



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAKURU

ELRC PETITION NO. E07 OF 2021

IN THE MATTER OF CONSTITUTION OF KENYA 2010.

IN THE MATTER OF ARTICLES 1, 2, 3, 10, 20, 21, 22, 23, 75,

165, 177, 196, 232 OF THE CONSTITUTION OF KENYA.

AND

IN THE MATTER OF SECTION 13 OF THE COUNTY GOVERNMENT ACT.

AND

**IN THE MATTER OF THE FILLING OF THE VACANCY OF THE OFFICE OF THE
CLERK OF THE COUNTY ASSEMBLY OF NYANDARUA.**

AND

IN THE MATTER OF SOVEREIGNTY OF THE PEOPLE OF KENYA.

AND

IN THE MATTER OF THE PRINCIPLES OF LEADERSHIP AND INTEGRITY.

BETWEEN

ELIZABETH WANJIKU MUTHUI.....PETITIONER/APPLICANT

VERSUS

MUKIRI MUCHIRI.....RESPONDENT

AND

THE SPEAKER, COUNTY ASSEMBLY OF NYANDARUA.....1ST INTERESTED PARTY

THE COUNTY ASSEMBLY OF NYANDARUA.....2ND INTERESTED PARTY

COUNTY GOVERNMENT OF NYANDARUA.....3RD INTERESTED PARTY

RULING

INTRODUCTION

1. The application before me is the Notice of Motion application dated 10th March, 2021 filed by the Petitioner/Applicant under Section 1A,

1B, 1C and 3A of the CPA, Cap 11 Laws of Kenya. Order 40 Rule 7 of the CPA, 2010 and any other applicable provisions of law. The applicant seeks orders;

- a) **THAT the application herein be certified as urgent and service of the same be dispensed with in the 1st instance due to its urgency.**
- b) **THAT pending the hearing and determination of this application inter partes, there be a stay of execution of the exparte Orders issued on the 8/3/2021.**
- c) **THAT the Honourable Court be pleased to set aside, vary and or vacate the exparte orders issued on the 8/3/2021.**
- d) **THAT the Petitioner/Respondent be restrained and/or enjoined from acting, conducting herself, performing duties or presenting herself as the clerk and/or Acting Clerk of the County Assembly of Nyandarua.**
- e) **THAT the costs of this application be provided for by the Petitioner.**

2. The application is based on the annexed affidavit of Mukiri Muchiri and the following grounds:-

- a) **THAT the Orders of 8/3/2021 were obtained through concealment of material facts and swearing of falsehoods.**
- b) **THAT the petitioner was appointed in office by a person without powers to appoint Acting Clerk.**
- c) **THAT the County Assembly Service Board did not make a resolution vide Min. No.1584/03/2021 to appoint the Petitioner/Respondent as an Acting Clerk and the persons who sat in the said meeting are strangers to the County Assembly Service Board and had no powers to make such resolutions.**
- d) **THAT the Petitioner/Respondent is a complete stranger to the County Assembly Service Board and the County Assembly of Nyandarua and she is using the exparte Orders of 8/3/2021 to run the affairs of and conduct the functions of the Acting Clerk.**
- e) **THAT the Respondent/Applicant remains the only legally appointed Acting Clerk of the County Assembly of Nyandarua and it is only fair and just for the Orders of 8/3/2021 to be vacated.**

3. In the affidavit of Muchiri, he reiterates the averments made on the grounds above and further depones that an Ag Clerk of the County Assembly of Nyandarua had been appointed by Nyandarua County Assembly Service Board and gazetted as such and have been performing the functions of the Accounting Officer of CASB as per Annexure MMI (a) (b).

4. He deponed further that according to the CASA the speaker of the CA is the designated chairperson to preside at every meeting of the Board and in the absence of the chairperson at the meeting, the Vice chairperson shall preside.

5. The deponent states that a vacancy in the office of the chairperson of the board only arises when the person, ceases to be the Speaker of the County Assembly.

6. He contends that on 10th February 2021, the 2nd Interested Party purported to carry out an impeachment motion for the removal of the speaker of Nyandarua County Hon. James Wahome Ndegwa which attempt was stayed by the court on 15th February, 2021 as per Court Order MM2.

7. This therefore implies that there was no vacancy in the office of the Speaker of the CA of the 2nd Interested Party and/or in the office of the Chairman Board of Nyandarua County Assembly Service Board.

8. The respondents only filed their Notice of Appointment on 9/4/2021 but no grounds of opposition or any document in opposition to this application.

9. The Petitioner's application in my view remain unmerited the High Court having already issued orders staying the removal of the Speaker of the County Assembly.

10. I find the current application merited and is allowed.

11. I also vacate interim orders granted on 8/3/2021.

12. Costs in the petition.

Ruling delivered virtually this 28TH day of JULY, 2021.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:-

Miss Kamau holding brief Ngaruiya for petitioner for interested parties – present

Waichungo for respondent – present

Court Assistant – Fred