



REPUBLIC OF KENYA



**KENYA LAW**  
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**Lolmingani & another v Leleit & another (Petition E019 of 2022)  
[2024] KEELRC 1668 (KLR) (27 June 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1668 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
PETITION E019 OF 2022**

**DN NDERITU, J**

**JUNE 27, 2024**

**IN THE MATTER OF ARTICLES 3, 10, 19, 20, 21, 22, 23 159,  
162(2)(A), 165 & 251 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS  
UNDER ARTICLES 27(1) & (2), 28, 29(D), 41, AND 47 CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF CONTRAVENTION SECTION 58(4)  
(A) & (5), AND 58A, COUNTY GOVERNMENT ACT**

**AND**

**IN THE MATTER OF IRREGULAR AND UNLAWFUL APPOINTMENT AND  
CONTEMPORANEOUS REMOVAL FROM OFFICE OF THE CHAIRPERSON  
AND MEMBER OF THE SAMBURU COUNTY PUBLIC SERVICE BOARD**

**BETWEEN**

**PAUL LOLMINGANI ..... 1<sup>ST</sup> PETITIONER**

**LINUS LENOLNGENJE ..... 2<sup>ND</sup> PETITIONER**

**AND**

**HON. JONATHAN LATI LELEIT GOVERNOR, COUNTY GOVERNMENT OF  
SAMBURU ..... 1<sup>ST</sup> RESPONDENT**

**HON. FRED LEKOREN LANGEES SPEAKER, COUNTY ASSEMBLY OF  
SAMBURU ..... 2<sup>ND</sup> RESPONDENT**



## JUDGMENT

### I. Introduction

1. In a petition dated 21<sup>st</sup> November, 2022 drawn by Akola Advocates & Associates the petitioners are seeking the following -

1. The Honourable Court be pleased to determine the following questions -
  - i. Whether the authority, power and/or discretion of the 1<sup>st</sup> and 2<sup>nd</sup> Respondent to facilitate empanelment of a recruitment panel and ultimate recruitment of members of the County Public Board is amenable and/or subject to oversight and supervision by the Honourable Court.
  - ii. Whether the decision by the 1<sup>st</sup> Respondent to empanel a selection panel for the recruitment of a chairperson and one member of the Samburu County Public Service Board, violates the 1<sup>st</sup> Respondents legal authority donated under Section 58A, County Government Act.
  - iii. Whether the impugned process commenced by the Respondents violates the Petitioner's fundamental rights and freedoms and the same is for immediate vacation and setting aside.

II. The Honourable Court be pleased to issue the following ORDERS THAT:

- i. A declaration be and is hereby issued to declare that the commenced process of recruitment of a chair person and one member of the Samburu County Public Board, including the appointment of the selection panel violates the petitioners' rights to fair labour practices, due process, equal protection of law and non-discrimination, right to human dignity, freedom and security of the person, right to property, right to fair administrative action and right to fair hearing enshrined in Articles 27,28, 29, 40, 47 and 50 of *the Constitution* as particularizes in this Petition, and further violates the values of public service and national values under Article 232 and 10, Constitution respectively.
- ii. A judicial review Order of certiorari be and is hereby issued calling up and quashing the impugned decision of the 1<sup>st</sup> Respondent dated 28<sup>th</sup> October, 2022 and referenced SCG/CA/CPSB/SP.Vol.3/22; and all consequential actions thereon.
- iii. A judicial review Order of prohibition be and is hereby issued barring the 1<sup>st</sup> and 2<sup>nd</sup> Respondents from in any way howsoever, commencing and proceeding with the process of recruitment of a chairperson and one member of the Samburu County Public Service Board, including the appointment of the Selection panel, in respect of the Petitioners' offices during pendency of their lawful tenure.
- iv. The Hon. Court be pleased to award a reasonable amount in general damages for the violations of the Petitioners' fundamental rights and freedoms, as evinced herein.



