



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 28 OF 2019

(Before Hon. Justice Mathews N. Nduma)

SAMWEL ONYANGO OKELO & ANOTHER.....1ST PETITIONER

OBWARE KENNEDY AKOKO.....2ND PETITIONER

VERSUS

THE COUNTY GOVERNMENT OF KISUMU.....1ST RESPONDENT

THE GOVERNOR, COUNTY GOVERNMENT OF KISUMU...2ND RESPONDENT

RULING

1. The Notice of Motion application dated 2/9/2019 and filed on 3/9/2019 seeks interim conservatory orders restraining the Respondents from implementing the Letter dated 28/8/19 terminating the appointments of Samuel Onyango Okello and Obwere Kennedy Akoko as members of the Kisumu City Board.
2. Interim orders pending the hearing and determination of this application *interpartes* were granted by Wasilwa J. at Nairobi and orders issued accordingly on 3rd September, 2019.
3. The application is on the grounds that the intended termination was arbitrary and the Respondents did not afford the Petitioners an opportunity to be heard over the said termination.
4. That the right to equal protection of the law under Article 37 and the right to fair labour practice as enshrined under Article 41 of the Constitution were violated. In any event the right to fair administrative action guaranteed under Article 47 and that to a fair hearing guaranteed under Article 50 of the Constitution were equally violated by the Respondents.
5. The application is opposed vide a Replying affidavit of 1st and 2nd Respondents in which they responded to both the Petition itself and the application dated 2nd September, 2019.
6. The Respondents state that the intended termination was occasioned by an Amendment to the Urban Areas and Cities Act, 2011 on 28th march 2019, under the Urban Areas and Cities (Amendment) Act, 2019 in which Section 13 of the Act was amended so as to provide for minimum qualifications of members of the board.
7. That the Petitioners who had earlier been appointed under Section 13 of the Act, now do not meet the criteria for appointment as member of the Board, hence the intended termination and replacement.
8. The court has considered the competing arguments in this matter and taking into consideration the requirements for grant of interim conservatory orders set out in the case of **Giella –vs- Casman Brown & Co. Limited** and in the Supreme Court decision in the **Gitirau Munya** case, the court is satisfied that the Petitioners/Applicants have established a prima facie case, worthy of consideration on the merits in the hearing and determination of the Petition itself.
9. It is therefore in the interest of justice and fair play that the conservatory orders already granted by Wasilwa J. be extended pending the hearing and determination of the Petition.
10. The application is therefore meritorious and is granted. Parties to take directions on the hearing and determination of the Petition on the date of delivery of this Ruling.

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

Mathews N. Nduma

Judge

Appearances

Mr. Muga Apondi, Advocate for the Petitioners, Applicants

Mr. Omondi for the Respondents

Chrispo – Court Clerk