



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
PETITION NO. 21 OF 2015

(Before Hon. Lady Justice Maureen Onyango)

1. PETER LOKOL LOMULEN

2. CHRISTOPHER EPORON

3. BEATRICE ASKUL MOEPETITIONERS

-Versus-

1. GOVERNOR, COUNTY GOVERNMENT OF TURKANA

2. COUNTY ASSEMBLY OF TURKANA

3. COUNTY GOVERNMENT OF TURKANA

4. THE ATTORNEY GENERAL RESPONDENTS

J U D G E M E N T

The Petition herein was filed by Peter Lokol Lomulen (1st Petitioner), Christopher Eporon (2nd Petitioner) and Beatrice Askul Moe (3rd Petitioner) who were all appointed as County Executive Committee Members of the County Government of Turkana as members for Pastoral Economy and Fisheries, Lands, Physical Planning and Urban Management, and Water, Irrigation and Agriculture respectively on 7th June, 2014 through Gazette Notice No.7924 of 14th June, 2014. The appointments were preceded by vetting through a select committee of the County Assembly of Turkana.

The 1st Respondent is the Governor of Turkana County Government elected under Article 180 of the Constitution. The 2nd Respondent is the speaker of the County Assembly of Turkana established under Article 178 of the Constitution while the 3rd Respondent is the County Government of Turkana established under Article 177 of the Constitution.

On 18th September, 2015 the 1st and 2nd Petitioners were served with letters of dismissals signed by the 1st Respondent. The letters state that they had been dismissed under County Government Act No.17 of 2012 Article 31(a) with immediate effect. The 3rd petitioner learnt about her dismissal through a news item in the Daily Nation Newspaper of 21st September, 2015 at page 18.

It is the petitioners case that their dismissal was not only arbitrary but a gross violation of their constitutional rights under Article 28, 41(1) and 47(2). It is further their case that the action offends Article 236(b) and 159 of the constitution.

The petitioners pray for the following reliefs;

- a) A declaration that the purported dismissal of the Petitioners as the Executive Committee Members for, pastoral Economy and Fisheries, Lands Physical Planning and Urban Management and Water Irrigation and Agriculture respectively was unconstitutional and unlawful and a violation of Section 31(a) of the County Government Act as read with Article 41, 47 and 236 of the Constitution of Kenya.
- b) An order of judicial review/certiorari to call into this court the decision of the 1st Respondent to dismiss the Petitioners and quash the said decision for violating Section 31(a) of the County Government Act as read with Article 41, 47 and 236 of the Constitution of Kenya, 2010.
- c) A declaration under Article 236 that the Petitioners remain the lawful holders of the positions of County Executive Committee members of Lands, Physical planning and Urban Management (Deputy Governors office) Pastoral Economy and Fisheries and Water Irrigation and Agriculture respectively.
- d) A declaration that the decision, actions and or omissions of the 1st Respondent in respect of the dismissal of the Petitioners from their respective positions constituted a violation of Article 10, 41 and 236 of the Constitution.
- e) An order directed at the Respondents to allow the Petitioners to resume their official duties in their respective positions forthwith.
- f) That an order for payment of the Petitioners' full salaries and allowances from the date of the purported dismissal until judgement.
- g) The 1st and 2nd Respondents to pay costs of this petition.

The petition is supported by the affidavits of the 2nd petitioner sworn on 28th September, 2015. The 1st and 2nd petitioners filed supplementary affidavits on 6th January, 2016. The 3rd petitioner filed a supplementary affidavit on 28th January, 2016.

The Petition was filed together with a Motion Under Certificate of urgency seeking conservatory orders staying the dismissals. The motion further sought orders barring the Respondents from filling the positions of the petitioners pending the hearing and determination of the motion. The Motion was supported by the grounds on the face thereof and the affidavits of the Petitioners sworn on 28th September, 2015.