- v. Costs of the Petition be awarded for each of the Petitioners on a full indemnity basis.
2. Alongside the petition the petitioners filed a notice of motion of even date under a certificate of urgency seeking, inter alia, some interim conservatory orders in the following terms –
    1. That the Honourable Court be and is hereby pleased, to certify the Application herewith as urgent, and the same be heard ex-parte at first instance.
    2. That pending the hearing and determination of this Application inter-partes or until further orders of this Honourable Court, the Honourable Court be and is hereby pleased to issue an appropriate temporary Conservatory order staying, restraining, and injunctioning the recruitment of a chairperson and one member of the Samburu County Public Service Board including injunctioning the appointment and/or operationalization of the selection panel nominated via the 1<sup>st</sup> Respondent's letter dated 28<sup>th</sup> October, 2022 and Ref SCG/CA/CPSB/Vol.3/22; and all consequential actions thereon in respect of the Petitioners' offices including restraining the vetting of nominees to the Samburu County Public Service Selection Panel.
    3. That pending the hearing and determination of the Constitutional Petition, or until further orders of this Honourable Court, the Honourable Court be and is hereby pleased to issue an appropriate temporary Conservatory order staying, restraining and injunctioning the recruitment of a chairperson and one member of the Samburu County Public Service board including injunctioning the appointment and/or operationalization of the selection panel nominated via the 1<sup>st</sup> Respondent's letter dated 28<sup>th</sup> October, 2022 and Ref SCG/CA/CPSB/Vol.3/22; and all consequential actions thereon in respect of the Petitioners' offices including restraining the vetting of nominees to the Samburu County Public Service Board Selection Panel.
    4. That an urgent date, and such further orders be set for the expeditious inter-partes hearing of the Petition.
    5. That this Honourable Court be pleased to grant such other appropriate relief as it may deem fit.
    6. That the costs of this Application be provided for on a full indemnity basis.
  3. When the matter was brought to court for consideration of the above application this court issued some interim conservatory orders in the following terms –
    1. That the said application be and is hereby certified urgent.
    2. That pending the hearing and determination of this application inter-partes or until such further and or orders of this court a conservatory order of injunction be and is hereby issued staying, restraining, and injunctioning the recruitment of a chairperson and one member of the Samburu County Public Service Board, including appointment and or operationalization of the selection panel nominated by the 1<sup>st</sup> Respondent via a letter dated 28<sup>th</sup> October, 2022 referenced SCG/CA/CPSB/SP/VOL.3/22 and the vetting of the nominees to the Samburu County Public Service Board by the selection panel.



3. That the said application, the petition, and a copy of this order be served upon the Respondents immediately.
4. That the parties herein and or their Counsel appear before Court 1 virtually (Wasilwa J) on Tuesday, 6<sup>th</sup> December, 2022 for further orders and or directions.
4. On 9<sup>th</sup> December, 2022 the 1<sup>st</sup> Respondent, through Mirugi Kariuki & Co Advocates filed a notice of motion under a certificate of urgency seeking to set aside the aforementioned interim ex-parte conservatory orders in the following terms –
  - a. That this Honourable court do certify the matter as urgent.
  - b. That this Honourable court be pleased to discharge the interim orders granted on 23<sup>rd</sup> November, 2022 be vacated and or discharged.
  - c. That the Petitioners be condemned to pay the costs of this application.
5. When the matter came up in court for directions on 15<sup>th</sup> December, 2022 the court ordered that the application for setting aside of the ex-parte conservatory orders be heard and disposed of first pending the inter partes hearing of the notice of motion dated 21<sup>st</sup> November, 2022. In a ruling delivered on 2<sup>nd</sup> February, 2023 the application was dismissed and the interim orders extended pending the hearing and determination of the application by the petitioners.
6. On 18<sup>th</sup> April, 2023 the 1<sup>st</sup> respondent filed a replying affidavit to the petition sworn by himself with several annexures thereto. Further, on 20<sup>th</sup> April, 2023 the 1<sup>st</sup> respondent filed a notice of preliminary objection (PO) raising the following issue – This court has no jurisdiction to hear and determine this matter.
7. On his part the 2<sup>nd</sup> respondent acting through Simiyu Opondo Kiranga & Co Advocates filed a replying affidavit sworn by himself on 26<sup>th</sup> March, 2023.
8. When the matter came up for directions on 9<sup>th</sup> May, 2023 it was by consent agreed and directed that the PO and the petition be heard simultaneously and be canvassed by way of written submissions. The interim conservatory orders were extended pending the hearing and determination of the petition.
9. Counsel for the petitioner filed written submissions on 6<sup>th</sup> June, 2023, counsel for the 1<sup>st</sup> respondent on 2<sup>nd</sup> June, 2023, and counsel for the 2<sup>nd</sup> respondent on 17<sup>th</sup> May, 2023.

