



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**PETITION NO. 86 OF 2017**

**IN THE MATTER OF: ARTICLES 19, 20, 22(1) & (2)(C), 23, 162(2)(A), 165(5)(B) AND 258(1) & (2)(C) OF THE CONSTITUTION OF KENYA, 2010**

**IN THE MATTER OF: THE ALLEGED COONTRAVENTION AND VIOLATION OF THE NATIONAL VALUES AND PRINCIPLES OF GOVERNANCE IN ARTICLES 1, 2, 3(1), 10(1) & (2)(A) & (C), 73, 75(1) AND 232(1)(A),(D),(E),(F) & (2)(B) AND 259(1) OF THE CONSTITUTION OF KENYA, 2010**

**IN THE MATTER OF: THE ALLEGED CONTRAVENTION AND VIOLATION OF THE RIGHTS AND FUNDAMENTAL FREEDOMS UNDER ARTICLES 27, 41(1) AND 47 OF THE CONSTITUTION OF KENYA, 2010**

**IN THE MATTER OF: THE ALLEGED FAILURE TO TAKE DISCIPLINARY ACTION AGAINST DR. HEZEKIAH CHEPKWONY AND DR. PIUS WANJALA.**

**BETWEEN**

**OKIYA OMTATAH OKOITI.....PETITIONER**

**V**

**MINISTRY OF HEALTH.....1<sup>ST</sup> RESPONDENT**

**PUBLIC SERVICE COMMISSION.....2<sup>ND</sup> RESPONDENT**

**HON. ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**DR. HEZEKIAH CHEPKWONY.....4<sup>TH</sup> RESPONDENT**

**DR. PIUS WANJALA.....5<sup>TH</sup> RESPONDENT**

**DIRECTIONS/RULING**

1. Okiya Omtatah Okoiti (Petitioner) moved Court on 11 October 2017 seeking a declaration that the 4<sup>th</sup> and 5<sup>th</sup> Respondents were not fit to hold public office and an order compelling the 1<sup>st</sup> to 3<sup>rd</sup> Respondents to take disciplinary action against them (4<sup>th</sup> and 5<sup>th</sup> Respondents).

2. Filed together with the Petition was a motion under certificate of urgency seeking directions as to the hearing of the Petition.

3. Wasilwa J before whom the application was placed certified it as urgent and directed that it be served upon the Respondents. The Judge also fixed the application for mention before Ndolo J on 17 October 2017.
4. The parties did not appear before Ndolo J but appeared before Mbaru J on 18 October 2017, who redirected the file to Ndolo J with mention scheduled for 25 October 2017 (mention did not proceed as the day was declared a public holiday).
5. On 7 November 2017, Abuodha J directed the parties to appear before Ndolo J on 20 November 2017 for further directions.
6. On 18 December 2017, the 4<sup>th</sup> and 5<sup>th</sup> Respondents filed an application under certificate of urgency questioning the jurisdiction of the Court to hear the Petition and seeking that it be struck out (*res judicata* and abuse of court process were invoked).
7. On the same day, Wasilwa J directed that the application be served for the purpose of giving directions on 19 December 2017.
8. On 19 December 2017, Ndolo J notified the parties that the directions would be given on 23 January 2018 (Ndolo J was transferred in the intervening period).
9. When the file was placed before me on 23 January 2018, the 4<sup>th</sup> and 5<sup>th</sup> Respondents sought a date for the hearing of their application dated 18 December 2017.
10. The Petitioner on his part proposed that the application dated 18 December 2017 be treated as a response to the Petition (despite having filed a response to the application).
11. The 1<sup>st</sup> to 3<sup>rd</sup> Respondents appeared to agree to the proposal by the Petitioner that the 4<sup>th</sup> and 5<sup>th</sup> Respondents application ought to be treated as a response to the Petition, and further suggested that the Petition and the application could be heard together.
12. The Court has considered the brief oral addresses by the parties and also looked at the record.
13. The grounds outlined by the 4<sup>th</sup> and 5<sup>th</sup> Respondents in their application go to the core of the Petition. Some of the grounds would require the Court to ascertain the facts as obtained by the time the Petition was filed.
14. It would therefore not be prudent to hear and determine the application and Petition separately. Precious judicial time would be better utilised by determining the Petition and application once and for all.
15. In this respect the Court directs as follows
  - i. The 4<sup>th</sup> and 5<sup>th</sup> Respondents application dated 18 December 2017 to be taken as part of their answer/replies to the Petition.
  - ii. The Respondents to file and serve their substantive answers/replies to the Petition on or before 16 February 2018.
  - iii. Petitioner at liberty to file and serve replies (if any) to the Respondents answers/replies and submissions on or before 23 February 2018.
  - iv. Respondents to file and serve submissions on or before 2 March 2018.
  - v. Submissions to be highlighted on a convenient date to be fixed on 2 March 2018.

16. Costs in the Cause.

**Delivered, dated and signed in Nairobi on this 26<sup>th</sup> day of January 2018.**

**Radido Stephen**

**Judge**

**Appearances**

For Petitioner in person

1<sup>st</sup> – 3<sup>rd</sup> Respondents Ms. Odhiambo, Office of the Attorney General

4<sup>th</sup> – 5<sup>th</sup> Respondents Ms. Kiarie instructed by Kinyanjui Njuguna & Co. Advocates

Court Assistant Lindsey