



**Barasa v Public Service Board County Government of Trans-Nzoia & 4 others
(Petition 2 of 2022) [2024] KEELRC 13399 (KLR) (5 December 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13399 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KITALE
PETITION 2 OF 2022
MA ONYANGO, J
DECEMBER 5, 2024**

BETWEEN

SILAS W BARASA PETITIONER

AND

**PUBLIC SERVICE BOARD COUNTY GOVERNMENT OF TRANS-
NZOIA 1ST RESPONDENT
COUNTY GOVERNMENT OF TRANS-NZOIA 2ND RESPONDENT
ALBERT SOITA 3RD RESPONDENT
COUNTY GOVERNMENT OF TRANS-NZOIA 4TH RESPONDENT
COUNTY ASSEMBLY OF TRANS-NZOIA 5TH RESPONDENT**

RULING

1. There are 2 applications for my consideration in this ruling. The first is dated 6th March, 2024 and is filed by the 1st Respondent who seeks the following orders:
 1. That this application be certified as urgent and the same be heard expeditiously.
 2. The firm of Anassi Momanyi & Company Advocates be allowed to represent the 1st Respondent in place of Z K Yego Law Offices
 3. That the honourable court be pleased to review the judgment of the Hon Lady Justice M. Onyango which was delivered on 30th November, 2023 Directing the Public Service Commission to immediately send a suitable officer to fill the position of County Secretary Trans-Nzoia County in acting capacity and to take steps in conjunction with the 1st 2nd 4th and 5th Respondents to substantively fill the position within the next 6 months.



4. The honourable court do find that the intended declaration and direction or finding was to the effect that the Public Service Commission to immediately send a suitable officer to fill the position of the County Public Service Board Secretary Trans-Nzoia County in an acting capacity and to take steps in conjunction with the 1st 2nd 4th and 5th Respondents to substantively fill the position within the next 6 months.
 5. The action taken by the 2nd Respondent in appointing Mr. Felix Sialo, the Director Communications to perform or discharge the functions of the County Public Service Board Secretary Trans-Nzoia County be declared Contrary to the honourable courts judgment.
 6. The honourable court be pleased to make such further orders as are necessary for the ends of justice to be met.
 7. Costs of the application be in the cause
2. The grounds in support of the application are that:
- a. The petitioner filed a petition seeking a declaration that the 1st Respondent was and is unlawfully and improperly constituted.
 - b. It was also the petitioner's case that the 3rd Respondent who is the acting secretary of the Respondent did not undergo competitive process as required by section 58(2) of the [County Governments Act](#) and had been holding the said position in acting capacity since 2018.
 - c. The honourable court in its judgment held that the only prayer that had been proved by the petitioner is that the continued appointment of the 3rd Respondent as the acting secretary of the 1st Respondent is against the express provisions of section 34 of the [Public Service Commission Act](#).
 - d. The counsel for the 1st Respondent has consented to change of representation
 - e. There is need to for the 1st Respondent change representation, after judgment
 - f. The honourable court in paragraph 80 of its judgment declared that the 3rd Respondent was irregularly in office.
 - g. The honourable court in paragraph 81 of its judgment proceeded to direct the Public Service Commission to immediately send a suitable officer to fill the position of County Secretary Trans-Nzoia County in acting capacity and to take steps in conjunction with the 1st 2nd 4th and 5th Respondents to substantively fill the position within the next 6 months. h) The honourable court erroneously directed that the office that was to be filled was that of the County Secretary Trans-Nzoia County instead of that of the County Public Service
 - h. Board Secretary Trans-Nzoia County.
 - i. That the Public Service Commission has been unable to act on the judgment in the light of the manifest and unintended error.
 - j. The 2nd Respondent has gone ahead to appoint somebody who is unqualified to fill the position of the County Public Service Board Secretary contrary to the judgment of the honourable court.
 - k. There is an error apparent on the face of the record.



