



**Uzalendo Institute of Leadership & Democracy v Cabinet Secretary Ministry of ICT, Innovation and Youth Affairs & 2 others; Kamanguya & another (Interested Parties); Government Printers (Proposed Interested Party) (Petition E155 of 2022) [2023] KEELRC 560 (KLR) (23 February 2023) (Ruling)**

Neutral citation: [2023] KEELRC 560 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E155 OF 2022  
K OCHARO, J  
FEBRUARY 23, 2023**

**BETWEEN**

**UZALENDO INSTITUTE OF LEADERSHIP & DEMOCRACY ..... CLAIMANT**

**AND**

**CABINET SECRETARY MINISTRY OF ICT, INNOVATION AND YOUTH AFFAIRS ..... 1<sup>ST</sup> RESPONDENT**

**CHAIRMAN ICT AUTHORITY BOARD ..... 2<sup>ND</sup> RESPONDENT**

**ATTORNEY GENERAL OF KENYA ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**STANLEY KAMANGUYA ..... INTERESTED PARTY**

**PAUL KIPRONOH RONO ..... INTERESTED PARTY**

**AND**

**KENYA GAZETTE/GOVERNMENT PRINTERS .... PROPOSED INTERESTED PARTY**

**RULING**

1. Through a Notice of Motion Application dated October 25, 2022, the Petitioner/Applicant sought the following orders:
  - a. That this application be certified urgent and service of the same be dispensed with in the first instance.



- b. That the Kenya Gazette/Government Printers be enjoined as a 3<sup>rd</sup> Interested Party.
  - c. That the Kenya Gazette/Government Printers furnish this Honourable Court with the certified copy of the Gazette Notice Number 9536 Vol CXXIV No 154 as well as the certified copy of the extract of the receiving register for gazette notices for August, 2022.
  - d. That costs of this Application be awarded to the Applicant/Petitioner.
2. The application is grounded on the grounds obtaining on the face of the application, and the supporting Affidavit sworn by Daniel Kamau Chege, the Chief Executive Officer on the October 24, 2022 and the further affidavit of December 8, 2022.

### **The Application**

3. The Petitioner contends that there was a contempt Application pending before the court relating to the Gazette Notice No 9536 Vol CXXIV No 154 dated August 8, 2022. The authenticity of the Gazette Notice is a central matter in the application.
4. The Petitioner/Applicant contend that the Gazette Notice was not physically available at the Kenya Gazette/Government Printers at the time of filing of the Petition herein on August 23, 2022.
5. The Petitioner states further that at the time of filing of the petition, the said Gazette Notice was unavailable and untraceable online and the same could also not be obtained from the Kenya Gazette/Kenya Law Reports website. Two months after the filing of the Petition still the notice cannot be traced.
6. It was further stated that pursuant to Article 35 of the Constitution as well as Section 4 of the Access to Information Act, the Petitioner through its Counsel wrote a letter to the Government Printer on October 12, 2022 requesting for a certified copy of the Gazette Notice.
7. The letter and the request therein did not elicit any response or action from the printer.
8. On the October 21, 2022, the office of the Commission on Administrative Justice also wrote to the Government Printer requesting for the document, however the letter did not elicit any action.
9. According to the Petitioner/Applicant, the Gazette notice is a public document, yet it is only the Respondents who claim to be having in their possession the certified copy thereof, while the Government Printer which should be having the same does not appear to be having it.
10. The Petitioner contends that the Gazette Notice was not only backdated but also was a product of forgery, fraud and deceit.
11. The Petitioner/Applicant asserts that the Affidavit sworn by Mwenda Njoka on the November 3, 2022 does not at all respond to the issues raised in the instant application, the 3<sup>rd</sup> Respondent has admitted to the facts and averments raised in the application dated October 25, 2022.

