



**REPUBLIC OF KENYA**  
**EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**  
**AT NAIROBI**

**PETITION NO. 46 OF 2015**

(Before Hon. Justice Hellen S. Wasilwa on 27<sup>th</sup> July 2015)

**IDRIS ADEN MUKHTAR.....1<sup>ST</sup> PETITIONER**

**MUKHTAR BULALE.....2<sup>ND</sup> PETITIONER**

**SALAH YAKUB FARAH.....3<sup>RD</sup> PETITIONER**

**VERSUS**

**THE COUNTY GOVERNMENT OF GARISSA.....1<sup>ST</sup> RESPONDENT**

**THE GOVERNOR –GARISSA COUNTY.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The application before court is the one dated 27/5/2015. The application was filed under a Certificate of Urgency and brought through a Notice of Motion brought under Order 51 Rule 1 of the Civil Procedure Rules 2010, Article 23 of the Constitution of Kenya (Supervisory Jurisdiction and Protection of Fundamental Rights and Freedom of the Individual) and the Industrial Court (Procedure Rules) and all enabling provisions of law.

2. The Applicant Petitioner seeks orders that:

*1. The application be certified urgent and heard ex-parte in the first instance.*

*2. Pending the hearing of this Application interparties, the Honourable Court be pleased to grant interim orders re-instating the Petitioners herein to the positions that they previously held before their dismissal as Garissa County Executive Committee Members.*

*3. Pending the hearing of this Application interparties, the Honourable Court be pleased to issue orders restraining the 1<sup>st</sup> and 2<sup>nd</sup> Respondents by themselves, their agents or servants from suspending, dismissing, reshuffling, purporting to send on compulsory leave or doing anything prejudicial to the Petitioners after the interim re-instatement by the court.*

*4. Pending the hearing of the Petition, the Honourable Court be pleased to grant interim orders re-instating the Petitioners herein to the positions that they previously held before their dismissal*

*as Garissa County Executive Committee Members.*

*5. Pending the hearing of the Petition, the Honourable Court be pleased to issue orders restraining the 1<sup>st</sup> and 2<sup>nd</sup> Respondents by themselves, their agents or servants from suspending, dismissing, reshuffling, purporting to send on compulsory leave or doing anything prejudicial to the Petitioners after the interim re-instatement by the court.*

*6. The Honourable Court be pleased to give further orders as it may deem convenient in the circumstances of this case.*

3. The application is based on the annexed affidavit of Idris Aden Mukhtar the 1<sup>st</sup> Petitioner herein and on the grounds that:

*1. There is news that after the dismissal of the Petitioners herein, the 2<sup>nd</sup> Respondent is about to appoint other members of the County Executive Committee to replace the Petitioners which will greatly prejudice them.*

*2. The responsibility has been given to the County Assemblies to ensure CEC members govern in a lawful and effective manner. Impeachment was included in the law to provide for a mechanism for good governance. It is thus unacceptable that this purpose should be defeated by being abused to settle scores instead of being used to enforce good governance and accountability.*

*3. The dismissal of a County Executive Member is not a political process but a quasi-judicial process akin to a trial process taken by a legislature, which starts with a Motion moved at the County Assembly. It must, therefore, meet certain constitutional and statutory thresholds, including fairness, independence, and impartiality. At the very least, the due process under Article 50 of the Constitution must be adhered to. When exercising a quasi-judicial function one must follow the due process. It is a gross abuse of power and a gross violation of the Constitution and stature where impeachment proceedings are used as herein to advance personal interests.*

*4. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents have violated due process and their actions are illegal, null and invalid because they seek to abuse a very strong political weapon of impeachment at their disposal which must be used only in appropriate cases of serious wrong doing on the part of a CEC member, which is tantamount to gross misconduct within the meaning of the law.*

*5. The entire shambolic dismissal process is in violation of rights and fundamental freedoms enshrined in the Bill of Rights.*

*6. The Honourable Court has an obligation to guard against abuse of power and as such to question whether there was procedural fairness, whether due process was followed, and whether there were substantial grounds for removal of the CEC Member under Section 31 and 40 of the Count Governments Act.*

4. The Petitioners have sought to rely on their individual affidavits filed herein and filed with the Petition.

5. It is the 1<sup>st</sup> Petitioner's averment that on 29/4/2013, he was nominated to be a member of the County Executive Committee of Garissa and took oath of office on 3/6/2013 and served as such member upto 22<sup>nd</sup> May 2015 as Committee Member for Youth, sports, Trade, Investment, Enterprise Development and Cooperatives. He annexed his appointment letter as **Appendix 1AM 1.**

6. The Co-Petitioners were also appointed as County Executive Committee Member Garissa for Water, Health and Sanitation and Environment, Energy, Natural Resource, Wildlife Management and Tourism

respectively within the same period.

