



IN THE INDUSTRIAL COURT OF KENYA AT NAKURU

PETITION NO. 13 OF 2014

BETWEEN

ROBINSON NALENG'OYO OLE TOROME

(Organising Secretary, ODM Party, Narok County) PETITIONER

v

THE NAROK COUNTY PUBLIC SERVICE

BOARD

1st RESPONDENT

THE COUNTY GOVERNMENT OF

NAROK

2nd RESPONDENT

RULING

1. Robinson Naleng'oyo ole Torome (Petitioner) filed a Petition on 31 July 2014 alleging contravention of his fundamental rights and freedoms and seeking
 - a) A declaration that the process of short listing, interviewing, recruitment and offering of appointments by the Respondents for all candidates for the job positions of Sub-County Administrators, Deputy Sub-County Administrators and Ward Administrators in Narok County and which candidates were sworn in on the 10th July, 2014 was by itself a process which contravened the relevant provisions of the Constitution, the County Government Act, No. 17 of 2012 and therefore null and void.
 - b) A declaration that the 1st Respondent, its employees and/or agents is obligated to uphold the provisions of Articles 10,19,27,73 and 232 of the Constitution in undertaking recruitments,selection,interviewing and appointment of all county officers.
 - c) An order directing the 1st Respondent to conduct fresh interviews, short listing, selection and recruitment of Sub-County Administrators, Deputy Sub-County Administrators and ward Administrators in Narok County while upholding the relevant provisions of the Constitution and other legislative measures.
 - d) That the respondents to pay the costs of the Petition.
2. The Petitioner at the same time filed a motion under certificate of urgency seeking orders

2. THAT pending the hearing and determination of this Application inter parties this hounourable court be pleased to issue orders of mandatory injunction compelling the Respondents by themselves, their agents or servants to furnish the Petitioner or his agents with the list of all Applicants, all letters of application by Applicants, the list of all appointees together with their curriculum vitae (C.V.S) for candidates for the job positions of Sub-County Administrators, Deputy Sub-County Administrators and Ward Administrators in Narok County who were sworn in on the 10th July,2014 and copies of the said documents be furnished within three (3) days from the date of service of the court order hereof.

3. THAT pending the hearing and determination of this Application inter parties this Honourable Court be pleased to issue Conservatory Orders of Prohibition restraining the 2nd Respondent-County Government by itself, its servants or agents from staffing, assigning offices, enrolling into orientation/induction programmes and/or registering into the payroll all the appointees for the job positions of Sub-County Administrators, Deputy Sub-County Administrators and Ward Administrators for Narok County who were sworn in on the 10th July,2014.

4. THAT pending the hearing and determination of this Petition this Honourable Court be pleased to issue Conservatory Orders of Prohibition restraining the 2nd Respondent-County Government by itself, its servants or agents from staffing, assigning offices, enrolling into orientation/induction programmes and/or registering into the payroll all the appointees for the job positions of Sub-County Administrators, Deputy Sub-County Administrators and Ward Administrators for Narok County who were sworn in on the 10th July,2014.

3. The motion was placed before Ongaya J on 31 July 2014 when he ordered that it be served for *inter partes* hearing on 2 October 2014 and that the Respondents file and serve their responses by 15 August 2014 setting out the details sought in prayer 2 of the motion.
4. On 2 October 2014 the motion was placed before me and *Trusted Society of Human Rights Alliance* informed me that it had filed a motion on 19 August 2014 seeking to be joined as an Interested Party.
5. Because the Respondent had indicated that it had raised a Preliminary Objection in the replying affidavit filed in Court on 14 August 2014, I directed that the objection be taken on 3 November 2014.
6. The objection as presented in paragraph 4 of the replying affidavit of Zipporah Sintoyia Gad was that the Industrial Court is mandated to determine disputes relating to employment and labour relations and that the instant dispute did not relate to a dispute between an employer and employee and that the dispute as raised related to administrative action and alleged contravention of the County Government Act, and thus this Court lacks jurisdiction.
7. On 3 November 2014, I directed that the Respondent to file and serve its submissions on the objection before 7 November 2014, Petitioner and Interested Party to file and serve their submissions before 14 November 2014.
8. The Respondents filed their submissions only on 25 November 2014 well outside the set timelines. No explanation has been tendered why the Respondent delayed in complying with the Court orders on filing of the submissions.
9. Be that as it may, after perusing, the file I am of the opinion that the Petition is not raising any issues concerning *fundamental rights of employees, conditions and terms of employment, labour and employment relations* or such other connected or incidental purposes.
10. It is raising questions as to how the Respondent performed its functions and exercised its powers in relation to appointment to certain offices created under the County Government Act. Those appointed to those offices are not parties before the Court.
11. This Petition properly belongs to the jurisdiction of the High Court and relying on the decision of the Court of Appeal in *Daniel N. Mugendi v Kenyatta University & 3 others* (2013) eKLR, I do order that it be transferred to the High Court, Nakuru for hearing and determination.
12. Despite finding that the proper forum is the High Court, I do order that the Respondents meet the

Petitioner's costs of the objection for their failure to comply with the orders of the Court as to filing and service of submissions.

Delivered, dated and signed in Nakuru on this 5th day of December 2014.

Radido Stephen

Judge

Appearances

For Petitioner Kanyi Ngure & Co. Advocates

For Respondents Havi & Co. Advocates

For Interested Party Geoffrey Otieno & Co.
Advocates