



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

HIGH COURT PETITION NO. 7 OF 2015

VERONICAH MUTHONI MWIRICHIA.....PETITIONER

-VS-

THE COUNTY GOVERNMENT OF MERU.....1ST RESPONDENT

THE GOVERNOR – MERU COUNTY.....2ND RESPONDENT

JUDGMENT.

1. The Petitioner VERONICAH MUTHONI MWIRICHIA through a petition dated 28th March 2015 brought pursuant to Articles 1,2,3 (1) ,10,12 (1) (a), 19,20,21,22,24,27 (1),92) & (3),28,41 (1), & (2) ,48,165 (3) (b),191 & 258 (1), of the Constitution of Kenya (2010) Rules 4,10,11,13 and 20 of the Constitution of Kenya (supervisory jurisdiction and protection of fundamental rights and freedoms of the individual) High Court Practice and Procedure Rules 28th June, 2013 and Sections 30 and 40 (1) & (2) of the County Governments Act No.17 of 2012 Laws of Kenya in which the Petitioner seeks the following orders:

(a) A declaration that the act of the 2nd respondent in relieving the Petitioner of her duties is a breach of the latter's constitutional rights under Article 27 (1) (2) and (3),28,41 &50 of the Constitution of Kenya and that the same is null and void for all intents and purposes.

(b) That pending the hearing and final determination of this application inter partes, conservatory orders of stay do issue staying the decision on the 2nd respondent dismissing the Petitioner.

(c) An order of judicial review to remove into this honourable court and quash the decision of the 2nd respondent relieving the Petitioner of her duties as County Executive in charge of Culture, Gender, Youth, Sports and Social Services.

(d) An order of Judicial Review of Prohibition to remove into this Honourable Court and prohibit the respondents from appointing any fresh nominee for approval by the Meru County Assembly for appointment as a member of Meru County Executive in charge of Culture, Gender, Youth, Sports and Social services, and if so approved an order of prohibition against the 2nd respondent from appointing any such approved person into the position the subject matter herein.

(e) In the alternative and without prejudice to prayer (d) above, an order of payment of all dues to the Petitioner in the period she would have served between now and the end of term.

(f) Any other relief or order this honourable court may deem fit to grant.

2. Briefly the Petitioner's case was as follows: the Petitioner was on 8th October 2014 appointed the County Executive Secretary in charge of Culture, Gender, Youth, Sports and Social Services as per annexed appointment letter marked "VI" of the 1st respondent at a monthly salary of Kshs 262,500.00 until 28th November 2014 when she was summarily dismissed. (see annexed payslip marked "V2").

3. It was the petitioner's case that the letter of dismissal dated 28th November 2014, did not give any reason for her dismissal and that she was constitutionally entitled to be informed of the reason for dismissal (said letter is annexed and marked "V3") that she was constitutionally entitled to be informed of the reason for her dismissal which she contended was not given and that according to the rules of natural justice, the petitioner ought to have been given a fair hearing before her dismissal.

4. The Petitioner contended that the Petitioner prior to employment by the 1st respondent voluntarily retired from the Teachers Service Commission having worked for 29 years (as per annexed letter dated 14th September, 2014 marked "V4") and that she cannot go back to the Teachers Service commission as her retirement and pension has finally been processed (as per annexure letters dated 19th December 2014 and 9th March 2015 marked "V5").

5. She contended further that the position for County Executive Committee (CEC) member in charge of Youth, Gender, Culture, Sports and Social Services has already been advertised in the Daily Nation Newspaper dated 12th February, 2015, thus the urgency of the matter (copy whereby annexed and marked "V6").

6. The petitioner further averred that she was properly vetted and found qualified and therefore the decision by the respondent to dismiss her was shrouded by ulterior motives (copy of vetting proceedings annexed and marked "V7").

