



REPUBLIC OF KENYA



**Muthui v Secretary County Service Board, Nyandarua County Assembly & another  
(Petition E004 of 2022) [2022] KEELRC 1406 (KLR) (30 June 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1406 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
PETITION E004 OF 2022**

**HS WASILWA, J  
JUNE 30, 2022**

**BETWEEN**

**ELIZABETH WANJIKU MUTHUI ..... PETITIONER**

**AND**

**SECRETARY COUNTY SERVICE BOARD, NYANDARUA COUNTY  
ASSEMBLY ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY SERVICE BOARD, NYANDARUA COUNTY ASSEMBLY .... 2<sup>ND</sup>  
RESPONDENT**

**JUDGMENT**

1. By a petition dated 20<sup>th</sup> April, 2022 the Petitioner sought for the following reliefs: -
  - a) A declaration be and is hereby issued that the acts of the Respondents in advertising for the position of the Clerk Nyandarua County Assembly and having qualifications outside of what is provided in *the Constitution* and the relevant statute violates the provisions of Articles 73(2), and 232 of *the Constitution*.
  - b) A declaration be and is hereby issued that the acts of the Respondents in advertising for the position of the Clerk of Nyandarua County Assembly and having qualifications outside of what provided in *the Constitution* and the relevant statute violates the provisions of section 13(2) of the County Government Act.
  - c) A declaration be and is hereby issued that the acts of the Respondents in advertising for the position of the Clerk Nyandarua County Assembly when the matter is live and in controversy in Nakuru ELRC Petition Number 028 of 2021: Elizabeth Wanjiku Muthui & Others versus The Speaker of the County Assembly of Nyandarua & Others, the same advertisement is subjudice.



- d) A declaration be and is hereby issued that the acts of the Respondents in advertising for the position of the Clerk Nyandarua County Assembly on 12th April 2022 was illegal, null and void for including qualifications not contemplated by section 13(2) of the [County Governments Act](#).
  - e) An order certiorari be issued to quash the advertisement for the position of Clerk of Nyandarua County Assembly dated 12th April 2022.
  - f) An order of permanent injunction be and is hereby issued restraining the Respondents, their representatives, employees, servants and/or agents or anybody working or for them recruiting the Clerk of Nyandarua County Assembly as stipulated in the advertisement of 12th April 2022 or at all and/or shortlisting and/or interviewing any candidates for the position of the Clerk of Nyandarua County Assembly.
  - g) Costs of the Petition.
2. The petition was supported by the facts inter alia that:
- a) The 1<sup>st</sup> Respondent advertised various position within the county assembly of Nyandarua on the 12<sup>th</sup> April, 2022 in print media with the deadline for submitting application ending on 21<sup>st</sup> April, 2022.
  - b) Under the position of clerk of the County assembly, the Respondents required the following qualifications; that the candidate must be a Kenyan citizen, holds a bachelor degree from a recognized university in Kenya or equivalent, has at least five-years relevant professional experience and meets the requirements of leadership and integrity set out in chapter six of [the Constitution](#). In addition, the 1<sup>st</sup> Respondent added that master degree from a recognized university will be an added advantage and under the professional experience was that the candidate to have attended senior management course of strategic leadership development program from a recognized institution. This qualification were not received well by the Petitioner as the same deviates from the qualifications under section 13(2) of the County Government Act.
  - c) The Petitioner avers that the added qualification was aimed at targeting some individuals which was against the law null and void as was held in [Chama Cha Mawakili \(CCM\) v Chairperson Independent Electoral and Boundaries Commission & 2others](#) [2019] eKLR.
  - d) It is averred that the said qualification locked out some Kenyan who might be interested in applying for the said advertised post as it gives undue advantage to people with senior management courses.
  - e) It is averred that these actions by the Respondent are in violations of Article 73(2) and Article 232 of [the constitution](#), Section 13(2) of the County Government Act, Section 3 and 8 of the [Leadership and Integrity Act](#) and Section 17 of the Public Officers Ethics Act.
  - f) It was further argued that the said vacancy is a matter live in Court under Nakuru ELRC Petition number 028 of 2021; Elizabeth Wanjiku Muthui Versus The speaker of the County Assembly of Nyandarua and others as such it defeats justice to allow the said positions to be filled when the matter is active in Court.
  - g) It was stated that the fact that the 1<sup>st</sup> Respondent advertised for the said position and included qualification not included in section 13(2) of the County Government Act is in violation of Article 10 of [the Constitution](#) as it violates the value of transparency, accountability, good



