



**Republic v Clerk Kisii County Assembly & 3 others; Nyamwange & 4 others  
(Exparte Applicants); Atika & another (Interested Parties) (Miscellaneous Judicial  
Review E013 of 2023) [2023] KEELRC 1155 (KLR) (12 May 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1155 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
MISCELLANEOUS JUDICIAL REVIEW E013 OF 2023**

**K OCHARO, J  
MAY 12, 2023**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE CLERK KISII COUNTY ASSEMBLY ..... 1<sup>ST</sup> RESPONDENT**

**THE SPEAKER KISII COUNTY ASSEMBLY ..... 2<sup>ND</sup> RESPONDENT**

**KISII COUNTY ASSEMBLY ..... 3<sup>RD</sup> RESPONDENT**

**THE GOVERNOR, KISII COUNTY GOVERNMENT ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**NANCY NYANGANYI NYAMWANGE ..... EXPARTE APPLICANT**

**JACKSON BOGONKO ONDIBA ..... EXPARTE APPLICANT**

**PATRICK MOGUSU MOMANYI ..... EXPARTE APPLICANT**

**JOHN MACHUKA NDEGE ..... EXPARTE APPLICANT**

**JUDY OMARE NYAKERARIA ..... EXPARTE APPLICANT**

**AND**

**BENSON MOCHAMA ATIKA ..... INTERESTED PARTY**

**INSTITUTE OF HUMAN RESOURCES MANAGEMENT INTERESTED PARTY**



## RULING

1. On the May 9, 2023 the ex parte applicant's application dated May 8, 2023 was placed before me for orders under certificate of urgency. Considering that this matter is a Kisumu matter that was placed before this court in the manner aforesated, owing to the fact that Justice Baari , and Justice Radido, Honourable judges of the station are not sitting for acceptable reasons, I deemed it important to call for the original file from Kisumu.
2. This court needed to fully understand the history of the matter and confirm whether the directions that had been given by Justice Baari and more specifically on the filing and service of the substantive notice of motion had been adhered to.
3. The file has been availed, I have studied it, I appreciate the history, the proceedings and the orders obtaining herein.
4. I have carefully listened to representations by counsel for the parties, they are largely those that ought to be reserved for the trial court which I am not.
5. However, I find the point raised by Mr Ondara for the 1<sup>st</sup> interested party not an idle point. The 1<sup>st</sup> interested party being a party to the proceedings has a right to participate in every application filed. He may choose to oppose or support the same. He has indicated that he will be opposing the instant application.
6. This court has not lost sight of the fact that counsel for the 1<sup>st</sup> interested party only filed his notice of appointment this morning. He could not have been served with the application any earlier.
7. Counsel Nyandieka for the 4<sup>th</sup> respondent informs this court that he has filed a preliminary objection based on the principle of res judicata and sub judice. He argues that the preliminary objection must be dealt with before the instant application is argued. Unfortunately, I cannot render myself on the same but the trial court shall.
8. Counsel Ochoki and Nyamweya for the applicants urge this court not to lose sight of the intention of the court when it gave the orders of stay on the April 25, 2023 and the order of maintenance of status quo on May 9, 2023, which orders the respondents have not adhered to.
9. I have carefully considered the submissions by counsel for the parties, the history of this matter and the proceedings and orders herein and come to the conclusion that the following directions and or orders are the most appropriate and fair that this court shall give now:
  - a. That the ex parte applicants do within 3 days from today serve the 1<sup>st</sup> interested party with the application dated May 8, 2023.
  - b. That the 1<sup>st</sup> interested party to file and serve a response to the application within 7 days of service of the application.
  - c. The trial court to give directions on the hearing of the preliminary objection by the 4<sup>th</sup> respondent and the application dated May 8, 2023 on the mention date hereinafter given.
  - d. That there is need to grant interim orders. Consequently:



- i. Pending the inter partes hearing of the application dated May 8, 2023, implementation or further implementation of gazette notice No 5841 of 2023, dated April 25, 2023 is stayed.
- ii. Pending the inter partes hearing and determination of the application the respondent is restrained from constituting and or causing to be gazetted, any selection panel for purposes of undertaking a process for removal of the exparte applicants as members of the Kisii County Public Service Board.
- iii. Any selection panel constituted post the orders of May 9, 2023, for the purpose aforesaid, is restrained from advertising, shortlisting, interviewing or hiring persons to replace the Exparte Applicants in the Kisii County Public Service Board pending the inter partes hearing of the application.
- iv. This matter be mentioned before the trial judge on the May 22, 2023 for directions on the preliminary objection and inter partes hearing of the applicant's application.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 12<sup>TH</sup> DAY OF MAY 2023.**

**OCHARO KEBIRA**

**JUDGE**

**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**

