



**Gurey & 2 others v Principal Secretary, Ministry of Interior & National Administration & 5 others (Petition E004 of 2024) [2024] KEELRC 13570 (KLR) (19 December 2024) (Judgment)**

Neutral citation: [2024] KEELRC 13570 (KLR)

**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS AT GARISSA**

**PETITION E004 OF 2024**

**B ONGAYA, J**

**DECEMBER 19, 2024**

**IN THE MATTER OF THE NATIONAL GOVERNMENT  
CO-ORDINATION ACT, CAP. 127 LAWS OF KENYA**

**AND**

**IN THE MATTER OF THE CHIEF’S ACT, CAP. 128 LAWS OF KENYA**

**AND**

**IN THE MATTER OF PART III OF THE NATIONAL GOVERNMENT CO-ORDINATIONS  
ACT, CAP. 127 LAWS OF KENYA, RELATING TO THE APPOINTMENT, ROLES AND  
RESPONSIBILITIES OF NATIONAL GOVERNMENT ADMINISTRATIVE OFFICERS**

**AND**

**IN THE MATTER OF COMPLAINT ON THE PROCESS OF APPOINTMENT OF  
CHIEF II MODOGASHE LOCATION, IN MODOGASHE DIVISION LAGDERA  
SUB COUNTY, GARISSA COUNTY AND THE EVENTUAL APPOINTMENT OF  
MOHAMEDKHADAR HUSSEIN GURE AS THE CHIEF II MODOGASHE LOCATION,  
IN MODOGASHE DIVISION, LAGDERA SUB COUNTY, GARISSA COUNTY**

**BETWEEN**

**DUBEN HUSSEIN GUREY ..... 1<sup>ST</sup> PETITIONER**

**ANWAR YUSSUF AHMED ..... 2<sup>ND</sup> PETITIONER**

**MASLAH HUSSEIN GURE ..... 3<sup>RD</sup> PETITIONER**

**AND**

**PRINCIPAL SECRETARY, MINISTRY OF INTERIOR & NATIONAL  
ADMINISTRATION ..... 1<sup>ST</sup> RESPONDENT**

**THE REGIONAL COMMISSIONER, NORTEASTERN REGION .... 2<sup>ND</sup>  
RESPONDENT**



COUNTY COMMISSIONER, GARISSA COUNTY ..... 3<sup>RD</sup> RESPONDENT

DEPUTY COUNTY COMMISSIONER, LAGDERA SUBCOUNTY .... 4<sup>TH</sup>  
RESPONDENT

CABINET SECRETARY, MINISTRY OF INTERIOR & NATIONAL  
ADMINISTRATION ..... 5<sup>TH</sup> RESPONDENT

THE ATTORNEY GENERAL ..... 6<sup>TH</sup> RESPONDENT

## JUDGMENT

1. The petitioners filed the petition dated 09.10.2024 through Mwangi, Mwangi & Associates Advocates seeking the following prayers:
  - a. A declaration be and is hereby issued that the directive by the 3<sup>rd</sup> respondent communicated vide a letter dated 13.09.2024 issued by the 3<sup>rd</sup> respondent, the County Commissioner Garissa County to the 4<sup>th</sup> respondent purporting to announce the decision to repeat the process of appointment of Chief II Modogashe Location, in Modogashe Division, Lagdera Sub County, Garissa County is irregular and contrary to the best interest of the community and offends the core values of governance prescribed under *the Constitution*.
  - b. That the Court proceed to quash the directive by the 3<sup>rd</sup> respondent communicated vide a letter dated 13.09.2024 issued by the 3<sup>rd</sup> respondent, the County Commissioner Garissa County to the 4<sup>th</sup> respondent purporting to announce the decision to repeat the process of appointment of Chief II Modogashe Location, in Modogashe Division, Lagdera Sub County, Garissa County.
  - c. That the Court be pleased to freezing and staying any directive, notice or communication directing the repeat of the process for the conduct of interviews for the appointment of Chief II Modogashe Location, in Modogashe Division, Lagdera Sub County, Garissa County.
  - d. That the Honourable Court be pleased to uphold and affirm the results of the previously conducted selection process that led to the recommendation of the appointment of Mr. MohamedKhadar Hussein Gure as the as the Chief II Modogashe Location which represented the wish of the citizens of Modogashe Location.
  - e. Costs of petition and interest at court rates until payment in full.
  - f. Any other relief that this Honourable Court may deem just to grant.
2. The petitioners' case was as follows:
  - a. The petitioners herein are residents and natives of Modogashe Location, Modogashe Division, Lagdera Sub County, in Garissa County.
  - b. On 05.10.2023, 08.01.2024 and 04.03.2024, the 4<sup>th</sup> respondent advertised a request for applications to fill the position of Chief II Modogashe Location in Modogashe Division, Lagdera Sub County, Garissa County.
  - c. Following several interviews and thorough vetting of prospective candidates, one MohamedKhadar Hussein Gure was selected the suitable candidate and prospective appointee for the said position. However, the 3<sup>rd</sup> respondent wrote to the 4<sup>th</sup> respondent a letter dated



13.09.2024 purporting to announce the decision to repeat the process of appointment for the subject position.

