



**Omweno & 3 others v Governor, County Government of Kakamega
& 4 others; Wanyama & another (Interested Parties) (Petition
E008 of 2023) [2024] KEELRC 464 (KLR) (29 February 2024) (Ruling)**

Neutral citation: [2024] KEELRC 464 (KLR)

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

**JW KELL, J
FEBRUARY 29, 2024**

BETWEEN

**CATHERINE RAINI OMWENO 1ST PETITIONER
STANLEY AMWAYI WERE 2ND PETITIONER
DR RALPH WANGATIA IMMAM 3RD PETITIONER
JOEL ANYERA OMUKOKO 4TH PETITIONER**

AND

**THE GOVERNOR, COUNTY GOVERNMENT OF KAKAMEGA 1ST
RESPONDENT
THE COUNTY ASSEMBLY OF KAKAMEGA 2ND RESPONDENT
COUNTY GOVERNMENT OF KAKAMEGA 3RD RESPONDENT
DENNIS DUNCAN MUHANDA 4TH RESPONDENT
THE COUNTY SECRETARY 5TH RESPONDENT**

AND

**JOHN AMBROSE WANYAMA INTERESTED PARTY
SILVIA ITEMEBE OTUNGA INTERESTED PARTY**

RULING

1. The Court this morning delivered a Ruling on the Notice of Motion Application dated 19th December 2023 by the Petitioners wherein the court confirmed the temporary conservatory order in place barring the replacement of the Petitioners in the Board. Following the delivery of the ruling, the Counsel for



the Petitioners, Mr. Shifwoka, made an oral application on behalf of his clients, seeking an order of the Court to have the offices of the Petitioners in the Kakamega County Public Service Board opened to enable the Petitioners access and render services to the public. The Counsel grounded the application on the reason that the Applicants had not been removed from office.

2. In response, the Counsel for the 2nd Respondent, Mr. Okongó, opposed the oral application on the ground that according to section 58 of the *County Governments Act*, the Petitioners were removed from office by the County Assembly and the decision communicated to the appointing authority and the replacement process had been commenced and that is the basis of the conservatory order issued by the court. That there is no order of reinstatement which can only be issued as a final order in the petition.
3. Ms. Moga h/b Mr. Lutta agreed with the submissions by Mr. Okong’o and stated that her clients were not in contempt of any court order.
4. Mr. Odero for the 4th Respondent associated himself with submissions by Mr. Okongó. He contended that Mr. Shifwoka’s case was evidence from the Bar. That the issue raised was not the subject of the application.
5. The 2nd Interested Party through his Counsel, Mr. Mukonyi, supported the application by the Petitioners.
6. In reply, Mr. Shifwoka, contended that the issue of locked offices was pleaded in their case. That under section 58 of the *County Governments Act*, the County Assembly had no power to remove the petitioners from office and that their mandate was limited to recommendations. That the 1st Respondent had not issued any dismissal letters or degazetted the names of the petitioners from office. That the public cannot be denied services just because it is alleged the petitioners were removed from office. That the petitioners hold public office.

Decision.

7. The Notice of Motion application dated 19th December 2023 sought the following orders:-
 - a. Spent
 - b. Spent
 - c. That upon the inter-partes hearing hereof, the temporary conservatory orders issued in (2) herein above be confirmed and the 1st Respondent herein and or his authorised representative(s) be restrained and or prohibited from proceeding on account of the illegal, irregular, unprocedural and ultra vires recommendation by the 2nd Respondent vide its purported resolutions of an unconstitutional, illegal and or irregular session of 14/12/2023 to remove the Petitioners from office as Chairperson and Members of the Kakamega County Public Service Board and or issuing any dismissal letters and further staying the purported and ultra vires resolution and or decision of the 2nd Respondent herein vide its said unconstitutional, illegal and irregular session and proceedings of 14/12/2023 purporting to direct the removal of the Petitioners from their respective offices and or staying any and all recruitment processes commenced for the replacement of the said Petitioners pending hearing and final determination of the Petition herein.
8. Having considered the application on merit, I made the following key findings and decisions in my Ruling:-