1. The 1st respondent is aggrieved with the decision of the honourable court on account of the error.
3. The Petitioner responded to the application by his replying affidavit sworn on 8th April, 2024 in which he states that he is not opposed to prayer 2 of the application.
4. The Petitioner however opposes prayers 3, 4, 5 and 6 of the application. He states that the 1st Respondent having lodged an appeal against the decision of this court, it has no right to file an application for review of the same decision, unless he withdraws the appeal.
5. That the Civil Procedure Rules further do not contemplate filing of an application for review and an appeal simultaneously. That the application does not otherwise meet the threshold for review of judgment.
6. A copy of Notice of Appeal dated 13th December, 2023 filed by the 1st, 2nd and 3rd Respondents through Z. K. Yego Law Offices is annexed to the Petitioners affidavit as exhibit “SWB” thereof.
7. The 1st Respondent filed submissions in support of the Application in which it points out that the court erroneously directed the Public Service Commission to temporarily fill the position of the County Secretary instead of the office of the secretary to the County Public Service Board.
8. It is submitted that it is obvious that what the petition is about is the office of the secretary to the County Public Service Board as the office of the secretary to the County Government was not the subject of the litigation. That the court should have no difficulty in correcting this error in its decision.
9. It is further the submission of the 1st Respondent that the 2nd and 4th Respondents have in utter disregard of the court’s decision, appointed one Felix Sialo, the Director of Communications, to perform and discharge the functions of the secretary County Public Service Board yet he does not have qualifications to hold the position as he is not a member of the Institute of Certified Public Secretaries as per law contemplated.
10. It is submitted that the conduct of the 2nd and 4th Respondents is contemptuous of the court’s judgment, that Felix Sialo should be removed from office for the same reasons as Albert Soita. That the court should give a structural interdict and ensure the office of secretary of the County Public Service is advertised and filled within specific timelines to enable the 1st Respondent discharges its functions.
11. The second application dated 11th March 2024 is filed by the 4th Respondent who seeks the following orders:
 - a. That this application be certified as urgent suitable to be placed before the duty court immediately and service of the same be dispensed with.
 - b. That pending interpartes hearing and determination of this application, the honourable Court be pleased to grant leave to the firm of Kemunto Moenga & Company Advocates to come on record for the 4th Respondent/Applicant in place of the firm of Oringe Waswa & Opany Advocates.
 - c. That pending interpartes hearing and determination of this application, there be stay of enforcement of the judgment of the honourable Court delivered on 30th November, 2023.
 - d. That pending interpartes hearing and determination of this application, this honourable court be pleased to issue orders that status quo currently existing be maintained by all parties.



- e. That this honourable Court be pleased to correct the incidental error on the face of the judgment to the extent that the Court referred to the Secretary to Trans-Nzoia County Public Service Board as the County Secretary Trans-Nzoia County
 - f. That this honourable court be pleased to enlarge the time within which the 4th Respondent/Applicant can lodge and serve the Notice of Appeal and lodge the Appeal.
 - g. Costs of this Application be provided for.
12. The application is supported by the grounds at the foot thereof as follows:
- a. The judgment of this honourable Court delivered on 30th November, 2023 contains an incidental error which requires urgent rectification by the honourable court. In the judgment, the honourable Court upon determining that the 3rd Respondent, the erstwhile Secretary to the Trans-Nzoia Public Service Board was irregularly in office, Ordered the Public Service Commission to immediately appoint an officer to fill the position of 'County Secretary Trans-Nzoia County' in acting capacity and to 'take steps in conjunction with the 1st 2nd 4th and 5th Respondents to substantively fill the position..."
 - b. It is apparent that the intention of the Court was to direct the appointment of the Secretary to the Trans-Nzoia Public Service Board and not the County Secretary Trans Nzoia County. As a result of the error, the 4th Respondent has encountered insurmountable difficulty and is incapable of complying with the judgment herein.
 - c. Furthermore, the 4th Respondent is aggrieved by the holding of the Court to the extent inter alia, that the honourable Court directed the Public Service Commission to appoint in acting capacity an officer of the 4th Respondent and to participate in recruitment of the substantive office holder, which holding is unconstitutional and an ostensible usurp of the constitutional powers of the 4th Respondent.
 - d. The 4th Respondent's seeks leave of this honourable Court to appeal the judgment of the honourable Court out of time. The delay in lodging the intended appeal out of time was occasioned by the indolence and unresponsiveness of the erstwhile counsel for the 4th Respondent/Applicant which resulted in the 4th Respondent/Applicant accessing the Judgment belatedly.
 - e. The 4th Respondent/Applicant did inquire on the progress of the matter from its erstwhile Counsel, which inquiry did not elicit a response therefrom.
 - f. Notwithstanding the delay in accessing the Judgment, the 4th Respondent has moved expeditiously without undue delay to lodge the instant Application.
 - g. The intended appeal raises substantial constitutional and legal issues that need to be heard and determined.
 - h. The appeal is arguable with high chances of success.
 - i. In order to prevent the ends of justice from being defeated, it is in the interest of justice that the orders sought be granted.
 - j. No prejudice will be occasioned to the parties herein in the event the orders sought are granted.
 - k. This application has been brought expeditiously and without undue delay.