governance and non-discrimination as the advertisement is targeted on specific individual not on the general public.

3. Together with the Petition, the Petitioner filed an application dated 20<sup>th</sup> April, 2022 seeking interalia to restrain the Respondent from carrying out interviews, background and or reference checks, causing gazettelement, offering an employment contract and eventually assigning any duties to the successful candidate for the position of clerk of the County assembly of Nyandarua, which Orders were granted in the interim by this Court on the 21<sup>st</sup> April, 2020.
4. Before Responding to the Petition and the Application by the Petitioners, the 2<sup>nd</sup> Respondent entered appearance and filed an application, Notice of Motion dated 26<sup>th</sup> April, 2020 seeking to set aside, vary and or discharge the Orders of the Court issued on 21<sup>st</sup> April, 2022 or in the alternative the Court allows the 1<sup>st</sup> Respondent to recruit a substantive Clerk as per its amended advertisement of 26<sup>th</sup> April, 2022.
5. When this Application was filed, the Petitioner noted that the Respondents had cancelled the advertisement and made new advertisement via print media on the 26<sup>th</sup> April, 2022 which was in conformity with section 13(2) of the County Government Act. She nevertheless, filed another Application dated 28<sup>th</sup> April, 2022 seeking to stop recruitment as per the advertisement published on the 26<sup>th</sup> April, 2022 and to issue notice to show cause why contempt proceedings should not be instituted against the chairperson, James Ndegwa Wahome and the secretary Gideon Mukiri Muchiri, of the Nyandarua County assembly service Board for contempt of Court Orders issued on the 21<sup>st</sup> April, 2022 and also fine them Kshs.500,000/= for the said contempt.
6. The 2<sup>nd</sup> Respondent through, James Wahome Ndegwa, the Speaker of Nyandarua County assembly, filed a replying affidavit sworn on the 16<sup>th</sup> May, 2022. The Respondent avers that they learned of the impugned qualification through the Petitioner's application and rectified the error and re-advertised the said position of county clerk in accordance with section 13(2) of the County Government Act.
7. It was averred that the Orders of the Court restrained them from recruiting clerk of the county based on the advertisement of 8<sup>th</sup> April, 2022 but did not bar the county from rectifying the said error to conform with the law. He added that the county government has corrected the error and prepared the correct advert in accordance with section 13(2) of the County Government Act and even publish the correct advert on the 26<sup>th</sup> April, 2022.
8. It is stated that the Respondent's application of 27<sup>th</sup> April, 2022 was certified urgent by the Court and the Court directed parties to explore out of Court settlement in light of the fact that the offending advertisement had been withdrawn and instead of the Petitioner seeking to settle the matter out of Court as directed by this Court, the Petitioner further file the Application of 28<sup>th</sup> April, 2022 which now stalled the intended recruitment to the detriment of County Government of Nyandarua.
9. The affiant states that he is a law abiding citizen and has always obeyed Court Orders issued by the various Court between 2020 when the Petitioner and her group attempted to remove him from officer. It was rather stated that it is the Petitioner who has failed and refused to obey the Court Orders as Issued by Justice Chemitei in Nakuru Petition number E002 OF 2021 leading her to be cited for contempt and found guilty of the same.
10. The 2<sup>nd</sup> Respondent avers that by the time they were served with the Orders of Court issued on the 4<sup>th</sup> May, 2022, they had not done any act they were refrained from doing by the Orders of the Court issued on 21<sup>st</sup> April, 2022 as such they were not in contempt of the Court Orders to warrant the contempt Application.



