



REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

(Coram: Koome, CJ & P, Ibrahim, Wanjala, Lenaola, & Ouko SCJJ)

PETITION (APPLICATION) NO. E008 OF 2024

– BETWEEN –

ISAAC ALUOCH POLO ALUOCHIER..... APPLICANT

– AND –

CHARLES OWINO LIKOWA.....1ST RESPONDENT

VINCENCIA AWINO KIONGE.....2ND RESPONDENT

COUNTY ASSEMBLY OF MIGORI..... 3RD RESPONDENT

(Being an application for inter alia the adoption of a consent of the parties dated and filed on 14th February 2024 at the High Court in Migori)

Representation:

Mr. Isaac Aluoch Polo Aluochier , the Applicant
(Acting in person)

Mr. Okong'o for the 3rd Respondent
(Okong'o, Wandago & Company Advocates)

Ms. Aron for the 2nd Respondent
(Agnes Awuor, Advocate)

Mr. Omondi for the 3rd Respondent
(Omondi Abande & Company Advocates)

RULING OF THE COURT

[1] Before the Court is another in a series of applications in this matter that have failed to resolve the dispute before us. Perhaps that is what drove Mr. Okong’o for the 1st Respondent to exclaim before the Deputy Registrar of the Court (*Hon. B. Kasavuli*) on 12th April 2024; “*Given the history [of this matter]...we are not even sure whether we are doing the right or wrong thing because we have been following the rules and nothing seems to be working for the parties.*” These words are poignant for reasons to be made apparent shortly.

[2] The Notice of Motion dated 26th March 2024 and filed on even date is **NOT** premised on any provision of the Constitution, Section of the Supreme Court Act, 2011 nor the Supreme Court Rules, 2020 but it seeks an order that this Court does adopt a consent filed by the parties on 14th February 2024 at the High Court in Migori within proceedings in ***Constitutional Petition No. E006 of 2022***; in the alternative, it seeks an order that the said consent be remitted to the High Court at Migori for adoption as an order of that court; and

[3] **UPON PERUSING** that consent, we note that the gist of it is that all the parties herein consented to the judgment dated 21st February 2023 in Constitutional Petition No.E006 of 2002 and the resultant decree issued therein being reviewed, set aside and/or otherwise vacated alongside all consequential orders issued therein; and

[4] **NOTING** that there is no response to the Motion with all Counsel for the Respondents “*leaving the matter to Court,*” **WE NOW OPINE** as follows:

- i. The Motion before us is bare of any jurisdictional foundation upon which we can act and adopt a consent that has not been filed in this Court but has been received, filed and stamped by the High Court at Migori within its

proceedings and which are distinct and separate from the matter before us.

- ii. It has not escaped our attention that there is in fact no consent filed before this court to determine the proceedings before us and as correctly stated by Mr. Okong'o, Advocate, all parties herein have been groping in the dark as to how they can progress the resolution of the issues they have placed before us. The Applicant's grounds in support of the Motion, while very well written, do not help matters at all in that regard and we do not know how we can remit a consent that is not filed before us to another court even if that course of action were feasible.
- iii. Counsel and parties appearing before this Apex Court ought to know how they should properly approach us and not by gambling and living in the hope that whatever they file may attract our sympathetic ear. We can only act under known procedures and not by whim or an attempt at resolving every issue placed before us for the sake of doing so.
- iv. The Motion is frivolous, utterly vexatious and while the Applicant is a layman, he is a regular litigant in Kenyan courts and ought to have known better. The less said about the conduct of Counsel for the Respondents in "leaving" such a simple matter "to the Court," the better.
- v. While dismissing the Motion before us, noting that no Respondent has opposed it, we shall order that each party should bear its costs.

[5] ACCORDINGLY, we make the following Orders:

- a. The Notice of Motion dated 26th March 2024 is hereby dismissed.***
- b. Each party shall bear its costs.***

[6] It is so ordered.

