



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Petition 279 of 2013

MATHEW LEMPURKEL.....PETITIONER

AND

HON JOSHUA WAKAHORA IRUNGU

COUNTY GOVERNOR, LAIKIPIA COUNTY.....1ST RESPONDENT

HON. PATRICK MARIRU,

SPEAKER LAIKIPIA COUNTY ASSEMBLY.....2ND RESPONDENT

THE ATTORNEY GENERAL.....3RD RESPONDENT

RULING

1. The petitioner, the Member of the National Assembly for Laikipia North Constituency, has filed an application seeking conservatory orders restraining the formation, approval, designation and swearing in of the County Executive Members for Laikipia County.
2. The application was filed on 30th May 2013 under certificate of urgency and when it came up, I declined to issue *ex-parte* orders. I directed the applicant to serve the application for hearing on 31st May 2013. On 31st May 2013, I was satisfied that service had been effected and in the absence of the respondents and or their representatives, I directed the petitioner to prosecute the application.
3. The gravamen of the petitioner's case is that the County Executive Committee nominated by the 1st respondent, the Governor, is largely composed of people of one ethnic group. According to the petitioner, Laikipia comprises three dominant ethnic groups; the Kikuyu, the Maasai and the Samburu.
4. The petitioner in the supporting affidavit depones to the fact that three out of seven members of the county executive belong to the Kikuyu community. The only nominee from the Samburu Community was rejected and replaced by one from the Maasai Community hence Samburu community has been left unrepresented.
5. Learned counsel for the petitioners, Ms Kilonzo, drew the court's attention to the provision of **section 35(1)** of the **County Government Act (Act No. 17 of 2012)** which provides that when nominating members of the executive committee, the county governor shall ensure that to the fullest extent possible, the composition of the county Executive reflects the community and cultural diversity of the county. These provisions, she submitted, draw from **Articles 10** and **232** of the Constitution which emphasise the national values and principles.

6. This is an application for conservatory orders, and I am required to be satisfied that there is a prima facie case with a probability of success and that without an injunction the members of the public will suffer substantial prejudice.

7. As the application was not opposed, I was unable to weigh the consideration that went into the nomination of county executive members but in view of the uncontested evidence provided I must conclude, in light of the facts presented, that there is a case to be made at the trial of the petition.

8. Despite the fact that there was no opposition to the application, Ms Kilonzo properly disclosed to the court a letter dated 31st May 2013, from *Sichangi Partners Advocates* written on behalf of the 1st respondent replying to the petitioner's counsel demand letter dated 24th May 2013 which set out the statutory and constitutional provisions violated by the manner in which the county executive was constituted. The 1st respondent's letter, quite apart from stating that Laikipia has over 18 ethnic communities, reiterated the contents of the law and noted that the Governor has tried to his best to give effect to the constitutional principles. Nothing was said about the process of appointment and the specific efforts made to accommodate those 18 communities. I shall say no more as this shall be a matter for trial.

9. The violation of the Constitution is a serious matter particularly at this time when the County governments are getting up on their feet. The issues of community and diversity are key to the success of County government and one of the reasons why Kenyans voted for a devolved structure of government is to involve various communities, previously marginalised, in governance.

10. This consideration is at the core of what is to be determined in the suit and in my view, if the executive committee does not reflect the face of the county, it is bound to fail.

11. The High Court has undoubted jurisdiction to grant relief where the Constitution is threatened or violated. I am also satisfied that at this stage the grant of conservatory orders sought will not impair the functioning of the county government. I shall therefore grant conservatory orders for a limited period of **thirty (30) days** to facilitate hearing of the petition.

12. I therefore grant conservatory orders in terms of prayers 4, 7, and 8 of the Chamber Summons dated 20th May 2013 as follows;

(a) A conservatory order be and is hereby issued restraining the 2nd respondent from approving the nominees to the Laikipia County Executive Committee pending the hearing and determination of the petition.

(b) A conservatory order be and is hereby issued restraining the 1st respondent from swearing in nominees for the Laikipia County Executive Committee pending the hearing and determination of the petition.

(c) A conservatory order be and is hereby issued restraining the 1st respondent from designating any function or gazetting the function of any member of the County Executive Committee pending hearing and determination of the petition.

(d) Orders (a), (b) and (c) above shall remain in force for a period of thirty days from the date hereof.

(e) The petition shall be mentioned on 7th June 2013 to take directions for hearing of the petition.

(f) The petitioner to serve the orders on the respondents forthwith.

DATED and DELIVERED at NAIROBI this 31st day of May 2013

D.S. MAJANJA

JUDGE

Ms K. Kilonzo instructed by Kilonzo and Company for the petitioners.