- d. The petitioners are aware of circulating information that the respondents herein, who are the appointing authorities, are being coerced by the Member of Parliament to re-do the exercise to favour a particular candidate.
  - e. The appointing authorities found Mr. Gure's nomination process as properly conducted having been undertaken by members of all clans, to avoid violation of the law and human rights. Therefore, revoking the appointment of Mr. Gure would be denying him an opportunity to lead the locals considering clan dynamics.
  - f. Further, considering the advert for the impugned position was done three (3) times, there are no reasons for further interviews or purpose for the government spending more time and resources on a process that has taken a protracted period. There has also been disruption of community services in Modogashe location since the previous chief retired and the community has been without a chief.
  - g. In view of the said illegal notice, there shall be gross violation of the rights of the citizens of Modogashe Location as it goes against their wishes as expressed during public participation exercises.
3. The petition is supported by the 1<sup>st</sup> petitioner's affidavit with authority of her co-petitioners. She maintained that the petition challenges the decision to order a repeat of the process of appointment of Chief II Modogashe Location in Garissa County. The petitioners' contention was that no complaint was lodged whatsoever to the completed exercise of appointment to warrant a repeat exercise. That this Court should therefore stay the actualisation of the notice by the 3<sup>rd</sup> respondent addressed to the 4<sup>th</sup> respondent.
  4. The respondents filed their grounds of opposition dated 15.11.2024 through the Hon. Attorney General and learned Senior State Counsel Mr. Earnest Kioko appeared in that behalf. They prayed that the petition dated 09.10.2024 be dismissed with costs on the grounds that:
    - i. The instant petition as instituted is an abuse of the court process, has no merit and is based on a misconception of law.
    - ii. The petitioners herein lack locus standi as conferred by Articles 22(2) (c) and 258(1) (c) to institute proceedings in the public interest, which does not extend to a petitioner instituting proceeding without express instructions for the benefit of named public officers/servants who can act in their own name.
    - iii. The petitioners have filed the instant petition seeking that the constitutional rights of the individuals named therein have been violated. The named individuals are not in a certain group or class. The petitioner therefore cannot act as members or in the interest of people who are not in any class or group. Therefore, Article 22(2) (b) of *the Constitution* is inapplicable.
    - iv. The petition herein contains claims regarding appointment of Chief II Modogashe Location in Modogashe Division, Lagdera Sub-County, in Garissa County; such matters are in the realm of private law. There is no public interest element in such matters. Therefore, Article 22(2) (c) of *the Constitution* is not applicable.
    - v. No one was issued with an appointment letter in the instant case and as such, there was no employer-employee relationship between Mr. Mohammed Khadar Hussein Gure as Chief of



Modogashe Location and this Honourable Court thus lacks the jurisdiction to entertain the instant petition.

vi. Section 51(1) of The *Interpretation and General Provisions Act*, Cap. 2 Laws of Kenya states as follows:

51.

(1) Where by or under a written law a power or duty is conferred or imposed upon a person to make an appointment or to constitute or establish a board, commission, committee or similar body, then, unless a contrary intention appears, the person having that power or duty shall also have the power to remove, suspend, dismiss or revoke the appointment of, and to reappoint or reinstate, a person appointed in the exercise of the power or duty, or to revoke the appointment, constitution or establishment of, or dissolve, a board, commission, committee or similar body appointed, constituted or established, in exercise of the power or duty, and to reappoint, reconstitute or re-establish it.