11. The 1<sup>st</sup> Respondent weighted in to the Application and the Petition of 20<sup>th</sup> April, 2022 and filed a replying Affidavit deposed upon by Gideon Mukiri Muchiri, the substantive holder of the office of the 1<sup>st</sup> Respondent herein deposed upon on the 24<sup>th</sup> April, 2022.
12. It was the 1<sup>st</sup> Respondent's averments that they made the said advertisement for the County Clerk based on the precedent that the county government has been using from its inception in 2014. He adds that the need to have an officer who had undertaken senior management course was informed by the advice given to it by the Human Resource officer expert from the Parliamentary Service Commission.
13. When the said issue was brought to his attention he caused an advertisement to be made in the daily newspaper cancelling the earlier qualification and making a new advertisement with the new qualification that was in conformity with section 13(2) of the County Government Act.
14. It is averred that the Petitioner has never held the position of county Clerk before and was only the principal Procedural Clerk Assistant which employment was terminated by the County Government on the 3<sup>rd</sup> May, 2021. He also avers that the Petitioner purported to have been the county clerk when she was illegally sworn into the said office by an illegal constituted board of Nyandarua County Service Board. The said appointment was subject of Nakuru ELRC Cause No. E007 OF 2021 which nullify the said appointment.
15. He states that the position of Clerk, County Assembly of Nyandarua is not the subject of Nakuru Petition E028 of 2021; Elizabeth Wanjiku Muthui & others v The Speaker of the County Assembly of Nyandarua & others, rather that the said suit is for reinstatement of the Petitioner employment as Principal Procedural Clerk Assistant, which explains why the Petitioner filed this suit separate from Nakuru ELRC E028 OF 2021.
16. The 1<sup>st</sup> Respondent avers that the county clerk plays a pivotal role in the running of everyday affairs of the county and the stalling of recruitment of the Clerk for Nyandarua County has stalled the activities of the County to the disadvantage of the general public.
17. The affiant herein avers that the lifting of the conservatory orders will not prejudice the Petitioner in any way as she will be in a position to apply for the said position and go through the recruitment process just like all other intended applicants.
18. The Petition herein and the Applications were disposed of by way of written submissions.

**Petitioner's submissions.**

19. The Petitioner submitted on three issues; Whether the prayers sought in the Petition should be granted, Whether the Orders issued by the Court on 21<sup>st</sup> April 2022, temporarily restraining the Respondents from conducting a recruitment process to the position of Clerk Nyandarua County Assembly should be set aside and Whether the Respondents should be held in contempt of the Court orders issued on 21st April 2022?
20. On the first issue it was submitted that the Petition was pegged on the revoked advertisement however that prayer (c) is yet to be determined and pray that the same be allowed and the advertisement made subsequently be deemed as Sub-judice. To support her argument, the Petitioner relied on the case of *Sceneries Limited versus National Land Commission* (2017) eKLR, the Court held as follows regarding the writ of certiorari:

“Certiorari may lie and is generally granted when a Court, tribunal or a body has acted without or in excess of its jurisdiction. The want of jurisdiction may arise from the nature



of the subject matter of the proceeding or from the absence of some preliminary proceeding or the Court or tribunal or body itself may not be legally constituted or suffer from certain disability by reason of extraneous circumstances.” It went on to state that: “Such writs as are referred to above are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice or refuse to exercise a jurisdiction vested in them or there is an error apparent on the face of record, and such act, omission, error or excess has resulted in manifest injustice.”

