



**Republic v Migori County Government, Office of the County Public Service Board;
Omondi (Exparte Applicant); County Government of Migori & 5 others (Interested Parties)
(Judicial Review E003 of 2024) [2024] KEELRC 1505 (KLR) (19 June 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1505 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
JUDICIAL REVIEW E003 OF 2024**

**CN BAARI, J
JUNE 19, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

**MIGORI COUNTY GOVERNMENT, OFFICE OF THE COUNTY PUBLIC
SERVICE BOARD RESPONDENT**

AND

CPA, MARVIN NGEI OMONDI EXPARTE APPLICANT

AND

COUNTY GOVERNMENT OF MIGORI INTERESTED PARTY

COUNTY GOVERNMENT OF MIGORI INTERESTED PARTY

MIGORI MUNICIPALITY INTERESTED PARTY

RONGO MUNICIPALITY INTERESTED PARTY

AWENDO MUNICIPALITY INTERESTED PARTY

KEHANCHA MUNICIPALITY INTERESTED PARTY

JUDGMENT

1. The Ex Parte Applicant lodged this proceeding vide a Notice of Motion dated 27th February, 2024 pursuant to leave granted by this Court on 7th February, 2024. He seeks the following reliefs: -
 - i. That the Honourable court be pleased to grant an order declaring that the unfair administrative action reposed in the blatantly illegal and unlawful administrative action



reposed in the advertisement of vacancies vide the publication in the standard newspaper of 17th and 18th January, 2024, is unlawful.

- ii. That the Honourable court be pleased to grant an order of judicial review of Certiorari to call, remove, deliver up to the court and quash the unfair administrative action reposed in the blatantly illegal and unlawful administrative action reposed in the advertisement of vacancies vide the publication in the standard newspaper of 17th and 18th January, 2024, and all actions and/or decisions made subsequent thereon.
- iii. That the Honourable court be pleased to grant an order of Judicial Review of Mandamus requiring the person who published and/or caused the publication in the standard newspaper of 17th and 18th January, 2024, to personally refund in full any such public sums expended, and a report filed in court within fifteen (15) days.
- iv. That the Honourable court be pleased to grant any further and or consequential orders necessary to give effect to the justice of the matters herein.
- v. That the Honourable court be pleased to award costs of the judicial review proceedings herein, to the Exparte Applicant.

2. The Motion is premised on the grounds THAT:

- i. On the 17th and 18th of January, 2024, vide public advertisements appearing in the Standard Newspaper at page 25 (classified's section-copies availed) an advertisement was run in the name of "Migori County Government Office of the County Public Service Board" purportedly declaring that Migori County Public Service Board wishes to recruit competent and qualified persons to fill vacant positions as per the Constitution of Kenya, 2010 under Article 176 and the County Government Act No 17 of 2012, Section 59(1)(b).
- ii. This postulation and invocation of both the Constitution and the County Governments Act, (to recruit and fill vacancies) is absolutely important in as far as the specific jurisdiction of this Hon Court under Article 162(2)(a), Constitution as read with Article 165(3)(d)(ii) thereof which confers power to this Court to interrogate, the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, the Constitution.
- iii. Article 258, of the Constitution confers on the ex-parte applicant, the right to institute court proceedings, claiming that the Constitution has been contravened, or is threatened with contravention on behalf of the people of Migori, where he is a civil rights activist and indeed the general public, in invoking Article 3(1) and 47, Constitution.
- iv. Vide a Court Order dated 6th July, 2023, from the Court of Appeal in Civil Application E066 of 2023-Hon Jared Opiyo & 5 Others v Migori County Assembly & Others (Kiage, Mumbi-Ngugi and Prof Ngugi, JJA) the Hon Court of Appeal did order that,

“That the status quo currently obtaining as at now, the 5th July 2023 shall be maintained pending the hearing and determination of the intended appeal. For the Avoidance of any doubt, status quo shall mean, that the applicants (Hon Jared Opiyo, Chairman Ms Jemimah Were, Vice-Chairperson Hesborn O. Omwa, Member, Enock Achieng' Member, Phoebe Aloo, Member and Range M Maroa, who have not been accessing their offices shall remain out of those offices, and they shall not be replaced in the interim”.