On 8th October, 2015 I issued orders of status quo, which had the effect of preserving the positions of the petitioners pending the hearing of a preliminary objection filed by the 1st and 3rd Respondents contesting the jurisdiction of this court. The preliminary objection was later abandoned with the 1st and 3rd Respondents opting to raise the issue of jurisdiction in their submissions on the petition. The petition was argued by way of written submissions.

The 1st and 3rd Respondent's Replying Affidavit

The 1st Respondent in his replying affidavit states that upon employing the petitioners the 1st Respondent expected them to diligently and professionally render their professional services to the constituents of Turkana County and assist the 1st Respondent to carry out his mandate to ensure the discharge of the functions of his office and that the petitioners were individually and collectively accountable to him in the exercise of their powers and performance of their duties and responsibilities. He states that once he lost confidence in their performance, he had the power to remove them without undue delay. He submits that the petitioners consistently failed to deliver on their set performance standards and performance reviews. That it is as a result of this failure that he terminated their services.

The 1st Respondent further states that at a meeting of the cabinet held on 2nd September, 2014 it was resolved that all County Ministries were to submit annual plans by 5th September, 2014. He states that the 2nd and 3rd Petitioners failed to submit their annual plans compelling him to issue letters for them to show cause why disciplinary action should not be taken against them.

The 1st Respondent further states that by letter dated 24th July, 2014 all heads of Ministries, the petitioners included, were required to comply with a letter of understanding with regard to auditing of the accounts of various Ministries in the County and the petitioners failed to comply.

The 1st Respondent further states that the Audit results for the period 1st July 2013 to 30th June, 2014 revealed discrepancies and misappropriation of funds largely with respect to the Ministries presided over by the petitioner. That pursuant to the audit report he communicated his displeasure at the way the petitioners were carrying out their duties requiring them to submit ministerial reports. He states that in the reports submitted by the petitioners they failed to capture important details which he drew their attention to.

He further states that the 2nd Petitioner failed to meet the minimum performance standards for the performance contract covering the period of 6 months from January 2015.

The 1st Respondent states that he received numerous complaints against the petitioners with requests for their dismissal and replacements with people able and willing to deliver efficient service to the constituents of Turkana County, and that he dismissed the petitioners to protect and preserve the interest of the constituents under his powers donated by section 31 (a) of the County Government Act, which is a replication of Article 132 of the Constitution at County level, that the powers under section 31(a) of County Government Act are not circumscribed by any conditions or restrictions and is exercisable at any time without assigning any cause. That there is no request to disclose the cause of removal and dismissal without assigning a cause can therefore not be said to be capricious, arbitrary or whimsical and that the removal of the petitioners was lawful and proper in accordance with the constitution.

The 1st Respondent contested the jurisdiction of this court to hear this petition on grounds that the County executives are state officers who do not fall under the definition of employees as envisaged under the Industrial Court Act (Now the Employment and Labour Relations Court Act).

2nd Respondents Replying Affidavit

For the 2nd Respondent, EKAL LOKURUKA, the Director of Legal Services of Turkana County Assembly states in his replying affidavit that on 23rd September, 2015 the Assembly, the 2nd Respondent, received a letter from the 1st Respondent dated 21st September, 2015 informing the 2nd Respondent of the removal of the petitioners. That the 1st Respondent proceeded to nominate 3 candidates as new members to replace the petitioner. That by relying on Article 179(2) of the Constitution and section 14(1) and (3) of the County Government Act and Order 43 and 187 of the County Assembly of Turkana Standing Orders, the 2nd Respondent did not commit any breach of the law or the Constitution.

Petitioners Written Submissions

In the Petitioners written submissions it is contended that the decision of the 1st Respondent dismissing the petitioners was in flagrant violation of their constitutional right to administrative action that is lawful, reasonable and procedurally fair, and that the decision has deprived them of the fundamental rights to livelihood. That under Article 47(2) of the constitution the 1st Respondent was obligated to give reasons for his decision.