- l. It is therefore in the interest of justice that this application be allowed and the orders sought granted.
13. The Application is further supported by the affidavit of Truphosa Amere, the County Secretary of the 4th Respondent in which she reiterates the grounds at the foot of the application.
14. Truphosa Amere swore a supplementary affidavit on 25th June, 2024 in which she attached the letter appointing the firm of Kemunto Moenga to represent the 4th Respondent. Notably there is no evidence that the said letter is copied to the advocates on record for the 4th Respondent Oringe Waswa & Opany Advocates.
15. The application is opposed by the 1st Respondent who filed a replying affidavit of Peter M. Wamoto, the Chairperson to the 1st Respondent who states that the application is incompetent and an abuse of court process on grounds that:
 - a. Leave to appeal out of time to the court of appeal can only be granted by the Court of Appeal;
 - b. The 4th Respondent has to date not filed the requisite notice of appeal;
 - c. The 4th Respondent has always been aware of the contents of the judgment of the honourable court and had copy as evidenced from the numerous correspondences over the same.
16. He states that the status quo that ought to be maintained is to the effect that the 1st Respondent has no secretary.
17. He deposes that no notice of appeal has been filed by the 4th Respondent, that the application for enlargement of time ought to be made to the Court of Appeal under the Court of Appeal Rules as this court lacks jurisdiction to extend time within which a notice of appeal can be filed.
18. He further deposes that there is already an application filed by the 1st Respondent seeking to have the error in the judgment reviewed and rectified and that nothing is unconstitutional in the decision/ judgment of this court.
19. He deposes that the 4th Respondent was all along aware of the judgement of this court as demonstrated in the correspondence at annexures 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 of the affiant's Replying Affidavit.
20. That there was inordinate delay in filing the application. That the 4th Respondent has been indolent and equity does not aid the indolent.
21. That the 4th Respondent can further not seek review and appeal simultaneously.
22. It is the affiant's deposition that the intended appeal is not arguable.

Determination

23. I have considered the applications, the grounds and affidavits both in support and against the same and the submissions of parties in respect of the two applications. It is noteworthy that only the 1st Respondent filed submissions in respect of its application dated 6th March, 2024 while both the 1st Respondent and 4th Respondent filed submissions in respect of the 4th Respondent's application dated 11th March, 2024.
24. The issues arising for consideration from both applications are the following:
 - i. Whether there is an error on the face of the record of the judgment herein delivered on 30th November, 2023 that ought to be rectified,



- ii. Whether the 4th Respondent ought to be granted leave to appeal out of time against the said judgment,
 - iii. Whether this court has jurisdiction to grant leave to appeal out of time,
 - iv. Whether this court should grant leave to the 4th Respondent to appeal out of time,
 - v. Whether the appointment of Felix Sialo as secretary to the County Public Service Board, Trans-Nzoia County was in disobedience of this court's orders and therefore null and void,
 - vi. Whether the 4th Respondent has an arguable appeal
25. On the 1st issue, both parties are in agreement that the petition herein questioned the appointment of Albert Soita, the 3rd Respondent herein, as the secretary to the 1st Respondent in acting capacity from 2018.
26. Under issues for determination the court framed issue No. 3 as:
- Whether the prolonged holding of office by the 3rd Respondent in the acting capacity as the secretary of the 1st Respondent is proper.
27. At paragraph 67 the court found as follows:
- I find that all the Respondents are in violation of the clear and unequivocal provisions of section 34 of the Public Service Act and in retaining the 3rd Respondent in the position of acting county secretary of the county of Trans Nzoia. By extension, they are also in violation of both Articles 10 and 232 of the Constitution on the national values and principles of governance and values and principles of public service which include inter alia, the rule of law, good governance, professional ethics, transparency, accountability for administrative acts and fair competition and merit in appointments and promotion.
28. At paragraph 80 of the judgment the court stated:
- The only prayer that has been proved by the Petitioner is that the continued appointment of the 3rd Respondent as the acting secretary of the 1st Respondent is against the express provisions of section 34 of the Public Service Commission Act. I accordingly declare that the 3rd Respondent is irregularly in office.
29. The judgment of the court was unequivocally clear of the decision of the court. Any person reading the judgment would not have any doubt as to what the decision of the court was, especially with the clarity at paragraphs 67 and 80 thereof.
30. At paragraph 81 the court directed:
- As provided under section 34(6) of the Public Service Commission Act and in view of the indication by the Respondents that they have been unable to fill the position, the Public Service Commission is hereby directed to immediately send a suitable officer to fill the position of County Secretary Trans-Nzoia County in acting capacity and to take steps in conjunction with the 1st, 2nd, 4th and 5th Respondents to substantively fill the position within the next 6 months.