- v. Under Sections 57 and 58(1), *County Governments Act* (CGA) the County Public Board (CPSB) comprises and constitutes the Chairman and Members inclusive of their Secretary.
 - vi. Further, under Sections 59(1)(b) and 63, CGA the lawful power to recruit and make appointments in County Public Service is exclusively conferred in the CPSB (as constituted, comprised and composed under Sections 57, and 58(1) CGA). In exercise of this exclusive power, only the CPSB can place, or cause to be placed, advertisements inviting applicants to fill any vacancy that would have lawfully arisen.
 - vii. The publication purporting to declare vacancies and recruit in the Migori County Public Service, vide the advertisements of 17th January, 2024 and the addendum on 18th January, 2024, is an unlawful administrative action, amenable to interrogation and quashing by this Hon Court.
 - viii. The entrenchment of judicial review under *the Constitution* elevated it to a substantive and justiciable right under *the Constitution*. Accordingly, judicial review is no longer a strict administrative law remedy, but is also an enshrined constitutional fundamental right.
 - ix. The discharge of the functions of the subject public duty i.e. declaration of vacancies and recruitment(s) thereon, are subject to Article 236(a)&(b), Constitution as read with the fundamental rights and freedoms enshrined under Articles 27(1),(2)&(4); 29(d); 41(1)&(2); 47; and, 50(1) Constitution guaranteeing not just equal treatment under the law, but also protection from discrimination, unfair labour practices, unfair administrative action, and, fair hearing all of which have been abridged herein.
 - x. Unless the Orders sought herein are granted, the ex parte Applicant, public interest and indeed the administration under rule of law stands to suffer irreparable loss and grave injustice
3. The Respondent seem not to have opposed the Ex Parte Applicant’s substantive motion, but instead, filed an application for joinder of the County government of Migori, the Migori County Public Service Board as Respondents in the suit, together with the intended interested parties named herein, vide a motion dated 28th February, 2024, and that they be allowed to defend the suit.
 4. When the matter came up for directions on 12th March, 2024, parties compromised the joinder motion and agreed to have the same considered as a response to the main judicial review motion by the Ex Parte Applicant, with a further agreement that Migori County Government and Migori County Public Service Boarded were to be considered the Respondents in the matter.
 5. Both parties filed submissions on the main motion.

The Ex parte Applicant’s Submissions

6. On the issue of jurisdiction, it is submitted for the Ex parte Applicant that all that an applicant is required to do in a judicial review matter, is to demonstrate that the impugned decision whether it is oral, a letter, an order or proceedings violates or threatens to violate the Bill of Rights or violation of *the Constitution*. He placed reliance on Republic v Firearms Licensing Board & another Ex parte Boniface Mwaura [2019] eKLR, where in following Republic v Speaker of the Senate & Another ex parte Afrison Export Import Limited & Another (2018) eKLR for the holding that: -

“Judicial Review is no longer a common law prerogative, but is now a constitutional principle to safeguard the constitutional principles, values and purposes. The Judicial Review powers that were previously regulated by the common law under the prerogative and the principles



developed by the courts to control the exercise of public power are now regulated by the Constitution.”