It is submitted that the petitioners have in their replying affidavits disproved the 1st Respondents allegations in the replying affidavit and have brought out the 1st Respondent's contributions to the non-performance that they are accused of.

It is submitted for the petitioners that section 31(a) of the County Government Act require the Governor to give reasons for exercising his discretion and the failure to give reasons makes the decision arbitrary, whimsical and unreasonable, and a violation of Article 47 of the Constitution.

It is submitted that in the case of the 3rd Petitioner the Respondent's have not denied that there was no letter of dismissal, the only communication having been in the print media.

Relying on the Court of Appeal decision in **County Government of Nyeri & Another v Cecilia Wangechi Ndungu [2014]eKLR**, it is submitted that the dismissal of the petitioners was unconstitutional. The Petitioners urge the court to find that the dismissal of the petitioners was not in the interest of the people of Turkana but for the personal selfish motives of the 1st respondent.

On the issue of jurisdiction the Petitioners state that the court's jurisdiction was affirmed in the case of **United states International University (USIU) v The Attorney General [2013]eKLR** and in **Appeal No.6 of 2012 Prof. Daniel Mugadi v Kenyatta University and 3 others**. It is submitted that the case is properly before this court.

The Petitioners urge the court to find that their fundamental rights under Article 10,27,47,73 and 236 have been violated by the Respondents and to grant the orders prayed for in their petition.

1st and 3rd Respondent's Submissions

The 1st and 3rd Respondents submit that the dispute in the instant Petition does not fall within the jurisdiction of this Honourable Court as conferred by Article 162 of the Constitution and section 12 of the Industrial Court Act.

The Petitioners being County Executives and hence state officers do not fall under the definition of employees as envisages in the Employment Act and the Industrial Court Act. Similarly the Governor and the county are not employers as defined by these Acts.

It is the Respondent's submissions that the Employment Act and other Labour Statutes have no application to the subject matter hereof and this Court has no jurisdiction to entertain this suit. This was the same holding in the case of **County Government of Nyeri** (Infra) where the Court of Appeal states:

We are of the considered view that the Employment Act does not apply to State Officers ... it therefore follows that a member of the County Executive Committee being a State Officer is not subject to the provisions of the Employment Act.

Further, that a dispute as defined by the Industrial Court Act is a dispute *inter alia* between an employer and employee to which definition the current dispute does not fall.

They submit that although the Constitution and the Industrial Court Act are silent on the jurisdiction of this Honourable court as regards the interpretation of the rights and freedoms contained in the Constitution, it has jurisdiction to entertain and interpret the Constitution and enforce matters relating to breach of fundamental rights and freedoms in matters arising out of disputes falling within the provisions of section 122 of the Industrial Court Act.

The 1st and 3rd Respondents rely on the case of **United States International University (USIU) vs. Attorney General (2012) eKLR** where the Court stated that:

...In light of what I have stated, I find and hold that the Industrial Court as constituted under the Industrial Court Act, 2011 as court with the status of the High Court is competent to interpret the Constitution and enforce matters relating to breach of fundamental rights and freedoms in matters arising from disputes falling within the provisions of Section 12 of the Industrial Court Act, 2011

This decision was approved by the Court of Appeal in the case of **Prof. Daniel N. Mugendi v Kenyatta**

University & 3 others [2013]eKLR.

They submit that the dispute in the instance case is not a dispute as contemplated by section 12 of the Industrial Court Act. It therefore follows that this Honourable Court does not have jurisdiction to entertain the petition or grant the orders sought by the petitioners.

On the Authority to dismiss the petitioners and obligation to give reasons, it was submitted for the 1st and 3rd Respondents that Article 200 of the Constitution donates to parliament the function of enacting legislation providing for all matters necessary or convenient to give effect to chapter 11(eleven) of devolved government. Pursuant to the said Article Parliament enacted the County Government Act, cap 265 (hereinafter the County Act) which is an Act of Parliament to give effect to Chapter Eleven of the Constitution; to provide for County Governments' powers, functions and responsibilities to deliver services and for connected purposes. As such the Act provides for the relationship in County Government including but not limited to the removal of the members of the County Government from office.

