



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

PETITION NO. E043 OF 2020

(Before Hon. Lady Justice Maureen Onyango)

IN THE MATTER OF ARTICLES 1(1), 1(3)(a), 1(3)(b), 1(4)(b), 2(1), 2(2), 3(1), 10(2)(c), 19, 20, 21, 22, 23, 73(1)(a)(i), 73(1)(iv), 169(2), 176, 179, 258, 201(d)

AND

IN THE MATTER OF THE ALLEGED VIOLATION OF ARTICLES 10(2)(c), 73(1)(a)(i), 73(1)(iv) AND 201(d) OF THE CONSTITUTION

ABDIAZIZ HUSSEIN ABDI.....PETITIONER

VERSUS

THE GOVERNOR, MANDERA COUNTY..... 1<sup>ST</sup> RESPONDENT

MANDERA COUNTY GOVERNMENT..... 2<sup>ND</sup> RESPONDENT

MANDERA COUNTY ASSEMBLY..... 3<sup>RD</sup> RESPONDENT

MANDERA COUNTY ASSEMBLY SERVICE BOARD..... 4<sup>TH</sup> RESPONDENT

AND

ETHICS AND ANTI-CORRUPTION

COMMISSION..... 1<sup>ST</sup> INTERESTED PARTY

THE SENATE OF THE REPUBLIC OF KENYA.....2<sup>ND</sup> INTERESTED PARTY

THE HON. ATTORNEY GENERAL..... 3<sup>RD</sup> INTERESTED PARTY

JUDGMENT

On 13<sup>th</sup> February 2020, the Governor of Mandera County Government informed Abdiaziz Sheikh Maad, Shamsa Mohamed Haji, Johora Mohamed Abdi and Hassan Mohamed Ahmed that their services as County Executive Committee Members would be terminated effective 15<sup>th</sup> March 2020. They challenged the decision to terminate their employment in **Petition 21 of 2020; Abdiaziz Sheikh Maad & 3 Others v the Governor, Mandera County & 3 Others** where it was held as follows–

- a. The 1<sup>st</sup> Respondent act of relieving the Petitioners of their duties violated their rights under article 47, 41 and 50 of the Constitution and was therefore null and void.
- b. Judicial review order of certiorari and prohibition as sought in prayer (a) and (b) of the Petition were granted.
- c. The Respondents were given the liberty to compute and pay the Petitioners the gratuity earned up to the date of dismissal plus

*their salary for the remaining period of their contract, as an alternative to the judicial review orders granted.*

*d. The vacancies caused by the impugned dismissal shall not be filled by other persons until the Respondents pay the rightful dues to the Petitioners.*

The Mandera County Governor opted to compute and pay the Petitioners their rightful dues. Thereafter, the process to fill the positions begun. An advertisement was published in the local daily newspapers on 29<sup>th</sup> August 2020 informing the public that the Governor had nominated Adan Dagane Hamud, Nadhifa Ahmed Mohamed and Rahma Abdow Abdrahman as County Executive Committee Members.

Aggrieved by the Governor's action, the Petitioner who resides and works for gain in the County, instituted this petition and sought the following reliefs–

1. *A declaration that the 1<sup>st</sup> Respondent violated Articles 10(2)(c), 73(1)(a)(i), 73(1)(a)(iv) and 201(d) of the Constitution.*
2. *This Court does quash/set aside the nomination and/or appointment of:*
  - a. *Adan Dagane Hamud, as Mandera County Executive Committee Member for Trade, Investment, Industrialization and Cooperative Development.*
  - b. *Nadhifa Ahmed Mohamed as Mandera County Executive Committee Members for Gender and Social Services; and*
  - c. *Rahma Abdow Abdrahman as Mandera County Executive Committee Members for Agriculture, Livestock and Fisheries.*
  - d. *Abukar Abdi Sheikh as the Mandera Chief Officer for Medical Services.*
3. *For purposes of saving the funds for Mandera County citizens, this Assembly does direct, for the next 2 years, the Governor Mandera County to appoint in acting capacity County Executive Committee Members for –*
  - a. *Trade, Investment, Industrialization and Cooperative Development.*
  - b. *Gender and Social Services.*
  - c. *Agriculture, Livestock and Fisheries.*
  - d. *Mandera County Chief Officer for Medical Services.*
4. *Costs of this Petition and interest thereon be provided for.*
5. *Any other further relief that this Court may deem fit and just to grant in the circumstances.*

#### **The Petitioner's Case**

The Petitioner averred that paying Abdiaziz Sheikh Maad, Shamsa Mohamed Haji, Johora Mohamed Abdi and Hassan Mohamed Ahmed Kshs.50,000,000.00 worth of gratuity and salary for the remainder of their term and thereafter nominating 3 County Executive Committee Members and appointing a Chief Officer who would consume a similar amount, was an abuse of office.

