



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAKURU

ELRC CAUSE NO. E007 OF 2021

CONSOLIDATED WITH ELRC CAUSE NOS. E010 OF 2021 & E011 OF 2021

NYANDARUA COUNTY ASSEMBLY SERVICE BOARD.....1ST CLAIMANT

MUKIRI MUCHIRI.....2ND CLAIMANT

-VERSUS-

NYANDARUA COUNTY ASSEMBLY.....1ST RESPONDENT

ZACHARIA MWANGI NJERU.....2ND RESPONDENT

SAMUEL RIMUI KAIYANI.....3RD RESPONDENT

REUBEN GITAU KARANJA.....4TH RESPONDENT

ELIZABETH WANJIKU MUTHUL.....5TH RESPONDENT

THE GOVERNMENT PRINTER.....6TH RESPONDENT

THE INSPECTOR GENERAL OF POLICE.....7TH RESPONDENT

THE HON. ATTORNEY GENERAL.....8TH RESPONDENT

AND

JOHN KIERU WAMBUI.....1ST INTERESTED PARTY

KARIUKI MUCHIRI.....2ND INTERESTED PARTY

RULING

1. This ruling is in respect of the three consolidated matters being ELRC Cause No. E007 of 2021, ELRC Cause E010 of 2021 and ELRC Cause E011 of 2021 with regard to the issue of representation of the Nyandarua County assembly service Board, the 1st Claimant in ELRC cause number 7 of 2021, by the firm of Kunini and company advocates and the firm of Githinji Kimamo and company Advocates.

2. As directed by this Court 27th April, 2021 the firm of advocates herein filed submission on this issue both received in Court on the 10th day of May 2021.

3. The firm of Kunini and company advocates submitted that on 11th February, 2021, Jubilee party revoked the membership of John Kieru Wambui (the then vice chairperson of the board) and Kariuki Muchiri from being members of the county assembly service board. Subsequently Samuel Rimui Kaiyani and Reuben Gitau Karanja were appointed pursuant to section 46 of the County Assembly Service Act and the said persons sworn into office after their names were duly gazetted in the Kenya Gazette.

4. It is submitted that on 23rd Day of February, 2021 the ousted members John Kieru Wambui and Kariuki Muchiri filed an application before the political parties' tribunal being **PPDTC E005 OF 2021** challenging their ouster by Jubilee party which application was dismissed.
5. Counsel thus submitted that the ousted board members herein having being removed from the County assembly service board lacked any power to issue instruction to the firm of Githinji Kimamo to act for the board. Therefore, he argues that they are properly on record having being instructed by the new board.
6. The firm of Githinji Kimamo on the other hand maintains that they are properly on record for the Nyandarua County Assembly Service Board. Counsel argues that the board is a legal entity which can only make decision when it is properly constituted.
7. It was submitted that on 10th February, 2021, the 2nd and 3rd Respondents herein purported to carry out an impeachment motion for removal of speaker of Nyandarua county assembly who doubles up as the chairman of Nyandarua County Assembly Service Board, one Honourable James Wahome Ndegwa. That on 15th February, 2021 and 23rd February, the High Court in Nakuru in **Petition E002 of 2021: Hon James Wahome Ndegwa –vs- Hon Zachary Mwangi Njeru and 5 others**, issued orders staying the de-gazetment of the said Hon. James Wahome Ndegwa as the speaker of the county assembly of Nyandarua pending hearing and determination of the matter which in essence meant that there was not vacancy that arose in the office of the speaker. However it was indicated that a section of the county assembly of Nyandarua in blatant disregard to the said Court order purported to have passed a resolution on 23rd February, 2021 and appointed the deputy speaker as a member of the board and subsequently into the office of the chairman of Nyandarua County Assembly Service Board.
8. Counsel submitted further that section 46 of the County Assembly Service Act provides for the composition of the County assembly service Board to include *inter alia* the speaker who shall be the chairperson deputized by the vice chairperson elected by the board from member appointed by political parties whose term shall only cease at the end of the terms of the assembly or if the person ceased to be a member of the county assembly. Accordingly, he argues that the speaker herein was still legally in office as per the Orders of the High court issued on 15th February, 2021 and the actions undertaken by the deputy speaker during the said period are void abinitio for lack of authority.
9. It was argued that in absence of the speaker who is the chairperson to the board, the vice-chairperson shall deputize him, however that the role played by the deputy speaker of the county assembly is not related in any way to the role of the vice-chairperson of the board as contemplated under the Act.
10. That sometimes this year jubilee party sought to remove two members of the board elected by jubilee, however the speaker by his letter of 15th February, 2021 declined to remove the said member for doing so would be illegal. Subsequently the members earmarked for removal moved to the Political Parties Tribunal under Case Number E005 OF 2021 seeking for orders restraining their political party from removing them from office which application was dismissed and the applicant ordered to exhaust internal dispute resolution mechanisms. He argues that the said members being Hon Kieru Wambui and Hon, Kariuki Muchiri are still members of the Nyandarua County Assembly Service Board.
11. That another attempt to remove the said members of the board by the 2nd, 3rd and 4th Respondent bore no fruits either as the same was stopped by the Court in Nyeri under Petition E004 of 2021.
12. He argued that, the firm of Kunini & Company Advocates were given instructions by the board that was not properly instituted as the deputy speaker purported to have acted as the chairman of the board and the members present was the 3rd and 4th respondent all who are not legally members of the board.
13. It was submitted that the firm of Githinji Kimamo were appointed by the board when it was properly instituted even before the impeachment proceeding against the speaker was commenced. Further that the law does not envision a situation where the deputy speaker deputizes the Speaker of County Assembly Service Board and carry out administrative functions when the said speaker is still legally in office. Additionally, that it is only the speaker of the board that is mandated in law to give instruction on behalf and on account of a resolution passed by the board and that the deputy speaker has no position in the composition of the membership of the board.
14. Counsel thus submitted that they are properly on record and urged this Court to hold as such.
15. I have examined the averments of the parties herein. In determining who of the counsels or firms on record are properly on record, I would endeavor to examine how they were instructed. The contention is in respect of representation for the Nyandarua County Assembly Service Board herein after referred to as the Nyandarua CASB in Cause 9/2021 by the two firms of Kunini & Co. Advocates and Githinji Kimamo & Co. Advocates.
16. As regards the firm of Kunini they submitted that the Jubilee Party revoked the membership of John Kiiru Wambui (then Vice Chairman of the Board) on 11/2/2021 and Kariuki Muchiri for being members of the Nyandarua County Assembly Service Board.
17. They aver that in their place Samuel Rimui Kaiyani & Reuben Gitau Karanja were appointed and sworn in office and duly gazetted.
18. However the ousted members filed an application before the PPDTC being PPDTC E005/2021 challenging their ouster.
19. This application was dismissed. The firm of Githinji Kimamo & Co. Advocates were apparently instructed by the ousted members. They have however submitted that the Nyandarua County Assembly Service Board is the only entity which can make a decision when it is properly constituted.

