



Mabuka v Speaker, Busia County Assembly & another (Petition E003 of 2024) [2024] KEELRC 2036 (KLR) (1 August 2024) (Ruling)

Neutral citation: [2024] KEELRC 2036 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA
PETITION E003 OF 2024**

**JW KELI, J
AUGUST 1, 2024**

BETWEEN

ALLAN WAFULA MABUKA PETITIONER

AND

SPEAKER, BUSIA COUNTY ASSEMBLY 1ST RESPONDENT

BUSIA COUNTY ASSEMBLY SERVICE BOARD 2ND RESPONDENT

(On the Notice of Motion Application dated 20th June 2024 by the Petitioner/Applicant)

RULING

1. The ruling is on application by way of a Notice of Motion application by the Petitioner/Applicant (herein “Applicant”) dated 20th June 2024 brought under the provisions of Article 23 of *the Constitution*, Rule 23 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, and Rule 17 of the Employment and Labour Relations Court (Procedure) Rules 2016, seeking the orders: -

Ex parte

- a. Spent.
- b. A conservatory Order do issue suspending the operation and/or implementation of the decision by the 1st and 2nd Respondent for the secondment of the petitioner from the Busia County Executive/Lake region Economic Bloc as communicated by the 1st respondent in a letter Ref No.CA/BSA/3/HRVOL.III (30) and dated 8th August 2023 and a further letter referenced FWO/001/023 dated 22nd August 2023 and renewed through a letter Ref No. FWO/002/024 and dated 23rd February 2024 pending the service, hearing, and determination of this Application.



- c. A conservatory order do issue restraining the 1st and 2nd Respondents whether acting directly or through third parties, agents, and/or proxies, from suspending, terminating removing from office, or otherwise interfering with the Petitioner’s contract of Employment as the Clerk of the Busia County Assembly pending the service, hearing and determination of this Application.
- d. A conservatory order do issue restraining the 1st and 2nd Respondent whether acting directly or through third parties, agents, and /or proxies, from withholding the Petitioner’s monthly salary, benefits, and allowances pending the service, hearing, and determination of this application.
- e. A conservatory order do issue restraining the 1st and 2nd Respondent from authorizing, allowing, and/or permitting any other person but the Petitioner, from acting, performing, and/or discharging the function and executing the powers of the Office of the Clerk pending the service, hearing and determination of this application.

Interpartes

- f. A conservatory order do issue suspending the operation and /or implementation of the decision by the 1st and 2nd respondent for the secondment of the Petitioner from the Busia County Assembly Service Board /Busia County Assembly to the Busia County Executive/ Lake Region Economic Bloc as communicated by the 1st Respondent in a letter Ref No. CA/BSA/3/HR/VOL.III(30) and dated 8th August 2023 and a further letter referenced FWO/001/023 which was renewed through a letter referenced No. FWO/002/024 and dated 23rd February 2024 pending the service, hearing, and determination of this Petition.
 - g. A conservatory order do issue restraining the 1st and 2nd Respondents whether acting directly or through third parties, agents, and/or proxies, from suspending, terminating, removing from office or otherwise interfering with the Petitioners’ contract of employment as the Clerk of the Busia County Assembly pending the service, hearing and determination of this Petition.
 - h. A conservatory order do issue restraining the 1st and 2nd respondents, whether acting directly or through third parties, agents, and/or proxies, from withholding the Petitioner’s monthly salary, benefits, and allowances pending the service, hearing, and determination of this Petition.
 - i. A conservatory order do issue restraining the 1st and 2nd respondents from authorizing, allowing, and/or permitting any other person but the Petitioner, from acting, performing and/ or permitting and /or discharging the function and exercising the powers of the Office of the Clerk pending the service, hearing a and determination of this petition.
 - j. The costs of and incidental to this application shall abide in the outcome of the petition herein.
 - k. Such other, further, or incidental, or alternative reliefs as the Honourable Court may deem just and expedient.
2. The Notice of Motion was premised on the grounds on the face of the application and the grounds in the supporting affidavit of the Applicant sworn on 20th June 2024 as follows: -
- i. The applicant is the Clerk and Accounting officer of the Busia County Assembly (Assembly) and the secretary of the 2nd Respondent, positions held on permanent and pensionable terms by dint of Section 18 of the County Assembly Service Act(“Act”) since 16th December 2013(AWM-01-Appointment Letter of 16th December 2013) and his duties as such are set out under section 16 of the said Act and under section 19 and 20.