7. The petitioner contended that Article 47 (1) of the Constitution of Kenya 2010 entitled her, (in common with other persons) to a fundamental inalienable right to a lawfully and procedural administrative action. On this basis the petitioner contended that the respondents have in blatant violation of various provisions of the Constitution of Kenya and various statutory provisions purported to relieve the petitioner her duties of the County Executive Secretary in charge of Culture, Gender, Youth, Sports and Social Services in a manner that is as well inhuman, disrespectful and degrading; consequently the petitioner contended that in exercising of his duties under Section 40 (1) of the County Governments Act, the 2nd respondent outrightly violated the Constitution and Statutory consideration thus violating the petitioner's right and freedoms by dismissing her with immediate effect hence violating her rights to a fair hearing and fair labour practices contrary to provisions of Article 41 (1) of the Constitution of Kenya and by dismissing her without reasons for her dismissal, the 2nd respondent acted contrary to Article 47 of the Constitution to fair administrative action.

8. The respondents opposed the petitioner's petition through replying affidavit by Peter Gatirau Munya the 2nd respondent dated 6th May 2015 and Mercy Mwendwa Ndiira for the 1st respondent through affidavit dated 5th May 2015.

9. In the affidavit of Mercy Mwandwa Ndiiri it is deponed that interalia; that within a few days of the petitioner's appointment, the petitioner adopted a boisterous, pompous, avaricious, cavalier, snobbish and dismissive attitude towards her office by ignoring members of the public seeking her services by purporting to be busy, while in actual fact she would be spending long hours chatting away on phone and in person with strangers in her officer a scenario that severely hampered service delivery in the department.

10. That the petitioner it is deposed would carry official and confidential documents requiring her signature to public places during which she would consult with strangers before appending her signature on them, this according to the 1st respondent was exposing the department to embarrassment and ridicule; that the petitioner incomplete ignorance and/or disregard of procurement procedures would demand for procurement of unnecessary material or her personal use and upon her being informed that would not be possible at her whims, she would descend into a torment of abuses against her principal assistant herein, Mercy Mwandwa Ndiira and other staff members thereby causing unnecessary tension, fear and recoil among the office staff, which severely hampered service delivery.

11. It is further deposed by Mercy Mwendwa Ndiira, that the petitioner had converted the office into her personal and family space, in which her husband was a permanent fixture in the office, confidential official functions and meetings which made it impossible for the Principal Assistants to consult with her on any issue as she was not comfortable with their decisions and consultations catching the ears of strangers.

12. M/s. Mercy Mwendwa Ndiira further contended that the petitioner was out to frustrate her, in her duties and in support referred to internal memos annexured "A-3" in which the petitioner demanded to be furnished with a report on the contents thereof immediately; that due to excitable nature and abrasiveness of the petitioner the morale of the other staff members fell to its lowest during her term, hence complaints were taken to the Governor regarding her conduct out of which she was reprimanded and required to mend her ways to allow the smooth working of the department, which warning she did not pay heed to.

13. M/s. Mercy Mwendwa Ndiira further deposed that their department in pursuit of its objectives and mandate, sponsored the passing out of a group of girls who had undergone an alternative rite to passage at Mujwa Catholic Mission through the efforts of a local women group but during the closing ceremony it transpired that the petitioner had caused the organizers to spend more money on the informal and unilateral promise that the 1st respondent would refund the same, thus exposing the County Government to extreme embarrassment and ridicule. She further deposed that the petitioner's lack of management skills and failure to create good inter personal relations made it completely impossible to work with the petitioner and her continued stay would have ground the department to a halt.

