



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. E023 OF 2020

LIKALE MOSES SANDE.....CLAIMANT

VERSUS

COUNTY GOVERNMENT OF KAKAMEGA.....1st RESPONDENT

GOVERNOR, COUNTY OF KAKAMEGA.....2nd RESPONDENT

COUNTY PUBLIC SERVICE BOARD, KAKAMEGA.....3rd RESPONDENT

COUNTY EXECUTIVE COMMITTEE MEMBER FOR

PUBLIC SERVICE AND ADMINISTRATION.....4th RESPONDENT

RULING

1. Likale Moses Sande (the Claimant) was offered the position of Legal Advisor and Head of Legal Services for 3-years with effect from 1 September 2015 by the County Government of Kakamega after an interview by the County Public Service Board.
2. On 15 September 2015, the Claimant wrote to the Chief Officer, Public Service and Administration, lamenting that he had been interviewed for the position of County Attorney, but he had instead been offered the position of Legal Advisor and Head of Legal Affairs.
3. The County Executive Committee member, Public Service, wrote to the Claimant on 28 August 2018 notifying him that the contract had been renewed for 2-years.
4. On 9 July 2020, the Office of the County Attorney Act was gazetted. It was to commence on 27 July 2020, and on 11 July 2020, the County Public Service Board (the Board) advertised for the position of County Attorney.
5. On 2 October 2020, the County Chief Officer, Public Service, wrote to the Claimant, bringing to his notice that his contract had ended on 31 August 2020 and instructing him to formally hand over so that his benefits could be prepared.
6. Consequently, the Governor appointed an acting County Attorney on 6 November 2020.
7. The Claimant understood the actions of the Respondents as having the effect of terminating his contract unlawfully, and on 26 November 2020, he sued the Respondents alleging unlawful termination of contract and breach of contract.
8. Filed together with the Memorandum of Claim was a Motion under a certificate of urgency seeking interim injunctive orders restraining the Respondents from interfering with the Claimant's contract and allowing him access to office, amongst other orders.
9. The Court heard oral submissions from the parties on 3 December 2020 and ordered that both the Motion and Cause be heard together.
10. The Court directed the parties to file and exchange pleadings and submissions ahead of judgment on 24 February 2021.
11. As a consequence, the following was filed:
 - (i) Respondents Response to Claim and affidavit of evidence on 25 December 2020.

(ii) Respondents further affidavit sworn by the County Executive Committee member for Public Service on 4 January 2021.

(iii) Claimant's further affidavit on 15 January 2021.

(iv) Claimant's further affidavit of evidence in response to Respondents affidavit filed on 4 January 2021.

(v) Claimant's submissions on 15 January 2021.

12. Nevertheless, the Respondents filed a Motion under a certificate of urgency on 2 February 2021, seeking orders, in brief, striking out documents said to be confidential and filed by the Claimant on 26 November 2020, and a further affidavit filed by the Claimant on 15 January 2021.

13. In the alternative, the Respondents sought leave to file a further affidavit and documents.

14. Pending the resolution of the Motion, the Respondents also sought an order arresting the delivery of judgment.

15. This Motion is the subject of this Ruling.

16. The Claimant filed a Replying Affidavit in opposition to this Motion on 9 February 2021. The Respondents filed submissions and authorities in support of the Motion on 24 March 2021

17. The Claimant filed his submissions on 21 April 2021.

18. The Court has keenly gone through the Motion filed on 2 February 2021, the affidavits and submissions and Article 234(2)(i) of the Constitution and come to the view that the directions issued on 3 December 2020 be set aside.

19. The setting aside is prompted by the need to save judicial time and the attendant costs to the parties if the Court were to fully consider the aforesaid Motion at this stage of the proceedings.

20. The Court has also considered the fact that the Claimant filed further affidavits without leave of the Court on 15 January 2021, and he failed to serve the same upon the Respondents until the Respondents became aware of the filings while preparing their submissions.

21. Further, the Court notes that there is in place the Access to Information Act which may be utilised by the Claimant to get the documents sought to be expunged from the record in order to assert his constitutional rights.

22. The Court issues the following new directions:

(i) The Cause to be determined on the basis of *viva-voce* evidence.

(ii) Before the Cause is scheduled for hearing, the parties to address the Court on the applicability and effect of Article 234(2)(i) of the Constitution, section 77 of the County Governments Act and sections 85, 86 and 87 of the Public Service Commission Act, 2017 on the cause of action herein.

(iii) The Claimant to file and serve his submissions on or before 2 July 2021.

(iv) The Respondents to file and serve their submissions on or before 2 August 2021.

23. Ruling date to be given immediately after delivery of this Ruling.

24. For purposes of clarity, the order of *status quo*, which was issued on 3 December 2020, is vacated.

25. Costs in the cause.

Delivered through Microsoft teams, dated and signed in Kisumu on this 2nd day of June 2021.

Radido Stephen, MCI Arb

Judge

Appearances

For Claimant Malalah & Co. Advocates

For Respondents Mukele Moni & Co. Advocates

Court Assistant

Chrispo Aura