doctrine is to provide finality. Once proceedings are finally concluded, the court cannot review or alter its decision; any challenge to its ruling on adjudication must be taken to a higher court if that right is available.” [emphasis ours]

[11] We determine that this court has finalised the proceedings in this matter and does not have jurisdiction to further determine issues raised by the parties. The scope of the directions given by this Court was specific to a period of ninety (90) days. Further, the directions did not require the parties to return to update the Court on whether there was any progress as regards compliance. The determination by this Court on this instant case thus brought the whole matter to a final close. This is therefore to say that parties are bound by court orders which require strict compliance.

[12] Consequently, we find that this Court does not have jurisdiction to extend the timeline granted to the 1st respondent to publish and publicize procedures for all its disciplinary and investigative processes through the Kenya Gazette.

On clarity of this Court’s orders relating to instruments under Section 47 of the Judicial Service Act;

[13] We **FIND** that the draft manual attached to the 1st respondent/applicant's notice of motion application is the requisite legal instrument anticipated under section 47 of the Judicial Service Act which empowers the 1st respondent to make regulations for the better carrying out of its purpose, we can say no more than to state that the 1st respondent would be well advised to stand guided by the structure and format of the already published regulations provided for and gazetted in the Third Schedule of the Judicial Service Act and comply accordingly in form and content.

[14] Consequently, we dismiss the 1st respondent's application with no order as to costs.

[15] It is so ordered.

DATED and DELIVERED AT NAIROBI this 17th Day of **February**, 2023

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P.M MWILU
DEPUTY CHIEF JUSTICE & VICE PRESIDENT
OF THE SUPREME COURT

.....
S.C WANJALA
JUSTICE OF THE SUPREME COURT

.....
NJOKI NDUNGU
JUSTICE OF THE SUPREME COURT

.....
I. LENAOLA
JUSTICE OF THE SUPREME COURT

.....
W. OUKO
JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

REGISTRAR,
SUPREME COURT OF KENYA

