



REPUBLIC OF KENYA



**KENYA LAW**  
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**Sidigu v Kolum & 5 others (Petition E034 of 2023)  
[2024] KEELRC 156 (KLR) (7 February 2024) (Ruling)**

Neutral citation: [2024] KEELRC 156 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**  
**PETITION E034 OF 2023**  
**S RADIDO, J**  
**FEBRUARY 7, 2024**  
**IN THE MATTER OF CONTRAVENTION OF THE**  
**CONSTITUTION OF KENYA**  
**CONTRARY TO ARTICLES**  
**10, 19, 20, 22, 23, 27, 47,**  
**50, 73 AND 159 OF THE**  
**CONSTITUTION OF KENYA,**  
**2010**  
**AND**  
**IN THE MATTER OF THE EMPLOYMENT**  
**ACT**  
**AND**  
**IN THE MATTER OF CHEMELIL SUGAR**  
**COMPANY LTD**  
**AND**  
**IN THE MATTER OF PROCEDURAL**  
**RECRUITMENT OF CEO/MD**  
**CHEMELIL SUGAR**  
**COMPANY LTD**  
**AND**  
**IN THE MATTER OF ENFORCEMENT OF**  
**FUNDAMENTAL RIGHTS**  
**AND FREEDOMS, NATURAL**



**JUSTICE, TRANSPARENCY  
AND FAIR LABOUR  
PRACTICES IN KENYA  
AND  
IN THE MATTER OF QUESTING THE  
APPLICATION OF CEO,  
CHEMELIL SUGAR  
COMPANY LTD BY  
CHAIRMAN OF THE BOARD  
ENGINEER JOHN NYAMBOK  
AND  
CONCURRENCE LETTER FROM THE CHIEF OF  
STAFF AND HEAD OF THE PUBLIC SERVICE  
AND  
THAT OF CABINET SECRETARY FOR AGRICULTURE,  
MITHIKA LINTURI RESPECTIVELY FOR  
CONTRAVENING THE LABOUR LAWS AND  
CONSTITUTIONAL PROVISION**

**BETWEEN**

**MICHAEL SIDIGU ..... PETITIONER**

**AND**

**MOSES KIPROP KOLUM ..... 1<sup>ST</sup> RESPONDENT**

**HON ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**CHEMELIL SUGAR CO LTD ..... 3<sup>RD</sup> RESPONDENT**

**CHAIRMAN, BOARD OF DIRECTORS, CHEMELIL SUGAR CO  
LTD ..... 4<sup>TH</sup> RESPONDENT**

**HON MITHIKA KINTURI, CS AGRICULTURE ..... 5<sup>TH</sup> RESPONDENT**

**PUBLIC SERVICE COMMISSION ..... 6<sup>TH</sup> RESPONDENT**

**RULING**

1. The Petitioner moved the Court on 29 December 2023 to challenge the appointment of the 1<sup>st</sup> Respondent as the Chief Executive Officer/Managing Director of Chemelil Sugar Co Ltd.
2. The Petition went through the legal motions and judgment was scheduled for today.



3. On 5 February 2024, the Petitioner filed a Notice to Withdraw the Petition and he cited Rule 27(1) (a) of the *Mutunga Rules*. The Respondents have submitted that they do not oppose the withdrawal of the Petition.
4. The Rule cited by the Petitioner contemplates the Court hearing the parties before deciding whether to grant leave before a Petition is marked as withdrawn.
5. Rule 27(3) of the aforesaid Rules gives the Court the discretion to proceed with a Petition notwithstanding the wishes of a Petitioner to withdraw or discontinue the proceedings. The factor the Court should consider is the juridical effect of the decision.
6. In the present Petition, the Petitioner raised questions implicating the Respondents adherence with the values and principles governing the public service and more so the recruitment and process leading to the appointment of the 1<sup>st</sup> Respondent.
7. The question of compliance with the values and principles of the public service and how it impacts recruitment transcends the interests of the parties herein. It is a matter of public interest since public entities have a duty to respect and uphold the constitutional values and principles at all times.

### **Orders**

8. For these reasons, the Court declines to grant leave for the withdrawal of the Petition and it will proceed to deliver the judgment as earlier scheduled.

**DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 7<sup>TH</sup> DAY OF FEBRUARY 2024.**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

### **APPEARANCES**

Petitioner in person

For 1<sup>st</sup> Respondent Olel, Onyango, Ingutiah Advocates, LLP

For 3<sup>rd</sup> and 4<sup>th</sup> Respondents Otieno, Yogo, Ojuro & Co. Advocates

For 2<sup>nd</sup> and 5<sup>th</sup> Respondents Mr Felix Kajo, Senior Litigation Counsel, Office of the Hon Attorney General

For 6<sup>th</sup> Respondent Michael Maurice Ogosso, Principal Legal Counsel, Public Service Commission

Court Assistant Chemwolo

