



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

PETITION NO. 181 OF 2019

IN THE MATTER OF ENFORCEMENT OF FUNDAMENTAL RIGHTS AND FREEDOMS AND ARTICLES 2, 3, 10, 22, 23, 27, 35, 41, 75, 165, 232 AND 233 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF CONTRAVENTION AND VIOLATION OF ARTICLES 10, 19, 20, 21, 22, 23, 24, 25, 35, 41, 50, 179, 232 AND 233 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF APPOINTMENT OF MOHAMED HUSSEIN AS CHIEF GRADE II OF RHAMU LOCATION, RHAMU DIVISION, MANDERA NORTH SUB-COUNTY

AND

IN THE MATTER OF THE LEADERSHIP AND INTEGRITY ACT, 2012

AND

IN THE MATTER OF THE EMPLOYMENT ACT, 2007

BETWEEN

IBRAHIM MOHAMUD IBRAHIM.....1st PETITIONER

ABDI DIMA YAKUB.....2nd PETITIONER

VERSUS

MINISTRY OF INTERIOR & COORDINATION OF

NATIONAL GOVERNMENT.....1st RESPONDENT

REGIONAL COMMISSIONER, NORTH-EASTERN REGION....2nd RESPONDENT

COUNTY COMMISSIONER, MANDERA COUNTY.....3rd RESPONDENT

DEPUTY COUNTY COMMISSIONER, MANDERA COUNTY.....4th RESPONDENT

THE ATTORNEY GENERAL.....5th RESPONDENT

AND

THE PUBLIC SERVICE COMMISSION.....1st INTERESTED PARTY

MOHAMED HUSSEIN.....2nd INTERESTED PARTY

RULING

1. On 5 December 2018, the Deputy County Commissioner (4th Respondent) advertised for the position of Chief Grade II, Rhamu Location.
2. 21 persons responded to the advertisement out of which 9 applicants were interviewed and Mohamed Hussein (2nd Interested Party) emerged top of the list.
3. On 4 July 2019, the Principal Secretary, Ministry of Interior and Coordination of National Government (1st Respondent) approved the appointment of the 2nd Interested Party as Chief, Rhamu Location. The 4th Respondent then formally offered the position to the 2nd Interested Party on 15 August 2019.
4. Ibrahim Mohamud Ibrahim and Abdi Dima Yakub (Petitioners) got wind of the appointment and on 27 August 2019 caused their advocate to request for information on the recruitment process from the 4th Respondent under Article 35 of the Constitution.
5. The 4th Respondent did not respond and on 4 October 2019, the Petitioners filed this Petition, alleging that the recruitment process and appointment of the 2nd Interested Party were in violation of Articles 10, 27, 41, 232 and 233 of the Constitution.
6. The reasons advanced by the Petitioners were that the 2nd Interested Party did not reside in Rhamu location or meet the mandatory (academic/diploma) requirements for appointment as Chief.
7. Filed with the Petition was a motion under a certificate of urgency seeking orders

1. ...

2. THAT pending the hearing and determination of this application, the Honourable Court do issue an order compelling the 2nd and 4th Respondents to file in Court copies of the applications, curriculum vitae, academic documents and testimonials received by the 4th Respondent from the 2nd Interested Party and other shortlisted applicants for the position of Chief Grade II for Rhamu Location in Mandera North Sub-County as advertised by the office of the 4th Respondent vide their letter dated 5th December 2018.

3. THAT pending the hearing and final determination of this application and the Petition, an order of temporary injunction be issued restraining the 2nd Interested Party from assuming office, exercising powers and functions of Chief Grade II for Rhamu Location, Rhamu Division, Mandera North Sub-County or drawing/earning any salaries or allowances thereof.

4. THAT an order do issue restraining the Respondents from swearing-in or handing over the tools of power/office to the 2nd Interested Party for the office of Chief Grade II for Rhamu Location, Rhamu Division, Mandera North Sub-County pending the hearing and determination of this application and Petition.

5. THAT costs hereof be provided for.

8. When the application was placed before the Duty Court, it directed that it be served for *inter partes* hearing.

9. The 4th Respondent filed a replying affidavit in opposition to the application on 4 December 2019, and the Court took brief oral submissions on the same day.

10. The primary grounds advanced by the Petitioners in challenging the appointment of the 2nd Interested Party were that he was not a resident of Rhamu Location, but a resident of Rhamu Dimtu Location and that he did not possess a Diploma certificate.

11. Eerily, the Respondents did not respond directly to the assertion that the 2nd Interested Party was not a resident of Rhamu Location but exhibited a copy of his national identity card indicating that he was a resident of Rhamu Dimtu Location.

12. A copy of the advertisement issued by the 4th Respondent on 5 December 2018 and filed in Court by the Petitioners show that one of the requirements for the appointment was that the candidate be

a resident of the particular ward

13. The ward is a fairly recent addition to the administrative/governance structure in this country under the Constitution, 2010. It is more of an electoral unit rather than an administrative unit. It is in the public domain that some electoral wards comprise more than one administrative unit.

14. Previously, the administrative units comprised of sub-location, location, division and district. The divisions and districts have since been renamed (sub-counties and counties).

15. The parties did not disclose to the Court the interplay and/or connection between a ward and the administrative units as outlined in the preceding paragraphs.

16. It was incumbent upon the Petitioners to demonstrate that the 2nd Interested Party was not a resident of the particular ward, or that Rhamu Dimtu location did not fall within that particular ward. The qualification referred to a ward and not location.

17. The Petitioners other challenge was on the 2nd Interested Parties academic qualifications.

18. In countering the challenge, the Respondents exhibited copies of the 2nd Interested Party's testimonials.

19. The testimonials show that the 2nd Interested Party has undergone extensive training in security, governance and administration from Government organs/bodies and holds Kenya National Examination Council Craft Certificates and Diploma Certificate in Social Work and Community Development.

20. Although a copy of the scheme of service for Assistant Chiefs/Chiefs was not produced, the Court would observe that experience cannot be relegated to the back burner.

21. The Petitioners failed to discharge the burden placed on them to establish a *prima facie* case.

22. The motion dated 4 October 2019 is this without merit and is dismissed. Costs in the cause.

Delivered, dated and signed in Nairobi on this 7th day of February 2020.

Radido Stephen

Judge

Appearances

For Petitioners Mr. Ayieko instructed by Laichena Mugambi & Co. Advocates

For Responders Ms. Wangeci, Litigation Counsel, Office of the Attorney General

For 1st Interested Party Ms. Wangeci, Litigation Counsel, Office of the Attorney General

2nd Interested Party did not participate

Court Assistant Judy Maina