7. It is further submitted that it is untenable and unavailable for any party to seek to uplift and superimpose any particular procedural considerations under the erstwhile imperatives of common law as codified in Order 53 of the Civil Procedure Rules, to defeat a judicial review action brought under Articles 47, 165(3)(d)(ii)&(6), and 258 Constitution.
8. That under the impugned administrative actions, the Respondent invokes Article 176, of the Constitution and Section 59(1)(b), of the County Governments Act as the premise for the exercise of impugned authority to declare vacancies and invite applicants to fill vacancies in Migori County Public Service.
9. That the invocation of the Constitution and the County Government Act, renders this action subject to interrogation by this Hon. Court as to its propriety with the Constitution and Statute law, under Articles 258(1), 165(6) & (7), 165(3)(d)(ii), & 47 Constitution; Section 9(4), and 7(1) Fair Administrative Actions Act (FAAA).
10. It is further submitted that under Sections 63 and 66 of the County Government Act, only the Migori County Public Service Board (MCPSB), properly constituted and/or comprised per Section 58(1) and acting independently pursuant to Section 59A(a)&(b) thereon; has the mandate to declare vacancies and invite applicants to fill vacancies in Migori County Public Service.
11. That to the extent that the impugned administrative action exercises the powers, functions and duties of the MCPSB; in a manner that violates and threatens to further violate the Constitution, then such action in law, qualifies as an administrative action.
12. He submits that the proceedings before this Honourable Court, are proper and the court’s jurisdiction properly invoked, and ask the Court to so find and hold.
13. On whether the impugned administrative action is unfair and unlawful, it is submitted that the Respondent is obligated under Article 10(1), (a)&(b) of the Constitution to respect, uphold and defend the Constitution. Reliance was placed in Republic v Speaker of the National Assembly and 4 Others ex-parte Edward R.O. Ouko [2017] eKLR to support this position.
14. It is the submission of the Ex parte Applicant that under Sections 57 and 58(1), County Governments Act (CGA), the County Public Board (CPSB) comprises and constitutes the Chairman and Members inclusive of their Secretary.
15. It is further submitted that under Sections 59(1)(b) and 63, CGA, the lawful power to recruit and make appointments in County Public Service is exclusively conferred in the CPSB, and that in exercise of this exclusive power, only the CPSB can place, or cause to be placed, advertisements inviting applicants to fill any vacancy that would have lawfully arisen, when so properly constituted as the legal responsibility is vested in the CPSB as properly constituted.
16. That vide a Court Order dated 6th July, 2023 from the Court of Appeal in Civil Application E066 of 2023 Hon Jared Opiyo & 5 Others v Migori County Assembly & Others (Kiage, Mumbi-Ngugi and Prof Ngugi, JJA) the Hon Court of Appeal did pronounce and order that,

“That the status quo currently obtaining as at now, the 5th July 2023 shall be maintained pending the hearing and determination of the intended appeal. For the Avoidance of any doubt, status quo shall mean, that the applicants (Hon Jared Opiyo, Chairman Ms Jemimah Were, Vice-Chairperson Hesborn O. Omwa, Member, Enock Achieng’ Member, Phoebe



Aloo, Member and Range M Maroa, Member) who have not been accessing their offices shall remain out of those offices, and they shall not be replaced in the interim.”

17. The Applicant submits that going by the status quo order by the Court of Appeal, the impugned actions through the Standard newspaper, was obviously done by an entity unbeknownst to law, and at best done by persons in excess of their authority.
18. It is submitted further that by the admission of Respondents, the impugned administrative action was sanctioned by David Ochola, Olga Auma Dede, Dorcas A Oyugi, George Jabando, Azariah, Enos and Mengo William, all of whom lacked such legal authority in fact and in law, with their impugned action resulting to naught. Reliance was placed in *Macfoy vs. United Africa Co. Ltd* [1961] 3 All E.R. 1169 and *Onesmus Sintole Saidimu v Sane Ole Saidimu Nkikoora & 5 others* [2021] eKLR, for the holding that: -

“If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the Court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”
19. It is submitted that the Respondents cannot rely on their unlawful action as an anchor to invite the Court to disregard the law and sanitise and legitimise their action. In citing Mutungi J, in the case of *Cortec Mining Kenya Ltd vs Cabinet Secretary Ministry of Mining & 9 Others* [2015] eKLR the Applicant urges this court to reach a similar finding, that;

“A party who flout the law to gain advantage cannot expect that the court will aid him to sustain the advantageous position that he acquired through the violation of the law....”
20. That the administrative actions by the Respondents, contravene Sections 7(2)(a)(ii), and (d), FAAA in as far as the Respondents have acted in excess of jurisdiction or power conferred under any written law; and, materially influenced by an error of law.