14. The Governor, Meru County Governor through his affidavit dated 6th May 2015 reiterated the provisions of Article 179 (1) of the Constitution of Kenya and added that under Article 179 (6) of the Constitution, members of the County Executive Committee are accountable to the County Government for the performance of their functions and exercise of their powers, a position that is reiterated by section 39 (1) of the County Government Act No. 17 of 2012 adding that under Section 31 (a) of the County Governments Act, the Governor may despite the alternative procedure for dismissal provided for under Section 40 of the Act aforesaid, dismiss a County Executive Committee member at any time, if the Governor considers that it is appropriate to do so. He further referred to decision in the case of **Stephen Nendela v County Assembly of Bungoma & 4 others [2014] eKLR** in which Section 40 (3) of the County Government Act was declared unconstitutional by Hon. Justice Mabeya and averred the said judgment has not been appealed against and states the same is persuasive to this court.

15. The Respondent case is that it is true the petitioner was relieved of her duties on 28th November, 2014 as per annexure "V3" in her affidavit; that while the petitioner's appointment was communicated via the letter dated 28th October, 2014 (annexture V1") she actually took office on 28th October 2014 and as at the time of dismissal on 28th November 2014 she had worked for one (1) month (see annexure "A1" a copy of the handing over report duly signed by the petitioner and her acting predecessor dated 28th October 2014); that the 2nd respondent reiterated the contents contained in the 1st respondent's affidavit and deposed further interalia; that during the short petitioner's stint in office, she distinguished herself as incorrigibly, cantankerous, boisterous, abrasive, effervescent and truly divisive person and a non-team player within her own office and in the wider County Executive Committee, conducting herself in a manner that grossly interfered with the smooth running of the operations of the country Government and undermining the projects and on several occasions, the 2nd respondent received complaints from junior staff working under the petitioner as well as her fellow County Executive Committee members informing

him that the petitioner was given to abusing everyone insight and generally creating a bossy and fearful environment in her office, which character grossly affected service delivery in her docket and dimmed staff morale.

16. The 2nd respondent further contended that it is its policy to provide County Executive members and Senior Staff with low costs and medium engine rating vehicle so as to ensure preservation of public resource, which policy was warmly welcomed by all staff but petitioner rejected the vehicle allocated to her and publically demanded that she be issued with a “big vehicle” an utterance that the 2nd respondent found to be extremely embarrassing to the County Executive Committee and which according to the 2nd respondent constituted a gross act of insubordination.

17. The 2nd respondent reiterated the contents of the 1st respondents affidavit about the petitioner being accompanied by her husband to official functions and confidential County Executive Committee meetings who interfered with and gave instructions to county staff though not an officer of the 2nd respondent; that the petitioner would be carrying confidential documents away from office in public places to scrutinize and purport to discuss them with strangers in blatant disregard of her oath of office and in a manner that exposed her office and the County Executive Committee at large to ridicule and which complaints were made to the Governor by the concerned and by staff members.

18. The 2nd respondent through the Governor it is deponed that the petitioner was severally reprimanded both in person and during County Executive Committee sittings, and she was given reasonable time to organize herself and blend into the County Executive Committee but the petitioner was simply unable to mend her ways but continued acting in a manner that undermined the authority of the 2nd respondent’s office.

19. The 2nd respondent further deponed that it seems the petitioner had been drawing the salaries from public coffers at the sametime, in a manner that points to the dents in her credibility as is indicated by a letter from the Teachers Service Commission dated 19th December 2014, which the 2nd respondent submitted indicated that the petitioner was still on the pay roll of the Teachers service Commission long after she had already been engaged by the respondent and relieved of her duties in the County Executive Committee.

