



**Republic v Governor, Machakos County & another; Kathili (Exparte) (Judicial Review Application E034 of 2021) [2022] KEELRC 12798 (KLR) (26 September 2022) (Judgment)**

Neutral citation: [2022] KEELRC 12798 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**JUDICIAL REVIEW APPLICATION E034 OF 2021**  
**MA ONYANGO, J**  
**SEPTEMBER 26, 2022**  
**IN THE MATTER OF AN APPLICATION BY JAMES**  
**MUSANGO KATHILI FOR ORDERS OF CERTIORARI,**  
**AND**  
**IN THE MATTER OF AND/OR THE VIOLATION OF**  
**ARTICLES 1, 2, 10, 23, 24, 27, 41, 47, 50 OF THE**  
**CONSTITUTION OF KENYA, 2010**  
**AND**  
**IN THE MATTER OF THE OFFICE OF COUNTY**  
**ATTORNEY ACT**  
**AND**  
**IN THE MATTER OF THE FAIR ADMINISTRATIVE**  
**ACTION ACT**  
**ELRC NAIROBI JUDGMENT JUDICIAL REVIEW NO. E034 OF 2021**  
**AND**  
**IN THE MATTER OF SECTIONS 8 AND 9 OF THE LAW**  
**REFORMS ACT, CHAPTER 26, LAWS OF KENYA**  
**AND**  
**IN THE MATTER OF: ORDER 53 OF THE CIVIL**  
**PROCEDURE RULES, 2010**

**BETWEEN**

**REPUBLIC ..... APPLICANT**



AND

GOVERNOR, MACHAKOS COUNTY ..... 1<sup>ST</sup> RESPONDENT  
COUNTY GOVERNMENT OF MACHAKOS ..... 2<sup>ND</sup> RESPONDENT

AND

JAMES MUSANGO KATHILI ..... EXPARTE

### JUDGMENT

1. The ex parte applicant (herein after referred to be the applicant) was at the time of lodging of the instant application the County Attorney of Machakos County Government, the 2<sup>nd</sup> respondent herein. The 1<sup>st</sup> respondent is the Governor of the 2<sup>nd</sup> respondent.
2. It is the applicant's case that the 1<sup>st</sup> respondent, by a notice referenced MCG/OOG/CONF CA/02/21 and dated the November 29, 2021 and a letter Ref No GMC/2/CS/SM/C0N/V0I II/89 dated the November 29, 2021 purported to indefinitely suspend the ex parte applicant from his position as a County Attorney.
3. That in arriving at the decision to indefinitely suspend the ex parte applicant from office, the 1<sup>st</sup> respondent did not adhere to the principles of good governance set out in Article 10 of the Constitution, the principles of fair administrative action as set out in Article 47 of the Constitution, the provisions of Article 41 on fair labour practices and Article 50 on right to a fair hearing.
4. That the process leading to the making of the impugned decision was in contravention of the principles of good governance as set out in the Constitution, tainted with illegality and conducted in a manner that violates provisions of the law and defeats the principles of the Constitution of Kenya and the right to fair administrative action.
5. That the ex parte applicant avers that he has a legitimate expectation that the respondents shall at all times be guided by the laws of the Republic in executing their mandates and that they shall at all times be guided by the Constitution, the relevant constitutive Acts of Parliament, the Fair Administrative Action Act and Regulations under these statutes.
6. The applicant was granted leave to institute judicial review proceedings against the respondents on December 7, 2021. The leave was to operate as stay of the implementation of the impugned suspension of the applicant.
7. In the substantive motion dated December 17, 2021. The applicant seeks the following orders: -
  - i. An order of *certiorari* to move into this court for purposes of being quashed, a decision of the 1st respondent to indefinitely suspend the *Ex Parte* applicant as the County Attorney Machakos County communicated vide a notice dated the November 29, 2021 and referenced MCG/OOG/CONF CA/02/21 and a letter Ref No GMC/2/CS/SM/C0N/V0I II/89 dated the November 29, 2021.
  - ii. Costs of this suit; and
  - iii. Any other remedy that the court deems fit and just.



8. When the motion came up for directions on February 3, 2022, the court directed the suit be disposed of by way of written submissions and timelines were given for the filing of the submissions.
9. On May 9, 2022 when the parties appeared before the court, Mr Nyamu for the respondents informed the court that he had been given instructions by the respondents to seek an out of court settlement. Mr Otieno Willis, counsel for the applicant agreed to accommodate the respondents even though he had already filed his submissions. Parties were given a return date of June 14, 2022 to report on the progress on the negotiations for the out of court settlement.
10. On June 14, 2022, Mr Otieno was present in court but there was no appearance for the respondents. Mr Otieno reported to court that the respondents had not reached out to him for settlement nor filed any response or submissions. The application by the applicant is therefore undefended.
11. This being the case, the application is granted as prayed as follows:-
  - i. An order of certiorari do and is hereby issued quashing the decision of the 1<sup>st</sup> respondent to indefinitely suspend the ex parte applicant as the County Attorney Machakos County communicated *vide* a notice dated the November 29, 2021 and referenced MCG/OOG/CONF CA/02/21 and a letter Ref No GMC/2/CS/SM/C0N/V0I II/89 dated the November 29, 2021.
  - ii. The ex parte applicant James Musango Kathili is immediately reinstated to the position of County Attorney General of Machakos with no loss of benefits whatsoever.
  - iii. The respondent shall pay the ex parte applicant's costs.
12. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 26<sup>TH</sup> DAY OF SEPTEMBER 2022**

**MAUREEN ONYANGO**

**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 March 15, 2020 and subsequent directions of April 21, 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of the *Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the *Constitution* and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**MAUREEN ONYANGO**

**JUDGE**

