



**Nyang'ongo & another v Cabinet Secretary, Ministry of Education & 6 others
(Petition E007 of 2022) [2023] KEELRC 117 (KLR) (26 January 2023) (Ruling)**

Neutral citation: [2023] KEELRC 117 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
PETITION E007 OF 2022
CN BAARI, J
JANUARY 26, 2023**

BETWEEN

EVANS MORARA NYANG'ONGO 1ST PETITIONER

CHARLES MORARO MOGUNDE 2ND PETITIONER

AND

CABINET SECRETARY, MINISTRY OF EDUCATION 1ST RESPONDENT

**PRINCIPAL SECRETARY, MINISTRY OF EDUCATION, DEPARTMENT OF
VOCATIONAL & TECHNICAL TRAINING 2ND RESPONDENT**

ATTORNEY GENERAL 3RD RESPONDENT

**DIRECTOR, DIRECTORATE OF TECHNICAL EDUCATION, MINISTRY OF
EDUCATION 4TH RESPONDENT**

**ELICANAH M MISORI, DIRECTOR, HUMAN RESOURCES
MANAGEMENT 5TH RESPONDENT**

**CHAIRMAN, KISII NATIONAL POLYTECHNIC GOVERNING
COUNCIL 6TH RESPONDENT**

PRINCIPAL, KISII NATIONAL POLYTECHNIC 7TH RESPONDENT

RULING

1. The respondents' application is dated July 13, 2022. The applicants/respondents seek the following orders: -
 - i. Spent



- ii. that the court be pleased to set aside the status quo orders granted on March 17, 2022, by Hon. Lady Justice Hellen Wasilwa, sitting at Nakuru.
- iii. The cost be provided for.
2. The application is supported by grounds on the face of the motion and the affidavit of Moimbo Momanyi, sworn on July 13, 2022. The crux of the motion being that the petition and two applications for interim orders filed with the petition, are founded on three affidavits that were purportedly commissioned by one Advocate Samson M. Sagwe, but who has since confirmed not having signed the affidavits, and that the stamps on the affidavits do not belong to his Law Firm.
3. That the interim orders of status quo were granted on the basis of the affidavits which are of no legal effect.
4. The Petitioners opposed the application, and argued that they filed a constitutional petition, seeking various constitutional orders, and which could be filed without a supporting affidavit in accordance with rule 11(1) of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules of 2013.
5. The petitioners further argue that the objection raised does not meet the standards set in *Mukisa Biscuits Manufacturing Company Limited vs. West End Distributors* (1969) EA 696, in that there are no pure points of law raised.
6. Parties canvassed the application through written submissions which have been duly considered.

Determination

7. The status quo order subject of this application was to stay the deployment and/or transfer decisions of the respondents pending hearing of the applications and the transfer of the suit to ELRC Kisumu. The order stated thus: -

“Status quo be maintained pending the hearing of the applications dated 1/2/2022 and 4/3/2022 hereto attached and marked MM-1”
8. The court record indicates that the petitioners have since withdrawn the application dated 4/3/2022. The application of 1/2/2022 seeks similar orders as those in the motion dated September 29, 2022, which has also since been concluded and a ruling delivered.
9. The orders sought in the instant application, are thus overtaken by events on account of a ruling rendered by this court on December 1, 2022, in this matter. There are therefore, no live orders- status quo or otherwise for this court to set aside.
10. The application is dismissed.
11. Costs shall abide the petition.
12. Orders accordingly.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 26TH DAY OF JANUARY, 2023.

CHRISTINE N. BAARI

JUDGE

Appearance:



Mr. Obiero present for the Petitioners

Mr. Moimbo present for Respondents

Ms. Christine Omollo -C/A

