



Galgalo v Deputy County Commissioner, Moyale Sub-County; Wako & 4 others (Interested Parties) (Petition E008 of 2021) [2022] KEELRC 13129 (KLR) (31 October 2022) (Judgment)

Neutral citation: [2022] KEELRC 13129 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
PETITION E008 OF 2021
DKN MARETE, J
OCTOBER 31, 2022**

BETWEEN

ISAACK ABDULLAH GALGALO PETITIONER

AND

DEPUTY COUNTY COMMISSIONER, MOYALE SUB-COUNTY RESPONDENT

AND

ISAACK KORE WAKO INTERESTED PARTY

ABDI GALGALO ABDUBA INTERESTED PARTY

ALI JARSO WAKO INTERESTED PARTY

ABDI IBRAHIM INTERESTED PARTY

MOHAMMED ABDULLAH GALGALO INTERESTED PARTY

JUDGMENT

1. This petition is not defended, or at all. This is despite service to the respondent and interested parties.
2. The petitioner's case is that on March 26, 2021 the respondent advertised the vacancy for the position of chief II for Kuro location Moyale central, Moyale sub-county within Marsabit county in the Republic of Kenya pursuant to a letter dated March 26, 2021 referenced as ST.102/Vol.V.II.
3. The petitioner's further case is that having met all the requisite conditions he applied for the position of chief II for Kuro Location Moyale sub-county within Marsabit county pursuant to the letter dated April 10, 2021 which was received by the respondent.
4. He avers that despite his impeccable and stellar academic credentials and work experience the respondent unreasonably and unfairly failed to shortlist him for the interviews for the chief II for Kuro



Location Moyale sub-county within Marsabit county slated July 7, 2021, contrary to article 27 which entitles the petitioner equality and equal benefit of the law.

5. The petitioner avers that on June 11, 2021 that the respondent released a list of shortlisted candidates including the unqualified candidates, but excluding the petitioner who is qualified without any reason. On June 22, 2021 he wrote to the respondent seeking to understand the reasons as to why he was not shortlisted despite his impeccable academic and work experience which the respondent responded orally and arrogantly to the effect that the petitioner is overqualified for the of position the chief II for Kuro Location, Moyale sub-county within Marsabit county. The petitioner avers the respondent's conduct in failing to give him information as reasons and/or criteria employed by the respondent in shortlisting the interested parties amounts to an infringement of article 35 of the Constitution of Kenya, 2010 which entitles the petitioner the right to access information which information is paramount in enforcement of petitioner's fundamental rights and fundamental freedom.
6. It is his other case that the shortlisting were done in opaque manner, devoid of transparency, public participation and in total breach of the Constitution, 2010 and in particular article 10, 41,47 and 232 and should the interviews slated for July 7, 2021 and subsequent appointment of the chief II for Kuro Location Moyale sub-county within Marsabit county be allowed to proceed on the basis of the impugned shortlisting and selection process the residents of Kuro location will suffer substantial loss and damage on the account of poor leadership devoid of the required qualification and national values set out in chapter 6 of the Constitution of Kenya, 2010.
7. His case is that the interested parties were not qualified as per the advert for employment as chief II. Again, the petitioner avers that the conduct of the respondent selecting, recruiting and shortlisting an unqualified candidates contrary to the advertisement contained in the letter dated March 26, 2021 referenced as ST.102/Vol.V/II was unlawful and illegal and was intended to disadvantage qualified candidates and rob the community of quality leadership.
8. His other case is that the advertisement carried by the letter dated March 26, 2021 referenced as ST.102/Vol.v/II provided for the following qualifications criteria which the petitioner surpassed and thus it was unreasonable not to shortlist him: That "for the appointment to this grade, a candidate must:
 - i. Be a Kenyan citizen and a resident of the location;
 - j. Have a Kenya Certificate of Secondary Education (KCSE) mean grade of C (plain) or its equivalent with C plain in English or Kiswahili;
 - k. Be in possession of diploma in Public Administration/Management, Social work/Community Development, teaching, Disaster Management or equivalent qualification from a recognized institution;
 - l. Be aged between 30 years old of age;
 - m. Have been in involve in development initiative in the area;
 - n. Have certificate of good conduct;
 - o. Have good communication skills; and
 - p. Have certificate in computer application from recognized institutions.
22. The petitioner avers that the respondent's conduct in recruitment, shortlisting and the intended interviews the interested parties who are unqualified was done unprocedurally, unlawfully and in total disregard of the provisions of articles, 25(c), 35, 41, 47, 48, 50



and 51 of the Constitution of Kenya, 2010 and contrary to section 10 of the Employment Act, 2007 in that the petitioner and the residents of Kuro Locations were denied access to information, participation, fairness in the process and failure to adhere to the procedures of fair administrative action.