In the Petitioner's view, the creation of another wage bill amounted to duplicating payments whereas that money could be used in service delivery such as provision of water, health and other essential services. As such, it was against public interest. He urged this Court to address the constitutionality of the nominations before the nominees could be vetted.

It was the Petitioner's case that by appointing a substantive Chief Officer for medical services and proposing 3 nominees, the 1<sup>st</sup> Respondent violated the provisions of article 10 (2)(c), 73 (1)(a)(i) and (iv) of the Constitution. Further, creating a wage bill of over Kshs.50,000,000.00 yet the same had been paid by the 1<sup>st</sup> Respondent violated the provisions of Article 201(d) of the Constitution due to his failure to prudently and responsibly use public funds.

#### **The Respondents' Case**

The 1<sup>st</sup> Respondent opposed the appeal vide his Replying Affidavit sworn in opposition to the Application dated 7<sup>th</sup> September 2020. He contended that the petition was frivolous and an abuse of the Court process due to its failure to specifically state the constitutional rights alleged to have been violated by the nomination of the new CEC members.

The 1<sup>st</sup> Respondent further contended that the Petitioner was not a party to Petition 21 of 2020 hence has no legitimate interest in law to seek enforcement of the judgment. It prayed that petition be struck out.

He averred that the former CEC members were paid their salaries for the remainder of the contract period, subject to statutory deductions and guidelines by the Salaries and Remuneration Commission. Their gratuity was equally computed and deposited in the County Pension Fund

(CPF) and was to be released once the individuals cleared with the respective County Departments.

The 1<sup>st</sup> Respondent contended that the process of vetting and nominating the CEC members complied with the law. In his view, the interim injunction orders stopping the vetting process delayed the approval and appointment of the nominees. It was his case that once the application filed in Petition 21 of 2020 where the former CEC members have challenged the computation of their terminal dues is determined, this petition will be rendered moot.

The 1<sup>st</sup> Respondent averred that since the positions of the CEC members became vacant, efficient functioning of the County Executive and service delivery has been hampered. Therefore, it is in the best interest of Mandera County residents that the vetting process be allowed to proceed.

The 2<sup>nd</sup> Respondent has opposed the petition vide the Replying Affidavit of Abdinur Maalim Hussein sworn on 16<sup>th</sup> September 2020. The 2<sup>nd</sup> Respondent contended that the petition was an abuse of Court process there being an application in **Petition No. 21 of 2020** dated 1<sup>st</sup> September 2020 seeking similar orders. It was further contended that the county assembly should be allowed to make a decision on the petition before it, as it was an independent body capable of making decisions on its own without the interference of this Court. Further that this Court cannot grant the orders sought as it would amount to interfering with the executive powers of the Governor to appoint CEC members hence contrary to the doctrine of separation of powers.

It is the 2<sup>nd</sup> Respondent's contention that the Petitioner misadvised himself in the reading and application of the judgment delivered on 29<sup>th</sup> April 2020 as the 1<sup>st</sup> Respondent was given the leeway to appoint CEC members upon paying the Petitioners therein their dues.

The 2<sup>nd</sup> Respondent averred that according to public policy, acting appointments should be for a period of 6 months thus making four appointments in acting capacity for two years was uneconomical, unlawful, against public policy and contravened article 10 of the Constitution. It was contended that the Constitution anticipates that the CEC must be properly constituted for effective service delivery and smooth functioning of a county government.

The 2<sup>nd</sup> Respondent further contended that the reassignment of Abukar Sheikh from Agricultural Chief Officer to Chief Officer for Medical Services was lawful as the Governor has the powers to re-assign a County Chief Officer by dint of Section 45(1)(5) of the County Governments Act.

Finally, the 2<sup>nd</sup> Respondent averred that the petition was vague, lacks any basis in law and does not show how the law has been violated by commencing the process of filling the vacancies when the judgment had been complied with. He urged this Court to dismiss the petition with costs.

