



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

JR APPLICATION NO. 5 OF 2018

REPUBLIC.....APPLICANT

VERSUS

REGIONAL COMMISSIONER,

WESTERN REGION.....1ST RESPONDENT

COUNTY COMMISSIONER, VIHIGA.....2ND RESPONDENT

COUNTY COMMISSIONER, KAKAMEGA.....3RD RESPONDENT

COUNTY AP COMMANDANT, KAKAMEGA.....4TH RESPONDENT

COUNTY AP COMMANDANT, VIHIGA.....5TH RESPONDENT

THE CABINET SECRETARY FOR INTERNAL SECURITY AND

COORDINATION OF NATIONAL GOVERNMENT.....6TH RESPONDENT

THE DIRECTOR OF PUBLIC

PROSECUTIONS.....7TH RESPONDENT

THE ATTORNEY-GENERAL.....8TH RESPONDENT

EX PARTE:

KIPKEMBOI KETER BOIT

WESLEY KIPKEMOI

WESLEY MARIGA

JUDGMENT

1. The *ex parte* applicants have moved the court by a Motion dated 12th July 2018, seeking:-

(a) An order of certiorari to bring to court and quash the decision communicated through a letter dated 22nd June 2018 by Anne Ng'etich, the Regional Commissioner, Western Region; and

(b) An order to restrain the respondents from conducting a crackdown on business premises and in anyway interfering with the operations of the *ex parte* applicants business premises pursuant to the directive until further orders of the court.

2. The factual background to the application is set out in the affidavit in support sworn on 12th July 2018 by Wesley Kipkemoi. He swears the affidavit on his own behalf and that of the other two *ex parte* applicants. He avers that they are businessmen with shops within Kakamega County and in other parts of the country where they operate gaming and betting machines. He states that they have contracted people who act as their agents. He says that their machines were confiscated in their business premises in Matunda, Butere and Kakamega within Kakamega County, and also within Vihiga County. The confiscation apparently happened following a directive made in the letter of 22nd June 2018 from the 1st respondent. He terms the directive as illegal. He states that twenty-four betting and gaming machines were destroyed at Maraba within Kakamega. He argues that there was danger that more machines would be destroyed.

3. The *ex parte* applicants describe themselves as businessmen operating for various towns within Kenya. They claim to have betting and gaming machines which they contract out to agents all over the country. They further claim to have business premises at various towns within Kakamega and Vihiga Counties. Their case is that these businesses and assets were at risk should the respondents go ahead and carry out the directives given in the latter of the 1st respondent the subject of these proceedings. It is on that bases that they seek the orders sought in the instant application.

4. Before the court can consider whether or not it can grant the orders sought against the public officers and authorities cited herein as respondents, it must be demonstrated that the *ex parte* applicants have the standing to seek the orders that they are asking for, essentially that they stand to lose in the manner that they allege, and deserve the protection of the law in the circumstances.

5. To established or demonstrate that they have the said standing and that they would suffer should the impugned directive be implemented, they ought to place documentary proof before the court that they run the businesses that they allege they run, that they operate from the business premises that they allege they operate from and that they have contracted the agents that they claim they deal with. They could have done that by attaching copies of business licenses issued to them by the relevant authorities, copies of the title documents of the premises they operate from, among others. In short, they ought to avail records that show that they are in the business and are not busybodies.

6. The affidavit sworn in support of the application, carries only one annexure or attachment, copy of the letter bearing the directive of the 1st respondent. The *ex parte* applicants have not attached any documents to demonstrate that they are in the business that they claim to be in or operate from the premises that they claim to operate from or that they own any gaming and betting machines. Before they can begin to raise issue with the directive in question it must be demonstrated that they have a stake in the area the subject of the directive.

7. I think I should also add that even if the application were to be brought in public interest by a public spirited individual, it would still be necessary for the individual to demonstrate by adequate documentary evidence that the persons said to be exposed adversely to the directive in question were actually in business and that they would therefore suffer in the event the directive is implemented.

8. As it is the *ex parte* applicants appear to be nothing more than busybodies. Court orders ought not to be made in vain. The upshot of this is that the Motion before me dated 12th July 2018 is devoid of merit, is poorly conceived and is available for dismissal. I hereby dismiss the same with costs to the respondents.

PREPARED, DATED AND SIGNED AT KAKAMEGA THIS 31st DAY OF January , 2019

W. MUSYOKA

JUDGE

DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 7th DAY OF February 2019

J. NJAGI

JUDGE



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