



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Opiyo, Chairperson & 5 others v Ayacko Governor, County of Migori & 2 others  
(Petition E002 of 2023) [2023] KEELRC 256 (KLR) (31 January 2023) (Ruling)**

Neutral citation: [2023] KEELRC 256 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
PETITION E002 OF 2023**

**S RADIDO, J**

**JANUARY 31, 2023**

**IN THE MATTER OF ARTICLES 3, 10, 19, 20, 21, 22, 23, 159, 162(2)(A), 165 AND 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 OF THE CONSTITUTION OF KENYA AND IN THE MATTER OF SECTIONS 58(4)  
(A) & (5)(A), 59A, 59(1)(B), 63(1) AND 64 OF THE COUNTY GOVERNMENTS ACT AND  
IN THE MATTER OF IRREGULAR AND UNLAWFUL REMOVAL FROM OFFICE OF THE  
CHAIRPERSON AND MEMBERS OF THE MIGORI COUNTY PUBLIC SERVICE BOARD**

**BETWEEN**

**JARED ODHIAMBO OPIYO, CHAIRPERSON ..... 1<sup>ST</sup> PETITIONER  
JEMIMAH ADHIAMBO WERE, VICE-CHAIRPERSON ..... 2<sup>ND</sup> PETITIONER  
HESBON OTIENO OMWA, MEMBER ..... 3<sup>RD</sup> PETITIONER  
ENOCK ODHIAMBO ACHIENG, MEMBER ..... 4<sup>TH</sup> PETITIONER  
PHOEBE ADHIAMBO ALOO, MEMBER ..... 5<sup>TH</sup> PETITIONER  
RANGE MWITA MAROA, MEMBER ..... 6<sup>TH</sup> PETITIONER**

**AND**

**OCHILO GEORGE MBOGO AYACKO GOVERNOR, COUNTY OF  
MIGORI ..... 1<sup>ST</sup> RESPONDENT  
CHARLES OYUGI OWINO SPEAKER, COUNTY ASSEMBLY  
MIGORI ..... 2<sup>ND</sup> RESPONDENT  
HON VINCENCIA OWINO KIONGE, CLERK, COUNTY ASSEMBLY  
MIGORI ..... 3<sup>RD</sup> RESPONDENT**



## RULING

1. The petitioners were appointed as chairperson and members of the County Public Service Board, Migori (the board), effective from February 27, 2020. The petitioners were to serve for six years.
2. On or around October 11, 2022, the governor appointed Ms Judith Okinda to act as secretary/chief executive officer of the board for 60 days.
3. On or around January 16, 2023, 3 petitions were presented to the clerk of the county assembly, Migori seeking the petitioners' removal from office. The petitions were forwarded to the speaker/county assembly, and the assembly established an ad hoc committee to look into the removal petitions.
4. The same day, the 1<sup>st</sup> petitioner wrote to the clerk to request a copy of the hansard report of the proceedings of January 16, 2023.
5. On January 19, 2023, the clerk sent out invitations to the petitioners to appear before the ad hoc committee on January 26, 2023. The petitioners were also requested to make written responses not later than January 24, 2023.
6. The 5<sup>th</sup> petitioner wrote to the clerk on January 20, 2023 requesting for more time, and on or around January 20, 2023, the clerk of the county assembly wrote to her to inform her that the time for appearance had been rescheduled.
7. On the same day, the 2<sup>nd</sup> petitioner wrote to the clerk to express frustrations at the way the petitioners had been treated from January 10, 2023 to January 13, 2023.
8. The 2<sup>nd</sup> petitioner made certain demands including, return of official vehicles, withdrawal of the police from the offices of the board and access to official documents.
9. The 2<sup>nd</sup> petitioner separately requested to be given a month to appear before the ad hoc committee. The request was declined.
10. The clerk also advised the 2<sup>nd</sup> petitioner that the acting secretary of the board would furnish her with all the documents she had requested for.
11. On January 25, 2023, the petitioners lodged a petition with the court alleging that the respondents were interfering with their independence contrary to the law and that the appointment of an acting secretary to the board was invalid.
12. The petitioners also challenged the attempt to remove them from office.
13. Filed together with the petition as a motion seeking orders:
  - (1) ...
  - (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 injuncting the commenced removal of the petitioners/applicants and any processes appurtenant thereof, including barring the hearing by the ad hoc committee considering petitions on the removal of members of Migori county public service board scheduled for Thursday the January 26, 2023.



