



**Bira v Ondeng & 3 others; (Kicc (Interested Party) (Employment and Labour Relations  
Petition E098 of 2023) [2024] KEELRC 196 (KLR) (8 February 2024) (Ruling)**

Neutral citation: [2024] KEELRC 196 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS PETITION E098 OF 2023**

**MN NDUMA, J  
FEBRUARY 8, 2024**

**BETWEEN**

**JESSE BIRA ..... PETITIONER**

**AND**

**PATRICIA ONDENG, ACTING CEO KICC ..... 1<sup>ST</sup> RESPONDENT**

**CHAIRPERSON, BOARD OF DIRECTORS OF KICC ..... 2<sup>ND</sup> RESPONDENT**

**CABINET SECRETARY, MINISTRY OF TOURISM, WILDLIFE AND  
HERITAGE ..... 3<sup>RD</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**CENTRE (KICC ..... INTERESTED PARTY**

**RULING**

1. The applicant in the notice of motion application dated 2<sup>nd</sup> June, 2023 seeks for an order in the following terms:
  1. Spent.
  2. Spent.
  3. Spent.
  4. Spent.
  5. That pending the hearing and determination of this petition an order to issue suspending the appointment of the Acting Chief Executive Officer (CEO), Patricia Ondeng the respondent herein.



6. That pending the hearing and determination of this petition an order to issue barring the 1<sup>st</sup> respondent from accessing the offices of the management of KICC.
7. That costs of the application be provided for.
2. The application is premised on grounds: (a) to (c) set out on the face of the Notice of Motion and buttressed in the supporting affidavit of one Jesse Bira the gist of which is that on or about 29<sup>th</sup> December, 2022, the 2<sup>nd</sup> respondent and the Director of Administration in the Ministry of Tourism oversaw the transition of the outgoing CEO to the new incoming Acting CEO, the 1<sup>st</sup> respondent for the position of Acting Chief Executive Officer (CEO) of KICC.
3. That the 1<sup>st</sup> and 2<sup>nd</sup> respondents disregarded and violated the March 11<sup>th</sup> 2020 Executive Direction of reference number OP/CAB.9/IA Re: Management of State Corporations which provided that an Acting CEO is to be appointed from within the agency and only if it is not possible, the Cabinet Secretary in consultation with the Chairperson of the Board of the agency shall select a suitable candidate within the ministry.
4. That the 1<sup>st</sup> respondent as at the time of her appointment as Acting CEO was not an employee of KICC.
5. That her appointment affects the morale and the efficient service delivery at the Agency. That the appointment was un-procedural, unlawful and in disregard of the values and principles of Public Service enshrined in the Constitution of Kenya 2010, the State Corporations Act, the Public Service Commission Act and various Executive Directives on the governance of state corporations.
6. That the application be granted with costs.

**Replying Affidavit:**

7. The application is opposed vide replying affidavit of the 1<sup>st</sup> respondent, sworn to by herself on 25/7/2023. She deposes that the appointment of an Acting CEO is in the nature of a deployment. That her leadership and integrity has not been questioned. That the application is fatally defective and a blatant abuse of the court process.
8. The 3<sup>rd</sup> respondent, Cabinet Secretary, Tourism, Wildlife and Heritage filed a replying affidavit deposed to by Mr. John Oloituaa, the Principal Secretary of the State Department for Tourism in the Ministry of Tourism, Wildlife and Heritage. He deposes that he has authority of the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> respondents and the Interested Party to depose to and file the affidavit.
9. That at the time the 1<sup>st</sup> respondent was appointed Acting CEO of KICC, she had over ten (10) years' experience at senior management level having held the positions of Corporate Communication and Marketing Manager and Corporate Affairs Manager since 2011 until her deployment to KICC as Acting CEO.
10. That the 1<sup>st</sup> respondent is qualified to discharge the duties that fall in the office of the CEO of KICC.
11. That the applicant has not raised an iota of evidence impugning the qualification or interparty of the 1<sup>st</sup> respondent to warrant any negative attention.
12. That the application and the petition does not disclose any and or any tangible infraction of any statute or the Constitution of Kenya, 2010 and ought to be struck out for not disclosing any cause of action warranting filing of a constitutional petition.



13. That the principle espoused in the Locus Classicus decision in *Mumo Matemu v Trusted Society of Human Rights Alliance* [2013] eKLR and of *Werie Njeri* [1979] KLR 154 have been wholly contravened by the petitioner/applicant. That the application be dismissed with costs.
14. The parties filed written submissions which the court has carefully considered together with the depositions by the parties.
15. In an application such as this one, it was set out in the case of *Kenya Small Scale Farmers Forum v Cabinet Secretary Ministry of Education, Science and Technology and 5 others* HCCP No. 38 of 2015 [2015] eKLR as follows:-

I would state the principles which govern a court considering an application for interim or conservatory relief to be the following:-
16. The application ought to demonstrate a prima facie case with a likelihood of success and he is likely to suffer prejudice as a result of the violation or threatened violation if the conservatory order is not granted.
17. In *Mary Ariviza and another versus Attorney General of Kenya and another*, East Africa Court of Justice, Application No. 3 of 2010, the court espoused all the applicable principles further as follows:
  1. The granting or refusal of a temporary injunction, which is an interlocutory order is an exercise of judicial discretion which, must be exercised judiciously.”
18. The court went on to enumerate the applicable principles as follows:-
  - a. An applicant must show a prima facie case with a probability of success.
  - b. An interlocutory injunction will not normally be granted unless the applicant might otherwise suffer an irreparable injury, which would not adequately be compensated by an award of damages.
  - c. If the court is in doubt it will decide an application on the balance of convenience.
20. The applicant in this matter has failed on all fronts. The applicant has not even to address any statutory or constitutional violations by the respondent that may warrant grant of a conservatory order in public domain such as the KICC.
21. It is strange that the applicant has not even disclosed his identity and or on whose behalf he has brought his application and the petition.
22. The bottom line is that the application lacks statutory or constitutional, justification for the court to exercise its discretion in favour of the applicant at the interim stage.
23. Accordingly, the application is dismissed with costs in the cause.

**Mathews N. Nduma**

**JUDGE**

**DATED AND DELIVERED AT NAIROBI THIS 8<sup>TH</sup> DAY OF FEBRUARY, 2024**

**Appearances**

Mr. Mukuna for applicant

Mr. Odukeyo for respondents

