



Miinyan v Turkana County Assembly & another; Turkana County Assembly Service Board (Interested Party) (Employment and Labour Relations Petition E008 of 2023) [2023] KEELRC 1496 (KLR) (21 June 2023) (Ruling)

Neutral citation: [2023] KEELRC 1496 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
EMPLOYMENT AND LABOUR RELATIONS PETITION E008 OF 2023
HS WASILWA, J
JUNE 21, 2023

BETWEEN

LINUS LOKAWA MIINYAN PETITIONER

AND

THE TURKANA COUNTY ASSEMBLY 1ST RESPONDENT

THE SPEAKER, TURKANA COUNTY ASSEMBLY ASSEMBLY 2ND RESPONDENT

AND

THE TURKANA COUNTY ASSEMBLY SERVICE BOARD INTERESTED PARTY

RULING

1. This application concerns representation of the 1st respondent herein, the Turkana County Assembly.
2. On May 17, 2023 the petitioner herein filed the application and petition before court against the respondents herein.
3. The Hon Justice Nderitu certified the application urgent and directed it to be placed before this court on May 29, 2023 for further directions.
4. On May 29, 2023 when the application came up for interpartes hearing, the firm of Sisule Musungu LLP had already filed their notice of appointment for 1st, 2nd respondents and interested parties. Counsel Mwangi appeared on record on May 29, 2023 and indicated that they had instructions from their clients to take up the main petition and have the application compromised.
5. Infact, by consent of the parties a consent was recorded allowing prayers 6, 7, 8 & 9.



6. I also granted direction that the respondents do proceed to file responses to the main petition within 21 days and to file a further affidavit and submissions in 21 days and respondents to file their submissions in 21 days.
7. The matter was then scheduled for July 31, 2023 for further directions.
8. On May 30, 2023, the firm of Muga & Associates filed a notice of change of advocates for the 1st respondent/applicant. They now sought orders to vary and set aside the consent orders given on May 29, 2023 vide their application dated May 28, 2023 though filed in court on May 30, 2023.
9. The Hon Justice Nderitu heard the applicants in this application *ex parte* and directed that they appear before me inter partes on June 8, 2023.
10. On June 8, 2023 we now had 2 sets of counsels purporting to represent the respondents herein. It is for this reason that this court directed that the 2 law firms files submissions to be considered by this court to establish which law firm is rightfully on record for the respondents and interested parties.
11. The firm of Muga & Associates have submitted they are rightfully on record because 1st respondent voted on May 15, 2023 to remove the petitioner from office of the clerk, Turkana County Assembly.
12. On the same day the Deputy Clerk John Komol assumed function of the office under section 21 of the *County Assembly Service Act*.
13. They have submitted that though the petitioner filed this petition and served the office of the Acting Clerk, on the date of hearing of the application, which was disposed of by consent was not known to the 1st respondent.
14. They content that Sisule Advocates didn't have instructions of the 1st respondent to enter consent.
15. Despite this argument by Muga Advocates, the issue before me is not about the consent signed upon by the parties but who was rightfully on record for 1st respondent.
16. The firm of Sisule Musungu on the other hand submitted that they filed their notice of appointment on May 25, 2023 coming on record for the Turkana County Assembly - the 1st respondent, the speaker – the 2nd respondent and the Turkana County Assembly Service Board, the interested party herein.
17. They also submitted their letter of instruction dated May 23, 2023 addressed to them signed by John Komol Ekomit, the Deputy Clerk, County Assembly of Turkana.
18. On May 29, 2023 when Mr Mwongo appeared in court he had instructions to do so by virtue of the above instructions.
19. They had filed their notice of appointment on May 25, 2023 and they had rightfully been given these instructions by the Deputy Clerk who was also rightfully in office after the ouster of the clerk; the petitioner herein.
20. The firm of Muga & Associates filed a notice of change on May 30, 2023 though dated May 28, 2023.
21. On May 29, 2023, the firm of Sisule was still rightfully on record when the consent order was recorded and orders therein issued.
22. The orders issued allowed prayer 6, 7, 8, & 9 which in effect reinstated the petitioner as Clerk of the Assembly.



23. Though Muga Advocates seem to indicate that instructions issued to Sisule & Associates LLP were withdrawn, they were withdrawn by John Komol the Deputy Clerk on May 31, 2023 when at this time he had no authority to withdraw instructions as the petitioner had been reinstated to his position through the court orders of May 29, 2023.
24. In view of this finding, it is my view that currently the counsel rightfully on record is Sisule & Associates LLP and they are free to proceed and prosecute this petition.
25. The respondents are free to instruct any other counsel in future if they so wish.
26. Documents thus filed by Muga & Associates who had no instructions at the time of filing are struck off the record.

RULING DELIVERED VIRTUALLY THIS 21ST DAY OF JUNE, 2023.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:-

Muga for 1st Respondent & Intended Interested Party - present

Ngwele for Petitioner – present

Mwango for 1st Respondent, 2nd Respondent & Interested Party - present

Court Assistant - Fred

