



**Bare & 2 others v County Public Service Board & 3 others (Petition E203 of 2022) [2022] KEELRC 13405 (KLR) (7 December 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13405 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E203 OF 2022**

**J RIKA, J  
DECEMBER 7, 2022**

**BETWEEN**

**IBRAHIM DAUD BARE ..... 1<sup>ST</sup> PETITIONER  
MOHAMMED ABDI ADAN ..... 2<sup>ND</sup> PETITIONER  
ABDIRAHMAN ADAN HUSSEIN ..... 3<sup>RD</sup> PETITIONER**

**AND**

**COUNTY PUBLIC SERVICE BOARD ..... 1<sup>ST</sup> RESPONDENT  
COUNTY GOVERNMENT OF MANDERA ..... 2<sup>ND</sup> RESPONDENT  
MANDERA COUNTY ASSEMBLY ..... 3<sup>RD</sup> RESPONDENT  
MOHAMED ADAN KHALIF THE GOVERNOR MANDERA ... 4<sup>TH</sup>  
RESPONDENT**

**RULING**

1. The petitioners above, have moved the court, under certificate of urgency, through an application dated December 2, 2022, seeking the following orders: -
  - a. For reasons shown in this application be certified urgent, and the same be heard *ex parte* in view of the urgency and prayer 2 herein.
  - b. A temporary order, do issue, staying the orders issued on December 2, 2022 in this matter pending the determination of this Application, in the interest of justice.
  - c. The orders issued on December 2, 2022 allowing vetting of the Chief Officers subject of this case and consolidation of the Petition E199 / 2022, Petition E2022 with the current suit be reviewed and/ or set aside.



- d. Such other and/or further orders do issue in the interest of justice.
2. The court made orders on December 2, 2022, for consolidation of 3 petitions which have been filed against the respondents by different petitioners from Mandera County, challenging nomination, vetting, approval and appointment of 33 nominees to the position of County Chief Officer.
  3. The petitions had been forwarded by the Principal Judge to the undersigned judge for directions, on December 2, 2022.
  4. On November 24, 2022, this court made a ruling on an *ex parte* application for conservatory orders, under Petition E199 of 2022. The court observed that vetting was scheduled for 24<sup>th</sup> and November 25, 2022, and the application, presented on November 24, 2022, was presented rather late in the day. It was also observed that the respondents have an important constitutional mandate in the processes, which must not be inhibited unreasonably by the Judiciary. Against this background, the court allowed vetting and approval processes to proceed, but ordered that no letters of appointments should be made to any of the nominees.
  5. On the same date, petitioners in the other petitions seem to have obtained orders, in different courts, suspending the processes.
  6. There were conflicting orders therefore, through no fault of any of the Hon judges who issued them, directing the processes of vetting and approval to proceed, while other orders directed suspension of the processes.
  7. It is against this background that the Principal Judge, in his wisdom, directed the files are placed before this court, which reviewed the orders issued suspending the processes, and directed that the orders issued under Petition E199 of 2022, shall apply in all the consolidated petitions.
  8. The court is allowed under review jurisdiction to correct its record, and align its orders, in case conflicting orders, have been made by different judges, without knowledge of what has been filed elsewhere by other parties.
  9. The complaint by the petitioners herein, that the undersigned judge should not have reviewed orders issued by other hon judges, is misplaced, in light of the orders of consolidation.
  10. The files cannot be deconsolidated, so as to allow individual judges revisit the orders they issued.
  11. Consolidation is discretionary, and the court need not hear litigants, before making the orders of consolidation. Review jurisdiction also, can be exercised by the court, without being moved by any of the parties.
  12. Reference of the various petitions to one judge, and the steps taken by that judge, is to ensure the same subject matter, relating to the same respondents, is dealt with consistently, and without the confusion occasioned by multiple petitions.
  13. The court directed that all the petitioners appear before it on December 9, 2022, and argue their respective applications for conservatory orders, in the presence of all the other parties.
  14. If the court is convinced that it should revisit the orders issued on November 24, 2022, and December 2, 2022, it shall revisit those orders, upon hearing the Parties inter partes, on 9<sup>th</sup> December 2022. What the petitioners above are seeking, is restoration of the conflicting orders, and deconsolidation of the files, with each court left to make its own orders, uninformed, about what the other Court is doing. There can be no greater cause of judicial anarchy, that reverting to the multiplicity of petitions and orders, as prevailed before the December 2, 2022.



**It Is Ordered**

- a. The application by the petitioners, dated December 2, 2022, seeking orders of review and deconsolidation of the petitions, and restoration of the orders suspending vetting and approval of the nominees, is declined.
- b. The Deputy- Registrar of the court to avail a copy of this ruling to all the parties in the consolidated petitions, before December 9, 2022.
- c. 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 7<sup>TH</sup> DAY OF DECEMBER 2022.**

**James Rika**

**Judge**