It is the 1st Respondent's position that he had authority to dismiss the petitioners. Section 31(a) of the County Act which provides that a governor may:

...despite section 40, dismiss a county executive committee member at any time, if the governor considers that it is appropriate or necessary to do so.

That the provision grants a governor the authority to dismiss a CEC member at any time. The Court of Appeal in the case of **County Government of Nyeri & Another v Cecilia Wangechi Ndungu [2015]eKLR** extensively interpreted the above provision. The court stated *inter alia* that:

We are of the considered view that the section 31(a) of the County Governments Act grants power to a Governor to dismiss a member of the County Executive committee at any time, that is, at his pleasure...A county Executive Committee member is the Governor's right hand in his/her respective office. Hence the Governor has to have confidence in the County Executive committee member. Where such confidence is lost the Governor ought to have the capability to removing such a member without undue delay so as to enable the County Executive Committee to function for the benefits of the County.

It is submitted that the Court of Appeal whose decision is binding on this Honourable Court acknowledged that the Governor has authority to dismiss a member of the CEC without notice and without holding a disciplinary committee hearing. The court acknowledged that reasons exist why this legislation is so when it stated:

There are certain circumstances a Governor may lose confidence in a member of a County Executive Committee and due to the sensitivity and/or urgency of the matter at hand the Governor may dismiss the member without giving notice of his intention to do so. Further, section 31(a) of the County Governments Act does not require the Governor to hold a disciplinary hearing in respect of the said member before dismissal, he can only dismiss if he considers it appropriate or necessary.

It was submitted that the reason for this is that it would be unconscionable to expect a governor who is expected to deliver on his manifesto to work with persons who have no interest in delivering on their responsibilities and in turn negatively affect service delivery on their responsibilities which in turn negatively affect service delivery to the constituents.

It was submitted the Court of Appeal in the above cited case was of the considered view that the authority granted by section 31(a) of the County Act could not be questioned except on the grounds where such authority was exercised arbitrarily or capriciously. To determine whether the authority was exercised reasonably the Court stated:

Appropriateness or necessity imports the requirement that there must be reasons that make

the dismissal appropriate or necessary. It is these reasons that determine whether the discretionary power...is reasonable or not.

The court earlier stated:

We find that the reasons for exercising the said power ought to be valid and compelling and will depend on the circumstances of each case. Consequently the power to dismiss a member of the County Executive is qualified to the extent that the same ought to be for the benefit of the County and in accordance to the principles of devolution...

The Respondents submitted that there was consideration before the petitioners were dismissed. The dismissal was not abrupt and whimsical as put forward by the Petitioners. That the Respondents deponed that the petitioners were issued with notice to show cause letters which the petitioners either failed to respond to (as the case with the 1st Petitioner) or responded to late in the day and affording implausible reasons.

That if the standard in the **County of Narok** case (supra) was to be applied, the Respondents submit that the same were met. First, the Governor issued notices to show cause letters to the Petitioners. This proves that the Governor did not just wake up and dismiss the Petitioners but that the Governor gave the Petitioners time to explain why they should not be disciplined. It would be wrong for the Petitioners to now claim that they do not and did not know the reason(s) why they were dismissed when they were in receipt of the show cause letters which they wither failed to respond to or were lackadaisical in responding to. That the Petitioners have not denied receiving either one of the two letters or both, that is the letter stating the displeasure of the 1st Respondent in the manner the petitioners were delivering on their responsibilities and/or show cause letters

2nd Respondent's Submissions

It was submitted for the 2nd Respondent that Article 179 (2)(b) of the Constitution of Kenya, 2010 vests on the Assembly the mandate to approve Members of the County Executive Committee appointed by the Governor from among persons who are not members of the Assembly. That the mandate provided to the Assembly by Article 179 (2) (b) is limited to the approval of the members nominated by the County Governor and the Assembly on its own accord does not have any mandate to appoint County Executive Committee Members.