20. The 2nd respondent further deponed that the petition has been overtaken by events and any order of reinstatement would lead to a constitutional absurdity for the following reasons; that the position was advertised on 12th February 2015 as per annexure “V6”; that one Joy Karui Muriungi was nominated to serve in the said capacity and her name forwarded to the County Assembly for debate and possible approval and on 24th February 2015 the Meru County Assembly debated and approved the nomination of Joy Karui Muriungi as 2nd respondent’s nominee for the post of County Executive Committee member in charge of Youth, Gender, Culture, Sports and Social services and a formal notification thereby made to the Governor by the speaker of the County Assembly on 3rd March 2015 and she was sworn subsequently on 7th April 2015 and took over the said office as aforesaid and at present she is diligently and efficiently serving in the said office; that in support of the averments stated herein above the 2nd respondent annexed bundle of documents marked “A-2” in respect of minutes of 24th February, 2015; letter from the Speaker dated 3rd March 2015 and the oath of office of Joy Karui Muriungi dated 7th April 2015. The 2nd respondent further deponed that the petitioner is guilty of extreme laches in the circumstances of the matter and the remedy, if any can only be in damages as the petition was filed on 30th March 2015 long after the dismissal and the court process served on 9th April 2015, long after the new nominee had taken over office on 7th April 2015.

21. The petitioner in response to 2nd respondent’s affidavit averred that she reported on duty on 9th October 2014 and was given a week of absence and reported on 27th October, 2014 and was sworn in on the 4th November 2014 and denied having ever been reprimanded by the Governor at any one time during

her one (1) month employment and that no warning letter has been exhibited at any rate.

22. I have carefully considered the parties rival pleadings, the counsel written and oral submissions and in my considered view the issues raised thereto for consideration and determination can be summarized as follows:-

(a) Whether the respondent in dismissing the petitioner by a letter dated 28th November 2014, the 2nd respondent exercised his powers in accordance with the law?

(b) Whether the petitioner is entitled to remedies sought.

(c) Who should bear the costs of the petition

A. WHETHER THE RESPONDENT IN THE DISMISSING THE PETITION BY A LETTER DATED 28TH NOVEMBER 2014, THE 2ND RESPONDENT EXERCISED HIS POWERS IN ACCORDANCE WITH THE LAW?

23. In the instant case there is no dispute that the 2nd respondent was the employer of the petitioner and that her services were terminated through a dismissal letter dated 28th November 2014 annexure “V3” with direction so that the dismissal took effect immediately. It was submitted for the petitioner that the 2nd respondent clearly contravened the Constitution and the provisions of the County Government Act No. 7 of Kenya. It is further submitted that the 2nd respondent in purporting to relieve the petitioner of her duties failed to indicate which law the dismissal was based on. It was further urged under the County Government Act it is clear on grounds upon which a County Executive Committee member can be removed from office. **Section 40 (1) (a) – (f) of the County Government Act 2012** provides as follows:-

(a) incompetence;

(b) abuse of office

(c) gross misconduct

(d) failure, without reasonable excuse, or written authority of the governor, to attend three consecutive meetings of the county executive committee.

(e) physical or mental incapacity rendering the executive committee member incapable of performing the duties of that office or

(f) gross violation of the Constitution or any other law.

24. Mr. Ng’ang’a learned advocate for the petitioner submitted from the reading of the above quoted **Section 40 (1) of the County Government Act 2012**, it is clear that the Governor was adjointed by the law to state under which ground the petitioner was being relieved of her duties and as that was not done made that his actions unlawful ab-initio. In support of that proposition he relied on the case **of R v Registrar of Societies and 5 others exparte Kenyatta & 6 others misc. application no. 747 of 2006; Cecilia Wangechi Ndungu v the County Government of Nyeri and another. HCP. NO. 1 OF 2014 and Nyeri Civil Appeal No. 21 of 2015, the County Government of Nyeri & another v Cecelia Wangechi Ndungu.**

25. The respondents learned counsel Mr. Thurania submitted that the petitioner was dismissed in accordance with the law. He referred to **Article 174 (G) of the Constitution of Kenya 2010** which sets out one of the objects of the devolution as being “***to promote democratic and accountable exercise of power***”. That he further submitted **Article 179 (1) and (2) of the Constitution of Kenya 2010** provides:-

(1) The executive authority of the county is vested in, and exercised by, a county executive

committee.

(2) The county executive committee consists of:-

(a) the county governor and the deputy governor and

(b) members appointed by the county governor, with the approval of the assembly, from among persons who are not members of the assembly.”

