



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**

**PETITION NO. 14 OF 2020**

**IN THE MATTER OF: ARTICLES 10, 19, 20, 21, 22, 23, 24, 27, 35, 36, 38, 81, 174, 201, 232, 236, 258 AND 259 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES 24, 27, 28, 38, 55, 81, 174, 232 AND 236 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF: THE COUNTY GOVERNMENTS ACT OF 2012**

**AND**

**IN THE MATTER OF: THE BOMET COUNTY PUBLIC APPOINTMENTS (ASSEMBLY APPROVAL ACT) 2014**

**BETWEEN**

**LEONARD SIGEY BETT.....PETITIONER**

**VERSUS**

**GOVERNOR, COUNTY OF BOMET.....1<sup>st</sup> RESPONDENT**

**COUNTY ASSEMBLY OF BOMET..... 2<sup>nd</sup> RESPONDENT**

**JUDGMENT**

1. Stella Chepkoech Langat was at all material times a Senior Deputy County Commissioner.
2. On 21 April 2020, the Public Service Commission wrote to the Cabinet Secretary, Ministry of Interior informing him that the said officer had been seconded to the County Government of Bomet upon her appointment as County Secretary.
3. On the same day, the Governor, County of Bomet (the Governor) submitted the name to the Speaker of the County Assembly (the County Assembly) for vetting for County Secretary's position.
4. On or around 23 April 2020, the Clerk of the County Assembly of Bomet caused to be published a notice in the Star Newspaper.
5. The notice invited Stella Chepkoech Langat and some other named persons to appear before different Assembly committees for vetting/approval.
6. Leonard Sigey Bett (the Petitioner) moved the Court on 27 April 2020 alleging that Stella Chepkoech Langat had been handpicked for the position of County Secretary contrary to the requirement for advertisement outlined in section 4 of the Public Appointments Act, 2014. The decision, it was also contended violated the national values and principles of governance as enshrined in Article 10 of the Constitution, responsibilities of leadership in Article 73 and the values and principles of public service espoused in Article 232.
7. The Petitioner sought the following orders:

- (i) A declaration that the Respondents are bound by the national values and principles pursuant to Articles 10 and 232 of the Constitution, to the wit rule of law, democracy, integrity, good governance, transparency, accountability and public participation in public matters.
- (ii) A declaration that by dint of Article 73 of the Constitution the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are bound to exercise public authority in a manner that is consistent with the purposes and objects of the Constitution and which promotes public confidence.
- (iii) A declaration that the 1<sup>st</sup> Respondents actions are glaringly illegal and unconstitutional and thus not fit to continue holding public office.
- (iv) A declaration that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents acted ultra vires and breached the provisions of Articles 10, 73, 174 and 232 of the Constitution.
- (v) An order of mandamus compelling the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to comply with the Constitution and initiate a recruitment process for the position of the County Secretary in a procedural, transparent and legal manner.
- (vi) There be an order on costs.

8. Filed at the same time was a Motion under a certificate of urgency seeking conservatory order(s) stopping the vetting and/or approval process.

9. The Court declined to certify the Motion as urgent and the Petitioner was directed to serve the application.

10. The Court further directed that affidavits and submissions be filed and exchanged within set timelines pending delivery of Ruling on notice.

11. The County Assembly filed its Ground of Opposition on 15 May 2020 while the Governor filed his Grounds of Opposition on 18 August 2020.

12. The next time the Petition came up was on 17 November 2020 (the Judge who had issued the first directions had been transferred). The Court was told that the Motion had been overtaken by events as a County Secretary had been appointed.

13. The Court gave fresh directions as a result of which the following were filed:

- (i) The Petitioner's submissions on 4 December 2020.
- (ii) The County Assembly's submissions on 7 December 2020.
- (iii) The Governor's replying affidavit on 11 December 2020.
- (iv) The Governor's submissions on 12 February 2021 (should have been filed/served before 3 February 2021).

14. The Court has considered the Petition, Motion, affidavits, Grounds of Opposition and the submissions and come to the view that one substantive Issue warrants its attention, the question whether the appointment of Stella Chepkoech Langat was subjected to competitive recruitment, and if not, appropriate relief.

### **Competitive recruitment**

15. The position of County Secretary is established by section 44 of the County Governments Act. Section 44(2)(a) of the Act makes it obligatory that County Secretary must be competitively sourced before nomination and approval.

16. The Petitioner's assertions that there was no public advertisement for the position were not denied or rebutted. The Respondents contention was that Stella Chepkoech Langat was a long-serving public administrator who met the bill for the position of County Secretary.

17. In the view of the Court, the Respondents position is not sound in law as it runs counter to the express statutory provision in section 44(2)(a) of the County Governments Act on competitive sourcing for a County Secretary.

18. In the same vein, section 5 of the Public Appointments (County Assemblies) Act, 2017 contemplates the appointing authority, in this case, the Governor to publish an advertisement inviting applications for nomination.

19. The Bomet County Public Appointments (Assembly Approval) Act, 2014 mirrors the requirements of the Public Appointments (County Assemblies) Act, 2017.

20. There was no material placed before the Court to demonstrate that the Governor invited interested persons to apply for nomination for the position of County Secretary as demanded by the Public Appointments (County Assemblies) Act, 2017. The appointment was unilateral and arbitrary and therefore, invalid.

21. The requirements of following the statutory procedures alluded to above have a constitutional foundation in the national values and principles of governance as well as the values and principles of public service. There should be fair competition and merit-based considerations in public appointments.

22. The integrity and transparency ethos which imbue the Constitution also justify the need for genuine public participation in the appointment process to public offices such as the one under examination here.

23. The Governor and the County Assembly are constitutional organs and are therefore bound by the Constitution and its values and principles.

### **Conclusion and Orders**

24. The remedies, as proposed by the Petitioner, were overbroad and if allowed as drafted, might have a polycentric effect without effectively remedying the real legal injury/wrong found to have been perpetrated. Orders must also be well-targeted and precise.

25. From the foregoing, the Court orders:

(i) A declaration be and is hereby issued that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents acted *ultra vires* and breached the provisions of Articles 10, 73, 174 and 232 of the Constitution as well as section 44 of the County Governments Act and section 5 of the Public Appointments (County Assemblies) Act, 2017 in the recruitment, vetting and appointment process of Stella Chepkoech Langat as County Secretary.

(ii) A declaration be and is hereby issued that the appointment of Stella Chepkoech Langat as County Secretary is invalid, null and void.

(iii) An order of mandamus be and is hereby issued compelling the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to comply with the Constitution and initiate a fresh recruitment process for the position of the County Secretary in a procedural, transparent and legal manner.

26. The Petition was in the nature of public interest litigation. Each party to bear their own costs.

**Delivered through Microsoft teams, dated and signed in Kisumu on this 17<sup>th</sup> day of February 2021.**

**Radido Stephen, MCI Arb**

### **Judge**

### **Appearances**

For Petitioner      Kasina & Associates Advocates

For 1<sup>st</sup> Respondent      Brian Otieno & Co. Advocates

For 2<sup>nd</sup> Respondent      Kirui Kipyegon & Co. Advocates

Court Assistant      Chrispo Aura