## **II. The Petitioners' Case**

10. The case for the petitioner is contained and expressed in the petition, the supporting affidavit and the annexures thereto, and the written submissions by their counsel. The same is summarized as hereunder.
11. As per the petition the 1<sup>st</sup> respondent is the chair of the Samburu County Public Service Board (the Board) while the 2<sup>nd</sup> respondent is a member thereof. It is pleaded that whenever a vacancy occurs in the Board the 1<sup>st</sup> respondent is allowed by the law, with the approval of the County Assembly, to nominate persons to form a selection panel for the purposes of selecting persons suitable for appointment to the Board. The process of approval alluded to above is conducted by the County Assembly headed by the 2<sup>nd</sup> respondent.
12. It is pleaded that vide Gazette Notice 6889 of 26<sup>th</sup> July, 2019 the 1<sup>st</sup> and 2<sup>nd</sup> petitioners were appointed chair and member of the Board respectively. They were subsequently issued with letters of appointment dated 18<sup>th</sup> July, 2019 which clearly stated that they were to serve for a non-renewable



term running from 18<sup>th</sup> July, 2019 to 15<sup>th</sup> July, 2019, a period of six years, in accordance with Section 58(4) of the [County Governments Act](#).

13. It is pleaded that through a letter dated 28<sup>th</sup> October, 2022 addressed to the 2<sup>nd</sup> respondent, unlawfully and in total disregard of the law, the 1<sup>st</sup> respondent purported to nominate for approval members of a panel “for purposes of selecting suitable candidates for appointment as chairperson and one member of the county public service board.” It is pleaded that there were no vacancies in the Board and the move was intended to un-procedurally and unlawfully remove the petitioners from the Board. The 2<sup>nd</sup> respondent was to vet the proposed nominees on 25<sup>th</sup> November, 2022.
14. It is pleaded that if the nomination, selection, vetting, and appointment is allowed to proceed the petitioners shall be kicked out of office prematurely and without due process. It is pleaded that if the respondents were allowed to proceed with their intended illegal and unlawful process it will result in wastage of public resources through duplication of membership of the Board causing unnecessary confusion with parallel Board members.
15. Further, it is pleaded that the intended actions by the respondents shall violate Articles 10, 27, 28, 29, 40, 47, 50, & 232 of [the Constitution](#).
16. The two petitioners filed supporting affidavits to the petition annexing thereto copies of the Gazette Notice of appointment, their respective letters of appointment, the letter by the 1<sup>st</sup> respondent dated 28<sup>th</sup> October, 2022, and a notice by the County Assembly scheduling the vetting of the nominees to the Board for 25<sup>th</sup> November, 2022.
17. Of course, the vetting and the nomination did not take place as the court issued the interim orders alluded to above which stopped the process pending the hearing and determination of the petition.
18. It is on the foregoing footing that the petitioners are seeking that the petition be allowed as prayed with costs. The submissions by their joint counsel shall be considered in detail in a later part of this judgment.