- ii. The applicant served in the defunct local authorities previously where he was a Senior Accounts Clerk in 2001, Accountant, Municipal Treasurer, and then the clerk to the County Council of Busia until he was competitively recruited by the Transition Authority as the interim Clerk of the Assembly.
- iii. He states that rumors began that the respondents were profiling employees in the senior management who were not born in Busia County which situation blew up on 10th March 2023 through a well-choreographed malicious scheme to get him out of the assembly.
- iv. That around 29th November 2022, a report of the Auditor General on the Busia County Assembly Revolving fund for the financial year ending in 2021 June, was tabled before the Assembly and committed to the Busia County Public Investment and Accounts Committee (CPIAC).
- v. That around 9th March 2023, the County Assembly adopted the report of CPIAC of the Auditor General's Report on the Revolving fund for the year ending June 2021.
- vi. That the Chairperson of the County Assembly Service Board called a meeting on 10th March 2023, to which the applicant was barred and he stated that a decision that he terms arbitrary, illegal, and irregular was made ordering him to proceed on compulsory leave with full pay.
- vii. That the said decision was communicated to him vide the letter Ref No. CA/BSA/CASB/ADM/04 dated 10th March 2023(AWM-02).
- viii. That the Busia County Assembly Human Resource manual provides for leave categories available to employees (AWM-03).
- ix. That due to denial to access his office, persistent threats, and bullying, he proceeded on the forced leave that was alleged "to allow for a special audit by the Auditor General" which was for 90 days ending 10th June 2023.
- x. That around 14th April 2023, the 1st respondent requested the office of the Auditor General through the letters reference Numbers CA/BSA/CASB/AUDIT/2 and CA/BSA/CASB/AUDIT(AWM-04) for a special audit on: -
 - a. Variance between the financial statements and supporting schedules.
 - b. Unsupported prior year adjustments
 - c. Unsupported cash and cash equivalent
 - d. Internal audit report.
 - e. Financial management systems used to manage the fund.
 - f. Core competence/ability to prepare accounts based on IPSAS and the [Public Finance Management Act](#).
- xi. That the office of the Auditor General replied vide letter Ref No. OAG/SA/CON/024/5, asserting that: -
 - a. The first items (a-c) above, being accounting factors could be addressed through revision by restating the affected figures when preparing the financial statements for the year ended 30th June 2023 and on the provision of documents.



- b. On issues of internal audit reports and financial management systems, the same would be reviewed during the audit cycle for the year ending 30th June 2023.
 - c. On the issue of core competency to prepare accounts the board was advised that the challenges be identified and addressed by the Board. (AMW-05)
- xii. That the Auditor General observed in her response that accounting matters could be addressed through revision, and she could not ascertain when the management was interrogated on the issues and conclusions based on the minutes of CPAIC of the meeting held at Millview Hotel in Kisumu.
- xiii. The Auditor General further observed that the audit report was yet to be discussed by the County Public Accounts Committee of the senate and it was only then that the senate could provide avenues for harmonizing the recommendations of the two committees.
- xiv. He states that despite the said observations by the Office of the Auditor General, he was not recalled from the compulsory leave.
- xv. That upon receiving the invitation to appear before the Senate County Public Accounts Committee vide its letter, Ref. SEN/DGAC/CPAC/CA/2023/090 dated 12th May 2023(AMW-06), the applicant vide his letter dated 15th May 2023, requested the chairperson of the 2nd respondent to recall the applicant from his leave to enable him to prepare audit responses (AMW-06).
- xvi. That through a letter reference number CA/BSA/CASB/ADM/04 dated 19th May 2023, his request was declined by the Board which stated that the board had resolved during his suspension, that all His duties would be undertaken by the deputy clerk.
- xvii. His leave was extended further by the chairperson of the 2nd respondent vide letter reference Number CA/BSA/CASB/ADM/06 dated 29th May 2023 for a further 30 days from 10th June 2023 to 10th July 2023, and the same letter required that the applicant appears before the County Assembly Service Board on 30th June 2023 at 2.30 PM(AMW-08).
- xviii. that the extension of his leave was meant to frustrate him and a diversionary tactic to stall him resuming his office and discharging his responsibilities thereof.
- xix. That on 29th June 2023, at 1942hours, he received a Short message service (SMS) from the 2nd Respondent's secretariat indicating that the applicant was to appear at 10 am instead of 2.30 pm on 30th June 2023 as earlier indicated.
- xx. That he was not informed of the purpose of the meeting, save that when he appeared he was ambushed with questions by the members of the Board akin to a job interview.
- xxi. That at the inception of the said meeting, the chairperson of the 2nd Respondent had indicated that the same meeting was not a hearing but a mere inquiry.
- xxii. That he was asked a plethora of questions as follows: -
 - a. To explain strategies laid down for the operation of the service for both MCAs and staff of the Assembly.
 - b. Whether he shared the said strategies before proceeding on leave.
 - c. Why he never responded to the board on requested documents.



