



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

PETITION NO. 71 OF 2018

(Before Hon. Justice Mathews N. Nduma)

MAJOR (Rtd) JOEL KIPRONO ROP.....PETITIONER

VERSUS

COUNTY SECRETARY – COUNTY GOVERNMENT OF BOMET.....1ST RESPONDENT

COUNTY PUBLIC SERVICE BOARD-BOMET COUNTY.....2ND RESPONDENT

COUNTY GOVERNMENT OF BOMET.....3RD RESPONDENT

JUDGMENT

1. In this matter interim orders were granted by consent for stay of recruitment, selection and appointment process on decisions flowing from the advertisement for vacancies by the 2nd Respondent in the print media as carried in the standard newspaper of 9th November 2018 and the parties proceeded to canvass the merits of the petition.

2. The petition was filed on 23rd November 2018 praying for an order in the following terms:

a. Pending the hearing and determination of this petition conservatory orders be issued in terms of the Notice of Motion filed herewith.

b. A declaration that advertisement by the Respondents placed in the Standard Newspaper dated 9th November, 2018 on page 13 is flawed, manifestly unreasonable and is contrary to the established guidelines with respect to job advertisements by the Public Service Board inter alia the right to a fair administrative action, fair hearing and therefore null and void *ab initio*.

c. A declaration be and is hereby issued that the actions of the 1st and 2nd respondents, their representatives or assigns contravene the constitution of Kenya, County government Act, 2012, Employment Act, 2007 and the interested parties terms and therefore prohibited by law.

d. That an order be and is hereby issued directing the 1st and 2nd respondents to first and foremost take staff rationalization of the staff working in the Bomet County government and determine vacancies that exist and thereafter place advertisements for only those positions that cannot be filled by the already existing staffs for the advertised positions as per the advertisement placed in the Standard Newspaper dated 9th November, 2018 on page 13.

e. That this Honourable Court be pleased to issue an injunction restraining the Respondents by it selves, their agents,, representatives or any other person whatsoever from hiring employees and or conducting any interviews in related jobs pursuant to the advertisement placed in the Standard Newspaper dated 9th November, 2018 before complying with prayer (d) above.

f. That the Honourable court be pleased to declare that the respondents violated the rights to fair labour practices namely reasonable working conditions including permanent terms and conditions of service as protected under *Article 41 (1) of the Constitution and the provisions of the employment Act, 2007*.

g. A declaration that the 1st, 2nd and 3rd Respondents have violated the petitioner's right to equal benefit of law under Article 27 of the constitution, right to a fair administrative action under Article 47 of the constitution, right to a fair hearing under Article 50 of the

Constitution and the right to access justice under Article 48 of the constitution.

h. An order for judicial review to quash any decision of the 1st and 2nd Respondents made pursuant to flawed, biased and unreasonable to the advertisement placed in the Standard Newspaper dated 9th November, 2018.

i. That the Respondents to pay costs of the petition.

j. Any other or further relief that this Honourable Court considers appropriate and just to grant.

3. The petition is grounded on the following facts:

a. That the Respondents placed an advert in the Standard Newspaper dated 9th November 2018 at page 13 contrary to the provisions and guidelines of the Public Service Board Human Resource Manual of May, 2016.

b. Public Service Board Human Resource Manual of May, 2016 on page 22 provides that;

“Ministries/State Departments will advertise all vacant posts in a manner that reaches the widest pool of potential applicants and allow for at least twenty one (21) days before closing the advert. The advert shall have the following details: the title of the post, number of vacancies, job description, person specification and the proposed remuneration”.

c. That the petitioner is also apprehensive that the jobs that have been advertised have already been occupied by people who were employed on a permanent and pensionable status.

d. That the Advertisements were done without seeking guidance from all the relevant user departments.

e. That the Advertisements are all targeted and aimed at specific individuals like it has been in the past thus discriminatory in nature as it does not accord those occupying such positions an opportunity to be heard.

f. That the Petitioner is also apprehensive that the said job adverts are aimed at employing more staffs with the sole aim of frustrating the activities of the County government of Bomet as the term of service for the Bomet Public Service board is about to come to an end.

g. The conduct of the respondents has grossly violated the Petitioner's rights *under Articles 27, 28, 29(c) and (f), 40, 47, 48, 159(2) (a) and (b) and 232 of the constitution* which violations is likely to continue unabated unless this court intervenes.

4. The respondents did not file any response to the petition and so the facts set out in the petition have not been contradicted and/or traversed.

5. The petitioner filed written submissions dated 23rd November 2018 on 16th August 2019 and isolated the following issues for determination:

a. Whether the advertisement in the standard newspaper dated 9th November 2018 at page 13 was contrary to the provisions and guidelines of the public service board Human Resource Manual of May 2016.

b. Whether the respondent's actions were in line with the provisions of the constitution.

c. Who is to bear the costs of the suit.

6. The respondents filed submissions on 17th September 2019.

7. The court has carefully analyzed the contents of the petition and in particular the facts of the case, statutory and constitutional violations set out by the petitioner and the reliefs sought.

8. The court is satisfied that the facts set out by the petitioner and the alleged violation of the Public Service Board Human Resource Manual of May 2016 on page 22 as set out in this judgment and *Articles 27, 28, 29 (c) and (f), 40, 47, 48, 159 (2) (a) and (b) and 232 of the constitution of Kenya 2010* have not been contradicted at all by the respondents.

9. The said facts and violations are supported by the petitioner in the Affidavit sworn in support of the petition on 28th November 2018 and filed on 23rd November 2018.

10. The court finds that the facts set out in the petition and the violations above have been proved on a balance of probabilities.

11. Accordingly, the petition succeeds and an order issued in favour of the petitioner as against the respondents in the following terms:

a. The recruitment, selection and appointment process or decisions flowing from the advertisement for vacancies by the 2nd respondent in the print media as carried in the Standard Newspaper of 9th November 2018 at page 13 is declared unlawful and in

violation of the Public Service Board Human Resource Manual of May 2016.

b. The action by the 2nd respondent threatened violation of the rights of permanent and pensionable employees already in the employ of the respondents under *Articles 27, 28, 29 (c) to (f), 47, 48, 159 (2) (a) and (b) and 23 of the constitution of Kenya 2010.*

c. An order for Judicial Review to bring into the Employment and Labour Relations court and quash the same as set out in the Standard Newspaper dated 9th November 2018 is hereby issued.

d. The Respondent to pay the costs of the petition.

Judgment Dated, Signed and delivered this 9th day of March, 2020

Mathews N. Nduma

Judge

Appearances

P. Sang, Advocate for the Petitioner.

Cosmas Koech, Advocate for the Respondent

Chrispo – Court Clerk