The 3<sup>rd</sup> and 4<sup>th</sup> Respondents filed a consolidated Replying Affidavit which was sworn by Ahmed Hassan Surow on 22<sup>nd</sup> September 2020. They contended that the salaries of the CEC members and the Chief Officer were calculated as follows–

- a. Abdiaziz Sheikh Maad Kshs.6,324,598.40
- b. Shamsa Mohamed Haji Kshs.3,634,085.40
- c. Johora Mohamed Abdi Kshs.4,884,598.40
- d. Hassan Mohamed Ahmed Kshs.3,637,775.80

Their gratuity was also calculated as follows–

- a. Abdiaziz Sheikh Maad Kshs.1,592,020.50
- b. Shamsa Mohamed Haji Kshs.628,377.75
- c. Johora Mohamed Abdi Kshs.1,592,020.50
- d. Hassan Mohamed Ahmed Kshs.690,720.81

They averred that the salaries and gratuity were calculated per the standards set by the Salaries Remuneration Commission (SRC) in Gazette Notice 6518 dated 7<sup>th</sup> July 2017 being: Basic salary was 60% of the gross pay while gratuity was 31% of the basic salary remuneration package for the time served.

The 3<sup>rd</sup> and 4<sup>th</sup> Respondents contended that the advertisement was only put up after the County Assembly of Mandera had verified to its satisfaction that the Governor had complied with the judgment of 29<sup>th</sup> April 2020. They averred that on 4<sup>th</sup> September 2020, the Office of the Clerk to the County Assembly received a public petition from the Petitioner herein which was deliberated upon by the Committee on Appointments of Mandera County Assembly on 7<sup>th</sup> September 2020 and it was resolved that the Petitioner be invited to appear before the Committee for a hearing of his petition.

The County Assembly in its letter of 7<sup>th</sup> September 2020, invited the Petitioner to appear before the Committee for the hearing of his

petition. However, the Petitioner filed the petition herein without giving the County Assembly an opportunity to hear and determine the said petition. It was therefore their case that had the Committee been given the opportunity to hear the petition, it would have recorded its findings in its Committee report.

They contended that the petition is an abuse of the Court process since it is based on a matter that is currently before another forum thus likely to prejudice its fair determination. It was their view that the petition has been filed on behalf of the former CEC members and Petitioners in Petition 21 of 2020 who had made an application on 1<sup>st</sup> September 2020 seeking an injunction to stop the Mandera County Assembly from proceeding with the vetting process of the advertised CEC positions before this petition was filed.

The 3<sup>rd</sup> and 4<sup>th</sup> Respondents averred that the Petitioner was being untruthful by claiming that the former CEC members had been paid Kshs.50,000,000.00 as dues arising from the said judgment. It was their contention that the assertion that appointment of new CEC members would amount to an additional wage bill to the county government was simplistic and the working and needs of the County Government.

It was their position that this Court should not supervise actions of the County Government in matters left to the discretion of the public institution to whom parliament has entrusted decision making powers. They contended that there was no reasonable cause of action against the 4<sup>th</sup> Respondent because its powers as outlined in Section 12(7) of the County Government Act and Section 11 of the County Assembly Service Act had not been challenged in the petition. Consequently, they urged this Court to dismiss the petition with costs.

### **The 3<sup>rd</sup> Interested Party's Case**

In response to the petition, the 3<sup>rd</sup> Interested Party filed the Grounds of Opposition dated 21<sup>st</sup> September 2020, on the following grounds –

- a. That the 3<sup>rd</sup> Interested Party has been misjoined in the instant proceedings.*
- b. That the County Governments are independent entities/body corporate and for this reason, they independently hire their own staff as stipulated in section 6(1) and (2) of the County Government Act, Act No. 17 of 2012.*
- c. That this is purely an employment dispute between the Petitioner and the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents herein.*
- d. That the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents pursuant to Article 156(4) have not requested the office of the Hon. Attorney General to represent them in the instant matter as stipulated un section 43 of the County Government Act, Act No. 17 of 2012.*
- e. That the Petitioner ought to have appealed to the Public Service Commission to hear and determine any grievances from the County Government Public Service of Mandera County as provided in section 77 of the County Government Act, Act No. 17 of 2012.*
- f. That the 3<sup>rd</sup> Interested Party herein therefore prays that he be struck out from this proceeding.*

The Petition was disposed of by way of written submissions with only the Petitioner, the 2<sup>nd</sup> Respondent and the 3<sup>rd</sup> and 4<sup>th</sup> Respondents filing their submissions.