31. It is obvious and would be obvious to any person reading the judgment that the reference by the court to County Secretary Trans-Nzoia County at paragraph 81 of the judgment was an error and was in fact a reference to and should have read Secretary, County Public Service Board, Trans-Nzoia County
32. The 4th Respondent was also very clear about the judgment of the court. That is why in the application filed by the 4th Respondent prayer 5 thereof reads:

That this honourable Court be pleased to correct the incidental error on the face of the judgment to the extent that the Court referred to the Secretary to Trans-Nzoia County Public Service Board as the County Secretary Trans-Nzoia County

33. The letter from Charles Wabuoba Walioli, the County Attorney, Trans Nzoia County, dated 15th February, 2024, addressed to the Secretary/CEO, Public Service Commission reads as follows:

County Government of Trans Nzoia

Office of the County Attorney

15th February, 2024

Our ref: CGTN/CA/05/VOL 1 (1)

Your Ref: PSC/LEG/GEN/23/VOL.III

The secretary/CEO Public Service Commission

Commission House, Harambee Avenue

Box 30095-00100

Nairobi

Re: Appointment of the Board Secretary, Trans Nzoia County Public Service Board in an Acting Capacity Pursuant to the Orders of the Court In Kitale ELRC Pet. No. 2 of 2022: Silas M. Barasa vs Trans Nzoia CPSB And 4 Others

The above matter and your letter dated 9th February, 2024 addressed to the Chairperson Trans Nzoia County Public Service Board refers.

That we have duly noted the contents therein and we wish to respond as follows:

That under paragraph 81 of the judgment, the court directed the Public Service Commission to immediately send a suitable officer to fill the position of County Secretary Trans Nzoia County in acting capacity.

That we wish to confirm to your good commission that the position of County Secretary, Trans Nzoia County has since been filled substantively (enclosed find a gazette Notice No. 13286 to that effect).

That in view of the above, this instant judgment in respect thereof is overtaken by events.

We further wish to bring to your attention that the appointing powers of the Public Service Commission have both constitutional and statutory limitations.

Whereas Articles 234(2)(a) of the Constitution of Kenya mandates the Commission to establish and abolish offices in the Public Service, to appoint persons to hold or act in those offices and to confirm appointments, Article 234(3)(d) excludes County Government as from the list of Public Offices over which the Public Service Commission can exercise the aforementioned mandated.



Further, Article 2 (1) provides that “Constitution is the Supreme Law of the Republic and binds all persons and all state organs at both levels of Government”

And further Article 2(1) of the Constitution, provides that “Any law that is inconsistent with this constitution is void to the extent of the inconsistency, and any act or omission in contravention of this constitution is invalid”.

Moreover, the appointing powers of the Public Service Commission at section 34 subject to the provisions of Section 33 (1) and (2) of the Public Service Commission Act which states as follows;

“The Commission shall have such powers as may be necessary to discharge its functions under Article 234(2)(a)(ii) of the Constitution.

“The Commission’s authority under sub section (1) shall be exercised at the request of the authorized officer of the public body to which the appointment needs to be made”.

In a nutshell, the Public Service Commission is precluded by law to make an acting appointment over the position of Secretary to the County Public Service Board as this will amount to usurping the appointing of the County Government of Trans Nzoia.

Appointment of Secretary to the County Public Service Board

Section 58 (1) (c) of the County Government Act is very clear that the holder of the post of Secretary to the County Public Service Board is to be nominated and appointed by the County Governor with approval of the County Assembly.