Pursuant to *Section 14* of the County Governments Act on 26th November, 2014, the Assembly adopted COUNTY ASSEMBLY OF TURKANA STANDING ORDERS ("*the standing orders*") to regulate its proceedings.

PART XI of the Standing Orders provides for the procedure for the approval of public appointments and in particular, Order 43 of the Standing Orders provides for the procedure for the approval of nominees forwarded to the Assembly under Article 179 of the Constitution as hereunder:-

"PART XI - APPROVAL OF PUBLIC APPOINTMENTS

Committal to Committees

43.(1) Upon receipt of a notification of nomination for appointment to an office as is under the Constitution or under any other legislation required to be approved by the County Assembly, the nomination shall stand committed to the relevant Sectoral Committee of the County Assembly for consideration.

(2) Despite paragraph (1), appointments under Article 179(2) (b) of the Constitution shall stand committed to the Committee on Appointments.

(3) Before holding an approval hearing, the Committee to which proposed appointments have

been referred shall notify the candidate and the public of the time and place for the holding of the approval hearing at least seven days prior to the hearing.

(4) The Committee shall conduct a hearing on the proposed appointment and shall, unless otherwise provided in law, lay its report in the County Assembly within fourteen days of the date on which the notification was received under paragraph (1)."

It was submitted that on 23rd September, 2015 the Assembly received a letter from the Office of the Governor, of the County Government of Turkana, the 1st Respondent herein dated 21st September, 2015 which *inter alia* proceeded to nominate 3 candidates as new members to be in charge of sectoral fields for the Assembly to ascertain their suitability.

It was submitted that the said letter forms the substratum of the Petitioners' claim against the 2nd Respondent as they state that the decision of the 1st Respondent informing the impugned letter infringed their fundamental rights.

Determination

From the pleadings and written submissions of the parties the issues that arise for determination are the following;

- 1. Whether this court has jurisdiction to here this petition.**
- 2. Whether the petitioners are entitled to orders sought.**

Jurisdiction

The 1st and 3rd Respondents have contested the jurisdiction of this court to the petition herein.

The jurisdiction of this court is derived from Article 162(2) and section 12 of the Employment and Labour Relations Court Act which provides as follows:-

Article 162.

(2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to-

(a) employment and labour relations; and

(3) Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2).

12. Jurisdiction of the Court

(1) The Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of the Constitution and the provisions of this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations including—

(a) disputes relating to or arising out of employment between an employer and an employee;

(b) disputes between an employer and a trade union;

(c) disputes between an employers' organisation and a trade union's

organisation;

(d) disputes between trade unions;

(e) disputes between employer organisations;

(f) disputes between an employers' organisation and a trade union;

(g) disputes between a trade union and a member thereof;

(h) disputes between an employer's organisation or a federation and a member thereof;

(i) disputes concerning the registration and election of trade union officials; and

(j) disputes relating to the registration and enforcement of collective agreements.

It is the 1st and 3rd Respondents position that there is no employment relationship between the petitioner and the Respondents.

A similar objection was made by the Respondent in the case of **Nick Githinji Ndichu v Clerk, Kiambu County Assembly & Another [2014]eKLR** in which Nduma J. stated as follows-

*"11. The jurisdiction of the Court under article 162(2) as read with Section 12 of the Industrial Court Act, 2011 is very clear and was well elaborated by **Hon. Majanja J.** in the matter of **United States International University (USIU) v Attorney General (2013) eKLR**.*

In the matter, counsel Kibe Mungai persuaded the Court to find;

a. The Industrial Court has jurisdiction to determine applications for enforcement of rights and fundamental freedoms under Article 22 and 23 in relation to all matters within their jurisdiction under the Act;

b. For purposes of all matters falling within the Industrial Court, reference to the "High Court" in the Constitution shall be deemed to refer to the "Industrial Court", and

c. In order to avoid apparent conflict, the court having the status of the High Court should have all powers of the High Court in determination of disputes.

