



**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**

**v**

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

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

**RULING**

1. In a judgment delivered on 17 February 2021, the Court issued the following 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.

2. On 23 February 2021, Stella Chepkoech Langat filed a Motion under a certificate of urgency seeking to be enjoined into the Petition as an Interested Party. The Court directed that the Motion be served ahead of giving of directions on 4 March 2021.
3. However, on 1 March 2021, the Petitioner filed a Motion under a certificate of urgency seeking orders:
  - (i) ...
  - (ii) An order of committal to be made against the following for such period as this Honourable Court may deem fit and just;
    - (a) H.E. Dr Hillary Barchok, the 1<sup>st</sup> Respondent herein.
    - (b) Hon Nelson Mutai, the 2<sup>nd</sup> Respondent's Speaker.
    - (c) Stella Langat.
  - (iii) An order that costs of and occasioned by this Motion be paid personally by the contemnors.
4. The Court directed that this Motion be served before the giving of directions on 4 March 2021.
5. Not to be outdone, the County Government of Bomet filed a Motion on 2 March 2021 seeking a stay of execution of the judgment. The Court directed that the Motion be served.
6. When the parties appeared before the Court on 4 March 2021, the Court instructed the parties to agree on the sequence of hearing of the Motions, but the parties could not agree.
7. The Court, therefore, directed that it would hear the contempt application first and that the parties file and exchange affidavits/responses and submissions within set timelines.
8. The following were filed:
  - (i) Replying affidavit by the Speaker of the County Assembly on 1 April 2021.
  - (ii) Replying affidavit by the Governor.
  - (iii) Submissions by the Governor on 16 April 2021.
  - (iv) A purported consent by Charles Koech Advocate for the 3<sup>rd</sup> Respondent on 19 April 2021.
  - (v) Submissions by the Petitioner on 5 May 2021.
9. The Court has considered the contempt Motion, the affidavits and submissions on record.
10. The test to be met before a finding of contempt is made is well known. There must be a demonstration that there is in existence a valid Court order/decre; that the order and or decree was served upon the alleged contemnors or that they were aware of the existence of the order or decree and that the alleged contemnors wilfully disobeyed or failed to comply with the order.
11. The Governor deposed in his replying affidavit that upon service of the Court order, he informed Ms Stella Chepkoech Langat to leave office and that he further appointed one Mr Simon Langat to act as the County Secretary pending the recruitment of a new County Secretary.
12. The Governor exhibited to his replying affidavit a copy of the letter appointing Mr Langat to act as County Secretary.
13. The Petitioner did not rebut the assertions by the Governor that Ms Langat was no longer in office or dispute that Mr Langat had been appointed to act as County Secretary pending the recruitment of a substantive County Secretary.
14. Therefore, the Court is unable to find contempt in as far as the ground that Ms Langat had not left office is concerned.
15. In the submissions, the Petitioner changed the tenor of alleged contempt by contending that the contempt arose because the Respondents had not taken action to recruit for the position of County Secretary.
16. The Court did not give any timelines for the recruitment of a County Secretary. Under section 44 of the County Governments Act, the County Public Service Board has a role in the recruitment of the County Secretary.
17. The County Public Service Board was not a party to the proceedings, and therefore because of the standard of proof in contempt applications, the Court is not ready to find that the Governor and/or the Speaker of the County Assembly were in willful disobedience of the orders of 17 February 2021 when the organ clothed with the power to recruit was not a party to the proceedings.

18. Before concluding, the Court must observe that it had not yet determined the application seeking joinder of Ms Stella Chepkoech Langat to these proceedings, and therefore it was improper of the parties to include her as the 3<sup>rd</sup> Respondent.

19. The Motion is dismissed with costs.

**DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 12<sup>TH</sup> DAY OF MAY 2021.**

**Radido Stephen, MCI Arb**

**Judge**

**Appearances**

For Petitioner Musyoka-Annan & Co Advocates

For 1<sup>st</sup> Respondent Geoffrey Kipngetich Korir Advocates

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

Court Assistant Chrispo Aura