



**Sheikh & 2 others v Meso & 2 others (Petition E005 of 2024)  
[2024] KEELRC 13490 (KLR) (19 December 2024) (Judgment)**

Neutral citation: [2024] KEELRC 13490 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS AT GARISSA  
PETITION E005 OF 2024  
B ONGAYA, J  
DECEMBER 19, 2024**

**IN THE MATTER OF ENFORCEMENT OF BILL OF RIGHTS UNDER ARTICLES 1, 2, 10,  
19, 20, 21, 22, 23, 27, 35, 40, 43, 47, 70 AND 232 OF THE CONSTITUTION OF KENYA, 2010  
AND**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF ARTICLE 1, 2, 10, 19, 20,  
21, 22, 23, 27, 35, 40, 43, 47, 70 AND 232 OF THE CONSTITUTION OF KENYA, 2010  
AND**

**IN THE MATTER OF THE PUBLIC SERVICE COMMISSION  
AND**

**IN THE MATTER OF THE DIRECTIVE ON  
APPOINTMENT OF CHIEFS AND ASSISTANT CHIEFS  
AND**

**IN THE MATTER OF THE RULE OF LAW, DISCRIMINATION  
OF WOMEN AND THEIR LEGITIMATE EXPECTATIONS**

**BETWEEN**

**RAHMA MOHAMED SHEIKH ..... 1<sup>ST</sup> PETITIONER  
NAIMA ISMAIL ADAN ..... 2<sup>ND</sup> PETITIONER  
SULEKHA ALI HUSSEIN ..... 3<sup>RD</sup> PETITIONER**

**AND**

**PATRICK M MESO ..... 1<sup>ST</sup> RESPONDENT  
MINISTRY OF INTERIOR & CO-ORDINATION OF NATIONAL  
GOVERNMENT ..... 2<sup>ND</sup> RESPONDENT  
THE HON ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**



## JUDGMENT

1. The petitioners filed the petition dated 30.10.2024 through Kakai Mugalo Advocates LLP seeking the following prayers:
  - a. A Declaration that the public notice dated 6<sup>th</sup> September, 2024 is discriminative unconstitutional, null and void ab initio.
  - b. A Declaration that the public notice dated 6<sup>th</sup> September, 2024 is in violation of Article 27 of *the Constitution*.
  - c. An Order of Certiorari quashing the 1<sup>st</sup> respondent's public notice dated 6<sup>th</sup> September, 2024.
  - d. An Order of judicial review by way of Prohibition against the 1<sup>st</sup> respondent prohibiting the 1<sup>st</sup> respondent from appointing chiefs and assistant chiefs for Gingo Location and Kamar Elle Sub-location in Mandera County.
  - e. An Order of judicial review by way of Mandamus compelling the respondents to follow constitutional and statutory provisions in appointing chiefs and assistant chiefs for Gingo Location and Kamar Elle Sub-location in Mandera County (if necessary).
  - f. In the alternative, the 3<sup>rd</sup> respondent be ordered to conduct fresh advertisement and conduct the interview for the position of chiefs and assistant chiefs for Gingo Location and Kamar Elle Sub-location in Mandera County.
  - g. That any other order and modification of petitioners' prayer(s) which this Honourable Court may deem fit so as to achieve objects of justice for majority of Kenyans as a whole.
  - h. Costs of this petition to be borne by the respondents.
2. The petitioners' case was as follows:
  - a. Mandera County has a total of 251 chiefs and assistant chiefs with women accounting for only three (3) positions out of the 251.
  - b. The 1<sup>st</sup> respondent is the Deputy County Commissioner of Mandera East Sub-county in Mandera County.
  - c. The 1<sup>st</sup> respondent shortlisted 18 candidates for the positions of chief and assistant chief for Gingo Location and Kamar Elle Sub-location in Mandera County vide a public notice dated 06.09.2024. Out of the 18 shortlisted candidates, only one (1) woman is in the list, one Ms. Faiza Abdinasir Hassan.
  - d. The interviews for the shortlisted candidates were scheduled for 17.09.2024 but were stayed by the High Court at Garissa in Petition No. E015 of 2024 that was subsequently withdrawn for want of jurisdiction.
  - e. The notice by the 1<sup>st</sup> respondent directly violates the directive on the Appointment of Chiefs and Assistant Chiefs dated 03.05.2023, issued by the Principal Secretary, Internal Security & National Administration, and in particular, directives (viii) and (x) that during recruitment and selection process criteria and qualifications per Scheme of Service for National Government Administrative Officers to apply; chiefs be appointed from serving assistant chiefs



with satisfactory service track record; and, take into account government policy on affirmative action for persons with disabilities (PWDs);

