



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

PETITION NO. 25 OF 2016

**IN THE MATTER OF ARTICLE 1,23,10,19,20,21,22,23,28,41,47,48,50,165,258 OF THE
CONSTITUTION**

AND

**IN THE MATTER OF: CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS
UNDER ARTICLES 27, 28 AND 41(1)(2)(a) AND (b), 47 AND 50 OF THE CONSTITUTION OF
KENYA**

AND

IN THE MATTER OF: THE COUNTY GOVERNMENTS ACT, ACT NO. 17 OF 2012

AND

IN THE MATTER OF: THE FAIR ADMINSTRATIVE ACTION ACT, ACT NO. 4 OF 2015

AND

IN THE MATTER OF: INDUSTRIAL COURT ACT, ACT NO. 20 OF 2011

BETWEEN

SHADRACK KOSGEY CHEROGOE.....1ST PETITIONER

ABRAHAM BIRUNDU NYANGOTO.....2ND PETITIONER

AND

THE COUNTY ASSEMBLY OF NAKURU.....1ST RESPONDENT

THE GOVERNOR, NAKURU COUNTY.....2ND RESPONDENT

THE COUNTY PUBLIC SERVICE BOARD.....3RD RESPONDENT

AND

JOSEPH MOTARI.....1ST INTERESTED PARTY

RULING

1. The 2 Petitioners moved Court on 5 July 2016 under certificate of urgency seeking conservatory orders restraining the implementation of recommendations by the County Assembly of Nakuru to have the Interested Parties removed from offices of County Secretary and Chief Officer.
2. The Court certified the application as urgent and directed that it be served for *inter partes* hearing on 11 July 2016.
3. On 11 July 2016, only the Petitioners, the Governor and County Public Service Board were represented. The 1st Respondent and the Interested Parties had not been served.
4. The counsel for the Governor and the County Public Service Board informed the Court that the 2 Respondents were amenable to the *status quo* being maintained.
5. The Court looked at the motion and noted that the substance thereof and the Petition were almost the same and directed that the motion be abandoned and the hearing of the Petition be expedited.
6. The Court therefore gave directions as to the filing of process and submissions which included the highlighting of submissions on 7 September 2016.
7. In order to preserve the *status quo*, the Court also allowed order 2 of the motion which sought to restrain the Governor and the County Public Service Board from receiving or acting on the recommendations of the County Assembly.
8. On 21 July 2016, the County Assembly moved Court under a certificate of urgency seeking to have the restraining orders against the Governor and County Public Service Board set aside and or discharged.
9. Among the grounds advanced by the County Assembly were that the Petitioners had only served it with their motion after *inter partes* appearance, and that the Petitioners did not disclose the existence of an order issued by Emukule J in Nakuru High Court Petition No. 23 of 2013 as consolidated with Nakuru High Court Petition No. 25 of 2013, *John Kipngeno Koech v Nakuru County Assembly Committee on Appointments, Speaker of the Nakuru County Assembly, Nakuru County Assembly and the Attorney General*.
10. In his judgment, Emukule J held in respect to the 1st Interested Party that I find and hold that he was not competitively sourced, and the County Assembly of Nakuru acted within the law in rejecting his nomination.
11. The Court directed the latter application to be served with a return date of 26 July 2016, but the other parties were not ready and the Court adjourned the application to today.
12. Today, when the application was called out, the counsel for the County Assembly informed the Court that he wished to abandon the application to set aside and or discharge the orders restraining the Governor from implementing the recommendations of the County Assembly to have the Interested Parties removed from office.
13. All the counsels present concurred with the proposal by the counsel for the County Assembly, but rather than give *ex tempore* orders or ruling on the proposals, the Court decided to prepare a detailed ruling.
14. It is not in dispute that there is a subsisting determination by the High Court in respect to the continued holding of office of the 1st Interested Party (County Secretary).

15. That subsisting order and or proceedings from which it arose were not disclosed to Court.
16. In the Court's considered view that was material non-disclosure which would militate against the preservation of the orders issued by this Court on 11 July 2016, at the prompting of the counsel of the Governor.
17. The Court has also noted that there is no suggestion presently that fresh recruitment of the County Secretary was carried out after the judgment.
18. On that single ground, the Court is constrained to vacate the order restraining the Governor and the County Public Service Board from proceeding to take action implementing the recommendations of the County Assembly.
19. Parties ought not to use the Courts to propagate interests which may serve parochial or personal interests in a matter where public interest, accountability and transparency is required and or expected.
20. The Court therefore sets aside/vacates the orders issued on 11 July 2016 and directs that
 - (a) Respondents and Interested Parties to file and serve Answers to Petitions/Replying Affidavits on or before 19 August 2016.
 - (b) Petitioners be at liberty to reply before 30 August 2016.
 - (c) Petitioners to file and serve submissions before 16 September 2016.
 - (d) Respondents and Interested Parties to file and serve submissions before 30 September 2016.
21. The Petition to be mentioned on 30 September 2016 for further directions.
22. Costs in the Cause.

Delivered, dated and signed in Nakuru on this 29th day of July 2016.

Radido Stephen

Judge

Appearances

For Petitioners:	Mr. Konosi instructed by Konosi & Co. Advocates
For 1 st Respondent:	Mr. Kibet instructed by Mirugi Kariuki & Co. Advocates
For 2 nd /3 rd Respondents:	Mr. Gakinya instructed by Hari Gakinya & Co. Advocates
For Interested Parties:	Mr. Magatta instructed by Magatta & Associates
Court Assistant:	Nixon