



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

PETITION NO. 9 OF 2017

1. BUSIA COUNTY PERSONS WITH DISABILITIES NETWORK

2. RONALD ONYANGO OBIERO.....PETITIONERS

VERSUS

COUNTY GOVERNMENT OF BUSIA.....RESPONDENT

JUDGMENT

1. The 1st petitioner is a community-based organization which is registered under the Ministry of Labour Social Security and Services. The 2nd petitioner is the chairman of the 1st petitioner.
2. The respondent is the County Government of Busia County which is constitutionally established.
3. By their a petition dated 11th December 2017, the petitioners are seeking the following orders:
 - a. A declaration that the appointment of Village Administrators by the County Government of Busia, pursuant to interviews conducted between 18th and 26th September 2017 was null and void for failure to take care of the interests of persons with disabilities.
 - b. That a fresh process of appointment of Village Administrators by the County Government of Busia be undertaken in conformity with the law.
4. The respondent opposed the petition and Nicodemus Onyango Mulaku swore an affidavit which gave details as to why some members of the 1st petitioner were not considered for appointment.
5. Article 54(2) of the Constitution of Kenya on which this petition is grounded provides as follows:

The State shall ensure the progressive implementation of the principle that at least five percent of the members of the public in elective and appointive bodies are persons with disabilities.

The principles of devolved Government are provided for under Article 175 of the Constitution as follows:

County governments established under this Constitution shall reflect the following principles—

- (a) county governments shall be based on democratic principles and the separation of powers;**
- (b) county governments shall have reliable sources of revenue to enable them to govern and deliver services effectively; and**
- (c) no more than two-thirds of the members of representative bodies in each county government shall be of the same gender.**

I can therefore safely conclude that though Article 54(2) of the Constitution addresses the State, the same can be broadly interpreted to include County Governments.

6. Some members of the 1st petitioner who had applied for the advertised vacancies were shortlisted for interviews. They were however left out during appointments. According to them, this was discriminatory and a breach of the Constitution. In order for this court to make a finding that there was discrimination, I would have expected to be furnished with the particular details of the candidates who were successful and what each scored at the interview. According to the respondent, the members of the 1st petitioner who were not appointed did not meet the minimum qualifications and attributes for the job.

7. The issue of meeting the Constitutional requirements for special groups of persons requires a lot of care. Blind application of the requirement under Article 54(2) may have negative effect to what was envisaged by the drafters. This would mean that if appointments were made to fulfil the legal obligation, the unqualified people will be taken. This will be received negatively by the service consumers.

8. Had the petitioners demonstrated that their members were discriminated due to their physical disabilities, then I would have granted the orders sought. This was not done. I accordingly dismiss the petition. Each party to meet own costs.

DELIVERED and SIGNED at BUSIA this 27th day of November, 2018

KIARIE WAWERU KIARIE

JUDGE