



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

PETITION NO. 44 OF 2017

VINCENT ENDEKWA MAHASI.....1ST PETITIONER/APPLICANT

JULIUS MASIVA OBUGA.....2ND PETITIONER/APPLICANT

VERSUS

FRANCIS ANGUEYAH OMINDE.....1ST RESPONDENT

COUNTY ASSEMBLY OF VIHIGA.....2ND RESPONDENT

OFFICE OF THE GOVERNOR COUNTY GOVERNMENT OF VIHIGA....3RD RESPONDENT

RULING

1. The applicant in the application dated 20/4/2020 seeks an injunction against the 2nd and 3rd respondents to stop them from recruiting a County Secretary for Vihiga County pending the hearing and determination of the Petition.
2. The Court did not certify the application urgent nor was any interim Order granted at the ex parte stage.
3. The application is supported on grounds (a) to (e) set out on the Notice of Motion.
4. There is not attached to the Notice of Motion the alleged affidavit of Julius Masira Obuga.
5. Grounds (a) to (e) on the other hand do not constitute factual and/or legal reasons why the 2nd and 3rd respondents should be stopped from recruiting the County Secretary.
6. In the grounds of opposition filed by the 2nd respondent, the application is opposed as bad in law and an abuse of the Court process in that the same is frivolous, vexatious and trivial in nature and should be dismissed with costs.
7. The Court agrees with this submission by the 2nd respondent in that no tangible ground is found on the face of the Notice of Motion to warrant grant of the injunction sought by the applicant.
8. Furthermore there is no deposition by way of a supporting affidavit disclosing justifiable grounds upon which the Court may lawfully stop an administrative mandate of the 2nd and 3rd respondents.
9. The application does not therefore merit the criteria set out by the Supreme Court for grant of conservatory orders in public institutions in the Gatirau Munya case.
10. Accordingly, the application lacks merit and is dismissed with costs.

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

Petitioners/Applicants in person.

Francis Rakewa for respondent

Chrispo: Court clerk