



**Odegi v Ministry of Interior & Coordination of National Government & 4 others
(Petition E026 of 2023) [2024] KEELRC 881 (KLR) (24 April 2024) (Judgment)**

Neutral citation: [2024] KEELRC 881 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
PETITION E026 OF 2023**

**S RADIDO, J
APRIL 24, 2024**

BETWEEN

HELLEN ASINGI ODEGI PETITIONER

AND

**MINISTRY OF INTERIOR & COORDINATION OF NATIONAL
GOVERNMENT 1ST RESPONDENT
REGIONAL COMMISSIONER, NYANZA REGION 2ND RESPONDENT
COUNTY COMMISSIONER, HOMA BAY COUNTY 3RD RESPONDENT
DEPUTY COUNTY COMMISSIONER, RACHUONYO NORTH SUB-
COUNTY 4TH RESPONDENT
HON ATTORNEY GENERAL 5TH RESPONDENT**

JUDGMENT

1. Hellen Asingi Odegi (the Petitioner) sued the Ministry of Interior & National Coordination of Government, Regional Commissioner, Nyanza region, County Commissioner, Homa Bay County, Deputy County Commissioner, Rachuonyo North sub-county and the Honourable the Attorney General (the Respondents) on 2 October 2023, alleging that the Respondents had violated her rights by refusing or declining to appoint her as the Assistant Chief, Komwoyo East sub-location after emerging top amongst the applicants and despite an authorisation by the County Commissioner.
2. The Petitioner sought the following reliefs:
 - (a) A declaration that the Petitioner’s rights guaranteed and protected under Articles 27, 41, 47, and 232 and the Petitioner’s right to legitimate expectation to be appointed as the area Assistant Chief, Komwoyo East sub-location have been violated or are likely to be violated by the Respondents.



- (b) An order of certiorari to remove into this Honourable Court the Respondents advertisement of vacancy for the Assistant Chief, Komwoyo East sub-location dated 25th August 2023 for the purposes of its being quashed and the said advertisement of vacancy for the Assistant Chief Komwoyo East sub-location dated 25th August 2023 to be quashed.
 - (c) An order of mandamus to issue compelling the Respondents to forthwith appoint the Petitioner as the Assistant Chief, Komwoyo East sub-location.
 - (d) In the alternative to (c) above, this Court's order to act as formal appointment (sic) of the Petitioner to the job position as the Assistant Chief, Komwoyo East sub-location.
 - (e) An order of permanent injunction be issued restraining the Respondents from shortlisting, interviewing, recruiting or appointing candidates other than the Petitioner for the post of the Assistant Chief, Komwoyo East sub-location.
 - (f) An order for general damages for the delay in the appointment from 2nd August 2022.
 - (g) Costs of this Petition be borne by the Respondents.
 - (h) Such other orders as this Honourable Court shall deem just.
3. Filed together with the Petition was a Motion under a certificate of urgency which was abandoned in lieu of expediting the hearing of the Petition (the Court had issued an injunction stopping any further recruitment of an Assistant Chief for Komwoyo East sub-location at the ex-parte stage).
 4. The Honourable Attorney General caused to be filed a replying affidavit sworn by the Deputy County Commissioner in opposition to the Petition on 6 October 2023, and another affidavit by a Criminal Investigations Detective on 9 October 2023.
 5. On 13 October 2023, the Honourable Attorney General filed what he referred to as Response to Statement of Claim, and on 18 October 2023, the Petitioner filed an affidavit sworn by one Walter Juma who deposed that he was the immediate former Human Resource Manager at the County.
 6. The Petition was heard on 23 January 2024, and 12 March 2024. The Petitioner, Deputy County Commissioner, Karachuonyo North and a Criminal Investigations Detective testified.
 7. The Petitioner filed her submissions on 31 March 2024, and the Respondents on 5 April 2024.
 8. The Petitioner raised 3 Issues in her submissions, to wit:
 - i. Whether the Petitioner was validly appointed to the position of Assistant Chief, Komwoyo East sub-location?
 - ii. Whether the 4th Respondent has the power and authority to revoke the appointment of the Petitioner?
 - iii. Whether the Petitioner's right to legitimate expectation and her rights under Articles 27, 41, 47 and 232 of *the Constitution* have been infringed?
 - iv. Whether the prayers can issue?
 9. The Respondents on their part identified 2 main issues:
 - i. Whether there was legitimate expectation?
 - ii. Whether the Petitioner is entitled to the reliefs sought?