### **III. 1st Respondents Case**

19. The 1<sup>st</sup> respondent’s position is taken in the replying affidavit sworn by himself on 17<sup>th</sup> April, 2023 with several annexures thereto, the PO dated 19<sup>th</sup> April, 2023 alluded to above, and the written submissions by his counsel. That position is summarized as hereunder.
20. In the replying affidavit the 1<sup>st</sup> respondent states that the petitioners were on 2<sup>nd</sup> April, 2019 arraigned in the Chief Magistrate’s Court at Nairobi charged with corruption and economic crimes in Anti-corruption Case No. 3 of 2019 alongside the former governor of Samburu County. The charges relate to abuse, misappropriation, and theft of public funds belonging to the County Government of Samburu. A copy of the charge-sheet is exhibited.
21. It is stated that as at the time of their appointment to the Board the petitioners were facing the above charges and as such they were neither eligible nor suitable therefor when scaled against the provisions of Chapter Six of [the Constitution](#) on ethics, integrity, and leadership. It is stated that the appointments of the petitioners were unlawful, null, and void ab initio.
22. Further, it is stated that as at the time of the impugned appointments, the petitioners were public officers serving in the County Government of Samburu and hence ineligible for the appointment. It is stated that the petitioners did not take the oath of office as per the law and that they have not rendered any services or attended any meeting since their appointment, yet they have consistently received monthly salary and other emoluments.



23. It is thus stated that the petitioners did not assume their positions in the Board and as such there is nothing like their removal as the appointments were null and void ab initio. It is stated that this petition is intended to perpetuate the said illegality.
24. In the PO it is pleaded that this court has no jurisdiction over the subject matter. This aspect of defence shall be considered below when the court shall be dealing with the written submissions by counsel.

#### **IV. 2nd Respondent's Case**

25. The 2<sup>nd</sup> respondent stated his position through a replying affidavit that he swore on 30<sup>th</sup> November, 2022, the PO on jurisdiction of this court to hear the matter, alongside the written submissions by his counsel.
26. In the replying affidavit it is admitted that the 1<sup>st</sup> respondent sent a request to the County Assembly to vet and approve the selection panel that would interview and select nominees to fill vacancies in the Board.
27. It is confirmed that the vetting, approval, and nomination did not take place in view of the interim conservatory orders alluded to above. It is reaffirmed that the 2<sup>nd</sup> respondent may only proceed with the process if and when lawfully moved by the 1<sup>st</sup> respondent.

#### **V. Submissions By Counsel**

28. Counsel for the petitioners submitted that the petitioners were vetted and approved by the 2<sup>nd</sup> respondent in plenary sessions held on 10<sup>th</sup> and 17<sup>th</sup> of July, 2019, in full compliance with [Public Appointments \(County Assemblies Approval\) Act](#) and the [County Governments Act](#). It is therefore submitted that vide the impugned letter of 28<sup>th</sup> October, 2022 the 1<sup>st</sup> respondent commenced the removal of the petitioners from the Board through unfair and unlawful means, by purporting to submit to the 2<sup>nd</sup> respondent request for nomination of members of a panel to vet the nominees who were to replace the petitioners.
29. Counsel for the petitioners identified the following issues for determination – Whether the court has jurisdiction over the subject matter, and, Whether the actions of the respondents, as described above, violated the law and the constitutional rights and fundamental freedoms of the petitioners.
30. On the first issue it is submitted that the petition before the court is not about whether the petitioners are fit to hold the positions that they hold in the Board as it has already been demonstrated that they were lawfully appointed. Rather, it is submitted, the issue is whether their intended removal as initiated by the 1<sup>st</sup> respondent and intended to be acted upon by the 2<sup>nd</sup> respondent is lawful. Counsel cited among other decisions *R v Firearms Licensing Board & Another Ex-parte Boniface Mwaura* [2019] eKLR wherein Mativo J (now JA) opined that once an applicant or petitioner demonstrates that the intended action threatens, breaches, or violates the fundamental rights and freedoms or legal rights, the court ought to intervene and stop such actions.
31. It is submitted that based on the decision of the Court of Appeal (COA) in *National Social Security Fund v Kenya Tea Growers Association & 14 Others* the jurisdiction of this court has been properly invoked.
32. Further, it is submitted that the petitioners may only be removed from office in accord with the law and more specifically Section 58(5) of the [County Governments Act](#). It is submitted that the appointment of the petitioners was in accord with the law, more specifically Sections 7 & 11(2) of the [Public Appointments \(County Assemblies Approval\) Act](#) & Section 58A of the [County Governments Act](#), and