9. The petitioner further avers that the petitioner is apprehensive that if the respondent is allowed to proceed with their illegal, unlawful and unprocedural actions the residents of Kuro location and the petitioner will suffer irreparable harm that is not atonable by award of damages.
10. Again, the petitioner avers that the respondent's conduct in the process leading to the impugned shortlisting of the interested parties contravened the Constitution of Kenya, 2010 and in particular the following provisions:-
 - a. That the impugned shortlisting and interviews flied on the face of article 19(2) Constitution of Kenya which is purposed on realization of potential of all human beings since the same curtails the quality services to the petitioners and residents of Kuro locations and employment rights of the petitioners and residents of Kuro location without any justification.
 - b. That the petitioners ought to have been given reasons for the shortlisting and interviewing the interested parties (unqualified candidates) and failure to do so the respondent breached the petitioners right of access to information under article 35 and right to a fair administrative action under article 47 of the Constitution of Kenya, 2010.
 - c. That the impugned recruitment, shortlisting and interviews of the interested parties flies on the face of the right to equality and freedom from discrimination in that the respondent's conduct in favouring unqualified candidates against the qualified is discriminatory and contrary to articles 27 (1), (2), (4) and (5) of the Constitution of Kenya, 2010.
 - d. That to the extent that the said recruitment, selection, shortlisting and interviews were conducted unprocedurally, without following the governing law, procedure and without consulting the petitioners and resident of Kuro location, without giving them sufficient notice and a right to be heard such actions and/or omissions flied in the face of article 41 of the Constitution of Kenya, 2010.
 - e. That the respondent's impugned conduct in respect to said selection and shortlisting process lacks any rational justification in a country carrying itself out as a democratic society governed by minimum essential values of human dignity, equality and freedom.
11. The petitioner's other case is that the impugned recruitment and the shortlisting grossly violates the founding objectives of public service to wit, fostering national unity by recognizing diversity; recognition of right of communities to self-determination and promoting social and economic development.

He prays thus;

- i. A declaration that the recruitment and the impugned shortlisting for interviews of the interested parties conducted and/or contained in the respondent's letter dated June 11, 2021 in relation to the appointment and/or filing of the vacancy for the position of a chief II for Kuro Location was without regard to due process of law, was unlawful, illegal, null and void.
- ii. An order of *certiorari* to issue removing into the honourable court the decision of the respondent contained in the letter dated June 11, 2021 relating to recruitment and impugned shortlisting of the interested parties for the interviews for appointment and/or filing of the position of chief II for Kuro Location and the same be quashed.



- iii. A declaration be issued that the petitioner's enjoyment of their rights and fundamental freedoms secured in the bill of rights under articles 10, 27,35,41,47 and 232 of the Constitution of Kenya, 2010 have been contravened and infringed by the respondent by failing, neglecting and refusing to give the petitioner a hearing before the adverse administrative action and further in denying the petitioner's access to information in relation to the interested parties' applications and/or the criteria employed by the respondent in selection process for the position of a chief II for Kuro Location within Marsabit County.
 - iv. An order of a permanent injunction to issue restraining the respondent jointly and severally, either acting on their own and or through its agents, employees, servants, and/or any other person acting and/or purporting to act under their instructions and or orders from interview and appointing any of the interested parties and/or any other persons to the position of chief II Kuro location and/or from taking any further action in respect to filing the position of the chief II Kuro location.
 - v. The court do find that the petitioners are entitled compensation for violation of constitutional rights.
 - vi. The respondents be condemned go pay the petitioner the costs of the petition.
12. The issues for determination therefore are;
- 1. Whether the recruitment process for the position of chief II for Kuro location was unlawful, null and void.
 - 2. Whether the petitioner is entitled to the relief sought.
 - 3. Who bears the costs of this cause.
13. The 1st issue for determination is whether the recruitment process for the position of chief II for Kuro location was unlawful, null and void. The petitioner in his written submission dated March 24, 2022 reiterates his case and submits illegitimacy on the recruitment process for chief II Kuro location, Moyale sub-county.
14. In the event of no defence or answer to the issues raised, the petitioner's case takes the day. This is because in his pleadings and submissions he had displayed an elaborate case for irregularity, illegality and lack of openness in the recruitment process for office as advertised. I therefore find that the process of recruitment of chief II Kuro location, Moyale sub-county was unlawful *ab initio*.
14. The 2nd issue for determination is whether the petitioner is entitled to the relief sought. He is. On a finding of an unlawful recruitment process for chief II Kuro location, the petitioner becomes entitled to the relief sought.
15. I am therefore inclined to allow the petition and order relief as follows;
- i. A declaration be and is hereby ordered that the recruitment and the impugned shortlisting for interviews of the interested parties conducted and/or contained in the respondent's letter dated June 11, 2021 in relation to the appointment and/or filing of the vacancy for the position of a chief II for Kuro Location was without regard to due process of law, was unlawful, illegal, null and void.
 - ii. An order of *certiorari* be and is hereby issued removing into the honourable court the decision of the respondent contained in the letter dated June 11, 2021 relating to recruitment and



impugned shortlisting of the interested parties for the interviews for appointment and/or filing of the position of chief II for Kuro Location and the same be quashed.

- iii. A declaration be and is hereby issued that the petitioner's enjoyment of their rights and fundamental freedoms secured in the bill of rights under articles 10, 27, 35, 41, 47 and 232 of the *Constitution* of Kenya, 2010 have been contravened and infringed by the respondent by failing, neglecting and refusing to give the petitioner a hearing before the adverse administrative action and further in denying the petitioner's access to information in relation to the interested parties' applications and/or the criteria employed by the respondent in selection process for the position of a chief II for Kuro Location within Marsabit county.
- iv. An order of a permanent injunction be and is hereby issued restraining the respondent jointly and severally, either acting on their own and or through its agents, employees, servants, and/or any other person acting and/or purporting to act under their instructions and or orders from interview and appointing any of the interested parties and/or any other persons to the position of chief II Kuro location and/or from taking any further action in respect to filing the position of the chief II Kuro location.
- v. The costs of this cause shall be borne jointly by the respondents and interested parties.

DATED AND DELIVERED AT NYERI THIS 31ST DAY OF OCTOBER, 2022.

D.K.NJAGI MARETE

JUDGE

Appearances

1. Mr. Lesaigor instructed by Hashim & Lesaigor Advocates for the Petitioner.
2. No appearance for the Respondent.

