



Rotich v County Public Service Board, Narok County & 3 others; Koech & 7 others (Interested Parties) (Petition E022 of 2023) [2024] KEELRC 1980 (KLR) (31 July 2024) (Judgment)

Neutral citation: [2024] KEELRC 1980 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
PETITION E022 OF 2023**

HS WASILWA, J

JULY 31, 2024

**IN THE MATTER OF AN APPLICATION FOR ENFORCEMENT
OF FUNDAMENTAL RIGHTS UNDER CHAPTER ARTICLE 19, 20,
21, 22, 23, 31, 47, 48, 49,50 OF THE CONSTITUTION OF KENYA**

AND

IN THE MATTER OF DISPUTES BETWEEN EMPLOYER AND EMPLOYEE

AND

**IN THE MATTER OF SECTION 12(7) (B), 51, 44, 55 OF
THE COUNTY GOVERNMENTS ACT NO; 17 OF 2012.**

AND

**IN THE MATTER APPOINTMENT OF WARD ADMINISTRATORS
IN TRANS MARA EAST SUB COUNTY, OLOLMASANI
WARD, KAPSASIANI ILKERIN WARD & MOGONDO WARD.**

BETWEEN

SIMON KIPLANGAT ROTICH PETITIONER

AND

**THE COUNTY PUBLIC SERVICE BOARD, NAROK COUNTY 1ST
RESPONDENT**

THE GOVERNOR NAROK COUNTY 2ND RESPONDENT

THE COUNTY SECRETARY, NAROK COUNTY 3RD RESPONDENT

**THE DEPARTMENT OF ADMINISTRATION & PUBLIC SERVICE
MANAGEMENT 4TH RESPONDENT**

AND

FELIX KOECH INTERESTED PARTY



JEREMY NGENY	INTERESTED PARTY
RICHARD TANUI	INTERESTED PARTY
JOSEPH KURUI	INTERESTED PARTY
KIPKOECH KOROS	INTERESTED PARTY
KIPLANGAT BIWOTT	INTERESTED PARTY
JOSEPH BETT	INTERESTED PARTY
BENERD RONO	INTERESTED PARTY

JUDGMENT

1. By a Petition dated 11th October, 2023, the Petitioner sought for the following reliefs; -
 1. A declaration that the subsequent appointment of Kipkoech Koros (Ololmasani Ward), Kiplangat Biwott (Kapsasiani Ward), Joseph Bett (Ilkerin Ward) and Benerd Rono (Mogondo Ward) as ward administrators is illegal, invalid and void.
 2. An Order to quash the Appointment of Kipkoech Koros (Ololmasani Ward), Kiplangat Biwott (Kapsasiani Ward), Joseph Bett (Ilkerin Ward) and Benerd Rono (Mogondo Ward) as ward administrators.
 3. Damages for unlawful removal of the petition from service.
 4. Costs of the petition.
 5. Any other relief that this Court may deem just to grant.
2. He states that he is a resident of Ololmasani Ward in Trans Mara East Sub-County within Narok County and therefore competent to institute this Petition. Further that, he is instituting this Petition on the strength of Articles 3(1), 19,20,21,22,23,24,25,26,27,47,48,49,50,171 and 172 of *the Constitution* as read with sections 43 & 47(5) of the *Employment Act*, *Anti-corruption and Economic Crimes Act* and the County Government Act.
3. He states that this Court is empowered under Article 165(3)(d)(i) &(ii) and Article 169(i) of *the Constitution* to hear and determine this Petition.
4. The Legal Foundation of the Petition herein is as follows;-
 - a. Section 51 of the County Government Act provides for the appointment of ward administrators for each ward and their functions, as such there can only be one ward administrator per ward.
 - b. Section 44 of the County Government Act provides for the appointment of the county secretary to head the county public service board.
 - c. Section 55 of the County Government Act provides for the establishment of the county public service board, its composition and functions.
 - d. Article 22 of *the Constitution* provides that; "(1) 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.



