



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**

**CAUSE NO. 13 OF 2019**

*(Before Hon. Justice Mathews N. Nduma)*

**CHARLES VICTOR ORODI.....CLAIMANT/APPLICANT**

**VERSUS**

**BUSIA COUNTY GOVERNMENT.....1<sup>ST</sup> RESPONDENT**

**GOVERNOR, BUSIA COUNTY.....2<sup>ND</sup> RESPONDENT**

**COUNTY SECRETARY, BUSIA COUNTY.....3<sup>RD</sup> RESPONDENT**

**THE CHAIR, BUSIA COUNTY PUBLIC SERVICE BOARD.....4<sup>TH</sup> RESPONDENT**

**RULING**

1. The respondent raised a preliminary objection against the suit that the court lacks jurisdiction to hear and determine the claimant's cause in view of Article 185(3) of the constitution of Kenya, 2010 and Section 15 of the County Governments Act no. 17 of 2012 and standing order 198 of the Busia County Assembly Standing Orders. Pending for hearing is an application dated 4<sup>th</sup> March 2019 in respect of which interim orders had been granted. The respondent filed a replying affidavit to the application sworn by one Assumta Obore on 14<sup>th</sup> March 2019.

2. The issue in dispute is the sending of the claimant on undefined compulsory leave in terms of a letter dated 12<sup>th</sup> February 2019. The claimant served as the secretary to the Busia County Public Service Board with effect from May 2014 for a fixed period of six (6) years.

3. On 23<sup>rd</sup> January 2019, the respondents advertised the vacancy of the secretary to the Board, Busia County Public Service Board despite the fact that there was no vacancy in the said position.

4. In the letter sending the claimant on compulsory leave, the claimant is accused of nepotism, incompetence, bribery and insubordination.

5. The appointment and discipline of the County Secretary is in terms of *Section 58 of the County Governments Act No. 17 of 2012*. The Section provides:

*“58 (1) The County Public Service Board shall comprise-*

*(a) A chairperson nominated and appointed by the County Governor with the approval of the County Assembly;*

*(b) Not less than three but not more than five other members nominated and appointed by the County Governor, with the approval of the county assembly; and*

*(c) A certified public secretary of good professional standing nominated and appointed by the governor, with the approval of the county assembly, who shall be the secretary to the board.”*

6. The letter sending the claimant on indefinite compulsory leave pending investigation is by the Governor himself.

7. The dispute is one arising from an employee and employer relationship and this court has jurisdiction in terms of *Article 162 (2) of the constitution of Kenya 2010 read with Section 12(1) of the E&LRC Act, 2011* as amended. The court similarly has jurisdiction to entertain applications for issuance of conservatory orders in respect of any employee in public service provided the applicant discloses sufficient merit in granting the application considered against the public interest of the case. **See Gatirau Peter Munya and Dickson Mwenda Kithinji & 3 others[2014]eKLR,Supreme Court of Kenya Petition No.2B of 2014**

8. The Secretary of Public Service Board may only be removed in terms of *Section 58 (5) of the County Governments Act*. The requirements for removal of a secretary who is a member of the County Public Service Board are:

(a) On grounds set out for removal of member of a constitutional commission under *Article 251(1) of the constitution*; and

(b) By a vote of not less than seventy-five percent (75%) of all members of the county assembly.

9. Without getting to the merits of the case, the sending to compulsory leave of the claimant violated the process for removal of the claimant stated above and the applicant has disclosed sufficient merit to warrant confirmation of the conservatory order granted at the *ex parte* stage. The court is persuaded by the decision in **Mundia Njeru Gateria vs Embu County government; Hussein Roba Boru vs County Government of Isiolo and 2 others (2015) eKLR, and County Assembly of Kisumu and 2 others vs Kisumu County Assembly Service Board and 6 others (2015) eKLR**, on the substantive and procedural requirements for removal of a member of county public service Board.

10. Accordingly, the preliminary objection is dismissed for lack of merit and the court confirms the conservatory order as prayed for in the application.

11. Costs in the cause.

**Ruling Dated, Signed and delivered at Nairobi this 16<sup>th</sup> day of April, 2020**

**Mathews N. Nduma**

**Judge**

**ORDER**

In view of the declaration of measures restricting court of operations due the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15<sup>th</sup> March 2020, this ruling has been delivered to the parties online with their consent. They have waived compliance with ***Order 21 rule 1 of the Civil Procedure Rules*** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by ***Article 159(2)(d)*** of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under ***Article 48*** of the Constitution and the provisions of ***Section 18 of the Civil Procedure Act (chapter 21 of the Laws of Kenya)*** which impose on this court the duty of the court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**Mathews N. Nduma**

**Judge**

**Appearances**

Mr. Nyegenye for the Claimant/Applicant.

Mr. Kobimbo for the Respondents

Chrispo – Court Clerk