



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

PETITION NO. 11 OF 2020

IN THE MATTER OF ENFORCEMENT OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLE 10,22,23,27,47,73,75 AND 232 OF THE CONSTITUTION OF KENYA 2010

IN THE MATTER OF ALLEGED CONTRAVENTION OF ARTICLES 10,22,23,27,47,73,76 AND 232 OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF SECTION 66(1) AND (B) OF THE WATER ACT NO. 43 OF 2016

AND

IN THE MATTER OF THE PUBLIC APPOINTMENT (PARLIAMENTARY APPROVAL) ACT NO. 33 OF 2011

AND

IN THE MATTER OF LEADERSHIP AND INTEGRITY ACT NO. 19 OF 2012

JOSEPH OYOLLO IMBUYE.....1ST PETITIONER

GODFREY LUMUMBA OHETI..... 2ND PETITIONER

VERSUS

CABINET SECRETARY MINISTRY OF WATER

AND SANITATION.....1ST RESPONDENT

LAKE VICTORIA NORTH WATER WORKS

DEVELOPMENT AGENCY.....2ND RESPONDENT

DR. JULIUS KONES..... 3RD RESPONDENT

RULING

1. The respondents in the replying affidavit to the Petition sworn on 4/5/2020 by the 3rd respondent Dr. Julius Kones raised a preliminary objection to the petition as follows:-

(i) That the matter is subjudice as there is a similar matter awaiting determination being Nairobi Petition No. 276/2019 between Emmanuel Asibwa and Ramadhan Makonzi Juma –vs- the Cabinet Secretary Ministry of Water and Sanitation, Lake Victoria North Water Works Development Agency, Dr. Julius Kones Maiyo, Manyalla, Keah, Meatrice Wangira, Alfred Khangati and Douglas Kiplimo awaiting Ruling before Korir J.

(ii) That the said suit raises the same issues for determination as the present petition and therefore this matter is subjudice and it be struck out as such.

2. The Orders set out in the Nairobi suit and those sought in this Petition were fully set out in the replying affidavit and Central to both suits

is sought a declaration nullifying appointment of 3rd to 8th respondents as members of the board of the 2nd respondent vide legal notice No. 1242 of 8th February, 2019.

3. The 1st and 2nd Petitioners filed grounds of opposition to the preliminary objection dated 4th May, 2020. The 1st and 2nd Petitioners allege that the petitioners in Petition No. 11 of 2020 Joseph Oyollo Imbuye and Godfrey Lumumba Oheti and Petitioners in Petition No. 276 of 2019 Emmanuel Asibwa and Ramadhan Makonzi Juma are totally different.

4. The Petitioners admit that the 1st, 2nd and 3rd respondents are the same in both petitions but the other respondents are different.

5. They also state that the reliefs sought in Petition 276/2019 concern all respondents whereas in the present petition No. 11 of 2020, reliefs are only sought against Dr. Julius Kones

6. That the Preliminary Objection and the application dated 4/5/2020 sought the same relief and therefore they be struck out for duplicity. That the application and the Preliminary Objection lack merit and they be dismissed.

Determination

7. The Court has considered the preliminary objection by the respondents herein and note that though the parties in Petition HCC 276 of 2019 and ELRC Petition No. 11 of 2020 are different, the Court notes that the Petitions share the key respondents being and the key relief sought is nullification of the appointment of the 3rd to 8th respondents as members of the Board of the 2nd respondent.

8. The two petitions also target nullification of Legal Notice No. 1242 of 8/2/2019.

9. Clearly, the subject matter in Petition 276/2019 is the same as the subject matter in Petition 11/2020.

10. It has not been disputed that proceedings in Petition 276/2019 before Korir J. are at an advanced stage and the parties await a ruling in the matter.

11. This matter is subjudice petition – No. 276/2019 and is meant to set ELRC on a collision cause with HCC at Nairobi with possible conflicted outcome.

12. Accordingly this petition and application dated 2/4/2020 is stayed pending the full hearing and determination of HCC Petition No. 276/2019. Costs in the cause.

Dated and delivered at Nairobi this 28th day of January, 2021.

MATHEWS N. NDUMA

JUDGE

ORDER

In view of the declaration of measures restricting court of operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this ruling has been delivered to the parties online with their consent. 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 18 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.

MATHEWS N. NDUMA

JUDGE

Appearances

Mulekyo & Co. Advocates for the 2nd and 3rd Respondents

Odinga & Khabuli Advocates for the Petitioners

Chrispo – Court clerk