



REPUBLIC OF KENYA



**Bosire & 4 others v Nyaribo Governor, Nyamira County & 8 others (Petition 010 of 2022) [2023] KEELRC 2224 (KLR) (27 September 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2224 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
PETITION 010 OF 2022  
S RADIDO, J  
SEPTEMBER 27, 2023**

**BETWEEN**

**DOUGLAS OSEKO BOSIRE ..... 1<sup>ST</sup> PETITIONER  
JOHN MOENGA OMANWA ..... 2<sup>ND</sup> PETITIONER  
BENARD OSUMO MANG'AA ..... 3<sup>RD</sup> PETITIONER  
PETER MUGA OMWANZA ..... 4<sup>TH</sup> PETITIONER  
ZABLON OERO ONCHIRI ..... 5<sup>TH</sup> PETITIONER**

**AND**

**HE AMOS KIMWOMI NYARIBO GOVERNOR, NYAMIRA  
COUNTY ..... 1<sup>ST</sup> RESPONDENT  
COUNTY GOVERNMENT OF NYAMIRA ..... 2<sup>ND</sup> RESPONDENT  
COUNTY ASSEMBLY OF NYAMIRA ..... 3<sup>RD</sup> RESPONDENT  
HON ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT  
GLADYS MOMANYI ..... 5<sup>TH</sup> RESPONDENT  
M.S. EMILY MORAA ONGAGA ..... 6<sup>TH</sup> RESPONDENT  
THOMAS NYARIKI ..... 7<sup>TH</sup> RESPONDENT  
JONES OMWENGA ..... 8<sup>TH</sup> RESPONDENT  
SAMUEL MAIKO ..... 9<sup>TH</sup> RESPONDENT**



## JUDGMENT

1. Douglas Oseko Bosire, John Moenga Omanwa, Benard Osumo Mangaa, Peter Muga Omwanza and Zablon Oero Onchiri (the petitioners) were appointed as County Executive Committee members on or around 14 April 2020 by Honourable John Nyagarama, who was then the Governor of Nyamira County.
2. Hon Nyagarama passed away on 18 December 2020.
3. By virtue of article 182(1)(a) of *the Constitution* as read with Article 182(2), Honourable Amos Kimwomi Nyaribo (1<sup>st</sup> Respondent) who had been serving as the Deputy Governor assumed the office of the Governor.
4. After assuming office, the 1<sup>st</sup> respondent nominated the 5<sup>th</sup> to 9<sup>th</sup> respondents for appointment as County Executive Committee members.
5. The decision of the 1<sup>st</sup> respondent to nominate the 5<sup>th</sup> to 9<sup>th</sup> respondents alarmed the Petitioners and on 14 January 2021, they moved the court in Kericho, contending that their removal from office as County Executive Committee members upon the assumption of office as Governor by the 1<sup>st</sup> respondent after the demise of the appointing Governor amounted to constructive dismissal and was illegal.
6. The petitioners sought the following remedies:
  - i. A declaration that the contracts of services of the Petitioners as County Executive Committee members, Nyamira County dated 14<sup>th</sup> April 2020 purported to be terminated have not been legally terminated.
  - ii. A declaration that the 1<sup>st</sup> Respondent's press statement of the January 6, 2021 and the subsequent invitation of the candidates and the public by the 3<sup>rd</sup> respondent in the matter of consideration of the nominee to the County Executive Committee members is null and void and an exercise in futility.
  - iii. A declaration that the presumptive dismissal of the Petitioners by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents amounted to constructive dismissal.
  - iv. An order to bring to Court for the purpose of quashing the 1<sup>st</sup> respondent's press statement of the January 6, 2021 and the subsequent invitation of the candidates and the public by the 3<sup>rd</sup> Respondent in the matter of consideration of nominees to the County Executive Committee members.
  - v. An order of prohibition stopping the filling of the positions of the County Executive Committee members for the departments held by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> petitioners being the departments of Health, Finance, ICT & Economic Planning, Public Service Management, Transport, Roads and Public Works and Lands, Housing, Physical Planning and Urban Development departments respectively.
  - vi. An order of prohibition stopping the 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Respondents from presenting themselves for appointment to the offices of the County Executive Committee members of the departments of Health, Finance, ICT & Economic Planning, Public Service Management, Transport, Roads and Public Works and Lands, Housing, Physical Planning and Urban



Development departments and or accepting and/or assuming office in the departments held by the Petitioners.