### **Submissions in Support of the Petition**

The Petitioner submitted that by paying the former CEC members their salaries up to 2022 and thereafter seeking to replace them and a chief officer substantively, violated the provisions of articles 10(2)(c), 73(1)(a)(i), (iv) and 201 (d) of the Constitution. He contended that this was not prudent and responsible use of public money as required by article 201(d) of the Constitution and sections 3 and 107 of the Public Finance Management Act, Act No. 18 of 2011.

The Petitioner implored this Court to quash/set aside the nomination of the CEC members as well as the Chief Officer in order to save funds on behalf of the residents of Mandera County so that there are no double payments. Lastly, he urged this Court to award him costs of this Petition.

### **Submission in Opposition to the Petition**

The 2<sup>nd</sup> Respondent submitted that the petition does not meet the constitutional threshold since the Petitioner failed to specifically outline the constitutional right that had been violated as a result of the nominations of individuals to serve as CEC members. In its view, constitutional violations ought to be specifically demonstrated by the Petitioner. The 2<sup>nd</sup> Respondent also contended that the Petitioner only cited the provisions allegedly violated but failed to specifically plead how the provisions had been infringed, to enable them appropriately respond.

To buttress this position, it relied on the case of **Godfrey Paul Okutoyi (suing on his own behalf and on behalf and representing and for the benefit of all past and present customers of banking institutions in Kenya) v Habib Olaka – Executive Director (Secretary) of the Kenya Bankers Association (being sued on behalf of Kenya Bankers Association) & Another [2018] eKLR, Anarita Karimi Njeru v Republic [1979] KLR and Judicial Service Commission v Gladys Boss Shollei & Another [2014] eKLR**. The 2<sup>nd</sup> Respondent thus urged this Court not to render judgment on the basis of opinions and hypothetical issues.

It was the 2<sup>nd</sup> Respondent's submissions that the Petitioner was not entitled to the orders sought as they were aimed at defeating the role bestowed on the Respondents thus killing the spirit and object of devolution as outlined under article 174 of the Constitution. Further, the 2<sup>nd</sup> Respondent contended that the petition was an abuse of the court process filed to frustrate the Respondents since the Petitioner had filed a similar petition before the 3<sup>rd</sup> Respondent, which it was capable of adjudicating upon by dint of section 15 of the County Government Act.

The 2<sup>nd</sup> Respondent relied on the case of **Muchanga Investments Limited v Safaris Unlimited (Africa) Limited & 2 Others [2009] eKLR** where an abuse of judicial process was defined as a situation when a party uses the judicial process to the irritation and annoyance of his opponent and the efficient and effective administration of justice.

The 2<sup>nd</sup> Respondent contended that this Court had the obligation to promote alternative dispute resolution and to refrain from usurping the powers of the other arms of government.

It was the 2<sup>nd</sup> Respondent's submissions that the decision to pay the CECs and CO was in public interest as opposed to their reinstatement. Further, that it was against public policy to appoint someone in acting capacity for more than 6 months.

According to the 2<sup>nd</sup> Respondent, making appointments in acting capacity was not economical neither would it encompass openness and accountability as required by article 201 of the Constitution. Further, those serving in acting capacity would desire to be confirmed which would result in problematic decisions and disputes. Finally, the 2<sup>nd</sup> Respondent submitted that the Governor had the power to re-assign a county chief officer hence the re-assignment of the Mandera Chief Officer was lawful.

On their part, the 3<sup>rd</sup> and 4<sup>th</sup> Respondents agreed with the 2<sup>nd</sup> Respondent. They submitted that the petition was an abuse of court process as it was propagating the agenda of the former CEC members and CO in light of the fact that the orders sought were a replica of the application filed in Petition 21 of 2020. They relied on the case of **Republic v IEBC & 2 Others ex parte Alinoor Derow Abdullahi & Others [2017] eKLR** where it was held that where it is established that proxy litigation has been instituted for persons who can litigate themselves, then the court ought to find an ulterior motive and punish a Petitioner.