- similarly their removal must comply with the law. It is submitted that even if the petitioners were on suspension from office, in view of the criminal charges, that does not amount to removal and in any event such suspension confirms appointment as one cannot be suspended from an office to which they have not been appointed.
33. It is submitted that the attempted removal of the petitioners by the respondents is against Articles 50 & 251 of *the Constitution*. Further, it is submitted that the petitioners were not state officers prior to their appointment to the Board as Article 260 of *the Constitution* is clear on who is a state officer. It is submitted that the petitioners did not have to take an oath of office before assuming their positions in the Board. It is submitted that unless lawfully removed the petitioners, as per their respective letters of appointment, are to hold their respective positions for a period of six years that ends sometimes in July, 2025. It is therefore submitted that if other persons are appointed to the positions occupied by the petitioners the same shall amount to duplication of appointments and roles which shall cause confusion rendering it impossible for the Board to function. Further, it is submitted, public resources shall be wasted.
  34. Counsel has also submitted on compensation to the petitioners for the purported violation of their constitutional rights. Counsel has cited among other decisions MUHURI & Another v Inspector General of Police & 5 Others [2015] eKLR seeking Kshs.2.5million for each of the petitioners in compensation.
  35. Counsel for the 1<sup>st</sup> respondent submitted based on the replying affidavit filed stating that upon being charged for corruption and economic crimes on 2<sup>nd</sup> April, 2019 the petitioners were suspended from office on 18<sup>th</sup> July, 2019 as per the letters of suspension exhibited.
  36. It is further submitted that the petition is filed in abuse of court process as a similar petition had been filed in Nyeri ELRC Petition No. 3 of 2020 which the petitioners withdrew after allegedly failing to obtain interim orders.
  37. Counsel therefore identified two issues for determination – Whether this court has jurisdiction over the subject matter, and, Whether the petition is filed in abuse of court process.
  38. In regard to jurisdiction counsel has cited Owners of the Motor Vessel “Lilian S” v Caltex Oil (Kenya) Ltd [1989] 1KLR 1 in emphasizing that a court has no business dealing with a matter wherein it lacks jurisdiction as any orders, directions, or opinions made therein amount to naught and void nullities. It is submitted that this court (ELRC) is established under Article 162(3) of *the Constitution* and its jurisdiction stated in Section 12 of the *Employment and Labour Relations Court Act*. It is submitted that there is no established employment relationship between the petitioners and the 1<sup>st</sup> respondent.
  39. It is submitted that the petitioners have not assumed the offices that they allege to occupy. It is submitted that as at the time of the alleged appointment the petitioners were employees of the County Government of Samburu and hence incapable of being appointed as such. It is submitted that as at 18<sup>th</sup> July, 2019 the 1<sup>st</sup> petitioner was the chief office for transport and public works while the 2<sup>nd</sup> petitioner was the director of education in the said county government.
  40. Counsel has cited the COA in Nakuru Civil Appeal No. E136 of 2022 – The Clerk, Nakuru County Assembly & Others v Kenneth Odongo & Others wherein the court held that where an employer-employee relationship has not been created the ELRC lacks jurisdiction over the subject matter.
  41. In regard to abuse of court process counsel cited Satya Bhama Gadhi V DPP & 3 Others (2018) eKLR wherein the court cited examples of when a party may be held to be in abuse of court process, including filing of multiple claims over the same subject matter against the same parties, forum shopping, and



even framing issues differently in different matters but over the same subject matter for the same or similar relief. It is submitted that the petitioners withdrew the petition in Nyeri after failing to obtain interim orders only to file the same petition at Nakuru.

