



**Kwamboka v County Secretary, City County of Nairobi & 2 others (Petition E161 of 2023) [2024] KEELRC 936 (KLR) (17 April 2024) (Judgment)**

Neutral citation: [2024] KEELRC 936 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E161 OF 2023**

**B ONGAYA, J**

**APRIL 17, 2024**

**N THE MATTER OF ARTICLES 19,20,21,21,22 23, 159, 162  
(2) (A) AND 258 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF ALLEGED VIOLATION OF ARTICLE 1, 2, 3, 6, 10,  
20, 21, 22, 23, 24, 27 47 AND 73 OF THE CONSTITUTION OF KENYA**

**IN THE MATTER OF FAIR ADMINISTRATIVE ACTIONS ACT**

**IN THE MATTER OF COUNTY SECRETARY EXERCISE OF UNLAWFUL  
AUTHORITY TO REMOVE A COUNTY ATTORNEY FROM OFFICE**

**IN THE MATTER OF THE COUNTY ATTORNEY ACT, 2020**

**BETWEEN**

**LYDIA KWAMBOKA ..... PETITIONER**

**AND**

**COUNTY SECRETARY, CITY COUNTY OF NAIROBI ..... 1<sup>ST</sup> RESPONDENT**

**GOVERNOR, CITY COUNTY OF NAIROBI ..... 2<sup>ND</sup> RESPONDENT**

**COUNTY ASSEMBLY, CITY COUNTY OF NAIROBI ..... 3<sup>RD</sup> RESPONDENT**

*(Before Hon. Justice Byram Ongaya on Wednesday 17th April, 2024)*

**JUDGMENT**

1. The petitioner filed the petition dated 15.08.2023 through Mogeni & Co. Advocates seeking the following prayers:



- a. A declaration that the petitioner was validly appointed as County Attorney for a period of 6 years in line with the provisions of Section 6(1) of the County Attorney Act, 2020;
  - b. An order of prohibition be and is hereby issued restraining the respondents whether acting jointly or severally by themselves, their servants, agents, representatives or howsoever otherwise from implementation, further implementation, administration, application and or enforcement of the decision in the letter dated 7<sup>th</sup> August, 2023.
  - c. A declaration that the county secretary cannot remove the County Attorney from office without adhering to the procedure for removal of the County Attorney as provided for under the provision of section 13 of Office of the County Attorney Act;
  - d. An order of prohibition be and is hereby issued restraining the respondents whether acting jointly or severally by themselves, their servants, agents, representatives or howsoever otherwise from the implementation, further implementation, administration, application and/or enforcement of the removal from office of the Petitioner or deny her access to the Office of the County Attorney or from discharging her duties as such.
  - e. A mandatory injunction be issued to the respondents to reinstate the petitioner to her office without loss of any benefit.
  - f. The costs of this Petition be borne by the respondents.
  - g. Any other or further order or relief that this Honourable Court deems fit to grant.
2. The petition was based upon the supporting affidavit of the petitioner herein and exhibits thereto filed together with the petition and sworn on 15.08.2023. The petitioner's case is as follows:
- a. That she is the duly appointed and rightful holder of the Office of the County Attorney, Nairobi County appointed under the Nairobi City County Office of the County Attorney Act, 2016 by the then Governor, Mike Mbuvi Sonko vide a letter dated 03.05.2018.
  - b. That under the said Act, the Governor was the County Attorney appointing authority and the role of the County Assembly was only to vet and approve the appointee.
  - c. That on 01.10.19 the petitioner was recalled from a suspension she had been sent to on 19.09.18 by the then Governor, Mike Mbuvi Sonko who then extended her contract of employment which provided that the contract will be from 01.10.19 to December 2022.
  - d. That on 20.07.22 before the expiry of her then existing contract period, her term in office was extended by Her Excellency Governor Anne Kananu in line with provision of section 6 (1) of the County Attorney Act, 2020.
  - e. That her term in office was extended to six years with effect and commencement of the County Attorney Act, 2020 13<sup>th</sup> July 2020.
  - f. That this was not a fresh appointment that would require another approval by the County Assembly as per section 4(2) of the Nairobi City County Office of the County Attorney.
  - g. That the current Governor, H.E Sakaja Arthur Johnson in Executive Order No. 1 of 2022 also retained her as the County Attorney.
  - h. That the [Office of the County Attorney Act, 2020](#) was enacted to standardize and unify the structure, functions and roles of the legal departments across all the 47 counties.