The Respondents’ Submissions

21. It is the Respondents’ submission that the Ex parte Applicant has deliberately sought to distort facts by giving a false and contradictory description of the Respondent, whom he describes as a state officer per Article 260 of *the Constitution* and the Chief Officer, in charge of Public Service Management and Devolution in Migori County, and who he alleges is bound by Article 10, 47 and 232 of *the Constitution* in the discharge of his legal mandate.
22. It is their submission that these proceedings have not been filed in compliance with the requirements of the Rules because the reliefs sought in the Statement are not the same as the reliefs sought in the Notice of Motion dated 27th February, 2024. In the substantive motion, judicial review orders are sought while the relief in the Statement are geared towards obtaining leave.
23. It is submitted that the averments contemplated by Order 53 Rule 1(2)(b) of the Civil Procedure Rules, have not been made anywhere in the affidavits on record, and in any event, would not have been made on the face of the averments that there is a previous Order of the Court of Appeal issued in Kisumu Civil Application No E066 of 2023, which is materially relevant.
24. The Respondents further submit that the proceedings are incompetent and do not lie as filed and ought to be struck out.



25. That this Court pursuant to Article 159(1) of *the Constitution* exercises delegated authority given to it by the People of Kenya, and that Article 159(2) (c) places an obligation on this Court, to be guided by several principles, among them alternative form of dispute resolution including reconciliation, mediation, arbitration and functional dispute resolution mechanism and should not arrogate to itself jurisdiction which *the constitution* and the law has conferred on another constitutional organ and/or statutory body.
26. That the Public Service Commission (County Appeals Procedures) Regulations, 2022 were promulgated to regulate the hearing and determination of appeals filed with the Commission by public officers or other persons in respect of county government public service and must be invoked by any person dissatisfied or affected by a decision of a county government executive, member of a county government executive committee, county public service board or county assembly service board.
27. That the Ex parte Applicant having failed to observe exhaustion doctrine before coming to Court is equally fatal in view of the provisions of Article 234(2)(i) of *the Constitution*, Section 77 (1) and (2) (c) of the *County Governments Act* and Section 87(2) of the *Public Service Commission Act*, hence this court does not have jurisdiction to hear and determine the present proceedings in the first instance. They sought to rely on the case of Owners of the Mot-or vessel " Lilian S" -vs-Caltex Oil (Kenya) Ltd (1989) eKLR to buttress this position.
28. It is their submission that in the motion before Court, the Ex parte Applicant is praying for orders which are discretionary remedies, and which can be declined, even if a case is made out, but in the circumstances of these proceedings, they submit that there is no inherent merit in granting them, as the grievances made in the Notice of Motion and the Statement of Facts, does not point to any illegality and or constitutional violation at all.
29. That there is no employer/employee relationship between the Ex-parte Applicant, CPA Marvin Omondi Ngei and the fictitious Respondent which he has named in the proceedings, and the dispute does not in any event arise out of employment and between an employer and an employee and or pursuant to any of the other circumstances contemplated by Section 12(1) of the Act.
30. They submit that the Respondents as named in these proceedings, is not employer, a trade union, and employer's organization, a federation, the Registrar of Trade Unions, the Cabinet Secretary or any office established under any written law of such purpose and that only a person specified in Section 12(2) of the Act, can move the Court.
31. It is submitter that placing of an advertisement by a County Public Service Board, calling for applications from a wide section of the public to fill vacancies in the county public service, is not an administrative action contemplated by Article 47(1) and (2) of *the Constitution*.
32. It is their submission that the suit challenges an advertisement dated 17th January, 2024 and its addendum dated 18th January, 2024, which on the face of it was placed by the County Government of Migori through Migori County Public Service Board, an entity of the County Executive.
33. That in placing the advertisement, the Board simply complied with a statutory requirement and a Constitutional obligation and that it is dishonest for an applicant who applies for a discretionary remedy from the Court to undertake dishonest litigation. They submit that the Interested Parties have explained the purpose and reasons that informed the advertisements in question.
34. Furthermore, the Respondent submits that Dr. Olima has averred, and his averment is not controverted, that the advertisement subject of these proceedings were placed by Migori County Public Service Board, a statutory body and entity of the County Government, as established by law