21. It was submitted that the Petitioner will stand prejudiced if the position of the clerk of the County Assembly is filled by someone else because she has an active case in Court in Nakuru ELRC Petition No. E028 of 2021: Elizabeth Wanjiku Muthui & Others Versus the Speaker County Assembly of Nyandarua & Others where she challenged her unlawful removal from office as the Acting Clerk of the assembly of Nyandarua. Also that the re-advertisement was made by the Respondents contrary to an Order issued by the Court on 21st April 2022 temporarily restraining the Respondents from recruiting the clerk of the County Assembly of Nyandarua.
22. With regard to the second issue, it was submitted that Article 3 of *the Constitution* obligates every person to respect, uphold and defend *the Constitution* while Article 10(1) of *the Constitution* mandates all state organs and public officers to observe the national values and principles of good governance when making and implementing public policy decisions. In addition, Article 10(2) of *the Constitution* provides for national values and principles of good governance to include; the rule of law, good governance, integrity, transparency and accountability, therefore that the fact that the Respondent advertised the position of the County clerk and included qualification not provided for under section 13(2) of the County Government Act is a clear indication of the Respondent’s unwillingness to adhere to the rule of law.
23. It was argued that, the Respondents acted contrary to the dictates of Article 73 of *the Constitution* by disobeying a lawful Court order. This makes it evident that the Respondents are not acting in good faith and cannot preserve the rule of law in the recruitment process of the clerk of the County Assembly of Nyandarua. The Petitioner relied in the case of *Davis Mokaya Ondimu Versus Attorney General & 3 Others* (2021) eKLR, where the Court recognized its role as the custodian of *the Constitution*, rule of law, protector of human rights and fundamental freedom and its obligation to ensure that every person acts within the law. It is for this reason that she urged this Court to decline to set aside the Orders issued on 21st April 2022 as prayed for by the Respondents in their application dated 26th April 2022.
24. On the last issue herein, it was submitted that the Respondents have disobeyed the Court order issued on 21st April 2022 by re-advertising the position of the Clerk of the County Assembly of Nyandarua despite being directed not to carry on with any form of recruitment by the Court. It was argued that, the Courts punish for contempt to uphold the dignity and authority of the Court, ensure compliance with directions of the Court, observance and respect of due process of law, preserve an effective and impartial system of justice, and maintain public confidence in the administration of justice by Courts. Without sanctions for contempt, there would be a serious threat to the rule of law and administration of justice. For a party to be cited for contempt, he must have violated and or disobeyed an order that was directed at him deliberately. She cited the case of *North Tetu Farmers Co. Ltd v Joseph Nderitu Wanjohi* [2016] eKLR the Court quoted the Halsbury’s law of England which stated that:

“It was plain and unqualified obligation of every person against or in respect of whom an order was made by a Court of competent jurisdiction to obey it unless and until it was discharged and disobedience of such order would as a general rule result in the



person disobeying it being in contempt and punishable by committal or attachment... an application to Court by him not being entertained until he had purged his contempt.

25. It was submitted that for one to be held in contempt of Court, there are four elements that must be satisfied;
- a) The terms of the order were clear and unambiguous and were binding on the defendant;
  - b) The defendant had knowledge of or proper notice of the terms of the order;
  - c) The defendant acted in breach of the terms of the order; and
  - d) The defendant's conduct was deliberate.
26. Accordingly, it was submitted that all the 4 elements were satisfied in this case since the Court order issued by this Honourable Court on 21st April 2022 was clear and unambiguous. It was served on the Respondents and the Speaker of the County Assembly who acknowledged receipt. The Respondents deliberately breached the terms of the order by re-advertising for the position instead of waiting for the Court's determination. Therefore, the Respondents should be held in contempt for willfully disobeying a Court order.
27. In conclusion the Petitioner urged this Court to allow the Petition as prayed.