26. That further Article 179 (6) of the Constitution provides that:- *“members of a county Executive Committee are accountable to the County Government for the performance of their functions and exercise of their powers”*;

That Article 179 (6) of the Constitution has found statutory conflict in the County Government Act under Section 39 (1) thereof, which provides as follows:-

“the members of the county executive committee are individually and collectively accountable to the governor in the exercise of their powers and performance of their duties and responsibilities”.

27. Mr. Thurania learned advocate for the respondents further submitted on powers of the governor under Section 31 (a) of the County Government Act which provides:-

“The Governor

a. may, despite section 40, dismiss a county executive committee member at any time, if the governor considers that it is appropriate or necessary to do so:

He further referred to powers of the Governor under Section 40 of the County Government Act to remove a member of the County Executive Committee from office on the ground stated thereto. He submitted the removal is to be initiated by a member of the County Assembly through a motion in the said Assembly, which if passed as per Section 40 (3) will then lead to the formation of a select committee of the Assembly to investigate the allegations against the Executive Committee member . He submitted however in the case of Stephen Nendela v County Assembly of Bungoma & 4 others (2014) Eklr Hon. Justice Mabeya, declared Section 40 (3) of the County Government Act as unconstitutional as a provision thereof place the County Assembly to the pedestal of the prosecutor, judge and jury in its own cause. That as there is no Court of Appeal pronouncement on this issue nor has parliament taken remedial measures I find as such the decision remains of persuasive nature to this court.

28. Mr. Thurania on his part submitted that as it stands under the County Government Act a County Government Executive Committee member can only be dismissed by the Governor under Section 37 (G) without recourse at all to the provision of Section 40 as per decision on Section 40 (3) in Stephen Nendela case (supra).

29. Mr. Thurania learned advocate for the respondents submitted that based on the law and contents of the replying affidavit according to the respondents contention the dismissal herein was regular, lawful, procedural and was as a result of reasonable and proper exercise of the 2nd respondent’s executive authority under Section 31 (g) of the County Government Act which allows him to dismiss such a member at his pleasure.

30. In the instant petition the petitioner cannot purport not to have notice of the allegations facing her nor can she contend she was not given a hearing by virtue of the contents of the affidavits by the 1st and the 2nd respondents which remain uncontroverted. It is my view that the form and content of notice and actual hearing is not a matter of legal prescription, provided it is shown that the petitioner had sufficient notice of the reason leading to her dismissal, and had been granted a chance to remedy the circumstances leading to her dismissal. The reasons for dismissal having been made to the petitioner need not be repeated in the

final letter of dismissal.

31. The reasons for dismissal of the petitioner herein are found in paragraph 3 (b) to (g) and 3 (i) of the 1st replying affidavit sworn by the 2nd respondent and paragraphs 3(a) to (h) of the 2nd replying affidavit by Mercy Mwendwa Ndiira which points out that the petitioner was grossly incompetent, abused her office with reckless abandon, was guilty of gross and avaricious misconduct in office and violated the constitution with such alarming alacrity that her continued stay in office became untenable. I have very carefully gone through the petitioner's supplementary affidavit dated 13th May 2015 and have noted that the petitioner has not in anyway denied in her affidavit the matters raised against her or in anyway rebutted the same. These were amongst the reasons for her dismissal.

32. On reasonable notice and hearing, the affidavit of Governor Peter Munya under paragraph 3(h), unequivocally states as follows:-

“h) I categorically wish to state that i severally reprimanded the petitioner, both in person and during County Executive Committee sittings, and gave her reasonable time to organize herself and blend into the County Executive Committee, due regard having been made to the sensitivity of her docket and bearing in mind that there had been no substantive holder of the said docket prior to her appointment, but the petitioner was simply unable to mend her ways and continued acting in a manner that undermine the authority of my office. I am also aware that the County Secretary also tried his best to induct her and assist her to fit in into the workings of the 1st respondent, and generally inducting her on human resource management, which efforts all came to nought.”

