



**Magnam Environmental Network v Onyango & 4 others (Petition
3 of 2022) [2022] KEELRC 12762 (KLR) (29 September 2022) (Ruling)**

Neutral citation: [2022] KEELRC 12762 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION 3 OF 2022
J RIKA, J
SEPTEMBER 29, 2022**

BETWEEN

MAGNAM ENVIRONMENTAL NETWORK PETITIONER

AND

ABEL ONYANGO 1ST RESPONDENT

ABDULATIF ALI 2ND RESPONDENT

**KENYA MEDICAL LABORATORY TECHNICIANS AND TECHNOLOGISTS
BOARD 3RD RESPONDENT**

CABINET SECRETARY, MINISTRY OF HEALTH 4TH RESPONDENT

ATTORNEY GENERAL 5TH RESPONDENT

RULING

1. The petitioner, a community based NGO filed this petition seeking orders inter alia, that the 1st and 2nd respondents are in the 3rd respondent's board illegally and unconstitutionally, their respective terms having lapsed. The 1st respondent chairs the board, while the 2nd respondent is the CEO of the 3rd Respondent.
2. The 1st, 2nd and 3rd respondents have filed notice of preliminary objection, stating that the petition is res judicata, the issue of removal of the 1st respondent, having been dealt with in Nairobi High Court Petition No 13 of 2014, *Abel Odhiambo Onyango & another v The Cabinet Secretary Ministry of Health & 2 others*.
3. The judgment of the court in the aforesaid petition, found that removal of the 1st respondent as a member and chairman of the 3rd respondent was unconstitutional. It was ordered that the 1st respondent serves out the remainder of his term.



4. The 1st, 2nd and 3rd respondents object to the present petition further, invoking the principle of *sub-judice*. They state that there is another active claim at the High Court in Nairobi, HCCC No 119 of 2015, *Association of Kenya Medical Laboratory Scientific Officers v Cabinet Secretary Ministry of Health*. The 1st, 2nd and 3rd respondents submit that the claimant applied for interlocutory orders, asking the court to stop implementation of new election rules.
5. Yet another petition relating to the dispute was filed at the High Court, being Petition No 527 of 2015, *Njagi Kivanda v The Cabinet Secretary Ministry of Health, The Attorney-General, Kenya Medical Laboratory Technicians and Technologists Board and Abel Odbiambo & 11 others*. This petition was withdrawn upon the respondents raising objection that it was sub-judice and in gross abuse of the court process.
6. The 1st, 2nd and 3rd respondent's position is that the petition herein is therefore *res judicata* and *sub-judice*.
7. The petitioner submits that the parties and issues in dispute in this petition and in HCCC No 119 of 2015 are not the same. The civil suit relates to election rules. The petitioner denies knowledge of petition 527 of 2015. The petition is not *sub-judice*.
8. Secondly, the petition is not *res judicata*. In Petition No 13 of 2014, the Court dealt with the alleged removal of the petitioner [1st respondent herein] as chairperson of the 3rd respondent, without revocation of the instrument by which he was appointed, and without taking into account that he was differently-abled. That petition related to discrimination. It did not involve the current litigants, or persons litigating under the same title.
9. It was agreed by the parties that the preliminary objection is considered and determined on the strength of the parties' submissions.

The Court Finds: -

10. The petition herein originated from the High Court at Nairobi.
11. It was transferred to this court through an order of the High Court, given on December 21, 2021, on the ground of jurisdiction.
12. The matters cited by the parties however, in relation to *sub-judice* and *res-judicata* are pending, or were dealt with by the High Court.
13. It becomes untidy for this court to be drawn into matters that are not before this court, or were not dealt with by this court.
14. This observation notwithstanding, there is no evidence that the issue in the petition transferred to this court, was dealt with conclusively, by the High Court. The 1st, 2nd and 3rd respondents have not shown that the same parties or their proxies, participated in the decided petition. A cursory look at the Judgment of the High Court shows that the petitioner herein, magnum environmental network, was not involved in the High Court Petition. The petition dealt with the termination of the petitioner's [High Court] term of service without revocation of the gazette notice, through which he was appointed, and without taking into account that he is a differently-abled person. It was a petition based on employment discrimination. The present petition pursues the line that the 1st and 2nd respondents are in office illegally and unconstitutionally, their respective terms having lapsed. The court does not think this was ever the issue in petition 13 of 2014. The petition herein relates to extended service of the 1st respondent, after the judgment in Petition No 13 of 2014.



15. The court is not persuaded that the petition is sub-judice. The Civil Case at the High Court appears related to election rules, rather the tenure of the 1st and 2nd respondents. An interlocutory application dated May 20, 2015 and ruling delivered on May 23, 2015, over 7 years ago, are relied upon in urging the court to find that the civil case is pending at the High Court. The court needed to be offered an extract of the latest proceedings in the civil case, or some other evidence to show that the claim is still pending. And if the civil case is pending, have the 1st, 2nd and 3rd respondents raised preliminary objection of res judicata in those proceedings? The 1st, 2nd and 3rd respondents have not clarified the status of that civil case. It would assist the courts in the administration of justice, if parties moved the courts to have the series of these disputes consolidated and heard in one jurisdiction.
16. The preliminary objection is declined, with no order on the costs.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI,
UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 29TH
DAY OF SEPTEMBER 2022**

James Rika

Judge