#### **1st Respondent's submissions.**

28. The Respondent herein submitted on three issues; Whether the advertisement of 12<sup>th</sup> April, 2022 is illegal, null and void, Whether the advertisement is sub-judice in light of Nakuru Petition no. 028 of 2021 Elizabeth Wanjiku Muthui v The speaker of the County Assembly of Nyandarua & others and whether the prayers sought should issue.
29. On the first issue, it was submitted that that the advertisement in question dated 12<sup>th</sup> April, 2022 was not produced before this Court save for an advertisement without any date which date of 8<sup>th</sup> April, 2020 has been affixed by hand. It was thus argued that the Petitioner's bid to seek to nullify the advertisement is not justified in light of the fact that the same was not produced before this Court. He also argued that section 107 and 108 of the *Evidence Act* is clear on the need for the party that alleged to prove. It cited the case of *Stephen Gachau Gitthaiga and others v Attorney General* [2015] eKLR where the Court held that;
- “Again in the case of Trust Bank Limited Vs Paramount Universal Bank Limited & 2 others the learned Judge citing the same decision stated that it is trite that where a party fails to call evidence in support of its case, that party's pleadings remain mere statements of facts since in so doing the party fails to substantiate its pleadings. In the same vein, the failure to adduce any evidence means that the evidence adduces by the plaintiff against them is uncontroverted and therefore unchallenged”
30. Similarly, it was submitted that the since the Petitioner has failed to tender the only evidence in support of her petition, the Petition ought to be dismissed for being moot.
31. It was further submitted that having realized that the said advertisement prejudiced the Petitioner, the Respondent corrected their error and cancelled the Advertisement and made a new one which was in conformity with section 13(2) of the County Government Act, which was an act of good faith on the part of the 1<sup>st</sup> Respondent. It was argued that it is only the 1<sup>st</sup> Respondent that is tasked with correcting the error in the advertisement and within their power to do so. To support this argument



the 1<sup>st</sup> Respondent relied on the case of *Henry Mututndu v Chairperson, Independent Electoral and Boundaries Commission & another; Attorney General (Interested party)* [2019] eKLR where the Court held that;

“In determining this petition, I agree that the Respondent couched the advertisement for the position of the Independent Electoral and Boundaries Commission (IEBC) Chief Executive Officer (CEO) outside the provisions of the Independent Electoral and Boundaries Commission (IEBC) Act and the same cannot be sustained as is worded. This Court cannot rewrite for the Respondent the correct version of the advertisement. However, this Court can order a fresh advertisement to be placed within the parameters of the law and for ensuring the right candidate gets hired.”

32. On the second issue, it was submitted that the doctrine of Sub-judice does not apply in this case and cited the case of *Kenya National Commission on Human Rights v Attorney General; Independent Electoral and Boundaries Commission & 16 others (Interested parties)* [2020] eKLR where the Court held that;-

“The term ‘sub-judice’ is defined in Black’s Law Dictionary 9<sup>th</sup> Edition as: “Before the Court or Judge for determination.” The purpose of the sub-judice rule is to stop the filing of a multiplicity of suits between the same parties or those claiming under them over the same subject matter so as to avoid abuse of the Court process and diminish the chances of Courts, with competent jurisdiction, issuing conflicting decisions over the same subject matter. This means that when two or more cases are filed between the same parties on the same subject matter before Courts with jurisdiction, the matter that is filed later ought to be stayed in order to await the determination to be made in the earlier suit. A party that seeks to invoke the doctrine of res sub-judice must therefore establish that; there is more than one suit over the same subject matter; that one suit was instituted before the other; that both suits are pending before Courts of competent jurisdiction and lastly; that the suits are between the same parties or their representatives.”

33. It was argued that for sub-judice rule to apply the party claiming it must show that; there is more than one suit over the same subject matter, that the suit was instituted before the other, that both suits are pending before Court of competent jurisdiction and that the suits are between the same parties or their representative. Accordingly, it was submitted that the matter here is not sub-judice there are no two similar suits herein, neither has the Petitioner attached the pleadings of the said suit she is alleging is sub-judice.