- e. Article 23 of *the Constitution* provides; that the High Court has jurisdiction, in accordance with Article 165, 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.
 - f. Article 27 of *the Constitution* in guarding against discrimination provides; “Every person is equal before the law and has the right to equal protection and equal benefit of the law.
 - g. Article 28 of *the Constitution* provides; every person has inherent dignity and the right to have that dignity respected and protected.
 - h. Article 40 (1) provides that subject to Article 65, every person has the right to either individually or in association with others, to acquire and own property (a) of any description, and (b) in any part of Kenya.
 - i. Article 47 of *the constitution* provides; “Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
 - j. Article 48 of *the Constitution* provides that the State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice.
 - k. Article 50 of *the Constitution* provides “Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.
5. The backgrounds of the fact in this case is that the 1st to 4th interested parties herein, being the ward administrators for the wards that fall within Trans Mara East Sub-County namely; Ololmasani Ward, Kapsasiani, Ilkerin Ward & Mogondo Ward respectively, were all employed in July, 2014 on permanent and pensionable terms.
 6. However, that upon the election and assumption of office by the 2nd Respondent, the positions for ward administrators for the above mentioned wards were advertised and as a result, applications were made, interviews conducted and new ward administrators appointed being the 5th to 8th Interested parties herein.
 7. He stated that the said appointed ward administrators were appointed during the Subsistence/ term of office of the earlier appointed ward administrators whose positions are on permanent and pensionable terms which was contrary to the provisions of section 51 of the County Government's Act that envisages the appointment of one ward administrator per ward, and as such the subsequent appointment of the above mentioned ward administrators during the tenure of office of the earlier appointed ward administrators is un procedural and illegal.
 8. He stated that as a result of the said illegality, the mentioned wards now have two ward administrators, against the provisions of section 51 of the *County Governments Act*. Further that there has been no explanation whatsoever tendered by the 1st Respondents with regard to the said appointments.
 9. He urged this Court to quash the subsequent appointment for being illegal and order for their striking out from the County payroll. He added that the subsequent appointment of the above mentioned ward administrators is meant to replace and re-deploy the earlier appointed ward administrators.
 10. That the actions of the respondents were unfair and acted with discrimination in appointing new ward administrators during the tenure of office of the earlier appointed ward administrators. Also that they acted without authority in the said subsequent appointment, by failing to give reasons/explanation for its action.



11. He contends that he has a legitimate expectation that fair administrative processes include fair appointments as provided for under [the constitution](#) are carried out by the respondents.
12. He maintained that the actions by the Respondent is vindictive, discriminatory and unconstitutional and urged this Court to allow the Petition as prayed.
13. The 2nd and 3rd Respondent opposed the Petition by filling a replying affidavit sworn on 8th February, 2024 by John Mayiani Tuya, the County Secretary of Narok County and the 3rd Respondent herein on his behalf and on behalf of the 2nd Respondent.
14. The affiant admitted the contents of paragraph a- e of the Petition. He also admitted to the averments of the Petition regarding locus standi and jurisdiction of the Court.
15. With regard to the factual basis of the Petition, the Respondent stated that Felix Koech, Jeremy Ngeny, Richard Tonui and Joseph Kirui, the 1st to 4th Interested parties, were appointed as ward administrators within Trans Mara East Sub-County in 2014 on a permanent and pensionable basis and in July, 2023, Kipkoech Koros, Kiplangat Biwott, Joseph Bett and Benerd Rono were all removed from their positions and deployed as the new ward administrators for Ololmasani, Kapsasiani, Ilkerin and Mogondo wards respectively.
16. Consequently, that from October 2023, Felix Koech, Jeremy Ngeny, Richard Tonui and Joseph Kirui were all re-designated from the position of ward administrators to new positions by the 1st Respondent. Specifically, that Felix Koech was re-designated to Principal Agricultural Officer, Jeremy Ngeny was re-designated to Administrative Assistant 1 CPSB O9 on the same terms due to exigencies of service, Richard Tonui was re-designated to Senior Social Welfare Officer, CPSB O8 on the same terms due to exigencies of service and Joseph Kirui was re-designated to Administrative Assistant on the same terms due to exigencies of service.
17. He stated that having re-designated the said ward administrators without loss of rank and emoluments, the Respondents have not breached the provisions of section 51 of the [County Governments Act](#) since there is only one ward administrator for the said wards and the previous administrators were re-designated to other positions.
18. He maintained that the appointment of the new ward administrators is legal and well within the confines of the law, under Section 59 of the [County Governments Act](#), that stipulates the functions of the County Public Service Board on behalf of the County Government, such as: to establish and abolish offices in the county public service, appoint persons to hold or act in offices of the county public service including in the Boards of cities and urban areas within the county and to confirm appointments, exercise disciplinary control over, and remove persons holding or acting in those offices.
19. The affiant reiterated that the former ward administrators have not been discriminated against by the Respondents as alleged, but were merely re-designated to other offices with equal statuses and salaries. Therefore, that the prayers sought herein by the Petitioner/Applicant are unjustified and baseless.
20. Based on the foregoing, the deponent stated that the instant Petition is frivolous, vexatious and an abuse of court process and urged this Court to dismiss it and award the Respondents costs of this Petition.
21. This Petition was canvassed by written submissions.