### **Analysis and Determination**

I have carefully considered the petition, the affidavits filed in support and in opposition of the petition and submissions by the parties. The following are the issues for determination before this Court –

- a. Whether the petition has met the threshold set out in the case of **Anarita Karimi Njeru v Republic [Supra]**.*
- b. Whether the 4<sup>th</sup> Respondents and Interested Parties are properly joined to these proceedings.*
- c. Whether appointing individuals to substantively fill the positions county executive committee members and the chief officer contravened the Constitution and was contrary to public interest.*
- d. Whether this Court should grant the reliefs sought.*

### **The Petition**

The Respondents submitted that the petition has not set out the alleged infringement with a reasonable degree of precision hence has failed to meet the threshold set out in the case of **Anarita Karimi Njeru v Attorney General [Supra]** where it was held that a person seeking redress for constitutional infringements ought to set out with a reasonable degree of precision what he complains of, the provisions said to be infringed, and the manner in which they are alleged to be infringed. What amounts to precision was elaborated in the case of by the Court in **Trusted Society of Human Rights Alliance v AG & 2 Others [2012] eKLR** whose decision on the issue of precision of constitutional petitions as upheld by the Court of Appeal in **Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] eKLR**, observing as follows–

*“46. We do not purport to overrule Anarita Karimi Njeru as we think it lays down an important rule of constitutional adjudication: a person claiming constitutional infringement must give sufficient notice of the violation to allow her adversary to adequately prepare her case and to save the Court from embarrassment of adjudicating on issues that are not appropriately phrased as justiciable controversies. However, we are of the opinion that the proper test under the new Constitution is whether a Petition as stated raises issues which are so insubstantial and so attenuated that a Court of law properly directing itself to the issue cannot fashion an appropriate remedy due to the inability to concretely fathom the constitutional violation alleged. The test does not demand mathematical precision in drawing constitutional petitions. Neither does it demand talismanic formalism in identifying the specific constitutional provisions which are alleged to have been violated. The test is a substantive one and inquires whether the complaints against Respondents in a constitutional petition are fashioned in a way that gives proper notice to the Respondents about the nature of the claims being made so that they can adequately prepare their case.”*

I do not agree with the Respondents that the petition lacks specificity. The petitioner has clearly pleaded the actions of the Respondents that he deems to be violations of the Constitution which he has stated to be the wanton waste of public funds by payment of salaries for the full contractual terms of the dismissed CECs and then replacing them with others also to be paid for the term for which others have already been paid. He avers this is violation of Articles 10(2)(c), 73(1)(a)(i), (iv) and 201(d). That the conduct of the 1<sup>st</sup> Respondent was not in tandem with good governance, was lacking in integrity, accountability, was not consistent with the objects and purpose of the Constitution, did not promote the integrity of his office and was not a prudent and responsible application of public funds.

The Petitioner articulated the infringements and clearly articulated how the 1<sup>st</sup> Respondent's action amounted to a violation of the Constitution. I find that the petition herein meets the threshold set out in the case of **Anarita Karimi Njeru v Republic**. Again based on the Respondents' responses, it is clear that they understood the violations that the Petitioner was complaining of.

#### **Joinder of the 4<sup>th</sup> Respondent and the Interested Parties**

The 4<sup>th</sup> Respondent submitted that it was wrongly joined as the petition did not disclose any cause of action against it. Indeed, a perusal of Section 12(7) of the County Governments Act and section 11 of the County Assembly Service Act discloses that none of the 4<sup>th</sup> Respondent's functions relate to the acts complained of by the Petitioner. Further, there is no violation attributed by the Petitioner to the 4<sup>th</sup> Respondent.

As regards the Interested Parties, it is clear that they were joined in their capacity as advisors of the Respondents or because of their oversight role. I however agree that in both the petition and in the submissions, the Petitioner failed to articulate the reasons for joining the Interested Parties as they are not mentioned in the body of the pleadings or submissions. In the case of **Francis Kariuki Muruatetu & another v Republic & 5 others [2016] eKLR** the Supreme Court observed that the personal stake of a party must be clearly set out for them to be joined as an interested party.

#### **Violation of the Constitution**

The Petitioner submitted that the 1<sup>st</sup> Respondent's decision to nominate CEC members to fill positions for which salaries had been paid until 2022 was imprudent and irresponsible. In his view, the funds to be used to pay the CEC members and the CO ought to be diverted to provision of services to the people of Mandera County and instead, individuals hired to serve in acting capacity in the vacant positions.

