



**Omweno & 3 others v Governor, County Government of Kakamega  
& 4 others; Wanyama & another (Interested Parties) (Petition  
E008 of 2023) [2024] KEELRC 1355 (KLR) (6 June 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1355 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KAKAMEGA  
PETITION E008 OF 2023**

**JW KELL, J**

**JUNE 6, 2024**

**IN THE MATTER OF ARTICLES 1,2,3,10,19,20,22,47, 48, 50,73,159,160,165,  
181, 234(2) (1), 236, 251(1) & 259 OF THE CONSTITUTION, 2010**

**AND**

**IN THE MATTER OF SECTIONS 58(5), 59 AND 77 OF  
THE COUNTY GOVERNMENTS ACT, NO. 17 OF 2012**

**AND**

**IN THE MATTER OF AN ILLEGAL, IRREGULAR, UNJUST, SELECTIVE AND OR  
DISCRIMINATORY DECISION, RECOMMENDATION AND OR RESOLUTION OF  
THE COUNTY ASSEMBLY OF KAKAMEGA VIDE ITS PURPORTED ASSEMBLY  
PROCEEDINGS ON 14/1/12/2023 TO REMOVE FROM OFFICE ;(1) MRS CATHERINE  
RAINI OMWENO; 2). MR. STANLEY AMWAYI WERE; 3). DR. RALPH WANGATIA  
IMMAM; & 4). MR. JOEL ANYERA OMUKOKO FROM OFFICE AS CHAIRPERSON AND  
MEMBERS OF THE KAKAMEGA COUNTY PUBLIC SERVICE BOARD RESPECTIVELY**

**BETWEEN**

**MRS. CATHERINE RAINI OMWENO ..... 1<sup>ST</sup> PETITIONER  
MR. STANLEY AMWAYI WERE ..... 2<sup>ND</sup> PETITIONER  
DR. RALPH WANGATIA IMMAM ..... 3<sup>RD</sup> PETITIONER  
MR. JOEL ANYERA OMUKOKO ..... 4<sup>TH</sup> PETITIONER**

**AND**

**THE GOVERNOR, COUNTY GOVERNMENT OF KAKAMEGA .... 1<sup>ST</sup>  
RESPONDENT  
COUNTY ASSEMBLY OF KAKAMEGA ..... 2<sup>ND</sup> RESPONDENT**



COUNTY GOVERNMENT OF KAKAMEGA ..... 3<sup>RD</sup> RESPONDENT  
DENNIS DUNCAN MUHANDIA ..... 4<sup>TH</sup> RESPONDENT  
THE COUNTY SECRETARY ..... 5<sup>TH</sup> RESPONDENT

AND

JOHN AMBROSE WANYAMA ..... INTERESTED PARTY  
SILVIA AMBROSE OTUNGA ..... INTERESTED PARTY

## RULING

Representation:

Petitioners: - Nyikuli Shifwoka & Company Advocates

1<sup>st</sup>, 3<sup>rd</sup>, & 5<sup>th</sup> Respondents:- Lutta & Company Advocates

2<sup>nd</sup> Respondent:- Okong'o, Wandago & Company Advocates

4<sup>th</sup> Respondent: -Agnes Awuor, advocate

2<sup>nd</sup> Interested Party:- Ongwenyi Mirieri & Company Advocates

### **(On oral application for stay of order of reinstatement of the petitioners pending filing of appeal by the 1<sup>st</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents)**

1. The Court this morning delivered a judgment dated 6<sup>th</sup> June 2024 allowing the petition dated 19<sup>th</sup> December 2023 as follows:-
  1. It is hereby declared that the removal process of the Petitioners from office, by the Kakamega County Assembly, the 2<sup>nd</sup> Respondent, was in violation of Articles 35, 47, 50 and 236 of the Constitution.
  2. It is declared that the rushed proceedings without sufficient notice to the Petitioners before the Assembly and removal of the Petitioners from office was unlawful. The Petition by the 4<sup>th</sup> Respondent before the Assembly did not meet the threshold of removal of members of the Kakamega Public Service Board under Article 251(1) of the Constitution. The signing/affirming of the report by Assembly Members who were not at the hearing was unlawful.
  3. An order of certiorari is hereby issued quashing the Report of the Assembly committee dated 11<sup>th</sup> December 2023 and the consequential decisions including the resolutions of 14<sup>th</sup> December 2023 of the 2<sup>nd</sup> Respondent communicated vide letters to the Petitioners dated 15<sup>th</sup> December 2023 removing them from office.
  4. The 1<sup>st</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents are restrained from relying on the letters dated 15<sup>th</sup> December 2023 communicating removal from office of the petitioners.
  5. The petitioners are to resume office with immediate effect and serve for the remainder of their term unless lawfully removed from office.