42. Counsel for the 2<sup>nd</sup> respondent submitted that there is no case against him as the county assembly may only act on lawful requests from the 1<sup>st</sup> respondent based on Articles 176(1) & 185 of *the Constitution* as read with Section 58A of the *County Governments Act*. It is submitted that no action has been taken by him against the petitioners and as such the petition is termed premature and speculative.

## VI. Analysis & Determination

43. The court has carefully and dutifully gone through the petition, the supporting affidavit, the replying affidavits, and the written submissions by Counsel for the parties. The following issues commend themselves to this court for determination –
- a. Whether this court has the requisite jurisdiction to entertain, hear, and determine the issues raised in the petition.
  - b. Whether the petition has been filed in abuse of court process.
  - c. Whether the petitioners are entitled to the reliefs sought, and,
  - d. costs.
44. There is no argument that the 1<sup>st</sup> and 2<sup>nd</sup> petitioners were appointed as chairperson and member of the Board vide letters of appointment dated 18<sup>th</sup> July, 2019 and their appointments notified vide Gazette Notice No. 6889 of 26<sup>th</sup> July, 2019. They were to serve for a period of six years ending on 15<sup>th</sup> July, 2025. Copies of these documents have been exhibited by the petitioners.
45. The letters of appointment exhibited by the petitioners indicate that they were to earn a salary and enjoy other emoluments from the County Government of Samburu. The terms and conditions of service, including the duties and responsibilities are spelt out in those letters of appointment. The said letters were duly signed by the Governor of the county and the petitioners signed in acceptance of the appointment.
46. On the basis of the foregoing, whether the petitioners were subsequently suspended or interdicted or charged in court, the petitioners became and remain employees of the County Government of Samburu unless and or until they are lawfully terminated or upon expiry of their period of service, whichever comes first.
47. This petition is distinguishable from the situation and circumstances that obtained and what the COA dealt with in Nakuru Civil Appeal No. E136 of 2022 as consolidated with E137 of 2022 cited by counsel for the 1<sup>st</sup> respondent. The COA noted that the employer-employee relationship had not crystallized as the recruitment had just commenced. In this petition, however, the recruitment process was completed, appointment letters issued, and the appointments notified in the Kenya Gazette. Clearly and evidently, the petitioners are employees of the County Government of Samburu and may only be removed from office in accordance with the applicable law under the *County Governments Act*, *Employment Act*, *the Constitution*, and any other applicable law.
48. No evidence has been availed that the respondents, and more so the 1<sup>st</sup>, ensured lawful removal of the petitioners from the Board before engaging or commencing in the process of nominating their replacements. It is for that reason that the petitioners have called upon this court to stop the