- d. Why he had not shared with the board information on the tax audit by KRA.
- e. Why there was a delay in the payment of statutory deductions?
- f. Why there were challenges in the procurement of stationery and cleaning materials.
- g. Whether he complied with section 147(I)a, b, and d of the *Public Finance Management Act*, 2012.
- h. Whether the Assembly's accounts were prepared as per IPSAS and whether he had upheld professional ethics
- i. Why there was a delay in the remittance of car loans and mortgage payroll recoveries to the Mortgage fund bank account?
- j. Why there was inter-fund transfer from the Mortgage account to the operations account and vice versa
- k. On what his working relation with the Director of Finance and for him to make his remarks in closing.
 - i. That around 1st July 2023, he received a letter Ref: CA/BSA/CASB/ADM/09 from the chairperson of the board dated 30th June 2023(AWM-09), which was referenced "leave by another one month as from 10th July 2023 to 10th August 2023, for the Board to consider his response when he appeared before it on 30th June 2023.
 - ii. He on 10th August 2023, received letter reference CA/BSA/3/HR/VOL.III (30) dated 8th August 2023 informing him that the 2nd Respondent in its meeting of 7th August 2023 had resolved vide minute CA/BSA.CASB/24/08/2023 that he has been seconded to the County Executive and the County secretary would re-assign him (AWM-10).
 - iii. Attached to the letter above, was a further letter ref: CA/BSA/3/HR/VOL.III (29) addressed to the county secretary and copied to the Chairperson Busia County Public Service Board, the applicant, and another person, communicating the decision of the Respondents to send the applicant to the County Executive for Deployment. (AWM-11).
 - iv. That prior to the secondment, the chairperson of the board inquired from the applicant whether he could be returned to his previous position in the Ministry of Devolution, to which the Applicant replied that his function was among those devolved to the county; and it was then that he knew that he was not needed at the Assembly.
 - v. That forced by the innuendos, undertones, and the machinations and schemes to kick him out, he accepted the secondment, to stop the compulsory leave and removal from office, save that his letter of secondment did not provide his terms of secondment.
 - vi. That on 11th August 2023, he reported to the office of the County Secretary for assignment of duties but he was informed that the Secretary was not ready to assign him duties and he was referred to the Governor, who also referred him to the County Executive Committee Member in charge of Public



Administration who further referred him to the County Secretary a second time.

- vii. On 14th August 2023, when he reported to the county secretary, he was informed that the secretary had not received authority to assign duties and the applicant was further referred to the assembly, where he reported and informed the first respondent that he had not been assigned duties by the hosting organization.
- viii. That the 1st Respondent informed the applicant that his file had been forwarded to the County Public Service Board and the decision had been made to second the applicant to the Lake Region Economic Bloc (LREB) created by the county Executive.
- ix. The applicant operated on the corridors of the office of the County secretary from 8th August 2023 to 22nd August 2023 as no office wanted to accept him as an employee.
- x. Vide a letter reference FWO/001/023 dated 22nd August 2023, the applicant was deployed to LREB for an initial period of 6 months to assist in setting up financial management systems (AWM-13). On 4th September 2023, vide letter Ref: LREB/STAFFMGT/CON/VOL2(10), LREB Informed the 1st Respondent that the applicant had reported. (AWM-13).
- xi. That at LREB, the applicant was assigned duties not in line with his letter of secondment and on trying to reach the chairperson of the Board of the Assembly, his efforts were futile.
- xii. That on 12th February 2024, vide letter ref. CA/BSA/CASB/ADM/016, the 2nd respondent required the applicant as the accounting officer to explain why statutory deductions were not remitted as required and to further explain where the non-remitted amount was used (AWM-14).
- xiii. On 23rd February 2024, his secondment to LREB was extended for a further 6 months without according him his constitutional right to be heard, his consent nor following procedure. (AMW-15).
- xiv. The applicant states that his secondment was malicious, contrived, illegal, and irregular, as he is the Clerk of the Assembly by dint of Section 13 of the County Governments Act, and sections 17 and 18 of the County Assembly Service Act employed on permanent and pensionable basis and there is no provision for the holder of the said office to be seconded, his secondment is an affront to the separation of powers as the county assembly and county executive are independent. His secondment is an attempt by the 2nd respondent to indirectly terminate his contract of employment as there is no equivalent job cadre to his office at LREB. His contract as the clerk is permanent and pensionable and can only be terminated pursuant to Sections 22 and 23 of the County Assembly Service Act, 2017. His consent was not obtained and or sought before his secondment contrary to clause 4.3 of the Public Service Commission guidelines, 2016 on secondment. There was no indication whether he was to resume his position after the secondment and his secondment is thus arbitrary,