5. The parties filed their respective submissions. The Court returns as follows:

- a. The respondents filed no replying affidavit to controvert the facts of the petition as urged in the supporting affidavit and exhibits thereto. The Court finds that the facts of the case are as set out in the supporting affidavit.
- b. The respondent urge that the petitioners lack locus standi because they are pursuing a private right of the successful candidate in circumstances that it is not a representative or group suit and the successful candidate at the recruitment and selection process has not been shown to be under incapacity to file the petition and enforce his rights by himself. The petitioners urge that they are pursuing a public interest namely the appointment of the chief of their location in accordance of the constitutional provisions. It is submitted that the petition is challenging a public process, namely, unconstitutional directive that the recruitment and selection process for the Chief II Modogashe Location, in Modogashe Division, Lagdera Sub County, Garissa County having been lawfully and constitutionally concluded, be repeated. The Court finds that the petitioners have established a public interest that the recruitment and selection process of the Chief II cannot be repeated upon an unlawful and unconstitutional directive. While the successful candidate may have a private right in his successful selection, the general members of the public as well have an interest that the recruitment and selection process duly concluded in accordance with *the Constitution* and applicable law and policy is upheld.
- c. Public interest relates to those things, which are amenable to protection by legislative or judicial pronouncements. The office of chief is an office in the public service governed by provisions of *the Constitution*, *Public Service Commission Act*, 2017, the Chief's Act and other relevant statutes. The Court finds for the petitioners that the petition has been filed in good faith pursuant to Article 3(1) of *the Constitution* to respect, uphold and defend *the constitution* by the respondents in the manner of undertaking the recruitment, selection and appointment of the successful candidate. The Court finds that the petitioners have established public interest and therefore standing per Articles 22(2) (c) and article 258(2) (c) of *the Constitution*.
  - a. The respondents urged that the court lack jurisdiction because petitioners have not established employer-employee relationship. However, the Court returns that the petitioners were entitled to file the instant strategic or public interest litigation. The impugned directive to repeat the recruitment and selection process is about



performance of a human resource function falling within the Court's subject matter jurisdiction.

- b. Thus, section 2 of the *Employment and Labour Relations Court Act* contemplates and institutes strategic or public interest litigation when it provided thus, "12(2) An application, claim or complaint may be lodged with the Court by or against an employee, an employer, a trade union, an employer's organisation, a federation, the Registrar of Trade Unions, the Cabinet Secretary or any office established under any written law for such purpose." The Court returns that the instant petition is made squarely under the provisions of the sub-section. The subject matter falls within the Court's jurisdiction and the applicant has established jurisdiction, accordingly.
- d. The respondents have not offered a reason to justify the repeat of the recruitment and selection process. The respondents allege that the petitioners have relied on illegally obtained official documents. However, no particulars of illegality have been pleaded and then by evidence established fore the respondent. The Court finds that once the recruitment and selection process proceeded and concluded, the respondent's exercise of authority, function or power in that respect became functus officio. The respondents have not shown the source in law of invoking the repeat directive. It was an unlawful and unconstitutional directive that was unreasonable in terms of Article 47 of *the Constitution* and amounting to violation of Articles 232 on values and principals of public service and Article 10 on the values and principals of national governance. Accordingly, the petitioners' case will succeed as prayed. It was a petition in the public interest and no orders on costs.

In conclusion, the petition is hereby determined with orders as follows:

1. The declaration be and is hereby issued that the directive by the 3<sup>rd</sup> respondent communicated vide a letter dated 13.09.2024 issued by the 3<sup>rd</sup> respondent, the County Commissioner Garissa County to the 4<sup>th</sup> respondent purporting to announce the decision to repeat the process of appointment of Chief II Modogashe Location, in Modogashe Division, Lagdera Sub County, Garissa County is irregular and contrary to the best interest of the community and offends the core values of governance prescribed under *the Constitution*.
2. That the Court hereby proceeds to quash the directive by the 3<sup>rd</sup> respondent communicated vide a letter dated 13.09.2024 issued by the 3<sup>rd</sup> respondent, the County Commissioner Garissa County to the 4<sup>th</sup> respondent purporting to announce the decision to repeat the process of appointment of Chief II Modogashe Location, in Modogashe Division, Lagdera Sub County, Garissa County.
3. That the Court hereby freezes and stays any directive, notice or communication directing the repeat of the process for the conduct of interviews for the appointment of Chief II Modogashe Location, in Modogashe Division, Lagdera Sub County, Garissa County.
4. That the Honourable Court hereby upholds and affirms the results of the previously conducted selection process that led to the recommendation of the appointment of Mr. MohamedKhadar Hussein Gure as the as the Chief II Modogashe Location which represented the wish of the citizens of Modogashe Location.
5. No costs of the petition.
6. The Deputy Registrar to return the Court file back to Garissa Sub-Registry forthwith, within three days.



**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 19<sup>TH</sup> DECEMBER 2024.**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

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