



**Rotich v County Public Service Board, Narok County & 3 others; Koech & 7 others (Interested Parties) (Petition 22 of 2023) [2024] KEELRC 1057 (KLR) (25 April 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1057 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
PETITION 22 OF 2023**

**HS WASILWA, J**

**APRIL 25, 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.**

**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 .... 1<sup>ST</sup>  
RESPONDENT**

**THE GOVERNOR NAROK COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**THE COUNTY SECRETARY, NAROK COUNTY ..... 3<sup>RD</sup> RESPONDENT**

**THE DEPARTMENT OF ADMINISTRATION & PUBLIC SERVICE  
MANAGEMENT ..... 4<sup>TH</sup> RESPONDENT**

**AND**



|                               |                         |
|-------------------------------|-------------------------|
| <b>FELIX KOECH .....</b>      | <b>INTERESTED PARTY</b> |
| <b>JEREMY NGENY .....</b>     | <b>INTERESTED PARTY</b> |
| <b>RICHARD TANUI .....</b>    | <b>INTERESTED PARTY</b> |
| <b>JOSEPH KURUI .....</b>     | <b>INTERESTED PARTY</b> |
| <b>KIPKOECH KOROS .....</b>   | <b>INTERESTED PARTY</b> |
| <b>KIPLANGAT BIWOTT .....</b> | <b>INTERESTED PARTY</b> |
| <b>JOSEPH BETT .....</b>      | <b>INTERESTED PARTY</b> |
| <b>BENERD RONO .....</b>      | <b>INTERESTED PARTY</b> |

## RULING

1. This ruling is in respect of the Petitioner/ Applicant’s Notice of Motion dated 11<sup>th</sup> October, 2023, filed under certificate of urgency pursuant to sections 19, 20, 21, 22, 23, 31, 47, 48, 49 & 50 of the [Employment Act](#), Articles 159, 10, 27, 28, 41, 47, 50, 176 & 236 of [the Constitution](#) of Kenya and sections 1A, 1B, 3A of the [Civil Procedure Rules](#), seeking for the following Orders;-
  1. THAT the application be and hereby certified as urgent and be heard on urgent basis in the instance.
  2. THAT pending the hearing and determination of this application inter-parties this Honourable Court be pleased to issue a conservatory staying the Appointment and assumption of office of the newly appointed ward administrators within Trans Mara east sub county namely; Kipkoech Koros (Ololmasani Ward), Kiplangat Biwott (Kapsasiani Ward), Joseph Bett (Ilkerin Ward) and Benerd Rono (Mogondo Ward).
  3. THAT pending the hearing and determination of this petition this Honourable Court be pleased to issue a conservatory order, staying the appointment and assumption of office of the newly appointed ward administrators within Trans Mara East Sub County namely; Kipkoech Koros (Ololmasani Ward), Kiplangat Biwott (Kapsasiani Ward), Joseph Bett (Ilkerin Ward) and Benerd Rono (Mogondo Ward).
  4. The costs of this Application be provided for.
2. The Application herein is based on the grounds on the face of the Application and the supporting affidavit of petitioner, sworn on 11<sup>th</sup> October, 2023.
3. The petitioner began by stating that the 1<sup>st</sup> to 4<sup>th</sup> 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.
4. However, that upon the election and assumption of office by the 2<sup>nd</sup> 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 5<sup>th</sup> to 8<sup>th</sup> Interested parties herein.
5. 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.
6. 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 1<sup>st</sup> Respondents with regard to the said appointments.
  7. 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 redeploy the earlier appointed ward administrators.
  8. That 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.
  9. 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.
  10. He maintained that the actions by the Respondent is vindictive, discriminatory and unconstitutional and urged this Court to allow the Application as prayed.
  11. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondent opposed the Application by filling a replying affidavit sworn on 8<sup>th</sup> February, 2024 by John Mayiani Tuya, the County Secretary of Narok County and the 3<sup>rd</sup> Respondent herein on his behalf and on behalf of the 2<sup>nd</sup> Respondent.
  12. The affiant admitted the contents of paragraph 1-6 of the supporting affidavit, however with regard to paragraph 8 to 20, he stated that Felix Koech, Jeremy Ngeny, Richard Tonui and Joseph Kirui, the 1<sup>st</sup> to 4<sup>th</sup> 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.
  13. Consequently, that from October 2023, Felix Koech, Jeremy Ngeny, Richard Tonui and Joseph Kirui were all redesignated from the position of ward administrators to new positions by the 1<sup>st</sup> 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.
  14. 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.
  15. 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.
16. 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.
  17. He stated also that the petitioner has not tendered sufficient evidence before this Court to be granted the orders sought. Therefore, that the prayers sought herein by the Petitioner/Applicant are unjustified and baseless.
  18. Based on the foregoing, the deponent stated that the instant application is frivolous, vexatious and an abuse of court process and urged this Court to dismiss it and costs to the Respondent.
  19. Direction were taken for the Application to be canvassed by written submission, however the Respondent elected to rely on their replying affidavit. The Applicant on the other hand did not file any submissions.
  20. I have examined the averments and submissions of the parties herein. I note that the orders being sought in this application are similar to those in the main petition and if this court's determines the application at this point, it would have determined the petition.
  21. I would therefore decline to issue any orders at this point and direct the parties to proceed with the main petition. Costs in the petition.

**JUDGMENT DELIVERED VIRTUALLY THIS 25<sup>TH</sup> DAY OF APRIL, 2024.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