irrational, unreasonable, and tantamount to constructive dismissal from his employment as clerk of the assembly.

- xv. That his secondment is a scheme by the 1st and 2nd respondent to instigate his suspension, termination, and removal from office, and punish him on account of his ethnicity which he asserts is due to him holding a senior position in a county which is not his own and to replace him with their preferred person, harass, intimidate, vex, vilify and scandalize him.
- xvi. That on 29th February he wrote requesting certain documents and information to enable him to respond to the 2nd respondent's letter dated 12th February 2024, a request that had never been heeded. (AWM-16).
- xvii. On 7th March 2023, he came to know that the Assembly had appeared before the Senate Committee on County Public Accounts to answer audit queries, yet he was not called when he was the one who had signed the said statements for two years and yet he was in employment.
- xviii. That as per the extract of the Daily Nation of 12th March 2024(AWM-17), the speaker during the senate appearance was quoted to have stated that the applicant was at large, yet the applicant had been seconded to LREB through a letter signed by the speaker himself which tarnished his name in public.
- xix. That the applicant in his letter of 15th March 2024, requested to assist the officers in preparing management responses on audited financial statements that the applicant had signed to avoid coming to wrong conclusions and recommendations by the senate and CPIAC(AWM-18).
- xx. On 24th April 2024, he received a letter ref CA/BSA/CASB/ADM/019 from the 2nd Respondent informing him, that they were in receipt of the invitation by CPIAC to give a response to the Auditor general's report on the Assembly's and Assembly's Revolving Fund for the year ending 30th June 2022(AWM-19), when he was allowed limited access to the assembly's precincts from 29th April 2024 to 2nd May 2024 to work from a room adjacent to the Boardroom.
- xxi. The applicant wrote a letter dated 29th April 2023(AWM-20) informing the acting Clerk that he required at least 21 days for a comprehensive audit response, and through a letter of 30th April 2024 ref No. CA/BSA/ADM/2/03/42, from the Acting Clerk he was granted an extension up to 10th May 2024 which was 9 Days. (AWM-20).
- xxii. On 10th May 2024, the applicant wrote a further letter to the acting clerk requesting a further extension of 15 working days to finalize preparing the audit response (AWM-22).
- xxiii. On 22nd May 2024, he received a letter of even date reference number CA/BSA/CASB/ADM/23(AWM-23 I) from the acting Clerk informing him that his request was declined and he was to appear before the County Public account and Investment Committee on 23rd May 2024 to give a response to the audited financial statement for FY/2021/2022 as per the invitation by CPIAC Ref; CA/BSA/CPIAC/COMM/03/10/VOL.2 (41)(AWM-23 II).