Appointment on acting capacity

We also wish to draw your attention to section 64 (2) and (3) of the County Governments Act, No.17 of 2012, accordingly we cannot belabour further,

In conclusion, the County Government Trans Nzoia has been properly advised and shall fill the said position of Secretary to the County Public Service Board in compliance with the Constitution and the law.

Signed

Charles Wabwoba Walioli

County Attorney – Trans Nzoia County

Cc

H.E. The Governor

The County Secretary

Chairperson – Trans Nzoia County Public Service Board

Mr. Felix Sialo – Director Communication

34. The letter is not only deceitful and a mockery of this court’s judgment, authority and dignity. It is disrespectful to the office of the Secretary/CEO, Public Service Commission and a disgrace to the office held by the said Charles Wabuoba Walioli as the County Attorney, Trans Nzoia County. It is further contemptuous of this court. The letter was deliberately intended to confuse and mislead the Secretary/CEO, Public Service Commission. This is especially so as the said Charles Wabuoba Walioli as the County Attorney, Trans Nzoia County had been copied in the letter dated 8th February, 2024 from the Peter M. Wamoto, Board Chairperson, Trans Nzoia County Public Service Board, which reads:



County Government of Trans Nzoia

County Public Service Board

Our Ref: CGTN/CPSB/11/2/13 Date:8th February, 2024

The County Government of Tans Nzoia

Re: Performance of Duties of Board Secretary

Reference is made to your letter Ref: CGTN/CS/30 dated 5th February, 2024 regarding the above subject matter.

Going by the spirit of the High Court Judgement, notwithstanding the likely error in the position highlighted in the judgement, and given that the judgement still stands unchallenged, the Public Service Commission was directed at paragraph 81 to immediately send a suitable officer to fill the position of Board Secretary, Trans Nzoia County in acting capacity and to take steps in conjunction with the 1st , 2nd 4th and 5th Respondents to substantively fill the position within 6 months, w.e.f. 30th November, 2023.

The appointment of Felix Sialo, P/NO. 20230192936 to perform duties of Board Secretary for a period of three (3) months therefore negates the express directive of the Court that the Public Service Commission sends a suitable officer to fill the position of Board Secretary in acting capacity, and it is on this basis that the Board, with utmost respect declines the appointment of Mr. Sialo to perform the duties of Board Secretary.

The appointment of Board Secretary either in acting capacity or substantively should be done in compliance with the Court directive and the law. Above all, one should meet the specified requirements for appointment of Board Secretary as per Section 58(1) (c) of the County Governments Act, 2012.

Signed

Peter M. Wamoto

Board Chairperson

Trans Nzoia County Public Service Board

CC: CEC Member for Governance and Public Service Management

County Attorney

Chief Officer, Public Service Management

35. The said Charles Wabuoba Walioli as the County Attorney, Trans Nzoia County was also in receipt of a letter dated 9th February, 2024 from FCS. Dr. Simon K. Rotich, EBS, MBS, CBS, Secretary/CEO, Public Service Commission in which Dr. Rotich wrote:

Public Service Commission

9th February, 2024

Our Ref: PSC/LEG/GEN/23/VO.III (62)

Your Ref: CGTN/CPSB/41 VOL. 3/19

Mr. Peter M. Wamoto

Chairperson

Trans Nzoia County Public Service Board



County Government of Trans-Nzoia

Box 4210-30200

Kitale

cpsbtranszoia@gmail.com

Appointment of the Board Secretary, Trans-nzoia County Public Service Board in a Acting Capacity Pursuant to the Order of the Court in Kitale Elrc Pet. No. 2 of 2022 Silas M. Barasa vs Trans-nzoia CPSB & 4 Others

Introduction

This has reference to your letter dated 11th January, 2024 in which you have brought to the commission's attention, the judgment in the above cited petition which had directed this commission to send a suitable officer to fill the position of Board Secretary Trans-Nzoia County Public Service Board in an acting capacity.

