



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 372 OF 2016

LUCY WANGARI

METHU.....CL

AIMANT

VERSUS

COUNTY COMMISSIONER, NYANDARUA

COUNTY.....1ST RESPONDENT

CABINET SECRETARY, MINISTRY OF INTERIOR AND COORDINATION OF NATIONAL GOVERNMENT....2ND RESPONDENT

PUBLIC SERVICE

COMMISSION.....3RD RESPONDENT

HONOURABLE ATTORNEY

GENERAL.....4TH RESPONDENT

HONOURABLE WANJIKU MUHIA, NYANDARUA COUNTY WOMEN REPRESENTATIVE.....5TH RESPONDENT

RULING NO. 2

1. Lucy Wangari Methu (Claimant) moved Court on 23 September 2016 under a certificate of urgency seeking several orders primarily geared towards suspending her interdiction from office as Chief, Kipipiri Location, County of Nyandarua. The interdiction letter dated 6 September 2016, was signed by the County Commissioner, County of Nyandarua (1st Respondent).
2. The interdiction letter called upon the Claimant to make representations to various allegations outlined against her within 10 days.
3. The Court certified the motion urgent and directed that it be served upon the Respondents for *inter partes* hearing on 6 October 2016.
4. When the motion was called out on 6 October 2016, it emerged that all the Respondents save for the 5th Respondent had been served.
5. The 1st to 4th Respondents, represented by Mr. Nguyo, Senior Litigation Counsel, Office of the

Attorney sought for more time to put in appropriate responses to the motion.

6. The Court acceded to the application and gave timelines as to filing and service of the responses, and service upon the 5th Respondent with a return date of 24 October 2016.

7. An Assistant Director, Human Resources Management and Development of the 2nd Respondent swore and filed a replying affidavit on behalf of the 1st to 4th Respondents on 24 October 2016.

8. The motion was urged on 24 October 2016, and in a reserved ruling delivered on 26 October 2016, the Court ordered thus

THAT pending the hearing and determination of this suit the interdiction of the Claimant be and is hereby suspended and the Claimant to continue serving in the office of Chief, Kipipiri Location, County of Nyandarua with all the benefits accruing thereto including the withheld salary and the privileges hereinbefore.

9. However, unknown to the Court and the Claimant, a Mr. A.A. Osiya, EBS, purporting to act on behalf of the 2nd Respondent had issued a dismissal letter to the Claimant. The dismissal letter is dated 21 October 2016.

10. The Claimant got wind of the dismissal and alerted the Court during the delivery of the ruling, and the Court directed that summons be issued to the aforesaid Mr. Osiya to appear in Court on 9 November 2016 (the Court's attention has also been drawn to an advertisement by the Respondents on 1 November 2016 to advertise a vacancy for the office of Chief, Kipipiri Location).

11. Before the return date of the summons, the Claimant also filed a contempt application on 1 November 2016. The Court directed that the motion be served for *inter partes* hearing on 9 November 2016.

12. Come 9 November 2016, Mr. Osiya did not appear in Court. It is not disputed that he was served with the summons.

13. Mr. Nguyo explained Mr. Osiya's failure to comply with the summons to the fact that he was part of the team handling national examinations which will end around 30 November 2016.

14. Mr. Nguyo thus sought that Mr. Osiya be given time to appear in Court in obedience to the summons.

15. Mr. Kihiko for the Claimant on his part urged that a warrant of arrest be issued against Mr. Osiya because there was no evidence placed before Court to show that he was involved in the administration of national examinations. Counsel further stated he was ready to urge the contempt application.

