



Kionge & 5 others v Speaker Migori County Assembly & 4 others (Judicial Review E010 of 2022) [2022] KEELRC 13283 (KLR) (24 November 2022) (Ruling)

Neutral citation: [2022] KEELRC 13283 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
JUDICIAL REVIEW E010 OF 2022
CN BAARI, J
NOVEMBER 24, 2022**

BETWEEN

VINCENCIA AWINO KIONGE 1ST APPLICANT
DURO GEORGE OKINYI 2ND APPLICANT
OUMA EDWARD OORO 3RD APPLICANT
NICHOLAS NGABIYA 4TH APPLICANT
GRACE AKINYI ODHIAMBO 5TH APPLICANT
ONUNDA CHRISTOPHER ODIRA 6TH APPLICANT

AND

SPEAKER MIGORI COUNTY ASSEMBLY 1ST RESPONDENT
BOAZ OKOTH OWITI 2ND RESPONDENT
BRIAN ODHIAMBO 3RD RESPONDENT
MEREZA ATIENO 4TH RESPONDENT
AUGUSTINE MWISE 5TH RESPONDENT

RULING

1. Before Court is the Applicants motion dated 13th July, 2022, and filed on 14th July, 2022, premised on Order 53 Rules 3 and 4 of the Civil Procedure Rules. The Applicants seek: -
 - i. An order of Judicial Review by way of certiorari to remove into this court for quashing the decisions contained in the 1st Respondent's Gazette Notice dated 1st July, 2022, Volume CXXIV degazetting the Applicants and replacing them with Boaz Owiti Okoth, Brian Odhiambo Osodo, Mereza Atieno Akel, Augustine Mwise Mwerah.



- ii. An order of Judicial Review by way of certiorari to remove into this court for quashing, the decisions arising from the Respondents' resolutions; letters dated 20th June, 2022, ref. Migori/Assembly/20/06/22/Vol II, letter dated 17th June, 2022, Ref. Migori/Assembly/17/06/Vol II, letter dated 20th June, 2020 Ref: Migori/Assembly/20/06/22/Vol. II, suspension letter dated 1st July, 2022, REF: Migori/Assembly/01/07/22/Vol. II and resolutions resulting from the minutes of the purported Board members REF:Migori/Assembly/17/06/22/Vol. II dated 17th June, 2022, or any other such resolutions they have passed and their consequence thereof.
 - iii. A Judicial Review Order of prohibition be issued barring the Respondents, their agents or anybody they rely on to implement the impugned decisions from implementing, continuing to implement, concluding implementation of the decisions contained in the letters and resolutions cited in ii above or any other resolution they have ever passed and they be prohibited from conducting any assembly business in such capacity.
 - iv. An order be issued in the nature of Judicial Review order of prohibition prohibiting the Chief Executive Committee Member Finance and Economic Planning Migori County or any other body they liaise with to implement such changes from implementing the purported board minutes, and if any process is already commenced, the same be stayed.
 - v. Costs be borne by the Respondents.
2. The 1st, 2nd, 3rd & 5th Respondents did not oppose the motion. The 4th Respondent opposed the motion vide a replying affidavit dated July 26, 2022.
 3. Parties orally urged the motion on October 3, 2022. Again, the 1st, 2nd, 3rd & 5th Respondents did not attend court, and nor were they represented at the hearing despite service.
 4. Counsel for the Applicants argued that they seek to review the resolutions contained in minutes of a meeting held on June 17, 2022, on the grounds that the meeting could not have taken place as the dissolution of the County Assembly was not reviewed, either by a court or the Assembly itself.
 5. The Applicants further argue that the timing of the meeting, having come one day after the Assembly was dissolved is malicious, and finally that the change of Bank signatories during the transition period points to a glamour to control public funds.
 6. The Applicants further told the court through counsel that sections 17-24 of the [County Assembly Services Act](#), make it mandatory for the Clerk of the Assembly to be Secretary of the Board and for reason that the meeting took place without a secretary, was irregular and hence the resolutions therein could not be implemented.
 7. Counsel for the 4th Respondent argued that the application as drawn has been overtaken by events upon coming into office of the new regime pursuant to the general elections.
 8. It is further urged for the 4th Respondent that she sought to challenge the decision taken by the Applicants herein through ELRC Petition No. 12 of 2022, and that the court issued a mandatory injunction retaining her as an appointed member of the Board, and further that there are no adverse orders challenging the order of mandatory injunction.
 9. The 4th Respondent further state that her decision alone could not amount to a decision of the Board and that the other Respondents did not state that their decisions were reached unanimously.
 10. It is the 4th Respondent's position that for judicial review orders to be granted, there must be a quasi-judicial body and the decision must be shown to have been tainted with illegality.



11. The Applicants' counsel in rejoinder, told the court that the matter is not overtaken by events for reason that the decisions made can still be implemented

Determination

12. I have considered the motion, the replying affidavit and the oral submissions by both Counsels.

13. In *Plaza Limited v. Commissioner for Lands & 3 others* [2019] eKLR, the court held thus: -

“We agree with the learned Judge that orders for judicial review ought to be sought as a last resort and only where there are exceptional circumstances. This Court, in setting out the criteria for determining such exceptional circumstances in *Republic vs. National Environmental Management Authority* [2011] eKLR held: -

“The principle running through these cases is where there was an alternative remedy and especially where Parliament had provided a statutory appeal procedure, it is only in exceptional circumstances that an order for judicial review would be granted, and that in determining whether an exception should be made and judicial review granted, it was necessary for the court to look carefully at the suitability of the statutory appeal in the context of the particular case and ask itself what in, the context of the statutory powers, was the real issue to be determined and whether the statutory appeal procedure was suitable to determine it..”

14. The Respondents herein, proceeded to hold meetings that gave rise to far reaching resolutions that included changing the County Government's Bank Accounts signatories in the middle of a transition period. Further, other than the 4th Respondent who denied being party to the decisions made, the rest of the Respondents did not deem it fit to respond to the application or attend court despite service.
15. As correctly submitted by Counsel for the Applicants, policy decisions such as those subject of this motion, live beyond a regime, and the application cannot be said to have been overtaken by events for reason only that there is a new regime in office. The decisions remain alive in the institution's records, and if not quashed, they stand capable of implementation.
16. The upshot is that I find the circumstances of this case exceptional such as to render a finding that judicial review was the most efficacious remedy, following which, I make the following orders:
 - a. An order of Judicial Review by way of certiorari be and is hereby issued to remove into this court for quashing the decisions arising from the Respondents' resolutions; letters dated 20th June, 2022, Ref. Migori/Assembly/20/06/22/Vol II, letter dated 17th June, 2022, Ref. Migori/Assembly/17/06/Vol II, letter dated 20th June, 2020 Ref: Migori/Assembly/20/06/22/Vol. II, suspension letter dated 1st July, 2022, REF: Migori/Assembly/01/07/22/Vol. II and resolutions resulting from the minutes of the purported Board members REF: Migori/Assembly/17/06/22/Vol. II dated 17th June, 2022.
 - b. The costs of this application shall be borne by the Respondents.
17. It is so ordered.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 24TH DAY OF NOVEMBER, 2022.

CHRISTINE N. BAARI

JUDGE



Appearance

Mr. Obiero present for the Applicants.

Ms. Apondi present for the 4th Respondent

N/A for the 1st, 2nd, 3rd, and 5th Respondents

Christine Omollo – C/A