33. I note from the above extract from the affidavit of the 2nd respondent, the petitioner has had reasonable notice and was afforded a hearing, above being given an opportunity to put her acts together in person and during Executive Committee Meetings. In the dismissal letter dated 28th November 2014 it is partly stated:-

“it has come to my attention that some crucial government programs are being undermined from within. There is also lack of team work, negative energy and disruptive behaviour in certain departments . . .”

In view of the contents of the dismissal letter, it is clear reasons for dismissal of the petitioner were duly given.

34. In the case of County Government of Nyeri & another v Cecilia Wangechi Ndungu [2015] eKLR the Court of Appeal stated:

“We are of the considered view that Section 31 (a) grants power to a Governor to dismiss a member of the County Executive Committee at any time, that is, at his pleasure. However, we find that the said power is qualified to the extent that he can only exercise the same reasonably and not arbitrarily or capriciously. Why do we say so?

38. Firstly by dint of Article 179(1) of the Constitution and section 34 of the County Governments act the executive authority of a county is vested in the County Executive members of the County executive Committee who are appointed by the Governor. The members of the County Executive Committee assist the Governor to carry out his mandate under the law. It is the Governor who assigns to every member of the County Executive Committee responsibility to ensure the discharge of any function in the County. This is the reason why the County Executive Committee member are individually and collectively accountable to the Governor in the exercise of their powers and performance of their duties and responsibilities. (See Article 179)6) of the Constitution and Section 39 of the County Governments Act). A County Executive Committee member is the Governor's right hand in his/her respective office. Hence the Governor has to have confidence in the County Executive Committee member. Where such confidence is lost the

governor ought to have the capability of removing such a member without undue delay so as to enable the County Executive committee to function for the benefit of the County.

39. Secondly Section 31 (a) provides that a Governor may dismiss a county Executive Committee member at any time, if he/she considers that it is appropriate or necessary to do so. We find that the provision places an obligation on the Governor to exercise the said power only when necessary or appropriate. In our view this entails reasonableness on the part of the governor in exercising this power. In Dunsmuir –vs- New Brunswick (supra) the supreme Court while discussing reasonableness observed :-

47. Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness; certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. . . . A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reason and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect to the facts and law.

Further, by virtue of the fact that a governor ought to exercise his powers for the public good he should not act on selfish motives but for the benefit of his/her county. We find that the reason for exercising the said power ought to be valid and compelling and will depend on the circumstances of each case. Consequently, the power to dismiss a member of the county executive is qualified to the extent that the same ought to be for the benefit of the County and in accordance to the principles of devolution as set out herein above. In B.P. Singhal –vs- Union of India & Another (supra)

35. In the case of Cecilia Wangechi (Supra) the Court of Appeal further stated:-

“Was the respondent’s right to a fair administrative action violated?”

40. From the foregoing it is clear that a Governor ought to exercise his power to dismiss a member of a County Executive Committee under Section 31(a) of the County Governments Act reasonably and for the public good. In this case, the respondent contended that her right to a fair administrative action was violated by the appellants. This is because the 2nd appellant neither informed her of the allegations against her nor gave her an opportunity to defend herself before the dismissal.

41. In B.P. Singhal –vs- Union of India & Another (supra) the Supreme Court of India held,

“The president in exercising power under Article 156 (1) should act in a manner which is not arbitrary, capricious or unreasonable. In the event of challenge of withdrawal of the pleasure, the court will necessarily assume that it is for compelling reasons. Consequently, where the aggrieved person is not able to establish a prima facie instance of arbitrariness or malafides. In his removal the court will refuse to interfere.”

