



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

PETITION NO. 14 OF 2017

(Before Hon. Justice Mathews N. Nduma)

JULIUS MASIVA OBUGA.....PETITIONER

VERSUS

COUNTY ASSEMBLY SERVICE BOARD OF VIHIGA.....1ST RESPONDENT

COUNTY ASSEMBLY OF VIHIGA.....2ND RESPONDENT

KILINGA AMBAKA.....3RD RESPONDENT

NAHASHON KUSINA OPANGA.....4TH RESPONDENT

RULING

1. This court delivered judgment on 13th December 2018 and granted reliefs in the following terms:

(a) The appointment of the 3rd Respondent Kilinga Ambaka as the clerk of the County Assembly of Vihiga is unlawful, null and void.

(b) The 1st Respondent is directed to submit the name of James Oyundi Mukabi who it had appointed to the position of clerk of the County Assembly of Vihiga for approval by the 2nd Respondent in terms of *Section 13(1) and 14(3) (a) (b) and (c) of the County Governments Acts as read with standing order 42 of the County Assembly standing orders.*

(c) In the event the appointment of James Oyundi Mukabi is not approved by the County Assembly, the 2nd Respondent to only consider the two other names of the 2nd and 3rd ranked candidates presented to it by the board being Linet Busieka Mugalitsi and Tom Shavisa respectively.

(d) The case against the 4th Respondent Nahashon Kusina Opanga, Deputy Clerk, Vihiga County assembly is dismissed.

2. In the body of the judgment the court had observed in paragraph 32, 33, 34 and 36, the gross manner in which the Speaker of the County Assembly of Vihiga had conducted himself in unilaterally, unlawfully and unfairly disregarding the recruitment process conducted by the County Assembly, Service Board in the appointment of one Kilinga Ambaka the 3rd Respondent as the clerk of the County Assembly of Vihiga.

3. The clear directive of the court in the judgment was to exclude for the consideration of 3rd Respondent Kilinga Ambaka as the clerk of the County Assembly of Vihiga in the directed process of concluding the appointment. The judgment did not leave room for a repeat recruitment process to circumvent the judgment of the court as the 1st and 2nd respondents proceeded to do since already the Board had approved for appointment one James Oyundi Mukabi and recommended the 2nd and 3rd ranked candidates being Linet Busieka Mugalitsi and Tom Shavisa for consideration in the event the County Assembly did not approve the appointment of James Oyundi Mukabi.

4. In what appears to be a blatant disregard of the judgment of the court and continuation of flouting the rights of already approved and recommended candidates in favour of a candidate who had been previously appointed in disregard of the law and due process, the 1st and 2nd respondents re-advertised the positions and went ahead to return the impugned preferred candidate.

5. The court had stated in its judgment the following:

“The process lacked transparency and integrity and boarded on criminal conduct by persons who subverted the appointment process so blatantly. This if not capped, will completely kill the morale of our youth who faithfully attend school and higher institutions of learning with the hope that their hard earned qualifications means something to the potential employers in Kenya”

6. Upon a careful consideration of the application by the petitioner dated 27th December 2018 and the supporting affidavit thereof; having considered the explanations given by the respondents in the replying affidavit of the 3rd Respondent Kilinga Ambaka, the impugned candidate in the judgment of the court; the court also having considered the notice of preliminary objection by the 1st and 2nd respondents dated and filed on 3rd January 2013 and the replying affidavit of Hon. Wycliffe Ombajo Masiri the Vice Chairperson of the County Assembly Service Board, the court is satisfied that the repeat selection process was done with the sole purpose of sanitizing the illegal appointment of the 3rd respondent hence subverting the orders of the court and defeating the ends of justice by excluding from appointment a candidate already approved for appointment by the County Assembly Service Board of Vihiga and two other alternatives recommended in the earlier process. This was a repeat of impunity already censored by the court in its judgment.

7. Accordingly, the court makes the following orders in terms of the Notice of Motion dated 25th January 2019:

(a) The repeat appointment of the 3rd respondent as the clerk of the County Assembly of Vihiga was in violation and blatant disregard of the orders of the court in its judgment delivered on 13th December 2018 and is therefore unlawful, null and void *abinitio*.

(b) The Respondents are directed to implement immediately the orders of the court in the judgment delivered on 13th/12/18;

(c) The 1st and 2nd respondents are censored by the court for willful contempt of court orders by re-appointing a person whose earlier appointment had been nullified by the court for being unlawful, null and void and blatant violation of the rights of other successful candidates.

(d) The respondents to pay the costs of the application.

Ruling Dated, Signed and delivered this 11th day of December, 2019

Mathews N. Nduma

Judge

Appearances

Mr. Kudu for Petitioner

Mr. Lakewa for 1st and 2nd Respondent

Mr. Musiega for 3rd Respondent

Chrispo – Court Clerk