



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**PETITION NO. 194 OF 2019**

*(Before Hon. Lady Justice Maureen Onyango)*

**IN THE MATTER OF: ARTICLES 10, 27, 28, 29, 41, 47 AND 236 THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF: THE CONSTITUTION OF KENYA (PROTECTION OF  
RIGHTS AND FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013**

**AND**

**IN THE MATTER OF: SECTIONS 5, 45 AND 46  
OF THE EMPLOYMENT ACT of 2007.**

**AND**

**IN THE MATTER OF: SECTION 12 AND 13 OF  
THE COUNTY GOVERNMENTS ACT, 2012**

**AND**

**IN THE MATTER OF: SECTION 5,10,17,19,22,23 OF  
THE COUNTY ASSEMBLY SERVICE ACT, 2017**

**AND**

**IN THE MATTER OF: CONTRAVENTION OF SECTION 9(2)(d)  
OF THE PUBLIC SERVICE (VALUES AND PRINCIPLES) ACT 2017**

**AND**

**IN THE MATTER OF: VIOLATION AND CONTRAVENTION OF  
UNDAMENTAL RIGHTS AND FREEDOMS GUARANTEES UNDER  
ARTICLES 10, 27, 28, 29, 41, 47, AND 236 OF THE CONSTITUTION OF KENYA, 2010**

***BETWEEN***

**THE CLERK, NAIROBI CITY COUNTY ASSEMBLY.....PETITIONER**

**VERSUS**

**THE SPEAKER, NAIROBI CITY**

**COUNTY ASSEMBLY.....1<sup>ST</sup> RESPONDENT**

**NAIROBI CITY COUNTY ASSEMBLY**

**SERVICE BOARD.....2<sup>ND</sup> RESPONDENT**

**AND**

**THE ORANGE DEMOCRATIC PARTY.....1<sup>ST</sup> INTERESTED PARTY**

**THE JUBILEE PARTY.....2<sup>ND</sup> INTERESTED PARTY**

**HON. ABDI HASSAN GUYO.....3<sup>RD</sup> INTERESTED PARTY**

**HON. MAURICE GARI.....4<sup>TH</sup> INTERESTED PARTY**

**HON. MARK NDUNG’U.....5<sup>TH</sup> INTERESTED PARTY**

**DIRECTIONS BY THE JUDGE GIVEN ON 5<sup>TH</sup> AUGUST 2020**

In his ruling dated 20<sup>th</sup> December 2019 at paragraph 51 thereof, Makau J. determined as follows –

*“51. Finally, parties are directed to comply with the consent orders issued on 30.10.2019 which reinstated the petitioner as the Clerk, Nairobi City County Assembly pending the hearing and determination of the petition herein.”*

There are no orders setting aside the said ruling. These orders are therefore confirmed and parties directed to comply.

The foregoing settles the application dated 30<sup>th</sup> July 2020 by the Nairobi City County Assembly and Edward Ombwoni Gichana to be enjoined as interested parties to this petition. This is because Gichana’s appointment was in violation of the court orders of 30<sup>th</sup> October 2019 and therefore null and void.

This also settles the application dated 26<sup>th</sup> July 2020 by the Petitioner which seeks to enforce orders of this court confirming him as Clerk of the Nairobi City County Assembly pending determination of the petition herein.

Further, in view of the ruling of this court of 15<sup>th</sup> November 2019, the following Interested parties are no longer necessary for the determination of this petition: -

1. The Orange Democratic Party – 1<sup>st</sup> Interested Party
2. The Jubilee Party – 2<sup>nd</sup> Interested Party
3. Hon. Abdi Hassan Guyo – 3<sup>rd</sup> Interested Party
4. Hon. Maurice Gari – 4<sup>th</sup> Interested Party
5. Hon. Mark Ndung’u – 5<sup>th</sup> Interested Party

They are therefore discharged from any further proceedings in this petition.

All other Interested Parties are also discharged as they are not necessary for the final determination of this petition.

There is a further issue in this matter. The issue of who is the Petitioner in this suit. From the prayers sought and the proceedings it is clear that The Clerk of the County Assembly who is Muvengei Jacob Ngwele only filed the petition in the name of the Clerk, Nairobi County Assembly because it was intended to preserve the positions of the persons named in paragraph 32 of the Petition being

- (i) Muvengei Jacob Ngwele, currently serving as the Clerk of the assembly and Secretary of the 2<sup>nd</sup> Respondent;
- (ii) Guyo Abdi Hassan, currently serving as the representative of the Majority Party/Coalition in the membership of the 2<sup>nd</sup>

Respondent;

(iii) Okumu Elias Otieno, currently serving as the representative of the Minority Party/Coalition in the membership of the 2<sup>nd</sup> Respondent;

(iv) Adah Awuor Onyango, currently serving as the Deputy Clerk of the Nairobi City County Assembly;

(v) Philomena Kavinya Nzuki, currently serving as the Principal Accountant of the Nairobi City County Assembly;

(vi) Frederick Macharia Mwangi, currently serving as the Senior Finance Officer of the Nairobi City County Assembly;

(vii) Nancy Cheroni Mutai, currently serving as the Principal Human Resource Officer of the Nairobi City County Assembly; and

(viii) Garvin Romeo Castro, currently serving as the Acting Principal Clerk Assistant of the Nairobi City County Assembly;

Since the issues relating to all the other persons/positions have been settled, the only issue left for determination is the preservation of the position of Clerk who as I have already stated above is Muvengei Jacob Ngwele, pending determination of this petition.

For these reasons, it is only the said Muvengei Jacob Ngwele who can instruct Counsel to represent the Petitioner herein. The issue of withdrawal of this petition is also now settled.

Petition No. 71 of 2020 is stayed as it seeks to fill the position of Clerk to Nairobi County Assembly which is not vacant, and which will be resolved by the determination of this petition.

Parties are therefore directed to proceed to file submissions as follows –

- (1) Petitioner to file on or before 17<sup>th</sup> August 2020.
- (2) Respondents to file on or before 31<sup>st</sup> August 2020.
- (3) Petitioner has right of reply on or before 10<sup>th</sup> September 2020.
- (4) Submissions not to exceed 10 pages in font 12 excluding authorities.
- (5) Highlighting of submissions on 21<sup>st</sup> September 2020. Each party will have 10 minutes.
- (6) Judgment on 16<sup>th</sup> October 2020.
- (7) All applications in the file are stayed. Any application filed after today will be given a hearing after judgment.

**In the meantime, Muvengei Jacob Ngwele to step aside until determination of the petition. The Deputy Clerk currently in office will take over the functions of the Clerk until the petition is determined.**

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 5<sup>TH</sup> DAY OF AUGUST 2020**

**MAUREEN ONYANGO**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020, that judgments and rulings shall be delivered through video conferencing or via email. 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 1B 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.

**MAUREEN ONYANGO**

**JUDGE**