Petitioner's Submissions

22. The Petitioner submitted that the subsequent appointment of the 5th to 8th interested parties as ward administrator was done when the 1st to 4th Interested parties were in office in violation of the



provisions of section 51 of the County Government Act which envisages the appointment of one ward administrator per ward. To support this, he relied on the case of Duncan Kariuki Gitau and 2 Others V Lamu County Public Service Board & Another [2021] eKLR, where the Court held that;-

“However, as I have said, the obligation to fill the vacancies arises only when the offices fall vacant. The Respondents admit that five (5) positions of Ward Administrators are still occupied. The Respondents assert that they only want to recruit the new Administrators in anticipation of redeploying the current occupants of the five (5) offices to other positions. But there is no evidence of vacancies in the positions that the officers are to be redeployed. And neither are the positions disclosed. To attempt to recruit Ward Administrators whilst there are still individuals lawfully occupying these offices prima facie appears to run afoul section 51(1) of the CGA which provides thus, ‘there is established for each Ward in a county the office of the Ward administrator. There is also one administrator by the name Fartun Abdi who allegedly was appointed as an Administrator but not a Ward Administrator. Prima facie, this officer is in office at the instance of the Respondents. It therefore appears improper in terms of section 51(1) of the CGA to recruit another Ward Administrator while she is still holding office. The Applicants have urged me to bar all proposed appointments on the ground that they will result in the ballooning of the wage bill of the 2nd Respondent beyond 35% of its total revenue as provided for in law. I have anxiously considered this ground. Even as the Applicants rely on the report of the Controller of Budget for the first nine (9) months of the financial year 2020/2021 to advance their argument on this point, the Respondents have filed a number of documents showing that the 2nd Respondent’s employee compensation vote has over the years consistently been below 35% of its total budget. In the premises, whether the 2nd Respondent’s employee compensation expenditure has exceeded the limits set by law is a contested fact that will require resolution at the full hearing of the Petition. In conclusion, The Applicants partially succeed in the application. b) There is prima facie evidence that the administrative unit of Lamu Central Sub County is a unit in the service of the national government and not the 2nd Respondent. Accordingly, the court is reluctant to allow the Respondents to make appointments to fill the position of Sub County Administrator for Lamu Central Sub County until this Petition is heard and determined. Conservatory orders are thus hereby issued restraining the 1st Respondent from filling the position of Sub County Administrator, Lamu Central Sub County until the Petition is determined on merits. For the avoidance of doubt, the orders mean that the Respondents shall not engage more than two (2) Sub County Administrators until after this Petition is determined. c) There is prima facie evidence that there are no vacancies in the offices of six (6) Ward Administrators. Only four (4) vacancies exist out of the total ten (10) positions. It appears contrary to the law to seek to fill these six (6) positions when they still have office holders. Accordingly, conservatory orders are hereby issued to restrain the 1st Respondent from proceeding with recruitment of six (6) Ward Administrators in respect of Wards where we still have office holders.”

23. In light of the foregoing, the Petitioner urged this Court to find the appointed of the 5th to 8th Interested parties as ward administrators while the office was occupied by the 1st to 4th Interested parties was illegal, invalid and void and therefore this Court should proceed to quash the Appointment and issue damages with costs to the Petitioner.



2nd and 3rd Respondent's Submissions

24. The Respondents submitted on three issues; whether the appointment of the new ward administrators is legal and well within the confines of the law, whether the former ward administrators have been discriminated against and whether the petitioner should be granted the orders sought in the petition dated 11th October, 2023.
25. On the first issue, it was submitted that the appointment of the new ward administrators was legal and well within the confines of the law as they were appointed in accordance with the powers given to the County Public Service Board in section 59 of the County Government Act.
26. It was submitted that the said ward administrators were appointed and then the former ward administrators re-deployed to other department in the county Government, hence the County has only one ward administrator per ward in line with the dictates of section 51 of the County Government Act and therefore they have not breached any law. To support this argument, the Respondent relied on the case of *Thuku Kiroro & 4 Others V County Government of Muranga* [2014] eKLR where the Court held that;-
- “Moreover, where a statute or *the Constitution*, for that matter, has expressly delegated specific functions, duties or responsibilities to particular organs, state or otherwise, this court will be hesitant to intervene and curtail these organs’ efforts to execute their statutory or constitutional mandates; it is the duty of this court to interpret *the constitution* in a purposive rather than a restrictive manner. As far as devolution is concerned, the county governments must be encouraged and not restrained to deliver on their devolved functions as long as they act *intra vires the constitution* and the applicable statutes.”
27. On the allegation of discrimination against the former ward administrators, the Respondents submitted that all the former ward administrators were re-designated to different department without loss of rank and emoluments, hence they were not discriminated against. Furthermore, that the Petitioner has not demonstrated how the said former administrators were discriminated to warrant the issuance of the reliefs sought. In support of this, reliance was placed in the case of *Samson Gwer & 5 Others V Kenya Medical Research Institute & 3 Others* [2020] eKLR where the Court held that; -
- “Section 108 of the *Evidence Act* provides that, “the burden of proof in a suit or procedure lies on that person who would fail if no evidence at all were given on either side;” and Section 109 of the Act declares that, “the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”
28. On whether the reliefs sought should issue, the Respondents submitted that they have proved that they acted within the confines of the law in appointing the new ward administrators. On the hand, the Petitioner has failed to prove his case to the required standard and thus, he is not entitled to the reliefs sought in the petition.
29. In conclusion, the Respondent urged this Court to dismiss the petition and award them costs.
30. I have considered the averments and submissions of the parties herein. I have looked at the facts of the petition and evidence submitted before court.
31. From Exhibit SKR 1, Felix Koech Kipkemoi was appointed vide a letter dated 25/6/2014 as a ward administrators JG 1 on permanent and pensionable terms. He was confirmed into employment vide a