- xxiv. He vide letter of 23rd May 2024 addressed to the chairperson of CPIAC, protested the summons as he had not been given adequate time to prepare the report nor furnished with the documents to prepare the report (AWM-24).
- xxv. Since he had not finalized in preparing his response to the audit report he was forced to submit draft management reports (AWM-25).
- xxvi. He appeared before CPIAC on 23rd May 2024 and informed the committee he was not ready to proceed with cross-examination as he had not finalized preparing the management responses.
- xxvii. That he learned that the assembly adopted a report of CPIAC for the year FY2018/2019(AWM-26) prepared while he was on leave and he had no opportunity to get feedback on management responses that were submitted nor provide additional documents required by the committee.
- xxviii. That the decision of the 1st and 2nd respondents to have the applicant appear before the senate for Audit queries yet he is not the accounting officer is orchestrated at finding a reason to remove the applicant from office.
- xxix. That he has been humiliated, harassed, and discriminately treated by his employer during his secondment by being denied airtime allocation despite his secondment letter stating that all benefits including airtime would be availed during the secondment.
- xxx. His subscription to ICPAK has not been paid by his employer despite his request of 7th March 2024(AWM-27).
- xxxi. That his transfer and baggage allowance for transfer from Busia to Kisumu of Khs. 300,500 has not been paid despite his letter of 7th March 2024 and 29th April 2024(AWM-28).
- xxxii. That advised by his advocate, his secondment should not occasion him any disadvantage and that secondment and transfer of services can only be undertaken in accordance with Sections 25 and 29 of the County Assembly Service Act, sections 43(2) and (3) of the *Public Service Commission Act, 2017* as read with the Sections 4, 7(2)(a)(v) the Fair Administrative Actions Act, by affording him an opportunity to be heard.
- xxxiii. That advised by his advocate the respondent's conduct is unlawful under sections 17(1) and (10), 18(2)(b) of the *Employment Act*.
- xxxiv. That his secondment is unprocedural, arbitrary irrational with malice, unreasonable, and unlawful, as there was no reason to second him, his consent was not sought, it is against the inherent right to dignity, the secondment re-designates him to another position violating section 69 of the *County Governments Act*, section 40 of the *Public Service Commission Act, 2017*.
- xxxv. He asserts 1st and 2nd respondents' malicious schemes of instigating his suspension, termination and/or removal violate various Articles of *the Constitution* namely Articles 27, 28,29, 41, 47, 236, Sections 5, 45, and 46 of the *Employment Act*; Section 5 of the County Assemblies Service Act, Section 11 of the County Assemblies Service Act, section 17 and 19 of the County



Assemblies Service Act, section 22 and 23 of the County Assemblies Service Act.

- xxxvi. He stated that the 1st and 2nd respondents' actions have occasioned him job insecurity, financial constraints, loss of professional standing due to non-payment of ICPAK subscriptions, mental and psychological trauma, exposure to public ridicule, hatred, moral censure, social stigma, opprobrium and scandals and malicious removal from the office of the Clerk and accounting officer and the loss of the benefits that attach to the office.

Written Submissions

3. The Court directed that the application be canvassed by way of written submissions. The parties complied. The Applicant's written submissions dated 23rd July 2024 were filed by JN & P Law Advocates LLP. The Respondents' written submissions dated 25th July 2024 were filed by Achach & Associates Advocates LLP.

Determination

Issues for determination.

4. The Applicant addressed the following issues in his written submissions:-
- a. What are the nature and principles guiding courts on the grant of conservatory orders; and
 - b. Whether the present application has satisfied the applicable principles for grant of conservatory orders.
5. The Respondents addressed the following issues in their written submissions: -
- a. Whether the petitioner has met the threshold for the grant of conservatory orders.
 - b. Whether the petitioner should be granted the conservatory orders he is seeking.
 - c. Whether the petitioner should be granted the costs of the application.
6. The Court having perused the pleadings by the parties and their submissions was of the considered opinion that the issue placed before the court by the parties for determination of the application is: -
Whether the present application merits the grant of conservatory orders.

Whether the present application merits the grant of conservatory orders.

7. The Parties in their written submissions were in agreement on the principles for the grant of conservatory orders as stated by the Supreme Court in *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 Others* (2014) e KLR as follows:- '86] "Conservatory orders" bear a more decided public-law connotation: for these are orders to facilitate ordered functioning within public agencies, as well as to uphold the adjudicatory authority of the Court, in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private-party issues as "the prospects of irreparable harm" occurring during the pendency of a case; or "high probability of success" in the supplicant's case for orders of stay. Conservatory orders, consequently, should be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes."



