



REPUBLIC OF KENYA



KENYA LAW
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**Bosire & 4 others v Nyaribo & 8 others (Petition 010 of 2022)
[2023] KEELRC 99 (KLR) (25 January 2023) (Ruling)**

Neutral citation: [2023] KEELRC 99 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
PETITION 010 OF 2022**

S RADIDO, J

JANUARY 25, 2023

**IN THE MATTER OF CONTRAVENTION OF FUNDAMENTAL RIGHTS
AND FREEDOMS PURSUANT TO ARTICLES 2, 3, 6, 10, 19, 20, 21, 22, 2, 47, 48, 159, 162,
179(7), 182(2) & (3) OF THE CONSTITUTION OF KENYA**

AND

IN THE MATTER OF SECTIONS 30(D) AND 35(3) OF THE COUNTY GOVERNMENTS ACT

BETWEEN

**DOUGLAS OSEKO BOSIRE 1ST PETITIONER
JOHN MOENGA OMANWA 2ND PETITIONER
JOHN MOENGA OMANWA 3RD PETITIONER
PETER MUGA OMWANZA 4TH PETITIONER
ZABLON OERO ONCHIRI 5TH PETITIONER**

AND

**H.E. AMOS KIMWOMI NYARIBO GOVERNOR, NYAMIRA
COUNTY 1ST RESPONDENT
COUNTY GOVERNMENT OF NYAMIRA 2ND RESPONDENT
COUNTY ASSEMBLY OF NYAMIRA 3RD RESPONDENT
HON ATTORNEY GENERAL 4TH RESPONDENT
GLADYS MOMANYI 5TH RESPONDENT
M.S. EMILY MORAA ONGAGA 6TH RESPONDENT
THOMAS NYARIKI 7TH RESPONDENT**



JONES OMWENGA 8TH RESPONDENT

SAMUEL MAIKO 9TH RESPONDENT

RULING

1. The petitioners were appointed as County Executive Committee members, Nyamira. The appointing Governor, however, died before the end of his term of office. The then Deputy Governor (the 1st respondent) herein assumed office and appointed new County Executive Committee members.
2. The petitioners sued (Kericho) to quash the appointments and to be allowed to continue in office.
3. The court in Kericho dealt with various applications before transferring the petition to this court.
4. On 23 November 2022, the respondents filed a motion seeking orders:
 - (1) That this honourable court be pleased to dismiss the petitioners' claim/petition as it discloses no reasonable cause of action.
 - (2) That the costs of this suit and application be borne by the petitioner.
5. The grounds in support of the motion were that the court in Kericho had, in a ruling delivered on 21 September 2021, held that the petitioner's employment was tied to the tenure of the appointing governor, and consequently, there was no contractual relationship with the 1st respondent who took office upon the demise of the appointing Governor.
6. The court gave directions on the application on 24 November 2022. None of the parties complied with the directions within the set timelines.
7. The court has looked at the record, motion and affidavit in support.
8. The respondents lodged an application dated 21 April 2021 seeking similar orders to the ones now under examination.
9. The court sitting in Kericho heard arguments on the application and dismissed it in a ruling on the merits delivered on 21 September 2021.
10. This court, therefore, declines the respondents' invitation to revisit the issue. The application is not only an abuse of the court process but *res judicata*.
11. The motion is dismissed with costs to be paid personally by the respondents' advocate on record.

DELIVERED VIRTUALLY, DATED, AND SIGNED IN KISUMU ON THIS 25TH DAY OF JANUARY 2023.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Petitioner Wamuyu Munga & Associates Advocate

For Respondents Ligunya Sande & Associates

Court Assistant Chrispo Aura

