



REPUBLIC OF KENYA



KENYA LAW
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**Onuonga v Omollo & 2 others (Petition E018 of 2024)
[2024] KEELRC 1386 (KLR) (12 June 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1386 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
PETITION E018 OF 2024
S RADIDO, J
JUNE 12, 2024
IN THE MATTER OF ARTICLES 1, 2, 3, 10, 22(1),
47(1) AND 47(2) OF THE
CONSTITUTION OF KENYA,
2010
AND
IN THE MATTER OF THE COUNTY GOVERNMENTS
ACT (ACT NO. 17 OF 2012)
AND
IN THE MATTER OF THE FAIR ADMINISTRATIVE
ACTION ACT, 2015 (ACT NO.
4 OF 2015)
AND
IN THE MATTER OF THE CONSTITUTION OF
KENYA (PROTECTION OF
RIGHTS AND FUNDAMENTAL
FREEDOMS) PRACTICE AND
PROCEDURE RULES, 2013

BETWEEN

GODWIN OTIENO ONUONGA PETITIONER

AND

EZEKIEL GILBERT OMOLLO 1ST RESPONDENT



JUDGMENT

1. Around 5 March 2024, the Public Service Commission (the Commission) advertised for several employment opportunities with the Ministry of Education, State Department for Technical, Vocational Education and Training. The opportunities were open at various Technical and Vocational Colleges including Rangwe Technical and Vocational College.
2. The announcement instructed interested applicants to apply directly to Boards of Governors/ Councils which included the Board of Governors, Rangwe Technical & Vocational College (the Board).
3. Godwin Otieno Onuonga (the Petitioner) applied to the Board for the position of Vocational & Technical Trainer, Accounting.
4. On 7 May 2024, the Petitioner moved the Court alleging that the recruitment process was unlawful and in breach of the national values and principles.
5. Accompanying the Petition was a certificate of urgency seeking interim relief. There was no Motion. Because there was no formal application for injunctive orders, the Court declined to grant any interim interdicts.
6. The Court directed the Petitioner to serve the Respondents. The Court also directed the Respondents to file and serve responses. The Court further directed the parties to file and exchange submissions ahead of judgment on 12 June 2024.
7. On 15 May 2024, the Petitioner filed a Motion seeking orders interdicting the interviews which had been scheduled to commence on 12 May 2024.
8. The Court directed the Petitioner to serve the Motion.
9. When the parties appeared in Court on 23 May 2024 for the hearing of the Motion, the parties could not agree on the status quo. The Respondents contended that the interviews had been concluded while the Petitioner insisted the interviews were still ongoing.
10. The Court could, therefore, not give interim relief. The Court directed the parties to comply with the directions given on 14 May 2024 with judgment reserved for today.
11. Ezekiel Gilbert Omollo, the Principal of the College and 1st Respondent, and a member of the Board filed replying affidavits in opposition to the Petition on 22 May 2024.
12. The affidavits exhibited letters signed by the 1st Respondent appointing members of the shortlisting/ interview panels.
13. Pursuant to leave, the Petitioner filed a further affidavit and submissions on 30 May 2024.
14. The Respondents filed their submissions on 4 June 2024.
15. The Court has considered the Petition, affidavits and submissions



Flawed recruitment process?

16. In support of the assertion that the recruitment process was flawed, the Petitioner relied on *R v Cabinet Secretary for Interior & Coordination of National Government & 6 Ors ex parte Africa Centre for Open Governance & 7 Ors* (2017) eKLR to contend that since the 1st Respondent had acted outside the powers given to him, then the recruitment process was unlawful and could not be left to stand.
17. The Respondents cited the case of *Mrao Ltd v First American Bank of Kenya Ltd & 2 Ors* (2003) eKLR to urge that the Petitioner had not made a *prima facie* case for grant of the reliefs sought.
18. The vacancy notice by the Commission directed interested persons to make their applications directly to the Boards or Councils of the named technical institutions and colleges.
19. The Guidelines issued by the Commission indicated that the recruitment process from shortlisting and interviews would be led by the respective Boards or Councils in accordance with the *TVET Act, 2013*. The Principals of the respective institutions were to serve as Secretaries of the recruitment panels unless another officer was duly designated.
20. Under the Guidelines, the Board or Council was mandated to appoint a shortlisting panel in writing, constitute the interview panel consisting of the Chair of the Board, the Principal of the Institute as Secretary and a Course/Subject specialist.
21. The 1st Respondent serves as the Secretary of the Board and therefore is the custodian of records. He deponed that the recruitment process complied with the Guidelines by the Commission and that because the College lacked Course/Subject specialists, he outsourced the specialists. He also stated that there was no Board meeting from 27 April 2024 to 28 April 2024 and that the Board met from 3 May 2024 to 4 May 2024 to endorse the shortlist from the panel.
22. One Elphas Oduor Omondi swore an affidavit stating that he is a member of the Board and that he represented the Board in the shortlisting exercise from 29 April 2024 to 4 May 2024 at the Kisumu National Polytechnic.
23. The said Board member did not disclose where, when and how the Board nominated or tasked him to chair the shortlisting panel. He did not indicate whether he was the Chair of the Board's Human Resource function.
24. The Guidelines from the Commission required the Board to nominate or appoint in writing the members of the shortlisting panel.
25. In the instant case, the Respondents did not place before the Court any records nominating or appointing the members of the shortlisting panel.
26. The appointments appear to have been unilaterally made by the 1st Respondent.
27. The Respondents also maintained that the interviews had been concluded by 14 May 2024. The Guidelines from the Commission outlined the composition of the interviewing panel.
28. The Petitioner's assertions that the interviewing panel was not validly constituted were not rebutted by the production of records or minutes of the Board.
29. It is clear from the evidence placed on record that the recruitment process herein was not conducted in compliance with the Guidelines from the Commission.



Conclusion and Orders

30. In light of the above, the Court finds and declares:
- i. A declaration be and is hereby issued that the action of the 1st and 2nd Respondents in constituting the shortlisting panel was null and void.
 - ii. An order be and is hereby issued restraining the Respondents, their agents or servants from proceeding with the recruitment if the same had not been concluded.
 - iii. In alternative to (ii) above, an order quashing the recruitment process carried out by the 1st and 2nd Respondents for the position of Vocational and Technical Trainer, Accounting.
 - iv. A declaration is hereby issued that the 1st and 2nd Respondents have acted in a manner that contravenes Articles 10 and 232 of the Constitution.
 - v. An order is hereby issued directing the Respondents to commence afresh the process of recruitment for the position of Vocational and Technical Trainer, Accounting.
31. The Petitioner is in the employ of the Respondents and therefore each part to bear own costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 12TH DAY OF JUNE 2024.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Petitioner Ndeda & Associates Advocates

For Respondents Office of the Honourable the Attorney General

Court Assistant Chemwolo