In the judgment the court pronounced itself inter alia as follows in its final orders:

- a. As provided under section 34(6) of the *Public Service Commission Act* and in view of the indication by the Respondents that they have been unable to fill the position, the Public Service Commission is hereby direct to immediately sent a suitable officer to fill the position of County Secretary Trans-Nzoia County in acting capacity.
- b. The Public Service Commission is further directed to take any other remedial measures to ensure compliance by the Respondents, including surcharging any officer found to have expended public funds irregularly.
- c. The case will be fixed for mention in six months to confirm compliance. Further reference is made to your letter 7th February, 2024 Ref. No. CGTN/CPSB/41 Vol 3/20 in which you have notified the Commission that despite the above highlighted judgment and directions therefrom:
 - a. Vide a letter dated 5th February, 2024 Ref. No. CGTN/CS/30 (copy availed to the Commission). The County Secretary Mrs. Truphosa I.O Amere, HSC has proceeded to appoint one Mr. Felix Sialo, the Director, Communications to perform the duties of Board Secretary of Trans-Nzoia County Public Service Board for a period of three (3) months with effect from 5th February, 2024.

The Commission's guidance on the issue

The Commission had read the judgment referred to above and notes that after arriving at its findings, the court proceeded to declare that Mr. Albert Soita was irregularly in office as the acting Secretary to the CPSB.

It is further noted that whereas the issue in dispute concerned the prolonged acting in the position of Secretary to the County Public Service Board as a result of which the court declared that Mr. Albert Soita was irregularly in office as the acting secretary to the CPSB in the final orders directed at he Commission for implementation the court erroneously referred to the office of the County Secretary as opposed to that of the Secretary to the CPSB.



Accordingly, the Commission directs and guides as follows;

- b. That the Board moves the court urgently so that the part of the judgment in which the court erroneously referred to the office of County Secretary as opposed to that of the Secretary to the CPSB be reviewed and rectified.
- c. That pursuant to the judgment of the court aforementioned, Mrs. Truphosa I.O Amere, HSC. The County Secretary/Head of the County Public Service has no legal authority to appoint the said Mr. Felix Sialo or any other person to the position of secretary to the County Public Service Board in an acting capacity. The action of the County Secretary in that regard as contained in her letter of 5th February, 2024 is illegal and it constitutes contempt of court for which punishment is contemplated.
- d. The Commission is in the process of complying with the judgment and orders of the court and will communicate its decision in due course. In the meantime, that said Mr. Felix Sialo is directed to refrain from acting in the position of Secretary to the County Public Service Board. In other words, Mr. Sialo is hereby directed not to comply with the unlawful appointment as conveyed by the County Secretary.
- e. For the avoidance of any doubt, any county public officer in the County Government of Trans-Nzoia is hereby directed not to comply with the letter dated 5th February, 2024 Ref. CGTN/CS/30 from the County Secretary, Mrs. Truphosa I.O Amere, HSC appointing Mr. Felix Sialo, Director Communication to perform the duties of Board Secretary Trans-Nzoia County Public Service Board until further directions from the Commission.
- f. As per the judgement and order of the court, specifically at paragraph 82 thereof the Commission will not hesitate to take any other remedial measures to ensure compliance by the Respondents, including surcharging any other officer found to have expended public funds irregularly as a result of any illegal actions including acting on the unlawful directive/appointment contained in the letter dated 5th February, 2024 Ref. CGTN/CS/30 from the County Secretary, Mrs. Truphosa I.O. Amere, HSC appointing Mr. Felix Sialo as Acting Board Secretary to Trans-Nzoia County Public Service Board is hereby quashed for having been issued without legal authority.

Be guided accordingly and take necessary action.

Signed

FCS, Dr. Simon K. Rotich, EBS, MBS, CBS

Secretary/CEO

Public Service Commission

Copy to:

Mrs. Truphosa I.O. Amere, HSC

County Secretary/Head of County Public Service



Trans-Nzoia County Government

Box 4211-30200

Kitale (info@trans-nzoia.go.ke)