34. With regard to the Application of 28<sup>th</sup> April, 2022, It was submitted that the said application has been overtaken by events save for prayer 6,7 and 8 on the contempt of Court. On the same it was submitted that the Orders in which the Petitioner is seeking to cite the Respondent’s officers is based on the impugned Orders based on the advertisement of 8<sup>th</sup> April, 2022 which was rectified to be in conformity with the County Government Act as such the Respondent’s officers are not in contempt of Court Orders. He cited the case of *Katsuri Limited v Kaprchand Depar Shah* [2016] eKLR where the Court held that;

“Writing on proving the elements of civil contempt, learned authors of the book Contempt in Modern New Zealand[22] have authoritatively stated as follows:-



"There are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases) that:-

- (a) the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant;
- (b) the defendant had knowledge of or proper notice of the terms of the order;
- (c) the defendant has acted in breach of the terms of the order; and
- (d) the defendant's conduct was deliberate.

Although the proceedings are civil in nature, it is well established that an applicant must prove the elements beyond reasonable doubt, at least higher than the standard in civil cases, The fact that the liberty of the defendant could be affected means that the standard of prove is higher than the standard in civil cases. It is incumbent on the applicant to prove that the defendant's conduct was deliberate in the sense that he or she deliberately or willfully acted in a manner that breached the order. The prayer sought is for committal for contempt. The power to commit for contempt is one to be exercised with great care. An order committing a person to prison for contempt is to be adopted only as a last resort."

35. It was argued that the Orders of the Court were expressly that the Respondent are restrained from commencing the recruitment process but the said Orders did not bar the Respondent from correcting the error noted in the advertisement of 8<sup>th</sup> April, 2022. It was thus argued that the Respondent did not act in any way in contempt of the Court Orders as such should not be held in contempt of Court Orders.
36. The 1<sup>st</sup> Respondent in conclusion urged this Court to disallow the Petition and the Petitioner Applications with costs.

### **2nd Respondent's submissions.**

37. The 2<sup>nd</sup> Respondent submitted that the Application by the Petitioner dated 20<sup>th</sup> April, 2022 and the Application dated 26<sup>th</sup> April, 2022 have been rendered mute by the direction of Court for the Petition to be heard together with the Applications pending for hearing.
38. On the Application dated 28<sup>th</sup> April, 2022, it was submitted that the basis upon which the application was made was based on the Petitioner's allegation that the Respondents were in contempt of Court Orders by correcting the error of the advertisement dated 8<sup>th</sup> April, 2022 and re-advertising the said vacancy on 26<sup>th</sup> April, 2020.
39. It was submitted that the act of correcting the error of qualification to be in conformity with section 13(2) of the County Government Act, cannot be in any way in disobedience of the Court Orders issued on 21<sup>st</sup> April, 2022 as no act or omission in relation to the said Orders was done by the Respondent as such the Respondent's officers are not in any way in contempt of Court Orders.
40. The 2<sup>nd</sup> Respondent cited the case of *Samuel M.N Mweru and other v National Land Commission & 2 others* [2020] eKLR where the Court held that;

"It is an established principle of law that<sup>[45]</sup> in order to succeed in civil contempt proceedings, the applicant has to prove (i) the terms of the order, (ii) Knowledge of these terms by the Respondent, (iii). Failure by the Respondent to comply with the terms of the order. Upon proof of these requirements the presence of willfulness and bad faith on the part of the



Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities.”

41. It was submitted that the contemnors were not in any way in willful disobedience of Court Orders to warrant them being held in contempt .to support this argument the Respondent herein relied on the case of *Sheila Cassat Isenberg and another v Antony Machather Kinyanjui* [2021] eKLR where the Court held that:-

“Contempt of Court is in the nature of criminal proceedings and, therefore, proof of a case against a contemnor is higher than that of balance of probability. This is because liberty of the subject is usually at stake and the applicant must prove willful and deliberate disobedience of the Court order, if he were to succeed. This was aptly stated in *Gatharia K. Mutikika v Baharini Farm Limited* [1985] KLR 227, that:

A contempt of Court is an offence of a criminal character. A man may be sent to prison. It must be proved satisfactorily.... It must be higher than proof on a balance of probabilities, almost but not exactly, beyond reasonable doubt. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit criminal cases. It is not safe to extend it to offences which can be said to be quasi-criminal in nature. However, the guilt has to be proved with such strictness of proof as is consistent with the gravity of the charge... Recourse ought not to be had to process of contempt of Court in aid of a civil remedy where there is any other method of doing justice. The jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and carefully watched and exercised with the greatest reluctance and the greatest anxiety on the party of the judge to see whether there is no other mode which is not open to the objection of arbitrariness and which can be brought to bear upon the subject... applying the test that the standard of proof should be consistent with the gravity of the alleged contempt... it is competent for the Court where contempt is alleged to or has been committed, and or an application to commit, to take the lenient course of granting an injunction instead of making an order for committal or sequestration, whether the offender is a party to the proceedings or not.”

42. On the Petition, the 2<sup>nd</sup> Respondent submitted that the prayers of the petition have all been overtaken by events save for prayer number (c) and the prayer for costs. It was argued that the Petition is pegged on an alleged non-existent advertisement of 12<sup>th</sup> April, 2022.
43. He submitted that prayer number (c) of the Petition is on sub-judice on the basis that there is another matter being ELRC Petition No. E028 of 2021 which suit is actually different in subject matter with this suit as such not sub-judice.
44. It is the 2<sup>nd</sup> Respondent’s submissions that the Petitioner is not fit to hold any public office for the reason that she was found in contempt of Court Orders by Justice Chemitei in in High Court Petition No. 2 of 2021. Further that the Petitioner is facing investigation for serious offenses from EACC touching on embezzlement of public funds in excess of Kshs.500 Million in the short period she illegally held the office as the acting clerk of the Nyandarua County Assembly.
45. The Respondent in conclusion submitted that the Petition herein is made aimed at scattering the running of county of Nyandarua and urged this Court to dismiss the same for lacking in merit.
46. I have considered the averments and the submissions of the parties herein.
47. There are two issues pending before me;



1. Whether the orders sought by the Petitioner can lie.
  2. Whether the Respondents are guilty of contempt of Court by advertising for the position of clerk of Respondent vide an advert of 12/4/2022 against the orders of the Court.
48. On the 1<sup>st</sup> issue, the Respondent submitted that the advert was wrongly done and corrected the error sue motto per the law.
49. This being the position, it is evident that the issue of putting in a proper advert has been overtaken by events and therefore there is no issue pending on the main petition.
50. As for the issue of contempt of Court, the Petitioner submitted that the Respondents made a subsequent advert against orders of the Court.
51. The advert made was however not submitted before this Court.
52. The applicants argued that it is dated 14<sup>th</sup> April, 2022.
53. However, the order of the Court dated 21<sup>st</sup> April 2022 was clear and unambiguous and stated as follows;
1. “That the application is certified urgent.
  2. That pending the hearing and determination of this application inter-partes, conservatory orders are hereby issued temporarily restraining the Respondents from carrying out interviews, background and/or reference checks, causing gazettement, offering an employment contract and eventually assigning any duties to the successful applicants for the position of Clerk of the County Assembly of Nyandarua.
  3. That the application be served upon the Respondents and be heard inter-partes on 17<sup>th</sup> May, 2022”.
54. The Court did not bar the Respondents from correcting the advert or even making a fresh advert.
55. It is therefore true that the making of a fresh advert to correct the error in the original advert was done correctly and was not in contempt of this Court as alleged.
56. Having determined as above, I find the petition in its entirety lacks merit and I dismiss it accordingly.
57. There will be no order of costs.

**DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 30TH DAY OF JUNE, 2022.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Munyao holding brief for Peter Wanyama for Petitioner – present

Wanjiru holding brief for Wachungo for 2<sup>nd</sup> Respondent – present

Koigi for 1<sup>st</sup> Respondent – present

Court Assistant - Fred