12. The Honourable Judge relying on Kenyan and South African jurisprudence and statutory law found; at page 14:

"In light of what I have stated, I find and hold the Industrial Court as constituted under the Industrial Court Act, 2011 as a court with the status of the High Court is competent to interpret the Constitution and enforce matters relating to breach of fundamental rights and freedoms in matters arising from disputes falling within the provision of Section 12 of the Industrial Court Act, 2011."

*This decision was cited with approval by the Court of Appeal, at Nairobi in **Civil Appeal No.6 of 2012 Professor Daniel N. Mugendi Vs. Kenyatta University and 3 others**.*

Section 12(1) of this Act provides that the Court has jurisdiction to hear and determine disputes **relating to employment and labour relations including:**

a. disputes relating to or arising out of employment between an employer and an employee

Under Section 2 of the employment Act, 2007 a "contract of service" is defined to mean;

"an agreement, whether oral or in writing, and whether expressed or implied to employ or to serve as an employee for a period of time."

Whereas an "employee" is defined as "a person employed for wages or a salary."

13. It is clear from the foregoing that the law is not concerned with the method of acquiring an employee. The law does not concern itself with whether the person was appointed or elected. Rather, the person must;

(i) be having an oral or written contract of service;

(ii) be provided a service to a real or legal person;

(iii) be receiving a wage/salary for the services rendered.

If such a person has a dispute with the person with whom he/she has a contract of service and to whom he/she provides services for a wage or salary, the court has jurisdiction over such dispute and has available remedies for that purpose.

14. It is the Court's finding that the Petitioner has a relationship with all the above attributes with the 2nd Respondent.

This court has therefore got jurisdiction over this matter."

I entirely agree with the decision of the Judge. The case of **Cecilia Wangechi Ndungu** (Supra) was also decided by the Employment & Labour Relations Court. In the appeal, the Court of Appeal confirmed that a state officer is an employee whose terms and conditions of service are regulated by the constitution or the relevant statute, principles of fair administrative action and rules of natural justice, but is not subject to the Employment Act.

This court's jurisdiction is not confined to employment relationships created under the Employment act only as suggested by the Respondents. The court has mandate to determine issues relating to all employment irrespective of whether or not such employment relationship arises out of the Employment Act. Article 162(2)(a) refers to jurisdiction in "*employment and labour relations*" without confining such jurisdiction to the Employment Act.

For these reasons I dismiss the objections to the jurisdiction of this court.

Whether the Petitioners are entitled to the Orders Sought

I will first deal with the case of the 3rd Petitioner. As I have already stated above, she was not given any letter of termination of her services. She only learnt about the dismissal from the print media.

Article 47 provides that administrative action must be expeditious, efficient, lawful, reasonable and procedurally fair. Further that if a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person **has the right to be given written reasons for the action.**

The position of the 3rd petitioner is one that was created through a gazette notice after clearance by the

County Assembly. It is not clear how the terms of her engagement were communicated to her but I presume she was issued with a letter. Being a public office established under the Constitution and the County Government Act with explicit provisions on the manner in which it can be terminated, there can be no presumption of the termination. Roadside pronouncements or media reports cannot terminate such appointments. In the case of **Wamwere v The Attorney General [2004] 1 KLR** the court observed that media reports have no probative value and the courts cannot rely on them as a basis for determination of a case. The same observation was made in **Randu Nzau Ruwa & 2 others v Internal security Minister & another [2012]eKLR**.

