



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA**

**AT NYERI**

**PETITION NO.E005 OF 2021**

**(As consolidated with ELRC PETITION NO.E004 OF 2021)**

***(Before D.K.N.Marete)***

GIDEON MUKIRI MUCHIRI.....1ST PETITIONER

STEPHEN MWANGI KAIRU.....2ND PETITIONER

PAUL MUYA GITAU.....3RD PETITIONER

GEORGE KAMUNYA WANGOMBE.....4TH PETITIONER

ANTHONY MATERE GATHURU.....5TH PETITIONER

LEWIS PETER NJENGA KARIRU.....6TH PETITIONER

RICHARD MACHARIA WAMWEA.....7TH PETITIONER

GEORGE KIMANI KANYONI.....8TH PETITIONER

PETER GITHAE MUHIA.....9TH PETITIONER

**VERSUS**

ZACHARY MWANGI NJERU.....1ST RESPONDENT

SAMUEL RIMUI KAIYANI.....2ND RESPONDENT

REUBEN GITAU KARANJA.....3RD RESPONDENT

ELIZABETH WANJIKU MUTHUI.....4TH RESPONDENT

NYANDARUA COUNTY ASSEMBLY SERVICE BAORD.....5TH RESPONDENT

**THE DIRECTOR,**

**ADMINISTRATIVE SERVICE & HUMAN RESOURCE,**

NYANDARUA COUNTY ASSEMBLY.....6TH RESPONDENT

**AND**

**THE COUNTY ASSEMBLY OF NYANDARUA.....INTERESTED PARTY**

**RULING**

This is an issue that arose in the course of these proceedings. It is an issue that primarily crops out of the legal representation of the parties in this application and suit. The suit comes in the nature of a constitutional petition.

This matter was originated by way of an application dated 26th April, 2021 drawn by the firm of Mathea Gikunju & Company Advocates. It was to be served onto the respondents as set out in the said application and suit.

On the following day, the same firm of advocates filed another application dated 27th June, 2021. The parties to this later application are the same.

These matters come for hearing *inter partes* on 19th May, 2021 when the appearances comprised of Mr. Mathea for the Petitioners whereas a Mr. Ngaruiya held brief for Mr. Korir for the Respondent and Interested Party.

During the proceedings, Mr. Mathea raised an issue of his service of a notice of Appointment of Advocate by the Law firm of Kipkoech & Ogolla, Advocates for the same Respondent and Interested Party. The new advocates went on to bring in Mr. Kairu who now held their brief.

This is the background of the issue at hand and the bone of contention. At this state, Mr. Kairu submitted that he did not owe Mr. Ngaruiya a duty of service as in his estimation, Mr. Ngaruiya was not properly on record for the respondents.

It is here that it became apparent that there were issues on the representation of the parties. This required determination. Mr. Mathea submitted and suggested that this be had in cause Numbers E004/2021 and E005/2021 in both of which the issue was in contention.

On 20th May, 2021, the Coram was as follows;

*Muthea & Ngwete for the Petitioner*

*Maina Kairu holding brief for Kipkoech for the 5th Respondent and Interested Party*

*Maina Ngaruiya for the 1st and 2nd Respondents and Interested Party*

The case of a clear contest on representation thereon arose with Mr. Muthea and Kairu submitting that they had not been served with a Notice of Appointment of Advocates by Mr. Ngaruiya. On the other hand, Mr. Ngaruiya submitted that this was now on record and served onto the complaining counsels.

With the ranging controversy, the matter came for hearing at 1608 hours on 20th May, 2021 wherein Mr. Ngaruiya opened on a note and submission by referring the court to the provisions of the County Assembly Services Act, No. 24 of 2017, particularly S. 19 which provides for the function of the clerk of the county assembly. It provides that the clerk shall be the Chief Administrative officer of the assembly.

The Act, he further submitted, also establishes the County Assembly Services Board through her section 4. S. 17 provides the various functions of the secretary of the board which include being Chief Executive Officer, Accounting and Administrative officer. It entitles the said secretary to be the custodian of the boards records.

Mr. Ngaruiya further submitted that besides the issue of representation, if the same was found out of his favour, he would be eligible to appear for the 1st, and 4th respondents, who are persons with an inalienable right to representation.

Mr. Ngaruiya further submitted and sought to rely on his Notice of Appointment of Advocate and the references, particularly the letter to the Registrar authored by the Acting Clerk, Nyandarua County Assembly, dated 19th May, 2021.

Mr. Kairu's submission is that the 5th Respondent and Interested Party are corporate. They act through persons and so the pertinent issue is to identify the faces of such persons acting for them.

It is his further submission that an issue of vacancy of the office of speaker was not onset in the circumstances. Again, the service of counsel is for the board. This also applies to the County Assembly- the board chooses and appoints counsel.

He further submits that Section 46 of the County Assembly Service Board provides the power to act. The County Assembly Service Board consists of the speaker, two members of the political party in majority representation and two members of the public. This is where counsel derives his authority to act.

Counsel further submitted a reliance on his list of documents and submitted that the list of documents filed by Mr. Ngaruiya are by the Deputy Speaker and not the legitimate authority – the Speaker.

Mr. Mathea, counsel for the Petitioner entered the fray by submitting that the quorum of the appointing board that come up with Korir & Co. Advocates is three (3). The 1st and 4th Respondent and 4th member is not a board secretary. Mr. Muthui has thus been appointed board member now is the 4th member a secretary. There is no quorum as required by law in this appointment.

His further submission is that the minutes supplied do not include Cause No. ELRC E005/2021 now before court and the Respondent and interested Party in E004/2021. The notice should therefore be struck out with costs.

This is a confused situation. Having heard the respective counsels for the parties, mine is to make an appropriate determination on their appearances and or representation. This is simple.

I find that the parties should in the circumstances of the case be represented in the following order;

- i) Mr.Mathea instructed by Mathea Gikunju & Company Advocates appears for the Petitioner. This was never in contention.
- ii) Mr.Kairu instructed by Kipkoech & Ogolla Advocates continues to hold their brief on behalf of the 5th Respondent and Interested Party.
- iii) Mr.Ngaruiya continues to hold brief for Mr.Kunini instructed by Kunini & Company Advocates for the 1st and 4th Respondents.
- iv) The space on representation of the other parties is open and up for grabs.
- v) Each party shall bear their costs of the application.

**DATED AND DELIVERED AT NYERI THIS 26TH DAY OF JULY, 2021.**

**D.K.NJAGI MARETE**

**JUDGE**

Appearances

1. Mr.Mathea instructed by Mathea Gikunju & Company Advocates for the Petitioner.
2. Mr.Kairu instructed by Kipkoech & Ogolla Advocates for the 5th Respondent and Interested Party.
3. Mr.Ngaruiya holding brief for Mr.Kunini instructed by Kunini & Company Advocates for the 1st and 4th Respondents.
4. No appearance for the other parties.