20. They submit that on 10/2/2021 the 2nd and 3rd respondents herein purported to carry out an impeachment motion for removal of the speaker of Nyandarua County Assembly Service Board who also doubled up as Chairman of the Board.

21. However on 15/2/21 and 23rd February 2021 the High Court in **Nakuru Petition No. E002/2021 Hon. James Wahome Ndegwa Vs Hon. Zachary Mwangi Njeru & 5 others** issued orders staying the degazettement of the same Hon. James Wahome Ndegwa as Speaker of the Nyandarua County Assembly Service Board pending the hearing and determination of the matter.

22. The firm of Githinji Kimamo thus argues that the import of the High Court's order was that there is no vacancy in the office of the Speaker of the Nyandarua County Assembly Service Board. The firm of Githinji Kimamo & Co. Advocates argue that on 23.2.2021 in blatant disregard of the High Court order a section of the County Assembly of Nyandarua purported to pass a resolution appointing the Deputy Speaker as a member of the Board and subsequently into the office of the Chairman of Nyandarua County Assembly Service Board.

23. It is true that the High court having stayed the degazettement of Hon. James Wahome Ndegwa as Speaker pending the determination of the matter any purported appointment of any other person pending the hearing and determination of High Court Petition No. E002/2021 was illegal and still is illegal, null and void.

24. It therefore follows that any action undertaken by the illegally appointed persons when the rightful speaker was in office is also illegal null and void.

25. The firm of Kunini & Co. Advocates having been given instructions by the Nyandarua County Assembly Service Board that was not properly instituted under the headship of the Deputy Speaker is therefore not properly on record.

26. Having analyzed the above representation and how each of the two contentious firms were appointed on behalf of the Nyandarua County Assembly I return the verdict that the firm that is properly on record is the firm of Githinji Kimamo & Co. Advocates.

27. Those are the orders of this court.

RULING DELIVERED VIRTUALLY THIS 20TH DAY OF MAY, 2021.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Kipkoech for claimants in E007 of 2021

Mwaniki holding brief for Kimamo Githinji for 1st & 2nd Interested parties in E010 of 2021 & for Interested parties in E007 of 2021