10. The Court has considered the Petition, evidence and submissions.

Background

11. The Court will set out the undisputed facts to put into context the dispute.

12. The Petitioner applied for the position of Assistant Chief, Komwoyo East sub-location in 2022, and she was shortlisted for an interview.

13. The Petitioner attended the interview on 6 April 2022, and the results were conveyed through a letter from the office of the Deputy County Commissioner to the County Commissioner for further processing.

14. On 2 August 2022, the County Commissioner wrote to the Deputy County Commissioner authorising him to verify and authenticate the Petitioner's testimonials before appointing her as the Assistant Chief, Komwoyo East sub-location.

15. The edict from the County Commissioner was not effected and on or around 25 August 2023, the Respondents re-advertised for the position of Assistant Chief, and this prompted the Petitioner to move to Court.

Petitioner's case

16. The Petitioner's case was that she fulfilled all the set qualifications for the position of Assistant Chief and that she emerged at the top of the applicants after being scored at 81.7%.

17. According to the Petitioner, the Deputy County Commissioner forwarded the results recommending her appointment to the County Commissioner for onward transmission to the Regional Commissioner and ultimately to the Ministry for approval and appointment.

18. The Petitioner's further case is that approval was given as signified through a letter dated 2 August 2022 from the County Commissioner directing the Deputy County Commissioner to appoint her to the office after verification of her papers, but the directive was not implemented.

19. The Petitioner contended that instead of implementing the directive despite several inquiries, the Deputy County Commissioner informed her that a woman could not be appointed as the Assistant Chief of Komwoyo East sub-location due to its strategic importance and that she was surprised to see the position re-advertised on 25 August 2023.

20. The Petitioner further asserted that the failure to implement the directive to appoint he violated her rights not to be discriminated against, to fair labour practices, to fair administrative action as well as the guiding values and principles of the public service as outlined in Article 232 of *the Constitution*.

The Respondents' case

21. The case for the Respondents was advanced through 2 witnesses.

22. The first witness, the Deputy County Commissioner attested that after the close of the interviews, a person other than the Petitioner emerged on top and that he instructed the Human Resource Officer, one Walter Juma to forward to the County Commissioner the recommendations and minutes of the interview process for further processing and that he received a letter dated 2 August 2022 from the County Commissioner authorising the appointment of the Petitioner.



23. The Deputy County Commissioner testified that when he received the letter from the County Commissioner he was surprised because he had not recommended the appointment of the Petitioner and consequently, he wrote to the County Commissioner on 15 August 2022 seeking clarification and further directions, and that on 6 September 2022, the County Commissioner asked him to carry investigations.
24. According to the Deputy County Commissioner, his preliminary investigations led him to Walter Juma (sub-county Human Resources Manager and Secretary of the interview panel) whom he had instructed to inform the County Commissioner of the interview outcome, and that the said Walter Juma admitted to having forged his signature in the merit list/recommendations. The admission prompted the commencement of disciplinary proceedings against the said Walter Juma, and the Police were also invited to investigate.
25. The Police charged the said Walter Juma with criminal offences and the case was still pending before the Magistrates Court. The events precipitated the re-advertisement.
26. The witness further testified that Walter Juma opted to take an early retirement.
27. The Deputy County Commissioner denied having informed the Petitioner the position of Assistant Chief was reserved for a man.
28. The Respondents' second witness was a Criminal Investigations Detective. He testified that he was tasked to investigate the circumstances of the recruitment process and that took sample signatures/handwriting specimens from Walter Juma and the Deputy County Commissioner.
29. According to this witness, a forensic examination of the records by an expert established that the documents forwarded to the County Commissioner upon which the Petitioner was recommended for appointment were forgeries. The signatures were in the handwriting of Walter Juma and not the Deputy County Commissioner.
30. The witness further stated that a recommendation was made to the Director of Public Prosecutions for Walter Juma to be charged with criminal offences but that because of his early retirement, he was on the run.