- (3) 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 order directed at the respondents staying, restraining and injuncting their interference with the petitioners discharge of their roles as members of the Migori county public service board and according them all necessary facilities to resume and perform their positions and discharge their roles.
  - (4) ....
  - (5) ....
  - (6) ...
  - (7) ...
  - (8) ...
  - (9) ...
  - (10) That the costs of this application be provided for on a full indemnity basis.
14. When the petition and motion was placed before the court on January 25, 2023, it directed that the respondents be served.
  15. The respondents filed grounds of opposition to the motion on the morning of January 26, 2023, and when the application was called out, they sought for more time to file an affidavit responding to the facts.
  16. However, due to the nature of the orders sought, the court directed the parties to make oral submissions as to whether any interim injunctive orders should be given at this stage.
  17. The parties made oral submissions which the court has considered together with the record and the applicable law.
  18. At this interlocutory stage, the court must caution itself not to enter into the arena of disputed facts before a full interrogation of the facts as presented by both sides.
  19. The question of whether the respondents have interfered with the independence of the petitioners by appointing an acting secretary to the board, attempted to direct the board to establish offices within the county public service or countermanded decisions of the board, or used the police to interfere with the petitioners performance of functions belong to realm of disputed facts.
  20. Section 15 of the [County Governments Act](#) gives legal standing to any person to petition the county assembly to consider any matter within the mandate of the assembly.
  21. The 3 petitions placed before the assembly thus have legal standing.
  22. In dealing with the petition(s), the county assembly is regulated and guided by the [Petition to County Assemblies \(Procedure\) Act, 2020](#), the standing orders and other applicable laws.
  23. Section 58(5) of the [County Governments Act](#) envisages the removal of a member of the county public service board on the grounds outlined in article 251(1) of the [Constitution](#).
  24. A person desirous of having a member of the board should present a petition to the county assembly through the clerk and speaker.



25. Although it is admitted that 3 petitions for the removal of the petitioners was presented through the clerk, copies of the petitions have not yet been placed before the court.
26. In determining the 3 petitions, the county assembly is bound to strictly comply with the provisions of the County Governments Act, the Petition to County Assemblies (Procedure) Act, 2020 and the relevant standing orders.
27. The petitioners did not place before this court the standing orders of the county assembly of Migori, but section 5(3) of the Petition to County Assemblies (Procedure) Act, 2020 oblige the County Assembly or its committee to afford the persons likely to be affected by the petition to be heard.
28. In the case at hand, the petitioners were invited to appear before the ad hoc committee of the county assembly and give oral representations. The petitioners had earlier on been requested to make written representations.
29. In dealing with the 3 petitions, the county assembly is exercising a quasi-judicial function and, therefore, it is bound to observe all the constitutional and lawful protections assured all public officers including the petitioners by article 236 of the Constitution.
30. Despite making allegations that their rights to due process have been or are threatened to be violated, the petitioners did not provide any evidence of such likely violation.
31. The petitioners did not also disclose which legal provisions of the County Governments Act, the Petition to County Assemblies (Procedures) Act or the standing orders the respondents had violated in accepting and processing the petitions in order to establish a *prima facie* case.
32. Equally, the petitioners did not show that apart from the select committees contemplated by the standing orders, the county assembly is bereft of legal power to resolve to constitute an ad hoc committee to inquire into any specific question.
33. Since, the county assembly has the legal mandate to consider the petitions of whatsoever nature from the public within fixed timelines, this court is not convinced that it should interfere in that process at its infancy stages without cogent evidence of violations of due process or violations by the respondents.
34. Consequently, the court makes the following orders:
  - i. Invitation to issue interim injunctive orders is declined.
  - ii. The motion and petition to be taken together.
  - iii. The respondents to file and serve responses on or before February 15, 2023.
  - iv. The petitioners to file and serve any further affidavit together with submissions on or before February 28, 2023.
  - v. The respondents to file and serve submissions before March 15, 2023.
35. The petition to be mentioned on March 16, 2023 to confirm compliance ad to schedule judgment date.

**DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 31ST DAY OF JANUARY 2023.**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

**Appearances**



For Petitioners/applicants Mr Lusi instructed by C.M. Advocates LLP

For Respondents Mr Okong'o instructed by Okong'o Wandago & Co. Advocates

Court Assistant Chrispo Aura

