



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT BUNGOMA**

**PETITION NO. 3 OF 2018**

**PIUS SIMIYU NDUMBA.....PETITIONER**

**VERSUS**

**THE COUNTY PUBLIC SERVICE BOARD.....1ST RESPONDENT**

**COUNTY GOVERNMENT OF BUNGOMA.....2ND RESPONDENT**

**THE ATTORNEY GENERAL.....3RD RESPONDENT**

**J U D G M E N T**

The Petitioner seeks court to declare advertisement in respect of recruitment of Sub County Administrators by the respondents unconstitutional, null and void on the grounds that the advertisement has been placed in the Daily Nation News Paper issue of 18.4.2018 despite that the positions intended to be filled are not vacant and are occupied by the eight named officers as follows:

1. Jumbe Ronald – Webuye East Sub County
2. Joel Peka – Webuye West Sub County
3. Violet Wafula -Kabuchai Sub county
4. Cleophas Mutonyi – Tongaren Sub County
5. Nelson Muholi – Bumula Sub County
6. Scholastic Mukoya – Kimilili Sub County
7. Bukose Maasai – Mt. Elgon Sub County
8. Everlyne Wekesa – Sirisia Sub County

That the advertisement of these positions is an affront on the rights of these persons who are lawfully employed to serve in the positions.

That the action violates Articles 47 and 50 of the Constitution since it is arbitrary and the setting of unreasonable qualification to the advertised position is a violation of the rights of the youth.

That the action also conflicts with Labour Practice Contrary to Article 41 of the Constitution and violation of human dignity of the incumbent in violation of Article 10 (2) (b) and 28 of the Constitution.

The Petitioner has also been denied relevant information as to why the advertisement was made in violation of Article 35 (1) of the Constitution.

Wherefore the Petitioner prays for a declaration that the advertisement is null and void and a permanent injunction be issued restraining the Respondent from conducting interviews to fill up the positions.

**Replying Affidavit**

The County Executive Committee Member, in charge of Public Service Management and Administration Mr. Richard Sabwami Keya filed a replying affidavit to the Petition on 10.7.2018.

The basis of the opposition is that no rights of any sub-county administration have been threatened or violated by the impugned advert, since all the named persons are employed as Sub-County administrators in the different administrative units on three (3) years contracts. That the named sub-county administrators performed well in their various duties and responsibilities and were all promoted and deployed in the various devolved units as evidenced by annex '(GB3)'.

The Petitioner has approached court out of ignorance and did not prior to coming to court request for information from County Government of Bungoma concerning the employment contracts of the named sub-county administrators.

That the intention to fill up the vacant positions does not in any way violate the constitutional rights of the named sub-county administrators.

That the petition has no merit and it be dismissed with costs.

### **Determination**

The Petitioner is not an employee of the Bungoma County Government but styles himself as a human rights defender.

The Petitioner has not supported the petition with any supporting affidavit of any person, including the named employees whose rights are said to be threatened or violated by an advert in the Daily Nation News Paper dated 18.4.2018.

The Petitioner simply does not disclose any tangible evidence on the alleged threat to and/or violation of the rights of the named persons.

No person employed by the respondents has complained at all regarding the intended recruitment and if there was any such complaint nothing would have been easier than for the Petitioner to attach letters of complaint to this Petition. There is no such at all.

The Petition is frivolous and lacks any merits at all.

To discourage the frequency of such unmeritorious filings, the Petitioner is condemned to the costs of this Petition which the court rarely grants in public interest litigation which is deserved.

The final order of the court is that the Petition is dismissed with costs.

**DATED, SIGNED and DELIVERED at BUNGOMA this 1<sup>st</sup> day of FEBRUARY, 2019.**

**HON. M. N. NDUMA, JUDGE**

**EMPLOYMENT AND LABOUR RELATIONS COURT**

**BUNGOMA**

### **Appearances:-**

Petitioner in person.

Mr. Machako for the 2<sup>nd</sup> Respondents

Mr. Shivoka for 1<sup>st</sup> Respondent