According to the Respondents, this is not practical as it was public policy that no one should serve in acting capacity for a period of more than 6 months. Further, it would infringe on the right to fair labour practices for those serving in acting capacity as they would be paid an allowance for undertaking duties for an entire office.

The Respondents further point out that the Petitioner did not exhaust the procedure he himself had commenced before the County Assembly. The Respondents' assertion is that they were served with the petition on 4<sup>th</sup> September 2020 while the Petitioner filed a petition which was a replica of one before it, yet he had been invited to appear before the assembly for a hearing on 14<sup>th</sup> September 2020. This was not controverted and is evidenced by the letter of 7<sup>th</sup> September 2020 written to the Petitioner.

I agree that the petition was premature as Mandera County Assembly Standing Order 206 (2) mandated the Committee to respond to all public petitions within 60 days. In light of the provisions of standing order 206 which provided the procedure to be followed where there was a public petition, the Petitioner failed to exhaust the mechanisms available to him before approaching this Court. In the case of **Geoffrey Muthinja Kabiru & 2 Others v Samuel Munga Henry & 1756 Others [2015] eKLR** the court held–

*“It is imperative that where a dispute resolution mechanism exist outside courts, the same be exhausted before the jurisdiction of the courts is invoked. Courts ought to be for a of last resort and not the first port of call the moment a storm brews...The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside the courts. This accords with Article 159 of the Constitution which commands Courts to encourage alternative means of dispute.*

It is thus the court's finding that the matter is presently pending before the County Assembly which process has not been exhausted. The Petitioner stands to suffer no prejudice if the same is heard before the Assembly as he still has recourse to this Court should he not be satisfied with the decision of the County Assembly. This is also in line with the principle of separation of powers which requires the different arms of government to refrain from interfering with each other's function. The Court in **Justus Kariuki Mate & Another v Martin Nyaga Wambora & Another [2017] eKLR** observed the following regarding separation of powers–

*“[62] A clear inference to be drawn is that, it was the Supreme Court's stand that no arm of Government is above the law. This being a constitutional democracy, the Constitution is the guiding light for the operations of all State Organs. The Court's mandate, where it applies, is for the purpose of averting any real danger of constitutional violation.*

*[63] From the course of reasoning emerging from such cases, it is possible to formulate certain principles, as follows:*

- (a) each arm of Government has an obligation to recognize the independence of other arms of Government;*
- (b) each arm of Government is under duty to refrain from directing another Organ on how to exercise its mandate;*
- (c) the Courts of law are the proper judge of compliance with constitutional edict, for all public agencies; but this is attended with the duty of objectivity and specificity, in the exercise of judgment;*
- (d) for the due functioning of constitutional governance,*

*the Courts be guided by restraint, limiting themselves to intervention in requisite instances, upon appreciating the prevailing circumstances, and the objective needs and public interests attending each case;*

(e) in the performance of the respective functions, every arm of Government is subject to the law.

As was stated in the above decision, this court's jurisdiction should be invoked only after the Country Assembly has made a determination so that the court's role is to determine if such a determination was within the confines of the Constitution and the law.

### **Remedies**

The petitioner sought several declarations and other orders. Although the Petitioner has raised valid constitutional issues, I find that the manner in which he invoked the authority of this court most awkward. As has been pointed out by the Respondents, there is a determination of this court in Petition 21 of 2020 authorising either the reinstatement of the dismissed CECs or payment of their gratuity for the period served and salary for the remainder of their terms in office. The court further specifically ordered that: ***"The vacancies caused by the impugned dismissals should not be filled by other persons until the Respondents pay the rightful dues to the Petitioners."***

What the Respondents did was to comply with court orders that had not been stayed, reviewed or set aside. No appeal or other application is pending in respect of the judgment. The orders sought herein therefore would amount to either review or an appeal against the decision in **Petition 21 of 2020**. It would further offend the doctrine of *res judicata*.

The remedies sought are therefore not merited for the two reasons that there is a petition filed by the petitioner before the County Assembly that has not been exhausted and therefore the petition herein is premature, and that the orders sought would offend the doctrine of *res judicata*.

**The petition is thus dismissed, but with no orders for costs, the same having raised a public interest issue.**

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 11<sup>TH</sup> DAY OF DECEMBER 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**