In the case of **Tesco Corporation Ltd v Bank of Baroda (K) Limited** the court stated as follows:-

"The real question for consideration and decision by this court is as to whether on the evidence it has been satisfactorily established that the plaintiff did part with the possession of the premises or any part thereof to any one in a manner to constitute a breach of contract. The only evidence relied upon by the applicant is a newspaper report contained in the Daily Nation of 19th November, 2007. The issue here is admissibility of documentary evidence as to the facts in issues.

The provisions of Section 35 of the Evidence Act are clear on this issue...

Having considered the application in light of the affidavit evidence and submissions by both counsel and the relevant law, I am not persuaded that the newspaper report is covered under the provisions of Section 35 of the Evidence Act."

For these reasons I find that the 3rd Petitioner is still in office as she was never dismissed.

For the 1st and 2nd Petitioners the 1st Respondent issued letters of dismissal. The dismissals are expressed to be made pursuant to the 1st Respondent's powers under section 31(a) of the County Government Act which provides that -

31. Powers of the governor

The governor—

(a) may, despite section 40, dismiss a county executive committee member at any time, if the governor considers that it is appropriate or necessary to do so;

In the case of **Cecilia Wangechi Ndungu** (Supra) the Court of Appeal dealt with the issue of dismissal of County Executive Committee Members extensively. The court stated that -

"Appropriateness or necessity imports the requirement that there must be reasons that make the dismissal appropriate or necessary" and that is is these reasons that determine whether the discretionary power had been exercised reasonably or not. The court further stated that such reasons must be valid and compelling depending on the circumstances of each case."

In this case the letters of dismissal did not assign any reasons. In the Replying Affidavit of the 1st Respondent there has been an attempt to justify the dismissals. The 1st Respondent referred to show cause letters dated 19th September, 2014 to the 2nd Petitioner and failure of the 2nd Petitioner to fulfil some non-specified duties and obligations under a performance contract for the period beginning 6th January 2015. Nothing is stated about the shortcomings of the 1st petitioner leading to the 1st Respondent expressing his displeasure vide letters to the petitioners dated 15th April, 2015. There is no evidence that following issuance of the letter dated 14th April 2015 the 1st and 2nd Petitioners were asked to show cause why their appointments should not be terminated. There is no evidence that they were given an opportunity to defend themselves as required by Article 47 before their dismissal. 1st Respondent has not explained why, if incompetence was the ground for dismissal, it was not stated in the letter of dismissal.

The 1st and 3rd Respondents have failed to show that the dismissal of the 1st and 2nd petitioners was appropriate or necessary. The Respondents have further failed to show that before the dismissal due process was followed as prescribed by Article 47 and 236 of the Constitution. Specifically the 1st Respondent failed to give written reasons for the dismissal of the 1st and 2nd Petitioners. The 1st and 2nd Petitioners have therefore proved the violations of their fundamental rights under Articles 41, 47 and 236 of the Constitution.

Remedies

The petitioners having proved that the Respondents violated their constitutional rights, I grant them the following orders -

1. I find and declare that the dismissal of the 1st and 2nd Petitioners as County Executive Committee Members for Lands, Physical Planning and Urban Management, and Pastoral Economy and Fisheries respectively was a violation of section 31(a) of the County Government Act and Article 47 and 236 of the Constitution of Kenya and therefore unlawful and unconstitutional.
2. I hereby call into this court and quash the decision of the 1st Respondent to dismiss the 1st and 2nd Respondents and order and direct the Respondents to allow the petitioners to resume their positions and official duties in their respective positions forthwith.
3. With respect to the 3rd Petitioner, I find that she was never dismissed as she was never issued with any letter of dismissal or given any formal communication of dismissal by the Respondents and order the Respondents to allow her to resume her official duties as Executive Committee Member in charge of the Ministry of Water, Irrigation and Agriculture forthwith.
4. I order the Respondents to pay the petitioners full salaries and allowances from 18th September, 2015 to date.
5. The Respondents shall pay the petitioners costs of this petition.

Dated and signed and delivered this 15th day of September, 2016

MAUREEN ONYANGO

JUDGE