



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT

AT KERICHO

PETITION NO. E 009 OF 2021

THOMSON KEROGO.....1ST PETITIONER

REGENA HUMAN RIGHTS WATCHDOG ORGANIZATION.....2ND PETITIONER

VERSUS

COUNTY GOVERNMENT OF KISII.....1ST RESPONDENT

COUNTY GOVERNMENT OF NYAMIRA.....2ND RESPONDENT

HON. SAMUEL MAIKO C.E.C.M. - WATER ENVIROMENT& NATURAL

RESOURCES NYAMIRA COUNTY.....3RD RESPONDENT

HON CHARLES ONYNACHA C.E.C.M – WATER ENVIRONMENT & NATURAL

RESOURCES KISII COUNRT.....4TH RESPONDENT

ROBERT ONGERI.....5TH RESPONDENT

GUSII WATER AND SANITATION COMPANY L.....6TH RESPONDENT

LAKE VICTORIA SOUTH WATER

WORKS DEVELOPMENT AGENCY.....7TH RESPONDENT

RULING

1. This ruling is in respect of interim orders sought by the 6th Petitioner in the Notice of Motion dated 14.2.2022 and interim stay order sought by the respondents in the Notice of Motion dated 7.2.2022 and 16.2.2022.

2. What the 6th respondents seeks in Notice of Motion dated 14.2.2022 is in away amounting to executing the orders of the court issued on 1.2.2022 in respect of the petitioners Notice of Motion dated 13.12.2021. The application was not opposed and it was conceded to by Mr. Manyange, Learned Counsel for the 1st and 4th Respondent.

3. The effect of the said consent order was to prohibit the 5th respondent from acting as the Managing Director of the 6th respondent. The order also froze account number 6622007422 at Eco Bank Kisii Branch in as far as the same was to be operated by the disputed signatories. The order also compelled the 1st to 4th respondents to supply certain information to the petitioner and to provide services to the residents of Nyamira and Kisii countieseffectively.

4. On the other hand, the respondents are seeking say of the said orders pending the interparty hearing of the applications. I have already made directions that the said application plus another one for contempt of court dated 21.2.2022 are serving to delay the main petition which must be determined in order to resolve the dispute. I have also directed at the said application will have to give the way for early hearing of the petition.

5. The court must now determine:

a) Whether pending hearing of the petition, the orders made on 1.2.2022 should be stayed.

b) Whether Ms. Lucy Wachira and Mr. Thandeleus Mogesi Mogoi should be allowed operate the 6th respondents account number 6622007422 Eco Bank Kisii Branch and account number 116368436 Kenya Commercial Bank pending trial.

6. To answer the first question, the court must ask itself, what would be the effect for granting or denying the interim stay. If stay is granted, the status quo before the order reverts, that is, the 5th respondent will become the acting Managing Director and he will operate the bank account for the 6th respondent. By so doing the suit will become moot.

7. On the other hand, if the stay is denied, the substratum of the case will be destroyed and the alleged mischief, which is being impugned by the petition, will not spread to affect the funds and the other assets of the 6th respondent. There is however, argument from the defence that the company risks paralysis of all its operations and the employees going without pay for a long time.

8. Having carefully considered the material before the court, I may not make final determination on the weighty issues raised by the petitioner and the respondents in both the petition and the various pending motions.

However, I must guard against the court proceeding in vain and the 6th respondent having its operations and provision of water services to the residents of Nyamira and Kisii counties paralysed.

9. The situation will not be best served by a stay of execution if the orders dated 1.2.2022 whose effect was to prohibit improper appointments of key officers of the 6th respondent and to protect the resources of the company.

Consequently, I declare to grant interim stay as prayed by the respondents.

10. Turning to the second question, the court must satisfy itself that the persons seeking to operate the 6th respondent accounts are officers of the company properly appointed and that they can be held accountable. There is no dispute that Ms. Lucy Wachira and Mr. Thaddeus Mogi are employees of the 6th Respondent. They are therefore accountable to the company for their action or omissions while operating the company accounts.

11. It was alleged that the substantive appointment of Ms. Lucy Wachira will lapse on 15.3.2022. However no documentary evidence was provided to the court to substantiate that allegation.

12. The issue in dispute in the petition and all the application herein relate to appointment of acting Managing Director and acting Deputy Managing Director for the 6th respondent. One wonders why the substantive managing Director has not been appointed. Even this matter and the orders issued on 1.2.2022 do not bar the 6th respondent from appointing a substantive Managing Director. It means that, even this suit can be rendered moot by appointment of the substantive Managing Director.

13. Having considered all the relevant facts of the case, I find that the company needs people to operate its two accounts until the petition is heard and determined or such a time when the company will appoint a substantive Managing Director. Consequently, I grant prayer 2 of the 6th respondent's application dated 14.2.2022. The effect of which is that pending the hearing and that determination of the petition, Ms. Lucy Wachira and Mr. Thaddeus Mogesi Mogoi will now operate the Respondents accounts in Eco Bank Kisii Branch and KCB.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 8TH DAY OF MARCH, 2022.

ONESMUS N MAKAU

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 15th April 2020, this ruling has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N. MAKAU

JUDGE