



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

PETITION NO. 5 OF 2016

IN THE MATTER OF THE PUBLIC PROCUREMENT & DISPOSAL ACT

AND

IN THE MATTER OF THE PUBLIC PROCUREMENT & DISPOSAL REGULATION 2006

AND

IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLE 27 AND 227(2) OF THE CONSTITUTION

DANIEL MWENDA NYAGA.....PETITIONER

ON HIS OWN BEHALF AND ON BEHALF OF PUBLIC

- VERSUS -

THARAKA NITHI COUNTY PUBLIC SERVICE BOARD....1ST RESPONDENT

THE ATTORNEY GENERAL2ND RESPONDENT

RULING

1. On 16th August, 2016, DANIEL MWENDA, "*the Petitioner*" lodged a Petition in this court alleging that the Public Service Board of Tharaka Nithi County ("*the 1st Respondent*") had breached the Constitution of Kenya.

2. It was alleged that the 1st Respondent had placed advertisement in the local dailies for jobs including those of village administrators; that the said publication was in breach of Articles 27 and 227(2) (b) of the Constitution as it discriminated against the youth on the basis of age; that there was no budgetary allocation for the said jobs in the 2015/2016 financial year. The Petitioner therefore sought a declaration to the effect that the advertisement of 21st July, 2016 is null and void.

3. Together with the Petition, the Petitioner lodged a Motion on Notice seeking a conservatory order to freeze the carrying out of the said recruitment by the 1st Respondent. The grounds for the said Motion were set out in the body of the Motion and the Supporting Affidavit of the Petitioner sworn on 29th August, 2016. These were that; the 1st Respondent had advertised for jobs in the local dailies; that the same was unconstitutional; that there was no budgetary allocation for the same; and that it was discriminatory on the basis of age.

4. The application was certified as urgent and ordered served for hearing on 6th September, 2016. On that day Counsel for the Petitioner informed the court that the application had not been served. When the matter came up for hearing on 3rd November, 2011, the court directed that the application be determined by way of written submissions to be hi-lighted on 13th December, 2016.

5. When the matter came up for hi-lighting of submissions on 13th December, 2016, whilst Counsel for the 1st Respondent appeared, neither the Petitioner nor his Counsel appeared. Further, although the 1st Respondent had filed its written submissions, the Petitioner had filed none. In this regard, it is clear that since the application had been ordered to be argued by way of written submissions, It is clear therefore that the Motion was not argued as the Petitioner failed to file his submissions. The Motion is therefore for dismissal and need not be considered.

6. If however, it needed to be considered; I have looked at the application and the Grounds of Opposition by the 1st Respondent. The application is objected to on the grounds that it is an abuse of the process of the court; it is unreasonable, frivolous and vexatious and that the orders sought are untenable. It was submitted on behalf of the 1st Respondent that there was no evidence of the alleged infringements of the Constitution. That the advertisement was in accordance with section 12(7) (a) of the County Government's Act, 2012; that the age of 30 years placed for the position of a village administrator was meant to tap maturity due to the nature of the duties bestowed upon that position; Counsel for the 1st Respondent submitted that there was no evidence of violation of any rights and relied on the authority of **Stephen Nyarangi Onsuma & Anor .v. George Magoha & 7 Others [2014] eKLR.** It was further submitted that there was no prima facie case established to warrant the injunction sought and the cases of **Hon. Kanini Kega .v. Okoa Kenya Movement & 6 Others [2014] eKLR and Trusted Society of Human Rights Alliance and 3 Others .v. JSC & Anor [2916] eKLR** were cited as authority for that proposition.

7. I have considered the Affidavit in support of the application and the submissions on record. As regards the age for those applying for the position of village administrators, I have seen the impugned advertisement. The same has set out the duties and functions of that office. Considering the same, I do not think that a requirement of maturity on the part of the applicants for those positions can be said to be discriminatory. The age of 30 years and above is not too high to be said to have discriminated upon the youth. I would think that the duties of that office would require some degree of maturity, understanding and interpersonal skills which in my view would be readily available for any person of the age of 30 years and above. To my mind, 30 years is not so high to have left out a majority of the population.

8. As to the efficacy or competence of the petition, the Petitioners did not particularize how, on the authority of **Stephen Nyarangi Onsuma .v. George Magoha & 7 Others (supra) case,** the facts relied on had infringed Articles 27 and 277 of the Constitution.

9. As regards the injunction sought, the Petitioner did not demonstrate what loss or damage or prejudice he stood to suffer if the recruitment advertised for continued (see **Hon. Kanini Kega .v. Okoa Kenya Movement & 6 Others** (Supra). If the petition finally succeeds, the recruitment can be reversed without much ado.

10. In view of the foregoing, I do not think the application has any merit and the same is hereby dismissed with costs.

DATED and Delivered at Chuka this 20th day of December, 2016.

A.MABEYA

JUDGE