### **The Petitioner's Submissions**

12. The Petitioner/Applicant distils two issues for determination in the instant application, thus:
  - a. Whether the Petitioner is entitled to the prayers sought.
  - b. Whether it is in the interest of justice that the orders sought be granted.
13. On the first issue, it was submitted that the right to information is now recognized and codified in the Constitution of Kenya, Article 35.



14. It was further urged that the right to freedom of speech has also generally been held to include the right to know or the right to information, Article 33 of the Constitution provided *inter alia*;

"(1) Every person has the right to freedom of expression which includes;  
a. Freedom to seek, receive or impart information or ideas."

Too, that Article 232(1)(f) of the Constitution provides for principles and values of public service which include transparency, and provision of timely and accurate information.

15. The Petitioner submitted that where documents are vital to a just determination of a matter, the court has authority to order that such document be produced. Reliance was placed on the holding in the case of Peter Mule Mutbungu V Kenya National Hospital (2013) eKLR, thus:

"I have seen some of the medical documents that were produced by the defendant in this case however the applicant feels that for him to advance his case he needs that document held by the defendant. Indeed, medical documents provide vital evidence of what went wrong. It is therefore imperative of the defendant to disclose to the plaintiff any document that relates to the plaintiff's claim."

16. Further reliance was placed on the case of Nelson O Kadison V Advocates Complaints Commission & another (2013) eKLR where the court expressed itself:

"Public complaint bodies exist to protect members of the public and are intended to enhance good governance. It is in the public interest that complaint procedures and processes remain open and transparent in so far as is possible consistent with the national values and principles enshrined in Article 10 of the Constitution. Access to information relating to public complaints against people seeking state or public office is especially significant because Chapter 6 of the Constitution, which deals with leadership and integrity, is one of the pillars of the Constitution and the right of access to information is pivotal to its effectiveness."

17. On the 2<sup>nd</sup> issue, it was submitted that the court should exercise its overriding objective and grant the orders sought. The court has unfettered power to grant reliefs where the ends of justice and equity demand. To buttress this submission, the decision in David Bundi V Timothy Mwenda Muthee (2022) eKLR was cited.

## Determination

18. The court has carefully considered the application by the Petitioner, the material placed before me and the general circumstance of the Petition, justice can truly be rendered in this matter, as between the parties, if the court fully understood the circumstances of the Gazette Notice that has been placed before this court by the Respondent and which notice the Petitioner is compromisingly disputes.

19. The court's higher calling is to dispense justice. In the quest to live to the calling, courts never allow themselves to be shackled with technicalities. Whenever the technicalities raise its unpleasant head, the court's overriding objective come in handy. In stating this, the court is inspired by holdings in Wachira Karani V Bildad Wachira (2016) eKLR, thus:

"The fundamental duty of the court is to do justice between parties. . . . Fundamental to that duty is that parties should be allowed a proper opportunity to put their cases upon the merits



of the matter . . . . The court is not powerless to grant the relief when the ends of justice and equity so demand, because the powers vested in the court are wide in scope and ambit.”

20. The Respondents opted not to file any response to the application. The averments in the Supporting Affidavit remain uncontested.
21. Having stated as I have herein above that the Gazette Notice and its circumstances are critical to a fair and just determination of the matter herein, I am inclined to state that the circumstances can be best explained by the entity charged with the responsibility of publishing, Gazette Notices and the custodian of the notices and other documents including registers thereto. It is by reason of this, coupled with the other factors hereinabove put forth, that I find the Petitioner’s application dated October 25, 2022 with merit.
22. In the upshot, I allow the application with costs.

**READ, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 23<sup>RD</sup> DAY OF FEBRUARY, 2023.**

**OCHARO KEBIRA**

**JUDGE**

In the presence of

Mr Oketch for the Petitioner

Mr. Kioko for the 1<sup>st</sup> and 3<sup>rd</sup> Respondents.

Mr Njenga for 2<sup>nd</sup> Respondent an 2<sup>nd</sup> Interested Party

Dr Kamotho for 1<sup>st</sup> Interested party

**ORDER**

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

**OCHARO KEBIRA**

**JUDGE**