- vii. An order of prohibition stopping the Respondents from interfering with the tenure of the office of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> petitioners as County Executive Committee members of the departments of Health Services; Transport, Roads and Public Works; Public Service Management; Finance, ICT & Economic Planning; and Lands, Housing, Physical Planning and Urban Development departments respectively.
  - viii. In the alternative, this Honourable Court be and is hereby pleased to issue orders compelling the 1<sup>st</sup> and 2<sup>nd</sup> respondents jointly and/or severally to compensate the Petitioners with respective aggregate salaries and benefits for the duration till August 31, 2022.
  - ix. Costs of the Petition and interest thereon.
  - x. Any other reliefs the court may deem fit to grant in the interest of justice.
7. The respondents filed a Reply to the Petition on 23 February 2021, but instead of focussing on the substantive dispute, the parties embarked on filing application after application. The court had to render 5 Rulings.
  8. On 22 June 2023, the court directed the parties to file and exchange further affidavits and submissions. The directions were not complied with.
  9. Nevertheless, the Court has considered the petition, reply to petition, affidavits and the record.
  10. The Petitioners were appointed as County Executive Committee members by Honourable Nyagarama on or around 14 April 2020. Honourable Nyagarama passed away on 18 December 2020 while in office.
  11. Pursuant to the dictates of article 182(2) of *the Constitution*, the 1<sup>st</sup> Respondent assumed office of the Governor.
  12. In cases where there is a vacancy in the office of the Governor, article 179(7) of *the Constitution* outlines what happens to persons who had been appointed as County Executive Committee members with the approval of the County Assembly.
  13. The Article provides:

If a vacancy arises in the office of the county governor, the members of the county executive committee appointed under clause (2)(b) cease to hold office.
  14. The Petitioners assert that the decision of the 1<sup>st</sup> Respondent to nominate the 5<sup>th</sup> to 9<sup>th</sup> Respondents to serve as County Executive Committee members breached their legitimate expectation to serve up to 31 August 2022; and breached their right to fair administrative action because they did not get any reasons for their intended replacement, and that it amounted to constructive dismissal under their contracts as there were no vacancies in the offices of County Executive Committee members.
  15. Article 179(7) of *the Constitution* requires persons holding office of a County Executive Committee member and appointed with the approval of the County Assembly to cease holding office whenever a vacancy arises in the office of the Governor.
  16. The cessation of holding office is not because of any conduct on the part of the said persons nor at the instance of any of the organs within the County Government. It is by operation of the law.



17. Legitimate expectation cannot arise or apply in direct contravention of a legal provision, in the instant case a constitutional requirement.
18. The Petitioners did not draw the attention of the Court to any normative or legal principle which obligates any entity or organ to subject a County Executive Committee member who ceases to hold office by operation of the law to fair administrative action whenever a vacancy arises in the office of a Governor (which requires such an executive to cease holding office).
19. The attempt by the Petitioners to assert that the right to fair administrative action as enshrined in article 47 is not ousted by the express provisions of article 179 (7) of *the Constitution* was a red herring. *The Constitution* must be read and interpreted holistically. Each provision sustains the others.
20. County Executive Committee members are political appointees and there must have been a policy reason why the requirement to cease holding office upon a vacancy arising in the office of the Governor was enacted the way it was.
21. The petitioners' case was futile from the start.

### **Conclusion and Orders**

22. The court finds that the petition is devoid of any merit.
23. The record shows that petitioners did not endeavour to assist the court in the expeditious and proportionate determination of the petition and they are condemned to pay the costs of the respondents.

**DELIVERED VIRTUALLY, DATED, AND SIGNED IN KISUMU ON THIS 27<sup>TH</sup> DAY OF SEPTEMBER 2023.**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