42. As demonstrated herein above the extent to which due process is applicable in a case such as this depends on the express and implied limitations by statute and the circumstances of the case. There are certain circumstances a Governor may lose confidence in a member of the County Executive Committee and due to the sensitivity and/or urgency of the matter at hand the Governor may dismiss the member without giving notice of his intention to do so. Further Section 31 (a) of the County Governments Act does not require the Governor to hold a disciplinary hearing in respect of the said member before dismissal; he can only dismiss if he considers it appropriate or necessary. Appropriateness or necessity is not arbitrariness or whimsical. Appropriateness or necessity imports the requirement that there must be reasons that

make the dismissal appropriate or necessary. It is these reasons that determine whether the discretionary power exercised under Section 31 (a) of the County Governments Act is reasonable or not. In Associated Provincial Picture Houses Ltd –vs- Wednesbury Corporation (1947) 2 ALL ER 680, Lord Green expressed himself as herein under:-

“It is true the discretion must be exercised reasonably. What does that mean? Lawyers familiar with the phraseology commonly used in relation to the exercise of statutory discretions often use the word unreasonableness in a rather comprehensive sense. It is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration mater which are irrelevant to the matter that he has to consider. If he does not obey these rule she may truly be said, and often is said, to be acting unreasonably. Similarly, you may have something so absurd that no sensible person could ever dream that it lay within the powers of the authority. Warrington L.J. I think it was, gave the example of the red-haired teacher, dismissed because she had red hair. That is unreasonable in one sense. In another sense it is taking into consideration extraneous mates. It is so unreasonable that it might almost be described as being done in bad faith. In fact, all these things largely fall under one head.”

“43. Article 47 of the Constitution provides in part:-

47 (1) Every person has the right to administrative action that is expeditious, efficient, lawful reasonable and procedurally fair.

2. If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.”

In the instant case the respondent was dismissed vide a letter dated 24th June, 2014 with immediate effect. From the said letter it is not clear under what circumstances the respondent’s services were terminated. We also not that no evidence was tendered by the appellants as to the reasons(s) for the respondent’s dismissal. In fact the appellants maintained the 2nd appellant had the power to dismiss the respondent at his pleasure without giving reasons. We find that in the circumstances that the respondent proved that the 2nd appellant’s actions were arbitrary. This is because there was no evidence that the 2nd appellant acted reasonably in dismissing the respondent. Consequently, we concur with the trial court that the respondent’s right to a fair administrative action was violated by the appellants.”

36. In the instant case the respondent did not solely rely on exercising its power under **section 31 (a) of the County Government Act**. The letter dated 28th November 2014 has pointed out that crucial government programs were being undermined from within, and that there was also lack of team work, negative energy and disruptive behavior in certain departments. These in my view are some of the circumstances the petitioner’s services were terminated on. The respondents in their detailed affidavits tendered evidence as to the reasons for the petitioner’s dismissal. The petitioner cannot in my view claim that no reason was either given orally or in writing. The contents of the dismissal letter are clear and the reasons thereto are similar to the ones expounded in the respondent’s affidavits which I have noted and held that they have not been controverted by the petitioner. I am therefore satisfied in view of the evidence laid before me that the respondents acted reasonably and within the law in dismissing the petitioner from duty. Consequently I find that the respondent in dismissing the petitioner by letter dated 28th November 2014, the 2nd respondent exercised his powers in accordance with the law.

B. WHETHER THE PETITIONER IS ENTITLED TO THE REMEDIES SOUGHT?

37. The petitioner sought the following declarations:-

(a) A declaration that the act of the 2nd respondent in relieving the petitioner of her duties is a

breach of the latter Constitutional rights under Article 27 (1) (2) and (3), 28,41 & 50 of the Constitution of Kenya and that the same is null and void for all intent and purposes.

(b) That pending the hearing and final determination of this application inter parties, conservatory orders of stay do issue staying the decision of the 2nd respondent dismissing the petitioner.

(c) An order of Judicial Review to remove into this Honorable Court and quash the decision of the 2nd respondent relieving the petitioner of her duties as County executive in charge of culture, gender and Social Development.