for the County Government of Migori. Therefore, the averment by the Ex Parte Applicant that seems to suggest otherwise is a false and misleading pleading, aimed at concealing the real facts and circumstances.

35. They submit further that Section 57 of the County Government Act establishes a County Public Service Board for each County, which is a body complete, with perpetual seal, capable of suing and of being sued, and is conferred with functions, powers and duties as are specified in the said Act.
36. That the County Public Service Board exists even before it is constituted, as Section 58 of the Act provides, and consequently the averments in the pleadings by the Ex Parte Applicant, to the effect that Migori County does not have a County Public Service Board capable of placing the advertisement is a deliberate misrepresentation of fact and law and does not have a factual and or legal basis.
37. It is the Respondents' submission that Section 58(4) of the County Government Act provides for composition of the Board, and pursuant thereto, as at 17th and 18th January, 2024 the County Public Service Board of Migori County, as explained by the County Secretary, has members who are named as follows, David Odhiambo Ochola, the Chairperson appointed on 4th July, 2023, Olgah Auma Adede, Member and Vice Chairperson appointed on 4th July, 2023, Dorcas A. Oyugi, Member, appointed on the 4th July, 2023, George Jabando, Member appointed on the 4th July, 2023, Azariah Enos D Member, appointed on the 4th July 2023, Menge William Sully, member appointed on the 4th July, 2023 and Andrew Okach Ochola, Secretary and Chief Executive Officer, appointed on 13th April, 2023.
38. They submit that the prayer for personal and individual liability will be a direct violation of Article 236, now that the persons likely to suffer that drastic consequence are not before this court, and are likely not to be heard.

Analysis and Determination

39. I have considered the judicial review motion, the responses and the rival submissions. The issues that arise for determination are whether: -
 - a. Whether the Court has jurisdiction to entertain this matter.
 - b. Whether the Ex-parte Applicant has the requisite locus to institute these proceedings.
 - c. Whether the advertisements of 17th and 18th January, 2024, were in violation of *the Constitution* and the law.
 - d. Whether the Ex-parte Applicant is entitled to the reliefs sought.

Whether the Court has jurisdiction to entertain this matter

40. Nyarangi J in the case of Owners of Motor Vessel "Lillian S" v Caltex Oil Kenya Limited [1989] eKLR, had this to say on jurisdiction: -

"I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."