8. The Parties further were in agreement on other principles on whether to grant conservatory orders being whether if an interim conservatory order is not granted the petition or its substratum will be rendered nugatory. See *Saltrose Ayuma & 11 others v Registered Trustees of Kenya Railways staff retirement benefits scheme (2011)e KLR* and *Martin Nyaga Wambora v Speaker of the County Assembly of Embu &3 others 2014 e KLR*.
9. The Respondent did not file a response hence the facts are taken as they are. The Court on perusal of the pleadings and documents filed in support of the application and the petition established that the applicant is the substantive holder of the office of the Clerk of the Busia County Assembly having been appointed on permanent and pensionable terms effective 16th December 2013 by the Busia County Assembly Service Board (AWM-01).
10. The applicant was vide letter dated 8th August 2023 deployed to Lake Basin Economic Bloc under the County public service. The decision of secondment was by the 2nd respondent. Prior to the secondment the applicant had been on leave with full pay effective 10th March 2023. In the letter of 10th March 2023 by the chairperson of the 2nd respondent it was stated that in view of adverse report of the Auditor General on the financial expenditure of the Busia County Assembly, the board had recommended he proceeds on leave to enable special audit for 90 days(AWM-02). The leave was further extended vide letter dated 29th May 2023 for one month and he was asked to appear before the 2nd Respondent on the 30th June 2023 (AWM-08). On 30th June 2023, the leave was extended for another month (AWM-09).
11. On the 8th August 2023 the acting Clerk informed the applicant that the 2nd Respondent had in its meeting of 7th August 2023 resolved he be seconded to the county executive. (AWM-10)
12. The court discerned from the affidavit of the applicant and his filed documents that it was true investigations on his work as the accounting officer following the adverse Audit report were ongoing and he was participating(paragraphs 44-50 of the affidavit). Further, he stated that he accepted the secondment as soft-landing (paragraph 28 of the affidavit). The applicant states that he was initially seconded for 6 months which was extended on 23rd February 2024. He is still on secondment.
13. The respondent submits that the conservatory orders sought have been overtaken by events, the applicant having accepted the secondment and even relocated to Kisumu to be near his new place of work.
14. The court finds that the applicant has long taken the secondment and was participating in the investigation process. There was evidence before the court that there was audit queries which touched on the role of the applicant as the accounting officer before the 2nd Respondent and the Senate of Kenya.
15. Taking into consideration the principles for granting conservatory orders and the facts of the case outlined above, I find that it is not in the public interest to suspend the the secondment decision pending the hearing and determination of the petition as the employer is addressing audit queries and the petitioner admitted to be participating and even requested for extension of time several times. The petitioner has also been on secondment for a long period and came to court after the renewal of the secondment in February this year.
16. The subject matter which is at risk of being rendered nugatory is the employment of the applicant as a clerk of the Busia County Assembly. The court finds that there is a risk of him being replaced taking into account the renewal of the secondment which, can defeat the substratum of the petition.
17. In order to preserve the substratum of the subject matter being the petitioner's substantive position as clerk of the Busia County Assembly, the Court was guided by the decision by the Supreme



Court in *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 Others* (2014) e KLR to wit: -[86] Conservatory orders” bear a more decided public-law connotation: for these are orders to facilitate ordered functioning within public agencies, as well as to uphold the adjudicatory authority of the Court, in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private-party issues as “the prospects of irreparable harm” occurring during the pendency of a case; or “high probability of success” in the supplicant’s case for orders of stay. Conservatory orders, consequently, should be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes.” The Court upholds the adjudicatory authority of the Court and taking into account the public interest, the Court grants prayer 7 of the application dated 20th June 2024 to the extent of preserving the substantive position held by the Applicant, of the Clerk of the Busia County Assembly as follows:-

It is hereby Ordered that Pending the hearing and determination of the Petition an interim conservatory order is hereby issued restraining the respondents and their assigns or any other person from terminating the contract of the Petitioner or recruiting any other person as Clerk of the Busia County Assembly.

18. All other other prayers are disallowed. Taking into account the facts of the case I make no Order as to costs in the application

19. It is so ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 1st DAY OF AUGUST 2024.

J.W KELI

JUDGE

In the presence of: -

Court Assistant: Macheso

Petitioners /Applicants: - Ngwele

Respondents: Kerubo

Directions on the Petition

The Court directs the petition be heard on a priority basis. The Respondent is granted 21 days to file a response to the petition. The petitioner will be at liberty to reply on service. Mention on 17th September 2024 for hearing directions.

It is so Ordered.

J.W KELI

JUDGE

01/08/2024

In the presence of: -

Court Assistant: Macheso

Petitioners /Applicants: - Ngwele

Respondents: Kerubo

