



REPUBLIC OF KENYA



Buchichi & another v Cabinet Secretary, Ministry of Water and Sanitation & 7 others (Petition 009 of 2022) [2023] KEELRC 78 (KLR) (25 January 2023) (Ruling)

Neutral citation: [2023] KEELRC 78 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
PETITION 009 OF 2022**

S RADIDO, J

JANUARY 25, 2023

IN THE MATTER OF ENFORCEMENT OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES 10, 22, 23, 27, 47, 73, 75 AND 232 OF THE CONSTITUTION OF KENYA, 2010 AND IN THE MATTER OF THE ALLEGED VIOLATION OF ARTICLES 10, 22, 23, 27, 47, 73,75 AND 232 OF THE CONSTITUTION OF KENYA, 2010 AND IN THE MATTER OF SECTION 66(1)(A) AND (B) OF THE WATER ACT, NO. 43 OF 2016 AND IN THE MATTER OF THE PUBLIC APPOINTMENT (PARLIAMENTARY APPROVAL) ACT NO. 33 OF 2011 AND IN THE MATTER OF THE LEADERSHIP AND INTEGRITY ACT, NO. 19 OF 2012

BETWEEN

EMMANUEL ASIBWA BUCHICHI 1ST PETITIONER

RAMADHAN MUKONZO JUMA 2ND PETITIONER

AND

**CABINET SECRETARY, MINISTRY OF WATER AND
SANITATION 1ST RESPONDENT**

**LAKE VICTORIA NORTH WATER WORKS DEVELOPMENT
AGENCY 2ND RESPONDENT**

JULIUS KONES 3RD RESPONDENT

JOAN MAIYO 4TH RESPONDENT

MANYALA KEAH 5TH RESPONDENT

MEDIATRICE WANGIRA 6TH RESPONDENT

ALFRED KHANGATI 7TH RESPONDENT

DOUGLAS KIPLIMO TANUI 8TH RESPONDENT



RULING

1. The Petitioners sued the Respondents before the High Court in Nairobi on July 12, 2019, alleging that the appointment of the 3rd to 8th Respondents as members of the Lake Victoria North Water Works Development Agency violated Articles 10, 27, 47(1), 73 and 75 of the Constitution and section 66 of the Water Act.
2. The provisions require public participation, non-discrimination, fair administrative action and, integrity in public office.
3. Filed together with the Petition was a Motion under a certificate of urgency seeking interim interdicts.
4. The High Court certified the Motion urgent and directed that it be served upon the Respondents.
5. When the parties appeared before the High Court on July 19, 2019, it directed the parties to file and exchange pleadings, affidavits and submissions within set timelines before highlighting on November 27, 2019.
6. The Respondents filed Grounds of Opposition to the Petition on November 15, 2019, and a Preliminary Objection on November 22, 2019 challenging the jurisdiction of the High Court.
7. In light of the preliminary objection, the High Court issued new directions on November 27, 2019 and set March 2, 2020 for mention to confirm compliance.
8. The parties did not comply and the Court issued fresh directions on March 2, 2020.
9. On July 28, 2020, the High Court was informed that there was a related Petition pending before this Court (Kisumu Petition No 11 of 2020). The High Court indicated it would wait for this Court to deliver its Ruling before further directions would be given.
10. On November 4, 2020, the parties informed the High Court that the appointment of the 3rd Respondent had been revoked.
11. On March 23, 2022, the parties informed the High Court that this Court had stayed the Petition pending before it to await the outcome of this Petition. They also indicated that they had filed submissions and therefore requested for a judgment date.
12. The High Court was also informed that the terms of the 3rd to 8th Respondents had expired rendering the Petition merely academic.
13. The High Court directed the Respondents who had not complied with previous directions to file and serve submissions and the High Court reserved judgment for July 28, 2022. The judgment was delivered on September 30, 2022.
14. In the judgment, the Court declined jurisdiction and ordered that the Petition to be transferred to this Court.
15. On November 24, 2022, this Court directed the parties to address it on whether there was a live dispute requiring its determination, considering that the term of office of the 4th to 8th Respondents had lapsed (the parties were to file and exchange submissions).
16. The Petitioner was also directed to notify the Respondents of the directions issued. There is no indication the Petitioner notified the Respondents).



17. The Petitioners submissions were not on record by the agreed timeline of 15th December 2022. The Respondents submissions were also not on record
18. The Court has considered the record and come to the view that there is no live dispute for determination.
19. One, the High Court delivered a judgment on 30 September 2022. This Court would, therefore, be entering unchartered legal waters by purporting to hear and deliver a second judgment when there is already a judgment on record.
20. None of the parties suggested that the judgment on record was in error or an error, or that it was in substance a Ruling.
21. Two, the orders/remedies sought by the Petitioners have become moot since they have been overtaken by events when the appointment of the 3rd Respondent was revoked, and the term of appointment of the 4th to 8th Respondents expired before the Court could determine the Petition.
22. In terms of judicial authority, this Court would endorse what was stated by the High Court in *Evans Kidero v Speaker of Nairobi City County Assembly & Another* (2018) eKLR that:

A matter is moot if further legal proceedings with regard to it can have no effect, or events have placed it beyond the reach of the law. Thereby the matter has been deprived of practical significance or rendered purely academic. Mootness arises when there is no longer an actual controversy between the parties to a court case, and any ruling by the court would have no actual, practical impact...

No court of law will knowingly act in vain. The general attitude of courts of law is that they are loathe in making pronouncements on academic or hypothetical issues as it does not serve any useful purpose. ...A suit is academic where it is merely theoretical, makes empty sound and of no practical utilitarian value to the plaintiff even if judgment is given in his favour. A suit is academic if it is not related to practical situations of human nature and humanity...

A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. In such instance, there is no actual substantial relief which a petitioner or applicant would be entitled to, and which would be negated by the dismissal of the case. Courts generally decline jurisdiction over such cases or dismiss them on grounds of mootness...

23. Judicial time is a scarce resource and should not be used to examine or adjudicate disputes which have become moot or would only serve an academic purpose.

Conclusion and Orders

24. In light of the above, the Court has no hesitation in dismissing the Petition. No order on costs.

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

RADIDO STEPHEN, MCIARB

JUDGE

Appearances



For Petitioners Osundwa & Co. Advocates

For 2nd – 8th Respondents Mulekyo & Co. Advocates

Court Assistant Chrispo Aura