The county Attorney

Trans-Nzoia County Government

Box 4211-30200

Kitale

Mr. Felix Sialo

Director Communication

Trans-Nzoia County Government

Kitale

36. The said Charles Wabuoba Walioli as the County Attorney, Trans Nzoia County further, in violation of the orders of this court, and as the principal legal advisor of the County Government, failed to advise and/or misadvised the County Secretary, Truphosa Amere, Head of Public Service, Trans Nzoia County, to appoint Felix Soita, Director, Communication, to perform the duties of Board Secretary, County Public Service Board, Trans Nzoia in disobedience of this court's orders as directed in the judgment.
37. Any actions taken by the 2nd, 4th and 5th Respondents in disobedience of this court's orders as contained in the judgment dated and delivered on 30th November, 2024 are null and void and of no legal consequence.
38. Felix Soita is directed to immediately relinquish the position of acting secretary, County Public Service Board Trans Nzoia County. If the position of Secretary, Public Service Board Trans Nzoia County has not been substantively filled in the manner provided in section 58 and 58A of the County Government Act, the Public Service Commission is directed to comply with the orders of the court as per judgment dated and delivered on 30th November, 2023 as corrected by this ruling.
39. The actions and/or omissions by Charles Wabuoba Walioli as the County Attorney, Trans Nzoia County are in violation of the court orders in the judgment delivered on 30th November, 2023.
40. The second application is filed by the 4th Respondent, the County Government of Trans Nzoia. In view of the fact that the 4th Respondent is in disobedience of this court's orders that is the subject of the prayers in its application dated 11th March, 2024, the said 4th Respondent shall not have audience before this court unless and until it purges the contempt.
41. Charles Wabuoba Walioli, the County Attorney, Trans Nzoia County is directed to appear in court in person to show cause why this court should not declare him unfit to hold any public office including the office of County Attorney, Trans Nzoia County, and why he should not be removed from office under section 13(a), (b) and (d) of the Office of the County Attorney Act.
42. A copy of this ruling to be served upon the Secretary/CEO, Public Service Commission.
43. Charles Wabuoba Walioli, the County Attorney, Trans Nzoia County, is also to be personally served through the court process server, with this ruling and an order extracted by the Deputy Registrar with



summons to appear in court on a date given by the Deputy Registrar. A copy of the Affidavit of service filed.

44. In conclusion I make the following orders:

a. The judgement herein dated and delivered on 30th November, 2023 is hereby reviewed at paragraphs 67 and 81 thereof to correct a typographical error to read as follows:

67. I find that all the Respondents are in violation of the clear and unequivocal provisions of section 34 of the Public Service Act and in retaining the 3rd Respondent in the position of Acting Secretary Of The County Public Service Board of Trans Nzoia. By extension, they are also in violation of both Articles 10 and 232 of the Constitution on the national values and principles of governance and values and principles of public service which include inter alia, the rule of law, good governance, professional ethics, transparency, accountability for administrative acts and fair competition and merit in appointments and promotion.

81. As provided under section 34(6) of the Public Service Commission Act and in view of the indication by the Respondents that they have been unable to fill the position, the Public Service Commission is hereby directed to immediately send a suitable officer to fill the position of The Secretary, County Public Service Board, Trans-nzoia County in acting capacity and to take steps in conjunction with the 1st, 2nd, 4th and 5th Respondents to substantively fill the position within the next 6 months.

b. Felix Soita is directed to immediately relinquish the position of acting secretary, County Public Service Board Trans Nzoia County.

c. If the position of Secretary, Public Service Board Trans Nzoia County has not been substantively filled in the manner provided in section 58 and 58A of the County Government Act, the Public Service Commission is directed to comply with the orders of the court as per judgment dated and delivered on 30th November, 2023 as corrected by this ruling.

d. The 4th Respondent is in disobedience of this court's orders that is the subject of the prayers in its application dated 11th March, 2024, and the said 4th Respondent shall not have audience before this court unless and until it purges the contempt.

e. The actions and/or omissions by Charles Wabuoba Walioli as the County Attorney, Trans Nzoia County are in violation of the court orders in the judgment delivered on 30th November, 2023.

f. Charles Wabuoba Walioli, the County Attorney, Trans Nzoia County is directed to appear in court in person to show cause why this court should not declare him unfit to hold any public office including the office of County Attorney, Trans Nzoia County, and why he should not be removed from office under section 13(a), (b) and (d) of the Office of the County Attorney Act.

g. A copy of this ruling to be served upon the Secretary/CEO, Public Service Commission.

h. Charles Wabuoba Walioli, the County Attorney, Trans Nzoia County, is also to be personally served with this order and summons through the court process server to appear in court on 28th January, 2025.

DATED, DELIVERED AND SIGNED AT ELDORET THIS 5TH DAY OF DECEMBER, 2024.

M. ONYANGO



JUDGE

