



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KITALE
PETITION NO. 18 OF 2015

PAUL KIPKORIR KIBET.....PETITIONER

VERSUS

DEPUTY COUNTY COMMISSIONER,

MARAKWET WEST SUB COUNTY...1ST RESPONDENT

THE PUBLIC SERVICE COMMISSIONER.....2ND RESPONDENT

THE PRINCIPAL SECRETARY MINISTRY OF INTERIOR AND

CO-ORDINATION OF NATIONAL GOVERNMENT.....3RD RESPONDENT

ANDREW KIPLAGAT CHEMARINGO.....4TH RESPONDENT

HON. ATTORNEY GENERAL.....5TH RESPONDENT

J U D G M E N T

By the petition dated 30/9/2015 the petitioner prays for the following orders;

- (a) A declaration that the appointment of the 4th respondent to the position of a chief for Sengwer Location is in contravention of the constitution and the said appointment is null and void.**
- (b) An order quashing the appointment of the 4th respondent as the chief for Sengwer Location**
- (c) Costs and any other relief that this court may deem fit to grant.**

The petition is supported by the affidavit of the petitioner in the notice of motion dated 30/9/15 together with the attached annexures.

Briefly, from the facts on record it appears that there was a vacancy for the position of Chief for Sengwer location. An advertisement was placed on 2/6/2015 to the Public inviting anybody who could be interested. Several qualifications were indicated and it was anticipated that the would be applicants would met. Subsequently the applicants were interviewed and the 4th respondent emerged victorious.

He was then given appointment letter and confirmed to be the chief Sengwer location.

The applicant has filed his petition primarily arguing that the 4th respondent although formerly appointed by the respondent did not meet the qualification which were stipulated hence his appointment contravened Article 232(f) and (g) of the Constitution.

On its part the 1st, 2nd and 3rd respondents filed a replying affidavit through one Benedict M. Nduva dated 2/11/2015 denying the above allegations. He deponed that all the necessary protocols were observed and that the interview was above board. That the 4th respondent has already assumed office by the time the applicant went to court. In short he argued that non of the alleged Articles of the Constitution were breached.

The said reply was supported by the 4th respondents affidavit and one of Elias Chelanga sworn on the same date. Elias Chelanga in particular states that he is an acting Human Resource Officer Marakwet West and he fully participated in the interview which according to him was above board.

This court has perused the petition together with the parties rival affidavits as well as the written submissions by respective counsels. The substantive issues to determine are whether the 4th respondent met the qualification as anticipated in the advertisement and whether there were any breaches of the Constitution.

It is not in dispute that the following requirements were expected of the applicants to the position, namely

“ (1) Be in a possession of Kenya Certificate of Secondary Education (KCSE) mean grade C+ or its equivalent with C+ in English or Kiswahili

(2) Be a holder of a Diploma in Public Administration/Management, Social work, Community Development, Teaching, Disaster Management or an equivalent qualification from recognized Institutions.

(3) Be thirty five (35) years old and above

(4) Be a resident of the particular location and a person of integrity who commands respect.

(5) Possess good communication skills

(6) Have served for at least six (6) years in the Public service and shows leadership and administrative qualities.

(7) Have been involved in development projects in their particular areas.”

As per the material placed before court it appears that the borne of contention by the applicant is that the 4th respondent did not meet requirement (3), that is age factor. The evidence on record which is clearly admitted is that he was 30 years at the time of the interview. The respondent countered this by stating that it sought a waiver of that requirement.

Indeed its letter dated 15/7/2015 by the 1st respondent to the Regional Coordinator states as follows;

“ Re: Waiver of age -Sengwer Location

This office request age waiver for the 1st rated candidate Mr Andrew C. Kiplagat as he emerged the best in the interview after scoring an average score of 76% and met all other qualifications required for the post among the 9 shortlisted candidates. He is suitable candidate with outstanding abilities who merits the position to lead the Location.”

This letter apparently is dated 15/7/2015 the date in which the 1st respondent delivered the results of all the candidates who had applied and interviewed. As correctly observed by the applicant there is no indication whether there was any response by the Regional Coordinator. It is therefore presumed though that the same was accepted as the 4th respondent was chosen after all.

What was the basis of this waiver? I have checked the **“Scheme of Service for Chiefs and Assistant Chiefs”** of December 2006 and under Appendix B one of the requirements is that the candidate ought to be 35 years old and above. It is not indicated anywhere that the interview panel or the appointing authority for that matter can waive any of the requirements. Neither have the respondents explained themselves why they did this. If the rules or requirements embodied in the scheme of Service does not provide for waiver of any requirements why then did they undertake such an act.

Further; there was no reasons provided by the respondent as to why they considered the 4th respondent so special. They did not in fact indicate what the other 9 applicants scored. Was it possible that all the 9 did not meet the requirements?

By favouring the 4th respondent, I respectfully hold in my view was discriminatory against all the other candidates. The advertisement that went to the public did not indicate anywhere that there would be any discretion to some candidates. If there was such a discretion especially on the matter touching on age then all the applicants ought to have been told including the 4th respondent. In any case the Scheme of Service have clearly indicated.

I therefore find that the respondents breached article 232(i) (g) (h) and (i) of the constitution which states;

“232 (i) The values and principles of public service include – (g) subject to paragraphs (h) and (I) fair competition, accurate information;

(h) representation of Kenyas diverse communities; and

(I) affording adequate and equal opportunities for appointment,

training and advancement, at all levels of the public service,

of -

(i) Men and women

(iii) the members of all ethnic groups; and

(iii) persons with disabilities.”

By specifically singling out the 4th respondent, the respondent did discriminate against the rest of the applicants who even if they scored low marks they were perhaps 35 years and above. There was no level playing field for all the applicants.

I think I have stated much to show that the petition is meritorious. If there was any provisions in law allowing the respondents to waive any of the requirements then perhaps this court would have arrived at a different finding.

In the premises the petition is allowed. The appointment of the 4th respondent as the Chief of Sengwer Location is hereby quashed. This being a public interest litigation, each party shall bear its own costs.

Delivered this 31st day of October, 2016

H.K. CHEMITEI

JUDGE

In the presence of;

Nyamu for Applicant

Odongo for Respondents

Kirong – Court Assistant