



**REPUBLIC OF KENYA**

**EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT KERICHO**

**PETITION NO. 10 OF 2017**

*(Before D. K. N. Marete)*

**CHARLES BARONGO NYAKERI.....PETITIONER**

**VERSUS**

**COUNTY GOVERNMENT OF KISII.....1ST RESPONDENT**

**COUNTY PUBLIC SERVICE BOARD...2ND RESPONDENT**

**COUNTY SECRETARY COUNTY**

**ROBERT OMBASA ACTING COUNTY**

**SECRETARY/HEAD OF COUNTY**

**PUBLIC SERVICE COUNTY**

**GOVERNMENT OF KISII.....3RD RESPONDENT**

**JAMES ELVIS OMARIBA ONGWAE**

**GOVERNOR KISII COUNTY.....4TH RESPONDENT**

**RULING**

This is an application by the petitioner/applicant dated 31st May, 2018. It seeks the following orders of court;

1. **THAT** this application be certified as urgent and that the same do proceed to be heard and orders given ex-parte in the first instance.
2. **THAT** pending the inter-partes hearing of this application, the hearing of the application dated 29.11.2017 that has been scheduled to be heard on 4.06.2018 be stayed.
3. **THAT** pending the hearing and determination of this application, there be a stay of the hearing of the application dated 29.11.2017.
4. **THAT** Kennedy Chweya Onsembe be disqualified from acting for the Respondents in regard to the subject petition.
5. **THAT** the costs of this application be borne by the Respondents.

It is grounded as follows;

- a) There exist a fiduciary relationship between the Applicant and the Advocate Kennedy Chweya Onsembe.

b) County Attorney is not an equivalent of the Attorney General of the republic of Kenya.

c) Mr. Onsembe Advocate had mentioned that he wanted to inform the Respondents of his intention to disqualify himself from acting.

d) All Advocates are bound by rule 9 of The Advocates (Practice) rules. Mr. Onsembe describes himself as such.

The respondents' in a Replying Affidavit sworn by Kennedy Chweya Onsembe on 7th June, 2018 opposes the application.

It is the respondents' position is that the advocate/client relationship alleged by the applicant against the respondents' counsel, one, Mr. Onsembe is non-existent in that all communication made between the applicant and Mr. Onsembe occurred in a co-work relationship *inter partes* when the applicant was the secretary to the 2nd respondent. This position no longer exists as the applicant's employment has now been terminated for gross misconduct.

The respondents deny any relationship between the applicant which would prejudice their representation by Mr. Onsembe or any counsel of their choice. This is because all relations between the applicant and Mr. Onsembe were ostensibly made in their respective capacities as employees of the 1st respondent and the 2nd respondent and therefore no cause for pleading any advocate/client issues *inter partes*. Moreover, there is nothing in this matter, and particularly in the pleadings of the petitioner/applicant which ties Mr. Onsembe to the issues pleaded thereby causing any imagination of conflict of interest.

It is the respondents' further averment and submission that this application, if allowed would cause enormous prejudice to the interest of the respondents who would require the services of their in-house counsel(s) in the management of their legal desk.

It cannot be truer. I agree with the sentiments and submissions of the respondents. There is no scintilla of evidence of an advocate client/relationship between the applicant and counsel for the respondents. This is a mere exercise in lamentations.

I deem this application frivolous and an abuse of the process of court. It must therefore take its position in the dustbins of litigation.

I am therefore inclined to dismiss the application with orders that each party bears their own costs of the application.

**Delivered, dated and signed this 29th day of June 2018.**

**D.K.Njagi Marete**

**JUDGE**

Appearances

1. Mr. Siele Sigira instructed by Siele Sigira & Company Advocates for the petitioner/applicant.
2. Mr. Onsembe instructed by County Attorney Offices for the respondents.