- i. That her transition to County Attorney is well within the provisions of section 31 of the Office of the County Attorney Act 2020.
  - j. That the respondents have deployed dubious and mischievous means to have the petitioner removed from office including hiring persons to pose as petitioners while they hide behind them. They have filed before this Court through proxies J.R Misc Application No. E0043 of 2022 and E037 of 2021 which raised similar issues and have all been dismissed.
  - k. It is in the interest of justice and fairness that the court allows the petition and grant the orders sought.
3. The 1<sup>st</sup> respondent, Patrick Analo filed his replying affidavit on behalf of himself and the 3<sup>rd</sup> respondent herein through Adrian Kamotho Njenga and Co. Advocates sworn on 08.09.2023. He stated as follows. That he is the acting county secretary and head of county public service, Nairobi City County. That the petitioner is abusing court process since there was another matter touching on the same issues being ELRC petition E153 of 2023 Caroline Wambui Mwangi vs The Governor, Nairobi City County and others. He further urged as follows:
- a. That the petitioner was party to the above matter and filed another petition, which she withdrew and filed this instant petition where she included a prayer for a mandatory order to be issued.
  - b. That the petitioner has been out of office since 7<sup>th</sup> August, 2023 having formally been requested to hand over pursuant to completion of her tenure after which one Ms. Christine Mumbi Ileri was appointed as acting County Attorney – Nairobi City County on 8<sup>th</sup> August, 2023.
  - c. That in an affidavit sworn by the petitioner in ELRC miscellaneous application No. E004 of 2022 Republic vs Hon Ann Kananu Mwenda and 3 others ex parte Mohammed Gufu, the petitioner stated in paragraph 5 that the duration of her employment as Nairobi City County Attorney was from October 2019 to December 2022.
  - d. That in the event Court finds in favour of the petitioner, a remedy in damages will still be available hence the conservatory orders sought in the petition are neither deserved nor warranted.
  - e. The deponent urged the court to dismiss the petition herein with costs.
4. The said Patrick Analo also filed a supplementary replying affidavit sworn on 10.11.23 in which he stated as follows:
- a. That in the petition, the petitioner annexed a letter purportedly drawn and signed by the former Governor, Anne Kananu Mwenda extending the term of service of the petitioner to six years with effect from 13<sup>th</sup> July 2020.
  - b. That the said letter dated 20<sup>th</sup> July 2022 had manifest irregularities and the respondents' advocates wrote to the immediate former Governor seeking to establish authenticity, validity, and the letter is exhibited.
  - c. The former Governor unequivocally confirmed that she is not the author, originator, the signatory or in any manner associated with the letter dated 20.07.22 and proceeded to swear an affidavit dated 10.11.23 denouncing the said letter. The affidavit was exhibited as evidence.
  - d. That therefore the petitioner's averments premised on the said letter and petitioner's affidavit sworn with the petition are a nullity and legally untenable.



- e. He reiterated that the petition herein be dismissed with costs and the Court be pleased to issue any further orders as may be lawful and just.
5. The petitioner in response, filed an affidavit sworn on 15.11.23 in which she stated thus:
- a. The contents of the affidavit of Anne Kananu Mwenda on 10.11.23 are not only a perjury but a most unfortunate turn of events in this matter.
  - b. That at the time of effect of the Office of the County Attorney Act, she was already serving in office and her position guaranteed under section 31(2) hence she had no reason to forge a letter and that she had met all requirements of being in such office.
  - c. That on 23.02.22 she wrote to the County Secretary who is the Head of Public Service notifying him of the County Attorney Act, 2020 and requested that her terms of service be reviewed in accordance with the provisions of section 6 of the said Act.
  - d. That the said letter was copied to the Human resource department who wrote back advising that the issue was dealt with by the Governor necessitating the issuance of the letter dated 20.07.22.
  - e. That the letter of 20.07.22 was authored by the Governor in the presence of the petitioner and the same was served to the Office of the County secretary board and the Nairobi City county department of Human resources and received on 17.08.22 in its original form.
  - f. That the said letter be subjected to forensic examination by a document examiner and that the former Governor presents herself before Court for cross-examination.
  - g. The petitioner attached former letters signed by the former Governor to also be subjected to forensic examination.
6. Final submissions were filed for the parties. The Court has considered all the material on record. The Court returns as follows.
7. The outcome of the petition settles on one issue: whether the former governor Anne Kananu Mwenda issued the letter dated 20.07.2022 extending the petitioner's term of service for 6 years effective 13.07.2020 (with impact that her tenure would lapse on 13.07.2026). The former governor testified and was cross-examined. She denied that she authored the letter and as per her affidavit on record. By the petitioner's own testimony, the Court finds that the letter relied upon by the petitioner is not genuine. She testified thus, "Letter of 20.07.2022 has no reference number. The letter refers to my term of service being extended to six years effective 13.07.2020 per Office of County Attorney Act, 2020; the commencement date per that letter, effective date is 13.07.2020. See Section 31 on transition. I have copy of County Attorney Act, 2020. Commencement date is July 2020 (27.07.2020). That is the date. The letter of appointment is 20.07.2020 – is drawn prior to commencement of the Act on 27.07.2020." The Court finds that on a balance of probability, the letter was not genuine as it lacked the relevant file folio referencing, it was not on the Governor's letterhead, and, it was issued purportedly in reliance upon the Office of the County Attorney Act but which had not come into effect. Further, there is no reason to doubt the former Governor's testimony that she did not author the letter especially that the petitioner as recipient of the impugned letter failed to avail the original. The forensic expert Emmanuel Karisa Kenga (PW2) was called to offer a testimony in support of the petitioner's case. PW2 confirmed that he relied on a clean photocopy of the letter and that it was possible to impose a signature on a document like the one he had done in his exhibited report. Thus, the Court finds that it was possible for the governor's signature to be imposed as an exact signature on the impugned letter without her having actually signed the letter. It is not also clear why the petitioner could not provide the



original of the impugned letter in Court or to PW2. The evidence was that the petitioner was already serving on a contract due to lapse in December 2022 and it is not explained how the extension in the impugned letter could have been conceived. It is highly improbable. In the circumstances, the claims by the petitioner that she continues in office as alleged will collapse. The petition was based on that one point of fact and relevant evidence. The Court returns that petition is liable for dismissal. Considering the protracted litigation and numerous cases involving the petitioner and her service for the County Government, each party to bear own costs.

In conclusion, the petition is hereby dismissed and each party to bear own costs.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS  
WEDNESDAY 17<sup>TH</sup> APRIL 2024.**

**BYRAM ONGAYA,  
PRINCIPAL JUDGE**

