



**Omao v Duke Onyari (Acting Clerk, County Assembly of Nyamira) & 5 others
(Petition 4 of 2022) [2022] KEELRC 12849 (KLR) (12 October 2022) (Ruling)**

Neutral citation: [2022] KEELRC 12849 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
PETITION 4 OF 2022**

S RADIDO, J

OCTOBER 12, 2022

**IN THE MATTER OF ARTICLES 1(3)(C), 2(1), 3(1), 10, 22, 23(1) & (3), 73, 74,
75, 79, 80, 159(1), 160(5), 161(2)(B), 163(B), 165(3)(A),(B) & (3)(D)(II), 166(2)
(C) & (3), 258, 259(1) & (3) AND 260 OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF PRINCIPLES OF LEADERSHIP AND INTEGRITY
UNDER CHAPTER 6 OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF RESPONSIBILITIES OF LEADERSHIP UNDER ARTICLE 73 OF THE
CONSTITUTION OF KENYA AND IN THE MATTER OF THE PRINCIPLES GOVERNING
THE CONDUCT OF STATE OFFICERS UNDER ARTICLE 75 OF THE CONSTITUTION**

AND

**IN THE MATTER OF SECTIONS 3, 4, 5, 6, 7, 8 AND 11 OF
THE LEADERSHIP AND INTEGRITY ACT NO. 19 OF 2012**

AND

**IN THE MATTER OF THE GENERAL LEADERSHIP AND INTEGRITY CODE AS
SET OUT IN PART II OF THE LEADERSHIP AND INTEGRITY ACT NO. 19 OF 2012**

AND

IN THE MATTER OF THE COUNTY ASSEMBLY SERVICES ACT NO. 24 OF 2017

BETWEEN

VINCENT MARIITA OMAO PETITIONER

AND

**DUKE ONYARI (ACTING CLERK, COUNTY ASSEMBLY OF
NYAMIRA) 1ST RESPONDENT**



SPEAKER, COUNTY ASSEMBLY OF NYAMIRA	2ND RESPONDENT
COUNTY ASSEMBLY SERVICE BOARD	3RD RESPONDENT
COUNTY ASSEMBLY OF NYAMIRA	4TH RESPONDENT
DIRECTOR, PUBLIC PROSECUTIONS	5TH RESPONDENT
DIRECTOR OF CRIMINAL INVESTIGATIONS	6TH RESPONDENT

RULING

1. The petitioner sued the respondents before the court sitting in Kericho on May 13, 2022, contending that the intended recruitment of staff as signified through vacancy advertisements in the Daily Nation and Standard newspapers on May 12, 2022 violated constitutional provisions, the County Governments Act, and the Employment Act, 2007.
2. The petition was accompanied by a motion under a certificate of urgency, and the court directed the petitioner on May 16, 2022 to serve the respondents.
3. On May 23, 2022, the 1st to 4th respondents filed a preliminary objection challenging the court's jurisdiction. On May 24, 2022, the Court in Kericho declined territorial jurisdiction and transferred the petition to this court.
4. When the parties appeared before this court on June 7, 2022, it issued directions on the filing and exchanging of responses and submissions ahead of the delivery of judgment on October 12, 2022. The court also stayed the recruitment process.
5. The 1st to 4th respondents caused to be filed on June 29, 2022, a replying affidavit sworn by the acting clerk of the County Assembly and the petitioner filed a further affidavit on July 25, 2022.
6. On July 28, 2022, a consent signed by Sam N Mainga & Co Advocates for the petitioner and Makori Mahinda & Co Advocates for the 1st to 4th respondents was filed in court.
7. The consent was in the following terms:
 - (i) The respondents to follow due process in the recruitment exercise.
 - (ii) The petition be and is hereby marked as settled.
 - (iii) The respondents to bear half the costs of the petition, to be assessed by the court.
8. On August 5, 2022, the firm of Mahinda Makori & Co Advocates wrote to the Court indicating that the parties had reached a compromise and consent had been filed on July 27, 2022.
9. Despite filing the consent, the petitioner filed submissions on August 25, 2022.
10. Again, despite the consent, the petitioner moved the court under a certificate of urgency on August 29, 2022, alleging contempt on the part of the members of the County Assembly Services Board and some officers of the Board.
11. The court declined to certify the application as urgent and directed that it be served before the giving of further directions on October 12, 2022.



12. The court has set out the background to create clarity before it endorses the consent filed by the parties on July 28, 2022.
13. The court has not been presented with any material to suggest that the primary parties did not sign the consent and the court, therefore, adopts the consent as an order of the court. The petition is marked as settled in terms of the consent.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 12TH DAY OF OCTOBER 2022.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For petitioner Sam N. Mainga & Co. Advocates

For 1st – 4th respondents Makori Mahinda & Co. Advocates

5th and 6th respondents did not participate

Court Assistant Chrispo Aura