41. The Respondents' position is that the Ex parte Applicant having failed to observe the exhaustion doctrine before coming to Court, renders the motion fatal, in view of the provisions of Article 234(2) (i) of *the Constitution*, Section 77 (1) and (2) (c) of the *County Governments Act* and Section 87(2) of the *Public Service Commission Act*.
42. The Ex parte Applicant on his part, contends that the Respondents in declaring vacancies and recruitment(s) thereon, are subject to Article 236(a)&(b), of *the Constitution* as read with the fundamental rights and freedoms enshrined under Articles 27(1),(2)&(4); 29(d); 41(1)&(2); 47; and, 50(1) of *the Constitution*, guaranteeing not just equal treatment under the law, but also protection from discrimination, unfair labour practices, unfair administrative action, and, fair hearing all of which have been abridged.
43. The provisions of the County Government Act are clear that anyone can invoke the appellate power of the Public Service Commission (PSC) in respect of decisions made by a County Public Service Board or a person exercising or purporting to exercise disciplinary control against an officer of the county government. The Ex Parte Applicant is thus not excluded from the appellate mandate of the PSC for reason only that he did not personally apply for any position.
44. Secondly, it is now settled that where there exists other sufficient and adequate avenues to resolve a dispute, a party ought to pursue that avenue and not invoke the court process, if the dispute is one that can be dealt with in the alternative forum. (See Speaker of the National Assembly v James Njenga Karume [1992] eKLR).
45. The Judicial review proceedings herein, were initiated on the basis of violation of specific fundamental rights and freedoms and which have been spelt out in the Ex parte Applicant's substantive judicial review motion.
46. Further, the alleged violations are not part of what is contemplated to constitute appeals to the PSC under Article 234(2)(i) as read with Sections 77 of the County Government Act and Sections 85,86 and 87 of the *Public Service Commission Act*, 2017.
47. It is also true that judicial review order, being the remedy sought; is not within the purview of the Public Service Commission, and which leads me to the conclusion that the issues raised under the motion cannot be remedied elsewhere other than before court.

Whether the Ex-parte Applicant has the requisite locus to institute these proceedings

48. It was the Respondents' assertion that the Ex-parte Applicant did not have locus to institute the proceedings herein on account of the fact that he was not an employee of Migori County. They cited a number of authorities whose main thrust was that an employer-employee relationship as contemplated in Article 162(2) of *the Constitution* and Section 12(1) of the ELRC Act, was a prerequisite for filing a suit before this court.
49. The Ex-Parte Applicant contends that he has locus based on entrenchment of judicial review in *the Constitution*, which in essence allows anyone to commence proceedings protecting any violation of rights.
50. The Ex parte Applicant moved this court arguing that the Respondent violated specific provisions of *the Constitution*; to wit Articles 27, 29, 36, 38, 47 and 50(1).
51. Article 3(1) generally provides for every person's right to uphold and defend *the Constitution*, while Article 22 of *the Constitution* of Kenya, 2010 encompasses threatened violations of rights and fundamental freedoms.



52. Article 22 states:

“Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed or is threatened.”

53. In *Judicial Service Commission V Mbalu Mutava & another* (2015) eKLR, the Court of Appeal stated as follows;

“Article 47(1) marks an important and transformative development of administrative justice for, it not only lays a constitutional foundation for control of powers of state organs and other administrative bodies, but also entrenches the right to fair administrative actions in the Bill of rights.

The right to fair administrative action is a reflection of some of the national values in article 10 such as rule of law, human dignity, social justice, good governance, transparency and accountability. The administrative actions of public officers, state organs and other administrative bodies are now subjected by article 47(1) to the principle of constitutionality rather than to the doctrine of ultra vires from which administrative law under the common law was developed.”

54. Article 23 of *the Constitution*, mandates the High Court (read ELRC) to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.

55. Further, Section 5 (2) (b) & (c) of the Fair Administrative Actions Act, empowers anyone to apply for review of administrative action and to institute legal proceedings for remedies under any written law.

56. In light of the foregoing, I find and hold that the Ex Parte Applicant has locus to institute the instant proceedings, and is thus properly suited.

Whether the advertisements of 17th and 18th January, 2024, were in violation of *the Constitution* and the law.

57. The Applicant’s assertion is that the publication purporting to declare vacancies and recruit in the Migori County Public Service, vide the advertisements of 17th January, 2024 and the addendum on 18th January, 2024, is an unlawful administrative action, amenable to interrogation and quashing by this Court.

58. On their part, the Respondents aver that the advertisement subject of these proceedings were placed by Migori County Public Service Board, a statutory body and an entity of the County Government, as established by law for the County Government of Migori, hence the averment by the Ex Parte Applicant that seems to suggest otherwise is a false and misleading pleading, aimed at concealing the real facts and circumstances.

