



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

PETITION NO. 17 OF 2017

(Before Hon. Justice Mathews N. Nduma)

JOSEPH INNOCENT BOSIRE.....PETITIONER/APPLICANT

VERSUS

SUB COUNTY COMMISSIONER MARANI SUB COUNTY....1ST RESPONDENT

ALFRED MAKORI OMOA.....2ND RESPONDENT

HON. ATTORNEY GENERAL.....3RD RESPONDENT

JUDGMENT

1. Petition was filed on 25th September 2015 seeking a declaration that the petitioner was the rightful candidate for selection by the respondents upon being interviewed for the position of the Chief of Mwakibagendi West Location in Kisii County.

2. The petitioner also seeks an order compelling the respondents to appoint the petitioner accordingly.

3. The petition is supported by grounds set out in the petition to wit:

That he had been interviewed for the position of Chief on three different occasions in 1991, 2008 and 2013 and on 1st August 2013 he was interviewed and declared winner on 15th November 2014. That the 2nd respondent Alfred Makori Omosa was erroneously appointed in his place.

4. The petitioner alleges that the District Commissioner declared him the winning candidate but the defendants altered the names

5. The petition is supported by an affidavit of the petitioner which bears no documentary evidence to support the allegations made by the petitioner in the petition.

6. The petitioner alleges that he was not selected due to corruption by the 1st respondent who hid his letter of appointment.

7. The 1st and 3rd respondents filed a replying affidavit of Dennis Ogola, the Deputy County Commissioner Marari Sub-County. The deponent deposes that the petition was not amongst those candidates who were interviewed on 1st August 2013 and that he was aware no results were declared on 15th November 2014 as alleged by the petitioner or at all.

8. That the results of the interviews were declared at a public baraza in Mwakibagendi Location which meeting was held to install the new Chief.

9. That the results of the interview were communicated to the deponent in a letter from the Regional Coordinator Nyanza Region authorizing the appointment of Mr. Alfred Makori Omosa, the 2nd respondent as the new Chief of Mwakibagendi West Location on 24th March 2014 after due process had been undertaken and proper verification done.

10. The letter of appointment is attached to the replying affidavit dated 24th March 2014 which shows that the 2nd respondent was appointed Chief Mwakibagendi West Location and the regional coordinator Nyanza region Mr. F.M. Mutie, EBS requested re-advertisement of the

Chief's position for Molongo and Kingongo Locations since the candidates interviewed did not meet the required qualifications.

11. The deponent states that the petition by the petitioner has no merit and it be dismissed with costs.

Determination

12. In terms of Sections 107 and 108 of the Evidence Act, Cap 80 Laws of Kenya, he who alleges must prove the alleged facts on a balance of probabilities.

13. The petitioner herein has made allegations that he was interviewed on 1st August 2013 by the respondents and was declared winner of the interview for the position of Chief of Mwakibagendi West Location.

14. The petitioner has not produced any tangible evidence oral or documentary to support the said allegation. To the contrary, the allegations by the petitioner have been ably and credibly refuted by the 1st and 3rd respondents in their replying affidavit. The respondents have demonstrated that the claimant was not interviewed on 1st August 2013 nor declared winner of the interview for the position of Chief Mwakibagendi West Location. To the contrary a letter from the regional coordinator Nyanza Region shows the 2nd respondent was the successful candidate and was duly appointed as Chief of Mwakibagendi West on 24th March 2014.

15. Accordingly, the petitioner has failed to demonstrate that any of his constitutional rights were violated or likely to be violated by the respondents.

16. The petition lacks merit and is dismissed with no order as to costs.

Judgment Dated, Signed and delivered this 8th day of October, 2019.

Mathews N. Nduma

Judge

Appearances

Petitioner in person

Wisley Ochel – AG's chambers

Chrispo – Court Clerk