(d) An order of Judicial review of Prohibition to remove into this Honourable Court and prohibit the respondents from appointing any fresh nominee for approval by the Nyeri County Assembly for appointment as a member of Nyeri County Executive in charge of Culture, Gender and Social Development.

(e) In alternative and without prejudice to prayer (d) above, an order of payment of all dues to the petitioner in the period she would have served between now and then end of term.

(f) Any other relief or order this Honourable Court may deem fit to grant.

38. Mr N'gang'a learned advocate for the petitioner submitted that **Articles 12(1), 20 (2) 22(1) and 47 (1) of the Constitution of Kenya 2010** entitles the petitioner to each and all fundamental rights and freedoms expressed and implied in the Constitution, that is to say inter alia, the right to move the honorable court whenever the bill of rights is denied, violated, infringed or threatened, the right to lawful and procedurally fair administrative action; right to fair labour practices and fair hearing.

39. Mr. Thurania learned advocates for the respondents submitted that the petitioner was dismissed in a proper and procedural manner and as such no constitutional rights were infringed; that the Governor must have confidence in his County Executive Committee members and his right of dismissal ought not to be unduly fettered and that his committee must function as a team if he is to deliver on his election pledges, urging that must have been the intention of Parliament when enacting **Section 31 (a) of the County Government Act.**

40. Mr. Thurania, learned advocate further submitted that prayer (a) to (d) both inclusive of the petition have been overtaken by events by virtue of the contents of paragraph 4 of the replying affidavit by Peter Gatirau Munya sworn on 6th May 2015. The prayers on the other hand have not been pursued in the petitioner's submissions I have no doubt in view of the affidvits by the respondents that the prayers have been overtaken by events as the position previously held by the petitioner was advertised on 12th February 2015, that the Governor nominated one applicant namely Judy Karui Muriungi, that Meru County Assembly debated and approved the nomination of Joy Karui Muriungi as Governor's nominee; and subsequently on 7th April 2015 she was duly sworn in and took over the position claimed by the petitioner. I therefore, find there is no vacant position to which the petitioner can be reinstated to as the petition has been overtaken by events and any order that court may issue to reinstate the petitioner would be an order in vain and would lead to a constitutional absurdity. I therefore decline to order reinstatement of the petitioner.

41. In the instant petition I find the dismissal herein was regular and lawful however in case I am faulted on that, finding and the dismissal is held to be irregular, my view is that the petitioner's claim can only lie in an award of damages. The petitioner had served for only one(1) month and her position was not one in which the petitioner would claim she held security of tenure until the next general elections as hers was an appointive office. She could be removed before the next General Election by virtue of powers donated to the Governor by virtue of **Section 31 (a) of the County Government Act.** The Compensation in my view in respect of her position is the one contemplated in **Article 23 (3) (e) of the Constitution 2010** which provides:-

“3. In any proceedings brought under Article 22, a court may grant appropriate relief, including:-

(a) . . .

(b) . . .

(c) . . .

(d) . . .

(e) an order for compensation; and . .

42. I do not agree the compensation in this case should be as per the Petitioner’s counsel submission or that of the respondent’s counsel. In view of the foregoing and had I found the petitioner successful I would have ordered a compensation limited to Kshs. 700,000/- all in all in view of her position and the period she had served before termination of her services.

43. The costs always follow event however in Constitutional matters the court is obligated before deciding on costs to consider in whose interest the petition was filed. In the instant petition it was not filed in the public interest but filed in pursuant of a private interest of the petitioner. I therefore proceed to dismiss the petition with costs to the respondents.

DATED at Meru this 22nd day of October, 2015.

J.A. MAKAU

JUDGE

22.10.2015

Delivered in open court in the presence of:

Mr.Ng’ang’a for petitioner.

Mr. Thurania for respondent.

F. GIKONYO

JUDGE

22.10.2015