- f. The acts of the 1<sup>st</sup> and 2<sup>nd</sup> respondents threaten to violate the provisions of Article 27 of *the Constitution*, which provides that every person is equal before the law and has the right to equal protection and equal benefit of the law.
  - g. This matter is of public interest and this Court has jurisdiction to hear and determine this petition. It is in the interest of justice that the Court upholds *the Constitution* and halts the violation by the 1<sup>st</sup> respondent in discriminating against women.
  - h. The 1<sup>st</sup> respondent has previously acted in violation of the scheme for National Government Administrative Officers (2015) by appointing children of retiring chiefs as chiefs instead of giving priority to the serving assistant chief.
  - i. The petitioners and Kenyans have a legitimate expectation that all state officers and state organs have to follow the law, including the constitutional provisions on equality and freedom from discrimination.
3. On the specific violation of *the Constitution* by the respondents, the petitioners pleaded that the public notice of shortlisted candidates dated 06.09.2024 discriminates on women contrary to Article 27 of *the Constitution* of Kenya
  4. The petition is supported by the 1<sup>st</sup> petitioner's affidavit with authority of her co-petitioners. She stated that she is a resident of Mandera County and actively involved in championing the rights of women in all spheres within the County. She noted that the Directive by the Principal Secretary in the office of the 2<sup>nd</sup> respondent gave guidelines that were to be founded on constitutional principles of leadership and integrity, national values and public service. Some of the principles in the directive include:
    - a. The appointment process should appreciate equity and inclusiveness by affording employment opportunities to women, minorities and marginalized groups through affirmative action.
    - b. The recruitment and selection process should be conducted in accordance with the criteria and qualifications as prescribed in the Scheme of Service for National Government Administrative Officers (2015). In respect of appointment of Chiefs, preference should be given to serving Assistant Chiefs who have satisfactory track records of performance, discipline and integrity over time.
  5. The 1<sup>st</sup> petitioner further averred that they have raised their concerns with the 2<sup>nd</sup> respondent through their organisation, Mandera Mums Chapter, for the Ministry to address the discrimination of women in leadership positions in Mandera County. She noted that in disregard of the aforementioned directive by the Principal Secretary of the 2<sup>nd</sup> respondent, the following went on retirement and were replaced by their children:
    - i. Birik Aftin Kassim - former Chief, Bulla Mpya (Mandera East).
    - ii. Abdullahi M. Omar - former Chief, Bulla Jamhuri (Mandera East).
    - iii. Khalif Noor Hussein - former Assistant Chief, Bulla Nguvu (Mandera East).
  6. Despite service, no appearance and defence were filed in the matter. The petitioners filed an affidavit of service sworn by Mueke Jeremiah on 22.11.2024 to show that the respondents were duly served via



email. In the circumstances, the petitioners' counsel requested the Court to make a judgment based on the material on record. The Court returns as follows:

- a. While lamenting that only one woman was shortlisted, the petitioners have not provided the evidence on the number of duly qualified women who may have applied. It is therefore difficult for the court to find that the respondents are undertaking the impugned recruitment and selection contrary to the constitutional values and principles of public employment or that in the process women have been discriminated contrary to Article 27 of *the Constitution*.
  - b. Similarly, the petitioners have failed to show that sons of three chiefs who retired had been recruited as chiefs through favouritism in that regard.
  - c. While alleging that the advertisement in issue is contrary to the circular on directives on appointment of chiefs dated 03.05.2023, the material breaches have not established by way of necessary evidence.
  - d. Accordingly, the Court finds that the petitioners have failed to provide sufficient evidence or at all to establish the alleged violation of constitutional provisions including Article 27 on the right of equality before the law and freedom from discrimination.
  - e. The petition will be dismissed with no orders on costs.
7. In conclusion, the petition is hereby dismissed with no costs and the Deputy Registrar to return the Court file to the 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**

