



**Nyambane v Duke Onyari, Acting Clerk, County Assembly of Nyamira
& 5 others; Nyaribo & 11 others (Interested Parties) (Petition
E050 of 2022) [2023] KEELRC 605 (KLR) (15 March 2023) (Judgment)**

Neutral citation: [2023] KEELRC 605 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
PETITION E050 OF 2022**

S RADIDO, J

MARCH 15, 2023

**IN THE MATTER OF ARTICLES 1(3)(C), 2(1),3(1), 10, 22, 23(1), 23(3), 73, 74,
75, 79, 80, 159(1), 160(5), 161(2)(B), 165(3)(A),(B) AND (3)(D)(II), 166(2)(C)
AND (3), 258, 259(1) AND (3) AND 260 OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF PRINCIPLES OF LEADERSHIP AND INTEGRITY
UNDER CHAPTER 6 OF THE CONSTITUTION OF KENYA**

**AND IN THE MATTER OF RESPONSIBILITIES OF
LEADERSHIP UNDER ARTICLE 73 OF THE CONSTITUTION**

**AND IN THE MATTER OF THE PRINCIPLES GOVERNING THE
CONDUCT OF STATE OFFICERS UNDER ARTICLE 75 OF THE
CONSTITUTION AND IN THE MATTER OF SECTIONS 3, 4, 5, 6, 7, 8
AND 11 OF THE LEADERSHIP AND INTEGRITY ACT NO. 19 OF 2012**

**AND IN THE MATTER OF THE GENERAL LEADERSHIP AND INTEGRITY CODE AS
SET OUT IN PART II OF THE LEADERSHIP AND INTEGRITY ACT NO. 19 OF 2012
AND IN THE MATTER OF THE COUNTY ASSEMBLY SERVICES ACT NO. 24 OF 2017**

BETWEEN

EVANS ATUNGA NYAMBANE PETITIONER

AND

**HON DUKE ONYARI, ACTING CLERK, COUNTY ASSEMBLY OF
NYAMIRA 1ST RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF NYAMIRA 2ND RESPONDENT
COUNTY ASSEMBLY SERVICE BOARD 3RD RESPONDENT
COUNTY ASSEMBLY OF NYAMIRA 4TH RESPONDENT**



DIRECTOR OF PUBLIC PROSECUTIONS 5TH RESPONDENT
DIRECTOR OF CRIMINAL INVESTIGATIONS 6TH RESPONDENT

AND

JOB RODGERS NYARIBO INTERESTED PARTY
JONES ONDUKO INTERESTED PARTY
LAMECK OSORO KOMETA INTERESTED PARTY
VINCENT NYAKIENI INTERESTED PARTY
DAVID MATWA NYABWARI INTERESTED PARTY
JOASH NYACHIRO ORUKO INTERESTED PARTY
GRACE MASESE BUNDI INTERESTED PARTY
ELVIS ONDIEKI MONGARE INTERESTED PARTY
ALOYS GATWERE INTERESTED PARTY
EDSON MAYAKA MOGENI INTERESTED PARTY
GLADYS MOTANYA INTERESTED PARTY
WINNY NYABOKE MAKORI INTERESTED PARTY

JUDGMENT

1. Evans Atunga Nyambane (the petitioner) sued the respondents on December 19, 2022, alleging that the recruitment and subsequent appointment of the 12 interested parties on July 29, 2022, was unlawful and beyond the approved establishment.
2. Filed at the same time was a motion under certificate of urgency seeking interim relief.
3. The court declined to issue any *ex-parte* interim relief because the impugned recruitment had been done in May 2022.
4. The court directed that the motion and petition be taken together, and further directed the parties to file and exchange pleadings and submissions.
5. As a result, the following were filed:
 - i. petitioner's submissions.
 - ii. replying affidavit by the clerk of the county assembly.
6. The court has considered the motion, petition, affidavits and submissions.
7. In the clerk's replying affidavit, he deposed that the county assembly service board had met and prepared a report in December 2022. The report, which was exhibited to the replying affidavit indicated that it had been resolved that the recruitment or appointment of the interested parties be cancelled due to illegalities.
8. The replying affidavit also indicated that the Ethics and Anti-Corruption Commission had commenced investigations into the recruitment process of the 12 interested parties.



9. The petitioner did not file any rebuttal to the replying affidavit meaning that the substratum upon which the petition revolved was determined by the decision of the county assembly service board to cancel the recruitments and revoke the appointment of the interested parties.
10. The petition has been overtaken by events and, therefore, there is no live dispute for the court's adjudication.
11. The court also notes that the recruitment of the 12 interested parties was the subject of Kisumu petition No 4 of 2022, Vincent Mariita Omas v Hon Duke Onyari & Ors, and that the petition was compromised when a consent was entered into on July 27, 2022, and adopted by the court on October 12, 2022.

Orders

12. The petition is dismissed with costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 15TH DAY OF MARCH 2023.

RADIDO STEPHEN, MCI Arb

JUDGE

Appearances

For Petitioner Sam N. Mainga & Co. Advocates

For 1st – 4th Respondents Mose, Mose and Mose Advocates

Court Assistant Chrispo Aura