- “1) The employment of the Petitioners is threatened by the communication of the resolutions of the 2nd Respondent to the 1st Respondent on the 15th December 2023. The Conservatory order as framed is meant to preserve the employment of the Petitioners pending the final determination of the Petition. However, the Court has to trend carefully not to be seen to grant a substantive order of reinstatement at the interlocutory stage guided by the Court of appeal decision in Kenya Tea Growers Association and another v Kenya Plantation and Agricultural Workers Union (2018)e KLR(supra).
- 2) Guided by the above decisions on threshold for grant of conservatory orders of the Supreme Court(supra), and having considered the case on prima facie basis and found there was substantial non –compliance by the Kakamega County Assembly, the 2nd Respondent, with requirements for fair hearing, various laws and its own Standing Orders in the process of coming up with the resolution to remove the Petitioners, I am satisfied that there is a real danger that the Petitioners will suffer prejudice as a result of the violation or threatened violation of the Constitutional Bill of Rights if the conservatory order sought is not granted as the 1st Respondent may act on the communication by the County assembly dated 15th December 2023 and commence recruitment to replace the Petitioners in the Board. The threat is further evidenced by the immediate advertisement on 15th December 2023 of the said positions held by the Petitioners by the 1st Respondent which was alleged to have been revoked as per replying affidavit of Lawrence Angolo Omuhaka. I do find there is real threat that the substratum of the Petition will be rendered nugatory if the conservatory order sought is not granted.
3. In the upshot, the Court makes an order confirming the temporary order in place of Justice Radido dated 21st December 2023 to be effective until determination of the Petition as follows:- A temporary order is hereby issued staying the decision of the County Assembly as communicated to the 1st Respondent on the 15th December 2023 and to prohibit the 1st, 3rd and the 5th Respondents or any other person or agent from taking any step towards the replacement of the Petitioners in the Kakamega Public Service Board and or recruitment of new county public service board members to replace the Petitioners.
4. In the public interest, the county public service board membership being critical for the operations of the 3rd Respondent, it is hereby ordered that the hearing of the main Petition proceeds on an urgent basis and without any delay. The Court will issue directions accordingly.
5. The Notice of Preliminary Objection by the 1st 3rd and 5th Respondent dated 26th January 2024 is held to be without merit and is dismissed.
6. No order as to costs.”
9. The foregoing were the findings on a prima facie basis and orders of the court this morning.
10. I do find there was no order sought on unlocking offices.
11. The Petitioners' opinion is that they were not removed from office. Their Counsel submitted that under section 58 of the County Governments Act the County Assembly could only make recommendations. The provisions of section 58 of the County Governments Act reads:- “58(5) The members of the Board may only be removed from office— (a) on grounds set out for the removal of members of a constitutional commission under Article 251(1) of the Constitution; and (b) by a vote of not less than seventy-five percent of all the members of the county assembly.” The court holds that the County Assembly by vote as stated can remove the Board members and did so leading to this petition. The Petition is yet to be determined. The Order sought orally for unlocking of offices for the



petitioners to work if granted would amount to reinstatement. The court cannot only issue an order of reinstatement to office as a final order.

12. The oral application by the Petitioners is dismissed with no order as to costs.

13. It is so Ordered.

DATED, SIGNED, AND DELIVERED THIS 29TH FEBRUARY 2024 IN OPEN COURT AT KAKAMEGA.

J.W. KELI

JUDGE

In the presence of

C/A Lucy Macheso

Petitioners:- Mr. Shifwoka

1st, 3rd and 5th Respondents – Ms. Moga h/b Mr. Lutta

2nd Respondents- Mr. Okong'o

4th Respondent – Mr. Odero

2nd interested party - Mr. Mukonyi

