



Republic v Chief Magistrates Court, Migori; John & 10 others (Interested Parties) (Judicial Review Application E001 of 2023) [2023] KEELRC 447 (KLR) (21 February 2023) (Ruling)

Neutral citation: [2023] KEELRC 447 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
JUDICIAL REVIEW APPLICATION E001 OF 2023**

S RADIDO, J

FEBRUARY 21, 2023

**IN THE MATTER OF ARTICLES 48, 162(2)(A) AND (3),
165(6),(7) AND 169 OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL
REVIEW ORDERS OF CERTIORARI AND PROHIBITION
AGAINST THE CHIEF MAGISTRATES COURT AT MIGORI**

AND

**IN THE MATTER OF SECTIONS 29(3) AND (4) OF THE
EMPLOYMENT AND LABOUR RELATIONS COURT ACT**

AND

IN THE MATTER OF SECTIONS 8 AND 9 OF THE LAW REFORM ACT, CAP 26

AND

**IN THE MATTER OF ORDER 53 OF THE CIVIL PROCEDURE
RULES, 2010 AND RULE 7(2) OF THE EMPLOYMENT AND
LABOUR RELATIONS COURT (PROCEDURE) RULES, 2016**

AND

**IN THE MATTER OF PROCEEDINGS AND ORDERS ISSUED IN MIGORI CMCC NO.
E012 OF 2023 BY A SUBORDINATE COURT OVER DISPUTES CONTEMPLATED
BY A SPECIALISED COURT UNDER ARTICLE 162(2)(A) OF THE CONSTITUTION**

BETWEEN

REPUBLIC APPLICANT

AND

CHIEF MAGISTRATES COURT, MIGORI RESPONDENT



AND

MOKORO JARED JOHN	INTERESTED PARTY
BEATRICE AOKO OCHIENG	INTERESTED PARTY
CLERK COUNTY ASSEMBLY OF MIGORI	INTERESTED PARTY
COUNTY ASSEMBLY OF MIGORI	INTERESTED PARTY
MIGORI COUNTY PUBLIC SERVICE BOARD	INTERESTED PARTY
JARED ODHIAMBO OPIYO CHAIRMAN	INTERESTED PARTY
JEMIMAH ADHIAMBO WERE VICE-CHAIRPERSON ...	INTERESTED PARTY
HESBON OTIENO OMWA MEMBER	INTERESTED PARTY
ENOCK ODHIAMBO ACHIENG MEMBER	INTERESTED PARTY
PHOEBE ADHIAMBO ALOO MEMBER	INTERESTED PARTY
RANGE MWITA MAROA MEMBER	INTERESTED PARTY

RULING

1. The Court granted leave to the Speaker, County Assembly of Migori (the applicant) to commence judicial review proceedings against the Chief Magistrates Court, Migori on 6 February 2023. The Court further directed that the leave operates as a stay of the order of the Principal Magistrate, Migori in Migori MCCC No. E012 of 2023, Mokoro Jared & Ors v Speaker of the County Assembly of Migori & Ors.
2. The Principal Magistrate had on 30 January 2023 issued an injunction restraining the County Assembly of Migori from proceeding with a debate on a report of an Ad Hoc Committee on the removal process of members of the County Public Service Board.
3. Prior to the orders by the Principal Magistrate, on 25 January 2023, a Petition had been filed in this Court seeking an order interdicting the proceedings before the County Assembly of Migori, but in a considered Ruling on 31 January 2023, the Court declined to issue any orders restraining the County Assembly from proceeding with the removal Petitions pending before it.
4. Concerned with the validity of the order from the Principal Magistrate, the applicant moved this Court leading to the orders alluded to in paragraph 1 herein above.
5. The applicant then filed a Notice of Motion on 8 February 2023, and this prompted the 1st and 2nd Interested Parties to lodge a Motion with the Court on 13 February 2023 seeking orders:
 - (1) ...
 - (2) That Hon Justice Radido J be pleased to recuse himself from the hearing of this matter and any further proceedings herein touching on the current parties.
 - (3) That this file be forthwith placed before the Chief Justice for further directions/re-allocation to any other suitable Court of competent jurisdiction for hearing and disposal.
 - (4) That the costs of this application be in the cause.



6. The Court gave directions on the recusal application on 13 February 2023, and further directed that parties make oral submissions on the application on 20 February 2023.
7. Consequently, the following were filed:
 - i. Replying affidavit by the Speaker.
 - ii. Replying affidavit by the acting Secretary of the County Public Service Board.
 - iii. Replying affidavit by the Clerk of the County Assembly.
8. When the Motion was called out for arguments on 20 February 2023, it turned out that the 1st and 2nd Interested Parties had filed a Notice of Withdrawal of the recusal application.
9. The Court took brief oral submissions from the parties and reserved Ruling to today.
10. It is not necessary for the Court to recap the argument made by the parties save to note that amongst the grounds in support of the application were assertions that a Petition had been filed with the Judicial Service Commission for my removal from office of judge resulting from how I had conducted myself in these proceedings, that the Court had made far-reaching orders without affording the Interested Parties an opportunity to be heard and that the current Governor of Migori had a very close personal relationship.
11. For reasons best known to the Interested Parties, they conveniently exhibited only page 1 of the 6-paged Petition.
12. This Court cannot and will not force the Interested Parties to proceed with the recusal motion.
13. However, since the applicant and 3rd to 5th Interested Parties had filed responses to the Motion, it is only appropriate to award them thrown away costs.
14. There is a constitutional norm that justice must not only be done, but it must be seen to be done and towards that value, a judge takes an oath of office to administer justice impartially and competently.
15. In this respect, a party who believes that a judge is not faithful to the oath of office should not shy away from putting forth the reasons or evidence for such belief.
16. The converse is that a party should not make spurious and unsupported complaints against a judges' impartiality for collateral purposes.
17. This Court, will, therefore, *suo moto* recuse itself from further hearing of the dispute.

Orders

18. The Court makes the following orders:
 - i. Notice of Withdrawal of the recusal Motion dated 10 February 2023 is allowed.
 - ii. The applicant and 3rd to 5th Interested Parties to have costs of the Motion.
 - iii. The Court, *suo moto* recuses itself from further hearing of the judicial review proceedings herein.
 - iv. The file be placed before Baari J for further directions.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 21ST DAY OF FEBRUARY 2023.



RADIDO STEPHEN, MCIArb

JUDGE

Appearances

For applicant Okong'o & Wandago & Co. Advocates

Respondent did not come on record

For 1st – 2nd Interested Parties Bashir & Associates Advocates

For 3rd – 4th Interested Parties C. Obiero & Associate Advocates

For 5th Interested Party Nyamori Nyasimi & Co. Advocates

For 6th – 11th Interested Parties CM Advocates LLP

Court Assistant Chrispo Aura