6. The petitioners are each awarded Kshs.1 million for violation of their rights plus costs. Monies awarded to attract interest at court rates from the date of judgment if not paid within 30 days of the judgment. “
2. Upon delivery of the decision, Mr. Lutta, Counsel for the 1<sup>st</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents, made an oral application for stay of the order “ The petitioners to resume office with immediate effect, and serve for remainder of their term unless lawfully removed from office” to enable them appeal.
3. The application was opposed by Mr. Shifwoka for the Petitioners on grounds that the Court having determined there were illegalities in the removal of the Petitioners from office and violation of constitutional provisions it would be a shot on its own arm to stay its decision. It would be tantamount to sitting on own appeal given the uniqueness of the case. It would not be in public interest as the public had been denied service of the Board since 14<sup>th</sup> December 2023.

### **Decision**

4. The grant of stay of decision of the court pending appeal is per section 42 of the [Civil Procedure Rules](#) to wit:-

‘Stay in case of appeal [Order 42, rule 6.] (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.

- (2) No order for stay of execution shall be made under subrule (1) unless—
  - (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
  - (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.
- (3) Notwithstanding anything contained in subrule (2), the court shall have power, without formal application made, to order upon such terms as it may deem fit a stay of execution pending the hearing of a formal application.
- (4) For the purposes of this rule an appeal to the Court of Appeal shall be deemed to have been filed when under the Rules of that Court notice of appeal has been given.
- (5) An application for stay of execution may be made informally immediately following the delivery of judgment or ruling.
- (6) Notwithstanding anything contained in subrule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure



for instituting an appeal from a subordinate court or tribunal has been complied with.”

5. The Court of Appeal in *National Assembly & 47 others v Okoiti & 169 others* (Civil Application E577, E581, E585 & E596 of 2023 (Consolidated)) [2024] KECA 39 (KLR) (26 January 2024) (Ruling) Neutral citation: [2024] KECA 39 (KLR) considered an application for stay of a decision of the High Court related to declaration of unconstitutionality of a law emanating from the National Assembly.
6. The Court of Appeal in the aforesaid decision, pronounced the applicable criteria to apply in determination of application for stay pending appeal to be:- ‘An applicant who would succeed upon such an application for stay of execution must persuade the court on two limbs, that the appeal or intended appeal was arguable and not frivolous. Secondly, that if the application was not granted, the success of the appeal, were it to succeed, would be rendered nugatory. Those two limbs must both be demonstrated and it would not be enough that only one was demonstrated.’(Paragraph 1) I uphold the decision to apply in the instant application.
7. I pronounced myself and declared the decision to remove the Petitioners from office by the County Assembly to be unconstitutional, unlawful and tainted with illegalities. How then can I decide there is an arguable appeal without doubting my own decision? I agree with the Petitioners that I would be sitting on own appeal.
8. The Court of Appeal in *National Assembly & 47 others v Okoiti & 169 others* (*supra*) further held in Paragraph 14:- ‘The presumption of constitutional validity in respect of the impugned sections was extinguished the moment the trial court issued the declaration. It would not be in public interest to grant a stay whose effect was to allow a statute that had been found to be constitutionally infirm to continue being in the law books pending the hearing of an appeal.’. I uphold and apply the decision to find that having declared the impugned decision of the County Assembly of removal of the Petitioners from office unconstitutional and unlawful the presumption of constitutionality and lawfulness of the County Assembly processes and resolutions was extinguished and the order of stay if granted would be tantamount to enabling further violation of the Petitioners’ rights. The court further holds that it is not in public interest to grant the stay sought as the Board functions have been held in abeyance since 14<sup>th</sup> December 2023 and the people of the County of Kakamega were entitled to its statutory services.
9. The application for stay of the Court Order of reinstatement to office of the Petitioners with immediate effect, is disallowed.
10. Right to appeal.
11. It so Ordered.

**RULING DATED, SIGNED, AND DELIVERED THIS 6<sup>TH</sup> JUNE 2024 IN OPEN COURT AT KAKAMEGA.**

**J.W. Keli**

**JUDGE**

In the presence of

C/A Lucy Macheso

Petitioners:- Shifwoka

1<sup>st</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents – Lutta

2<sup>nd</sup> Respondents- Absent



4<sup>th</sup> Respondent – Odero

2<sup>nd</sup> interested party - Absent