letter of 5/3/2015 into the permanent and pensionable terms. He was even promoted into this position and salary increased on 18th May 2021.

32. The other persons named in the petition Jeremy Ngeny, Richard Tonui and Joseph Kirui were also employed as ward administrator vide the letters of 25th June 2014 and the appointment was with effect from 1/7/2014.
33. Just like the 1st Interested Party herein, the 2nd to 4th Interested Parties vide a letter of 30TH October 2023, were also redeployed to other duties in other departments but within the CPSB to perform other duties.
34. Prior to this, the 5th to 8th Interested Parties herein were vide letters of 17/7/2023 redeployed to perform duties of Ward Administrators with immediate effect.
35. It is apparent that the 5th to 8th Interested Parties were deployed as Ward Administrators in July 2023 when the 1st to 4th Interested Parties were still serving in the same wards which was an illegality.
36. Section 10 (5) of the [Employment Act](#) 2007 states as follows:

“10(5) Where any matter stipulated in subsection (1) changes, the employer shall, 'in consultation with the employee, revise the contract to reflect the change and notify the employee of the change in writing.”

37. There is no indication that the 1st to 4th Interested Parties were consulted before the redeployment and change in title in the work they had been employed to do. There is also no indication that the redeployment was necessitated by some exigencies of duty.
38. Under Article 232 of [the constitution](#) values and principles of Public Service are provided and they include:

- “(1) The values and principles of public service include-
- (a) high standards of professional ethics;
 - (b) efficient, effective and economic use of resources; responsive, prompt, effective, impartial and equitable
 - (c) provision of services;
 - (d) involvement of the people in the process of policy making;
 - (e) accountability for administrative acts;
 - (f) transparency and provision to the public of timely, accurate information;
 - (g) subject to paragraphs (h) and (i), fair competition and merit as the basis of appointments and promotions;
 - (h) representation of Kenya's diverse communities; and
 - (i) affording adequate and equal opportunities for appointment, training and advancement, at all levels of the public service, of--
 - (i) men and women;
 - (ii) the members of all ethnic groups; and



(iii) persons with disabilities.

(2) The values and principles of public service apply to public service in--

(a) all State organs in both levels of government; and

(b) all State corporations.

(3) Parliament shall enact legislation to give full effect to this Article.”

39. There is no indication as to what informed the redeployment of 1st to 4th Interested Parties and the swap with 5th to 8th Interested Parties as there was no transparency and no consultation.

40. The whole process smacks of an illegality which this court cannot be seen to condone.

41. I will therefore find the petition merited and allow it and make the following finding:

1) A declaration that the subsequent appointment of Kipkoech Koros (Ololmasani Ward), Kiplangat Biwott (Kapsasiani Ward), Joseph Bett (Ilkerin Ward) and Benerd Rono (Mogondo Ward) as ward administrators is illegal, invalid and void.

2) An Order is issued to quash the Appointment of Kipkoech Koros (Ololmasani Ward), Kiplangat Biwott (Kapsasiani Ward), Joseph Bett (Ilkerin Ward) and Benerd Rono (Mogondo Ward) as ward administrators.

3) The 1st to 4th Interested Parties be reinstated to their position as Ward Administrators.

4) Costs of the Petition to be borne by the Respondent.

JUDGMENT DELIVERED VIRTUALLY THIS 31ST DAY OF JULY, 2024.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of: -

Magata for Respondent – present

Muli for Claimant – present

Court Assistant - Fred

