



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

PETITION NO. 33 OF 2016

(Originally Nairobi Petition No. 113 of 2016)

**IN THE MATTER OF ARTICLES 2, 3,10,41,47,174,179,185,224,226 AND 236 OF THE
CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF RIGHT TO FAIR ADMINISTRATIVE ACTION AND A FAIR HEARING
PROVIDED UNDER ARTICLES 47 AND 50 OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF SECTION 13 OF THE COUNTY GOVERNMENTS ACT, 2012 AND THE
RIGHT TO FAIR LABOUR PRACTICES UNDER ARTICLE 41 OF THE CONSTITUTION**

AND

**IN THE MATTER OF THE UNFAIR, UNPROCEDURAL AND UNLAWFUL PROCES OF
REMOVAL FROM THE OFFICE OF THE CLERK OF THE COUNTY ASSEMBLY OF
NYANDARUA**

BETWEEN

PURITY MWONJORIA KAMURUCI

PETITIONER

v

NYANDARUA COUNTY ASSEMBLY SERVICE BOARD

RESPONDENT

RULING

1. The Petitioner was offered the position of the Clerk, County Assembly of Nyandarua by the Respondent through a letter dated 17 January 2014. She was confirmed into the position through a letter dated 14 October 2014.
2. On 29 April 2016, the Petitioner was sent on compulsory leave and she challenged the same in Nakuru Cause No. 19 of 2016, *Purity Mwonjoria Kamuruci v Nyandarua County Assembly Service Board*. The Court declined to grant the interim injunctive relief sought.
3. Come 5 May 2016, the Respondent issued a show cause notice to the Petitioner to show cause why a disciplinary action could not be taken against her on account of alleged gross misconduct.

4. The Petitioner responded to the notice through a letter dated 9 May 2016. The response in substance requested for documents/records.
5. The Respondent through a letter dated 12 May 2016 informed the Petitioner that the request for records would be considered once the Respondent's Board returned from an overseas trip.
6. On 17 May 2016, the Petitioner responded substantively to the show cause notice, and also sought formalisation of the allegations against her, and this prompted the Respondent on 20 June 2016 to ask the Petitioner to respond within 7 days.
7. The Respondent thereafter through a letter dated 14 July 2016 invited the Petitioner to a disciplinary hearing on 25 July 2016, and this was followed with a dismissal letter dated 1 August 2016.
8. The dismissal aggrieved the Petitioner and on 9 August 2016 she moved the Court in Nairobi, and on the same day, Abuodha J granted an order staying the decision to dismiss the Claimant.
9. The interim order of stay was extended by Wasilwa J on 25 August 2016 and on 30 August 2016, Ndolo J directed that the file be placed before Abuodha J.
10. When the matter was placed before Abuodha J on 1 September 2016, he directed that the file be transferred to the Court sitting in Nakuru, being the Court with territorial jurisdiction.
11. The file was placed before the Court on 15 September 2016. The Petitioner was not represented during the session.
12. The Respondent informed the Court that it had also filed a motion dated 16 August 2016 and the Court then directed that the motion be heard on 11 October 2016.
13. On 21 September 2016, the Petitioner filed another motion seeking reinstatement of the interim order granted by Abuodha J, and which order had not been extended on 15 September 2016 because of the Petitioner's absence. The Court reinstated the said interim order and scheduled 11 October 2016 *for inter partes* hearing.
14. When the file was called out on 11 October 2016, the Court directed that the Petitioner's motion dated 8 August 2016 would be taken and the Respondent's motion dated 16 August 2016 and a preliminary objection dated 21 September 2016 would be taken in opposition to the Petitioner's initial motion.
15. The motion seeks

1.

2. *THAT pending the herein and determination of this application inter parte, this honourable court be pleased to grant an Interim Order of stay of the Respondent's decision and order made on the 1st August 2016, dismissing the Petitioner/Applicant from her position as the Clerk of the County Assembly of Nyandarua.*

3. *THAT pending the hearing and determination of this application inter parte, this honourable court be pleased to grant an Interim Conservatory Order restraining the respondent from recruiting, advertising for, appointing and/or in any way procuring any person, whether on interim basis or at all, to the position of the Clerk of the County Assembly of Nyandarua.*

4. *THAT prayers 2 and 3 be granted pending the hearing and determination of the Petition herein.*

5. ...

16. The Court has given due consideration to the material placed before it and the oral submissions taken

in Court.

17. Confirming the proposed order 2 would in the view of the Court amount to reinstating the Petitioner to office without a hearing on the merits.

18. Reinstatement in employment law is generally a final remedy granted after a hearing on the merits and not on the papers.

19. Of course, the Court can where exceptional circumstances are demonstrated grant an order whose effect would amount to reinstatement, at an interlocutory stage. Apart from exceptional circumstances, removal from office sought to be stayed should be underpinned by specific as opposed to general statutory provisions/protections.

20. There is no specific statutory provision prescribing the procedures for removal of a Clerk to a County Assembly in this country, and therefore any protections are found in laws of general application such as the Employment Act, 2007 and the Constitution.

21. Without demonstration of exceptional circumstances or protections expressed in a statute of specific application, the Court is of the view that confirming the interim order granted on 9 August 2016, on the papers, would be legally untenable.

22. Having reached the conclusion that the interim order granted cannot be confirmed, the Court is of the persuasion that it would not be appropriate to restrain the Respondent from appointing or procuring any person to act even on an interim basis in the office of Clerk, County Assembly of Nyandarua as that might cause impediments to the smooth operations of the County Assembly.

23. The motion is therefore dismissed with an order that costs be in the cause.

Delivered, dated and signed in Nakuru on this 25th day of November 2016.

Radido Stephen

Judge

Appearances

For Petitioner Mr. Njenga instructed by Muchoki Kangata Njenga & Co. Advocates

For Respondent Mr. Karanja instructed by Mirugi Kariuki & Co. Advocates

Court Assistants Nixon/ Daisy