



**Ouma & 5 others v Principal Secretary, Ministry of Interior &
Coordination of National Government & 4 others (Petition E021 of 2023)
[2023] KEELRC 2456 (KLR) (11 October 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2456 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
PETITION E021 OF 2023**

S RADIDO, J

OCTOBER 11, 2023

**IN THE MATTER OF THE ENFORCEMENT OF ARTICLES 2, 3, 10, 11, 19, 23,
27, 35, 41 AND 47 OF THE CONSTITUTION OF THE REPUBLIC OF KENYA**

AND

**IN THE MATTER OF ALLEGED VIOLATION OF ARTICLES 73,
74, 75, 76, 78, 79 AND 232 OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF ALLEGED VIOLATION AND INFRINGEMENT
OF THE FAIR ADMINISTRATIVE ACTION ACT, 2015**

AND

IN THE MATTER OF THE EMPLOYMENT ACT NO. 11 OF 2007

AND

**IN THE MATTER OF THE RECRUITMENT/APPOINTMENT OF ASSISTANT
CHIEFS IN NYAMAMBI EAST SUB-LOCATION OF LAMBWE EAST LOCATION,
NYAMAMBI WEST SUB-LOCATION OF LAMBWE EAST LOCATION,
AND WAWARE NORTH SUB-LOCATION OF RUSINGA EAST LOCATION**

BETWEEN

**BENSON ODONGO OUMA 1ST PETITIONER
SOPHY OKECH 2ND PETITIONER
PETER ONYANGO OCHOLA 3RD PETITIONER
LUCY ATIENO OGWELA 4TH PETITIONER
GEORGE OWITI OSODO 5TH PETITIONER
MARK ODUNGA 6TH PETITIONER**



AND

PRINCIPAL SECRETARY, MINISTRY OF INTERIOR & COORDINATION OF NATIONAL GOVERNMENT 1ST RESPONDENT
REGIONAL COMMISSIONER, NYANZA REGION COUNTY COMMISSIONER, HOMA BAY COUNTY 2ND RESPONDENT
DEPUTY COUNTY COMMISSIONER, MBITA SUB-COUNTY 3RD RESPONDENT
PUBLIC SERVICE COMMISSION 4TH RESPONDENT
ATTORNEY GENERAL 5TH RESPONDENT

JUDGMENT

1. The 6 Petitioners sued the 6 Respondents contending that the recruitment/appointment process for Assistant Chiefs for Nyamambi East, Nyamambi West, and Waware North sub-locations were in violation of Articles 10(2), 27(1), 35, 47(1) and (2) and 73 of *the Constitution*.
2. Filed together with the Petition was a Motion seeking interim interdict which the Court granted on 2 August 2023.
3. The Court issued directions on the Motion and Petition on 10 August 2023 and when the parties appeared for judgment on 4 October 2023, the Public Service Commission informed the Court that the Respondents had decided to recall the exercise and start it afresh.
4. The Court directed the parties to sign a consent in terms of the indications by the Public Service Commission, but regrettably, the parties could not agree on costs, thus handicapping the filing of the consent.
5. The Court, therefore, opted to proceed and prepare this judgment.
6. The Principal Secretary wrote to the Regional Commissioner on 26 September 2023, directing him to commence a fresh recruitment process for Assistant Chiefs for Nyamambi East, Nyamambi West, and Waware North sub-locations.
7. A copy of the letter was introduced into the record by the Public Service Commission on 4 October 2023.
8. The effect of the letter is that the Respondents have admitted to or conceded to the Petition.
9. On the basis of the admission/concession, the Court orders:
 - i. A declaration is hereby issued that the recruitment exercise and/or interviews conducted by the Respondents and/or their servants, agents, and/or employees regarding Assistant Chiefs in Nyamambi East sub-location of Lambwe East Location, Nyamambi West sub-location of Lambwe East Location and Waware North sub-location of Rusinga East Location was unconstitutional, unlawful, null and void.
 - ii. Fresh recruitment be conducted in accordance with *the Constitution* and applicable statutes.



10. The Respondents made a concession on the day set for judgment. They are condemned to pay costs on half scale.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 11TH DAY OF OCTOBER 2023.

RADIDO STEPHEN, MCIArb

JUDGE

Appearances

For Petitioners Edward Kisia & Associates

For 1st to 4th and 6th Respondents Honourable Attorney General

For 5th Respondent Wangeci Gichangi, Principal Legal Counsel

Court Assistant Chrispo Aura/Everlyne