Whether Petitioner was validly appointed as Assistant Chief

31. The Petitioner took the view that she had been validly appointed as the Assistant Chief because the score sheets indicated she emerged the best among the applicants and because the County Commissioner instructed that she be appointed through the letter dated 2 August 2022.
32. It is incontestable that the County Commissioner gave an instruction that the Petitioner be appointed as the Assistant Chief, Komwoyo East sub-location upon verification of her testimonials.
33. The instruction was not implemented because the Deputy County Commissioner who was part of the interview panel queried the instruction as it was not in line with the outcome of the interview process.
34. By the time the Petitioner moved to Court, she had not been validly appointed as Assistant Chief, Komwoyo East sub-location.
35. It is also instructive that one Walter Juma, who at the material time served as the Human Resources Manager and Secretary of the interview panel though listed as a witness on behalf of the Petitioner did not appear to testify on behalf of the Petitioner. The testimony by the Police Detective that he had gone into hiding was not controverted. It is equally telling that he took early retirement when investigations went into high gear.



36. The appointment of the Petitioner was not sealed by the issuance of an appointment letter or formal contract and therefore this question as framed by the Petitioner must be answered in the negative.

Whether Deputy County Commissioner had the power to revoke the appointment of the Petitioner?

37. The Deputy County Commissioner never revoked the appointment of the Petitioner. In any case, the instruction to appoint was not implemented and the question of power to revoke as an issue was not a proper or live issue for determination by the Court.
38. The Petitioner did not at any rate address the Court on the extent and scope of the Deputy County Commissioner's powers to revoke her appointment as delegated within the obtaining regulatory or statutory framework.

Legitimate expectation

39. The Supreme Court gave guidance on when and what constitutes legitimate expectation in *Communications Commission of Kenya & 5 Ors v Royal Media Services Limited & 5 Ors* (2014) eKLR, wherein it stated:

...The emerging principles may be succinctly set out as follows:

- a. there must be an express, clear and unambiguous promise given by a public authority;
 - b. the expectation itself must be reasonable;
 - c. the representation must be one which it was competent and lawful for the decision maker to make; and
 - d. there cannot be a legitimate expectation against clear provisions of the law or *the Constitution*. It is also trite law that the law does not protect all expectations except those that are legitimate.
40. The Petitioner sought to rely on the letter dated 2 August 2022 from the County Commissioner to the Deputy County Commissioner instructing that she be appointed after verification of her testimonials to assert violation of her right to legitimate expectation.
41. The instructions were not implemented because of concerns about forgery which was later established after investigations by the Police.
42. In the circumstances, the Court finds legitimate expectation could not arise because of the established forgery.

Violation of rights

Discrimination

43. The Petitioner contended that her right not to be discriminated against was violated.
44. With respect to discrimination, all the Court has is the Petitioner's assertions that the Deputy County Commissioner informed her that a woman could not be an Assistant Chief of Komwoyo East sub-location and the Deputy County Commissioner's denial.
45. The Court finds that the Petitioner did not lay an evidential foundation that there was discrimination based on the fact that she is a woman.



Fair labour practices and fair administrative action

46. The Petitioner also asserted that her right to fair labour practices, right to fair administrative action, and the values and principles of public service were violated by the Respondents
47. The Petitioner did not provide satisfactory or sufficient evidence that her rights to fair labour practices or fair administrative action were violated, or that the recruitment process up to the time of re-advertisement was in breach of the values and principles governing the public service.

Conclusion and Orders

48. Arising from the above, the Court finds the Petition without merit and it is dismissed with costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 24TH DAY OF APRIL 2024.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Petitioner O.J. Okoth & Co Advocates

For Respondents Ms Sarah Jumma, Senior Litigation Counsel, Office of the Hon Attorney General

Court Assistant Chemwolo