- respondents from undertaking a clearly un-procedural and unlawful process that shall result in their unfair and unlawful termination.
49. As rightly pointed out by counsel for the petitioners, the gist of this petition is not whether the petitioners are ethically or morally fit to hold the positions that they do. As noted above the petitioners were, unless otherwise proved, lawfully and procedurally appointed into the positions that they hold in the Board. Mutatis mutandis their removal can only be in accordance with the procedural and lawful dictates of the law.
  50. If the respondents, and more so the 1<sup>st</sup>, feel that the petitioners are not in the office legally or procedurally they should institute removal proceedings in accordance with the law. Appointing new members to the Board while the petitioners are still in office, whether on suspension or otherwise, amounts to abuse of the law and misuse of public resources.
  51. In answer to the first issue, therefore, the court returns in the affirmative that indeed this court has jurisdiction over the subject matter. The petitioners are employees of the County Government of Samburu with rights and privileges appurtenant to such employment and they may only be removed from office in accordance with the law.
  52. In regard to the second issue, the court has perused the proceedings in ELRC Nyeri Petition No. 3 of 2022 (formerly ELRC Nairobi Petition No. E193 of 2022) as exhibited by the 2<sup>nd</sup> respondent. Firstly, except for the typed proceedings the pleadings have not been availed. Secondly, the said petition was withdrawn on 23<sup>rd</sup> January, 2023 before the same was served upon the respondents. Further, no reason for withdrawal was given and the court allowed the said withdrawal with no order as to costs. The allegation that the same was withdrawn after the petitioners failed to obtain interim orders is clearly far-fetched.
  53. Whatever the reason(s) for the withdrawal of the petition, and the court shall not speculate on the same, the court is not persuaded that this current petition was filed in violation of any law or in abuse of the court process. As stated above the court has not had the benefit of accessing the pleadings in the Nyeri matter although the same was withdrawn after this petition was filed on 23<sup>rd</sup> November, 2022. Further the petition in Nyeri was not heard and determined on merit and the respondents were not served. A court of law, unless on matters of common notoriety of which it may take judicial notice, shall decide matters brought before it on the materials, facts, and evidence availed. The respondents have failed to demonstrate that indeed the matter at Nyeri was about the same subject matter.
  54. Clearly, the petition is not res judicata.
  55. For all the foregoing, the court takes the view that the petition was not filed in abuse or violation of the court process and the court shall consider the reliefs sought as hereunder.
  56. The process commenced by the 1<sup>st</sup> respondent, as communicated to the 2<sup>nd</sup> respondent, of recruitment of a chairperson and one member of the Board, including selection of the panel, while the petitioners are still in office is clearly and evidently un-procedural, irregular, illegal, and unlawful. Consequently, the decision by the 1<sup>st</sup> respondent as communicated in the letter dated 28<sup>th</sup> October, 2022 shall be and is hereby quashed. Likewise, unless the petitioners are legally and lawfully removed from office, the respondents are hereby prohibited by themselves, their agents, servants, and or others howsoever, from commencing and proceeding with the process of recruitment of persons to replace and or occupy the positions held by the petitioners.
  57. In terms of the requested damages in compensation, the court takes the considered view that the petitioners have since their appointment enjoyed and continue to enjoy their salaries and other benefits



as per their letters of appointment. It is sad that it has been alleged that they have not attended any meetings or rendered any services in view of alleged suspension based on the pending criminal charges. The court is not privy to the status of the criminal proceedings. However, it would place a heavy burden on the tax-payer for the court to order award of damages in those circumstances. The interim orders issued by the court, alluded to earlier on in this judgment, cautioned the petitioners against unfair termination from their positions.

58. Likewise, any costs awarded to the petitioners shall trickle down to the tax-payer and the court shall thus not make an order on costs.
59. As I conclude let me state this. This judgment is not a vindication that the petitioners are morally or ethically fit to hold the positions that they do. What the court is stating and I reiterate is that having been appointed as detailed elsewhere in this judgment, the petitioners may only be removed in accordance with the law. If the respondents are of the view that the petitioners ought to be terminated, they should commence and execute the process in accordance with the law. Purporting to nominate and or recruit other persons into the same positions occupied by the petitioners amounts to abuse of due process, causing confusion, and waste of public resources.

## **VII. Orders**

60. Flowing from the foregoing this court issues the following orders -
- a. That a declaration be and is hereby issued that the process of recruitment of a chairperson and one member of the Board, including appointment of the selection panel, as commenced by the respondents is illegal, null, and void.
  - b. A judicial review order of certiorari be and is hereby issued quashing the impugned decision of the 1<sup>st</sup> respondent as expressed and contained in a letter dated 28<sup>th</sup> October, 2022 and all other and or further consequent and or subsequent actions.
  - c. An order of prohibition be and is hereby issued barring the 1<sup>st</sup> and 2<sup>nd</sup> respondents, their agents, servants, and or others howsoever, from commencing and or proceeding with the process of recruitment of a chairperson and one member of the Board, including the appointment of a selection panel, to replace the petitioners, as long as the petitioners lawfully occupy the said positions in the Board.
  - d. All the other reliefs are denied.
  - e. There is no order as to costs.

**DELIVERED VIRTUALLY, DATED, AND SIGNED AT NAKURU THIS 27TH DAY OF JUNE, 2024.**

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**DAVID NDERITU**

**JUDGE**