16. After hearing the addresses from counsels, the Court reserved ruling/directions to today.

17. In paragraph 10 of the Respondents replying affidavit sworn on 24 October 2016, Mr. John Kimani Njorjo, Assistant Director, Human Resources Management and Development deposed that

10. THAT the allegations against the claimant are neither spurious, frivolous, politically motivated nor vitiated by malice. The case has yet to be formally investigated so as to establish the true position. (my emphasis). The decision to interdict the claimant was therefore taken in accordance with the provisions of the Human Resources Policies and Procedures Manual for the Public Service (May 2016) and the Public Service Commission of Kenya Discipline Manual, May, 2016.

18. Without attempting to delve into the merits of the case presented by the Claimant at this interlocutory stage, it is obvious that the decision purportedly issued under the hand of Mr. A. A. Osiya EBS to dismiss the Claimant on 21 October 2016 was meant to circumvent the outcome of the court challenge presented by the Claimant. How else could there be a dismissal on 21 October 2016, when there is evidence before

Court that formal investigations against the Claimant had not been conducted/commenced by 24 October 2016?

19. Even the speed with which the Respondents have moved to recruit a replacement for the Claimant is telling. The Respondents conduct as public officers appear unprecedented.

20. The purported dismissal of the Claimant in the wake of the pending proceedings appear to be an attempt to steal a march on the Claimant by public officials who have an obligation to observe the constitutional imperatives on public service and the bill of rights, and also to subvert the cause and administration of justice.

21. The conduct/action was(is) an assault against the authority, power and dignity of the Court, which had issued an order which ought to have been respected and complied with by the Respondents unless vacated or set aside.

22. No Court of law ought or will countenance such conduct from any public official however high the office held and in appropriate circumstances, the Court will move swiftly to protect not only the rights of citizens but the authority and dignity of the Court, and the cause of and administration of justice. This Court and indeed all Courts have an obligation to safeguard the rule of law

23. In this respect, the Court orders and directs as follows

(i) Mr. A. A. Osiya to present to Court through an affidavit, evidence that he was involved in the administration of national examinations, before 2 December 2016.

(ii) Mr. Samuel W. Kimiti, the County Commissioner, County of Nyandarua (or any person holding that office) to ensure that the Claimant is restored to her office in terms of the order of 26 October 2016 on or before 12 November 2016, and an affidavit of compliance to be filed in Court before 16 November 2016.

(iii) As part of compliance with the orders of 26 October 2016 and (ii) above, Mr. Samuel W. Kimiti, County Commissioner, Nyandarua County (or any person holding that office) to ensure that any symbols and instruments of office withdrawn from or surrendered by the Claimant are returned to her by 12 November 2016.

(iv) Mr. Samuel W. Kimiti (or person holding office of County Commissioner, Nyandarua County) to personally appear in Court on 16 November 2016 to confirm compliance and for further directions by the Court.

(v) Mr. A.A. Osiya to file and serve an affidavit as to his decision/letter of 21 October 2016 and also attend Court personally on 2 December 2016 in compliance to the summons.

(vi) Counsel on record for the Respondents to ensure this ruling/orders are brought to the personal attention of the officers mentioned.

24. In order to maintain and preserve the integrity of the judicial process and administration of justice, the Court *suo moto* restrains and invalidates any attempt or process by the Respondents as published through an advertisement on 1 November 2016, to advertise or recruit any person to hold the office of Chief, Kipipiri Location, County of Nyandarua.

25. In this regard, the 1st Respondent is ordered to ensure that a copy of the ruling/orders flowing from this ruling are prominently displayed in the notice-boards where the advertisement(s) were displayed.

26. The Court will give further directions as to the Claimant's application dated 1 November 2016 on 2 December 2016.

27. Claimant to have costs of the applications so far.

Delivered, dated and signed in Nakuru on this 10th day of November 2016.

Radido Stephen

Judge

Appearances

For Claimant	Mr. Kihiko instructed by Stanley Henry Advocates
For 1 st -4 th Respondents	Mr. Nguyo, Senior Litigation Counsel, Office of the Attorney General
For 5 th Respondent	Katwa & Kemboy Advocates
Court Assistants	Nixon/Daisy