



REPUBLIC OF KENYA

IN THE HIGHCOURT OF KENYA

AT MERU

PETITION NO 4 OF 2020

KENNETH MURIUKI.....PETITIONER

AND

MERU COUNTY ASSEMBLY SERVICE BOARD.....1ST RESPONDENT

MERU COUNTY ASSEMBLY.....2ND RESPONDENT

AND

JACOB KIRARI.....1ST INTERESTED PARTY

EARNEST KIMAITA.....2ND INTERESTED PARTY

DIRECTIONS

Public participation in decision-making process

1. The Petitioner is an advocate of the High Court of Kenya. He stated that he filed this petition purely on public interest, good governance, accountability and inclusion of the people in the decision-making process. In his petition dated 9th March 2020, he sought for the following:

- i. A declaration that the composition of the 1st Respondent as constituted on the 21st day of February, 2020 was in violation of Article 27(8) of the Constitution of Kenya 2010 and any business, actions and/or activities conducted by the 1st Respondent be declared invalid and a nullity.
- ii. A declaration that the 2nd Respondent overlooked the constitutional and statutory requirements in approval of the 1st Interested Party as the clerk of the 2nd Respondent as it was in violation of the provisions of the Constitution, the standing Orders, County Government Act and the Public Appointments (County Assemblies Approval) Act, No 5 of 2017 and therefore a nullity.
- iii. A declaration that there having been no forum for public participation in the entire process of recruitment, nomination, vetting, debate and appointment of the 1st Respondent as the Clerk for the 2nd Respondent, the 1st and 2nd Respondents compromised their integrity and violated the provisions of Chapter 6 of the Constitution, thereby rendering the entire process a nullity.
- iv. The entire process of recruitment of the clerk of the 2nd Respondent be nullified.
- v. Costs of the petition.

2. I do note that the court made an order on 27th of July, 2020, that: -

1) The application for discovery and petition shall be disposed of together through written submissions.

3. I have looked for the application dated 2nd July 2020 but I was not able to find it. The petition is challenging the entire process of recruitment of clerk to the county assembly, and in some instances, insinuations of collusion as well as covert undertakings in respect of the recruitment, debate on and nomination thereof were made. The application for discovery of documents was also given very high premium in these proceedings. I am aware of the position of discovery within the wide concept of disclosure of and right to information under article 35

of the Constitution. Accordingly, it would be great injustice not to determine the application for discovery as had been ordered. Again, I do not intend to leave rugged edges which may invite unnecessary legal challenges of the decision.

4. On the basis of that reason, I return the file to Meru so that the applicant will provide a copy of the application for discovery- if the registry cannot find the court copy- for determination together with the petition by the judge who will be allocated this file. It is so ordered.

Dated and signed at NAROK this 14th day of December, 2020

F. GIKONYO

JUDGE

Dated, signed and delivered at Meru this 16th day of December 2020

T. W. CHERERE

JUDGE