



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT UASIN GISHU

COURT NAME: ELDORET LAW COURT

CASE NUMBER: ELRCPET/E006/2021

CITATION: BISMARCK PTIYOS NGURIAKADA AND TODOMOK PKEMOI LOMGELECH AND 3 OTHERS VS DEPUTY COUNTY COMMISSIONER POKOT CENTRAL SUB- COUNTY- COUNTY AND THE PUBLIC SERVICE COMMISSION AND 3 OTHERS

RULING

ON 2021-06-25 BEFORE HON. JUSTICE J. N. ABUODHA

1. By a Motion dated 9th March, 2021 the Petitioner sought orders inter alia that:

- (i) THAT pending the hearing and determination of this Application this Honourable Court be pleased to issue conservatory orders and /or prohibitory injunction prohibiting the 4th Respondent from resuming office and performing the duties of Assistant Chief Chepsurum sub -location.
- (ii) THAT pending the hearing and determination of the Application, the Honourable Court be pleased to issue and hereby issues an interim order suspending the implementation of the 1st Respondent decision made on the 12/02/2021 appointing the 4th Respondent herein as the Assistant Chief II for Chepserun sub-location.
- (iii) THAT pending the hearing and determination of this Petition this Honourable Court be pleased to issue conservatory orders restraining and/or Prohibition injunction, prohibiting the 4th Respondent from assuming office of Assistant Chief Chepserun sub-location.
- (iv) THAT pending the hearing and determination of the Petitioner, the Honourable Court be pleased to issue and hereby issues an interim order suspending the implementation of the 1st Respondent's decision made on the 12.02.2021 appointing the 4th Respondent herein as the Assistant Chief II for Chepserun sub-location.

2. The application was supported by the affidavit of Bismarck Priyos Nguriakade who deponed on the main that:

- (i) THAT I together with my Co-Petitioners are residents of Chepserun sub-location and present the petition on the Application on behalf of the residents of Chepserun sub location.
- (ii) THAT I was among the shortlisted candidates for the position of Assistant Chief while my Co-Petitioners have been appointed by the community to act on their behalf
- (iii) THAT on the 18/6/2020 an advertisement was placed by the 1st Respondent herein advertising the position of an Assistant Chief Chepserun sub location.
- (iv) THAT the qualifications of the position of Assistant Chief II Job group "F" was as follows:
 - (a) The Applicant must be resident of Chepserun Sub-location, should posses' high leadership qualities and have thorough knowledge of the area.
 - (b) He/she must be development conscious, have self-driven and be a person of Integrity who commands respect in the community.
 - (c) Be between 35 35 and 45 years old.
 - (d) Have passed KCSE with a minimum grade of C-(Minus).

(e) Be in possession of Certificate in Public Administration /Management Social work, Community Development Teaching, Disaster Management or equivalent from recognized institution.

(f) Possess good communication skills.

(g) Be in possession of a computer certificate.

(h) Be in possession of a certificate of good conduct.

(v) THAT candidates to the position were short listed and interviews conducted on the 3/08/2020. The results of the interviews were released on the 12/2/2021 appointing the 4th Respondent as Assistant Chief II Chepserun sub location.

(vi) THAT upon shortlisting of the candidates we raised a complaint to the 1st Respondent over the 4th Respondent being shortlisted since we knew he came from a different location and sub location however he assured us that fact would be considered during the interviews since it was one of the requirements.

(vii) THAT the following candidates were shortlisted for the position of Assistant Chief-

i. BISMARCH PTIYOS NDURIAKADA ID NO 25271405

ii. PETER PKEMEI AMUKE ID NO 20028293

iii. HILLARY KOSKEI LOTIDOMO ID NO 27660728

iv. STEPHEN KAKUKO LOMUNAN ID NO 24261573

v. DAISY CHEMUTAI KALALE

(viii) THAT the above candidates: - BISMARCK PTIYOS NDURIAKADA, PETER PKEMEI AMUKE, HILLARY KOSKEI LOTIDOMO and DAISY CHEMUTAI KALALE are residents of Chepserun sub location and who possessed the qualifications stated in the advertisement.

(ix) THAT we were shocked to learn that the 4th Respondent had been appointed as the Chief yet he is not a resident of Chepserun sub location but a resident of Cheptulel location, Nyorpotwo sub location.

(x) THAT the appointment of the 4th Respondent did not meet the requirements stipulated in the advertisement and also as per the National Government Act which requires the Assistant Chief to be from the sub-location to be from the sub location hence denying qualified candidates from Chepserun sub location.

(xi) THAT we again raised a complaint to the 1st Respondent and a letter of protest was presented to the 1st Respondent but he has failed to take any action yet the residents who the 4th Respondent intends to govern have vowed not to allow him in office.

(xii) THAT the 1st, 2nd and 3rd Respondents have accorded preferential treatment to the 4th Respondent against the residence of Chepserun sub location which contravenes the provisions of Article 27(1) of the Constitution of Kenya.

(xiii) THAT the 2nd and 3rd Respondents are in the process of implementing the decision of the 1st Respondent and unless the orders being sought are granted the Petitioners stand to suffer irreparable loss.

3. When the matter came before me Ex-parte on 15th March, 2021, I ordered that the application together with the petition be served on the respondents who were required to file a response thereto within 14 days of service and that the matter be mentioned on 8th April, 2021 for directions on hearing and disposal.

4. The respondents entered appearance through the AG on 6th April, 2021 but never filed any Replying Affidavit or Grounds of Opposition to the application.

5. When the matter came up for mention on 25th April, 2021 Only Counsel for the Petitioners appeared. The court thus directed that the Petitioner do file and serve submissions on the respondent. The Petitioners complied with the Court's direction yet still at the time of writing this ruling the respondent had neither filed a Replying Affidavit, nor submission. The matter is therefore considered undefended and the Court shall proceed to grant the orders as prayed in the Motion dated 9th March, 2021.

6. It is so ordered.

Dated at Eldoret this 1st day of October, 2021

Delivered at Eldoret this 1st day of October, 2021

GIVEN under my hand and Seal of this Court on 2021-10-03 12:28:08

SIGNED BY: HON. JUSTICE J. N. ABUODHA (ADMINISTER JUSTICE)

THE JUDICIARY OF KENYA.

ELDORET ELRC

EMPLOYMENT AND LABOUR RELATIONS COURT

DATE: 2021-10-03 12:28:08