59. It is the Respondents further argument that the County Public Service Board exists even before it is constituted, as Section 58 of the Act provides, and consequently the averments in the pleadings by the Ex Parte Applicant, to the effect that Migori County does not have a County Public Service Board capable of placing the advertisement is a deliberate misrepresentation of fact and law, and does not have a factual and/or legal basis.



60. The Respondents do not dispute that it is the mandate of the County Public Service Board to advertise vacancies and recruit persons to hold offices in the County public service. The question is whether Migori County had a CPSB as at the time the advertisement in issue was published.
61. Letters of appointment of members of the County Public Service Board produced in evidence indicate that the appointments were made on 4th July, 2023.
62. The Ex parte Applicant's evidence is that vide an order dated 6th July, 2023 from the Court of Appeal in Civil Application E066 of 2023 Hon Jared Opiyo & 5 Others v Migori County Assembly & Others (Kiage, Mumbi-Ngugi and Prof Ngugi, JJA) the Hon Court of Appeal made the following pronouncement as regards the CPSB of Migori County: -
- “That the status quo currently obtaining as at now, the 5th July 2023 shall be maintained pending the hearing and determination of the intended appeal. For the Avoidance of any doubt, status quo shall mean, that the applicants (Hon Jared Opiyo, Chairman Ms Jemimah Were, Vice-Chairperson Hesborn O. Omwa, Member, Enock Achieng' Member, Phoebe Aloo, Member and Range M Maroa, Member) who have not been accessing their offices shall remain out of those offices, and they shall not be replaced in the interim.”
63. By the Respondents' submissions, it is clear that the impugned administrative action was sanctioned by David Ochola, Olga Auma Dede, Dorcas A Oyugi, George Jabando, Azariah, Enos and Mengo William, while the status quo order was to the effect that the old Board of Jared Opiyo, Chairman Ms Jemimah Were, Vice-Chairperson Hesborn O. Omwa, Member, Enock Achieng' Member, Phoebe Aloo, Member and Range M Maroa, were not to be replaced.
64. Although the appointment of the new CPSB is said to have been made on 4th July, 2023, the Court of Appeal by its orders of 6th July, 2023, seem to have stayed those appointments in view of the order that the old CPSB should not be replaced, as I do not think that the Superior Court had intended that the two Boards concurrently remain in office.
65. It is also clear that the Respondents ventured out to defeat these proceedings premised solely on technicalities as opposed to addressing the issue subject of the motion. The Respondents are alive to the status quo orders by the Court of Appeal, and have not in any way shown that those orders were lifted and/or set aside as to allow the county government to appoint a new CPSB.
66. By reason of the foregoing, I reach the conclusion that Migori County does not have an operational CPSB with legal capacity to recruit for the Migori County Public service.
67. It is therefore abundantly clear that the action of the Respondents in publishing the advertisement and purporting to recruit for the 1st Respondent is void, hence a nullity in law.
68. In the end, I find the motion merited and make orders as follows: -
- i. That an order be and is hereby granted declaring the advertisement of vacancies by the Respondents vide the publication in the Standard Newspaper of 17th and 18th January, 2024 unlawful.
 - ii. That an order of Judicial Review in the nature of Certiorari be and is hereby issued to call up to the court and quash the advertisement of vacancies made by the Respondents vide the publication in the Standard Newspaper of 17th and 18th January, 2024, together with all actions and/or decisions made subsequent thereon.
 - iii. This being a public interest litigation, parties shall bear their own costs of the suit.



69. It is ordered.

**DATED, SIGNED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 19TH
DAY OF JUNE, 2024.**

C. N. BAARI

JUDGE

Appearance:

Mr. Letare h/b for Mr. Lusi for the Ex. Parte Applicant

Ms. Achieng h/b for Mr.Okongo for the Respondent & I. Party

Anjeline & Debra - C/As