7. The Petitioner filed a replying affidavit in answer to the supporting affidavit of the Respondents on 8/6/2015. The 4 affidavits form the gist of the Applicant's case herein. The Applicant avers that on 18/5/2015 he was summoned to appear before the Adhoc Committee on foreign travel of the Garissa County Assembly on 22/5/2015.

7. (a) The letter required him to carry copies and original of the visa used to travel to Israel and Italy, original passport and copies of the pages including entry and exit stamps of Italy and Israel, letter or evidence showing the official nomination by the Governor to attend the Conference, a list of the members in his delegation, copy of the department's annual work plan and how the trip was factored in a letter from the Ministry of Foreign Affairs and International Trade showing that he had been cleared to travel to the said countries for the conference, substantiate his visit to the Kenya Embassies or circular as required by the executive directive as policy guidelines for foreign trade by public officers on official capacity.

7. (b) He was also required to submit detailed write-ups on the conference, any agreements, treaties, memorandum and any other information. Their substance and travelling allowance for the committee was to be reimbursed. The letter warned that if he failed to comply with the said summons without lawful reason, they will be subject to the consequences of non-attendance laid down in Section 27 of the County Assembly Powers and Privileges Act. The letter was signed by the Clerk of the County Assembly of Garissa.

8. The 3<sup>rd</sup> Applicant received a similar letter.

9. It appears that the 1<sup>st</sup> and 3<sup>rd</sup> Applicants failed to appear before the Adhoc Committee as instructed. They attribute this to the short notice given to them and they aver that the Assembly made no decision on the matter.

10. However, the Applicants contend that on a Sunday evening, they received emails with letters backdated to Friday whereby the 2<sup>nd</sup> Respondent purported to terminate them on grounds that they had never been asked to respond to being making unauthorized trips for 1<sup>st</sup> and 3<sup>rd</sup> Petitioners and failure to implement water policy for the 2<sup>nd</sup> Petitioner.

11. The Applicants aver that there was total lack of due process and that grounds alleged for their termination were an afterthought to mark interior motives being clan politics in Garissa County.

12. It is the Applicants contention that the principle of fair administration process under Article 47 of the Court and Article 10 were flouted plus their rights under Article 41 of the Constitution.

13. The Applicants aver that the affidavit filed in response to the application by the Respondents include a number of documents that the Petitioners had never seen before and they believe them to be forgeries and these include documents at:

***1. Page 19 - a letter by the Clerk of the Assembly to the County Secretary, County Government of Garissa dated 19/2/2014 inquiring about foreign trips by the Executive.***

***2. Page 21 – A letter written to the 1<sup>st</sup> Petitioner dated 23/2/2015 asking him to submit documents and relevant details on six key issues regarding his foreign travel to Israel and Italy.***

***3. Page 22 – A letter to 3<sup>rd</sup> Petitioner on similar issues of the trip to Israel and Italy dated 23/2/2015.***

***4. Page 23 – A letter to 1<sup>st</sup> Petitioner dated 25/3/2015 on his trips to Israel and Italy.***

***5. Page 25 – letter to 3<sup>rd</sup> Petitioner dated 25/3/2015 on his trip to Israel and Italy.***

6. *Page 27 – Letter dated 18/5/2015 from Chief Officer in Office of Youth, Sports, Trade, Investment, Enterprise Development and Co-operatives to the County Secretary Garissa County complaining about absenteeism of CEC from office for a long period from 10/12/2014 to 24/4/2015 on a number of occasions. The Chief Officers in the said letter complained of failure to get guidance and proper leadership regarding formulation and implementation of Policy, Development of Projects and in general, Departmental day to operations of the Ministry.*

14. It is also the Applicants position that some of the signatures are forged as per their further affidavit at paragraphs 5, 6, 7, 13 which affidavit is not controverted.

15. The Applicants aver that their termination was flawed and they urge court to find that they have established a prima facie case and a strong persuasive case and urge court to award them orders they seek.

16. They have asked court to consider the law – Section 40 of County Government Act (CGA) on authority of terminating County Executive Members where misconduct must be demonstrated and Section 31 where the Governor can do the termination, but must comply with the Constitutional Principles of Article 10, 41 and 47. They cited various authorities amongst them: **County Government of Nyeri & Another vs Cecilia Wangechi Ndungu Civil Appeal No. 2 of 2015** and **Erastus Onyango Nyamori vs. County Government of Migori & Another (2014) eKLR.**

17. The Respondents filed their replying affidavit on 3/6/2015 sworn by one Mohamud H. Mursal the County Secretary and Head of County Public Service of Garissa County of the 1<sup>st</sup> Respondent herein. They also filed their own application filed under Certificate of Urgency, filed on the same date and filed through a Notice of Motion dated 3/6/2015 seeking the following orders:

- 1. That the instant Application be certified as urgent and the same be heard ex-parte in the first instance.*
- 2. That the Honourable Attorney General be joined in this Petition as an Interested Party and or Amicus Curie.*
- 3. That the Petition and all Applications and or pleadings herein be served upon the Honourable Attorney General.*
- 4. That pending the hearing and determination of the instant Application as well as, the Petitioners Application and Petition both dated 27<sup>th</sup> May 2015, this Honourable Court be pleased to set aside, vacate and/or vary the Exparte orders granted to the Petitioners on the 27<sup>th</sup> May 2015 which orders were to the effect inter alia,*

“

- 1. That the Application be and is hereby certified as urgent.*
- 2. That an interim order be and is hereby granted re-instating the Petitioners herein to the positions that they previously held before their dismissal as Garissa County Executive Committee Members pending interpartes hearing on 10<sup>th</sup> June 2015 before any court.*
- 3. That an interim order be and is hereby granted restraining the 1<sup>st</sup> and 2<sup>nd</sup> Respondents by themselves, their agents of savants from suspending, dismissing, reshuffling, purporting to send on compulsory leave or doing anything prejudicial to the Petitioners after interim reinstatement by the court pending interpartes hearing on the 10<sup>th</sup> June 2015 before any Court.....”*
- 5. That the instant Application be heard and determined on merit contemporaneously with*

*and or at the same time with the Petitioners' Application dated 27<sup>th</sup> May 2015.*

*6. That pending the hearing and determination of the instant Application, the Honourable Court be pleased to issue a temporary injunction restraining the Petitioners from obstructing, intermeddling and or in any manner whatsoever interfering with the Respondents' delivery of services and/or discharge by the said Respondents of their Constitutional and/or statutory powers duties and service to the residents of Garissa County and the public.*

*7. That pending the hearing and determination of the Petition herein, the Honourable Court be pleased to issue a temporary injunction restraining the Petitioners from obstructing, intermeddling and or in any manner whatsoever interfering with the Respondents' delivery of services and/or discharge by the said Respondents of their Constitutional and/or statutory powers and service to the public.*

*8. That the Honourable Court be pleased to issue and or grant such other and or further orders as it may deem fit and convenient in the circumstances to best serve the ends of justice.*

*9. That costs of this Application be provided for.*

18. Their application was grounded in the annexed supporting affidavit of Mohamud H. Mursal and on the following further grounds:

*1. That the Respondents are Constitutional and/or Statutory organs by law established and duly constituted as provided for under the laws of the Republic of Kenya in particular Articles 174 & 176, of the Constitution and Section 5, 30, 31 and 40 of the County governments Act 2012.*

*2. That the Petitioners herein were members of the County Executive Committee of the 1<sup>st</sup> Respondent serving under the authority and supervision of the 2<sup>nd</sup> Respondent herein until 22<sup>nd</sup> May 2015 when their services were lawfully terminated by the Respondents in exercise of the statutory powers conferred under the Constitution and Sections 31 (a) and 40 (1) of the County Government Act 2012.*

*3. That on the 22<sup>nd</sup> May 2015, the Petitioners were dismissed from their respective positions as members of the County Executive Committee after inter alia:*

*i. They undertook foreign travels without the prerequisite state authorization thereby violating Article 42(2) of the Vienna Convention, Article 2 (5) & (6) of the Constitution of Kenya and the State Circular dated 26<sup>th</sup> January 2015 Ref. Number OP/CAB.1/7A on "Policy Guidelines on International travel and Diplomatic Engagement 2015" issued by the Executive Office of the President of the Republic of Kenya through the Chief of Staff and Head of the Public Service on Francis Kinyua.*

*ii. Expending public resources in the trips alluded to in C (i) above.*

*iii. They failed neglected and or refused to render any and or any plausible explanation for their unauthorized and unlawful foreign ravelts thereby conducting themselves in a manner that amounts to insubordination over the authority placed upon them.*

*iv. The Petitioners were unable to explain why they had undertaken the said foreign travels without the requisite authority and/approval or the 2<sup>nd</sup> Respondent to whom they are answerable.*

*4. That the decision taken by the 2<sup>nd</sup> Respondent to dismiss the Petitioners herein was in the best*

***public interest for the citizens of Garissa Count and the Republic of Kenya especially owing to that insecurity issues within the Count vis-avis the Petitioners' unexplained and unauthorized foreign travels into and out of the country in which it is unclear whom they met and what they deliberated.***

***5. That the 2<sup>nd</sup> Respondent concomitantly appointed persons to replace the said Petitioners in acting capacity as County Executive Members to ensure uninterrupted service delivery.***

***6. That the Petitioners have in exercise of their Constitutional rights challenged their termination in the Petition herein dated 27<sup>th</sup> May 2015.***

***7. That further to the Petition, the Petitioners filed a Notice of Motion dated 27<sup>th</sup> May 2015 contemporaneously and this Honourable Court was pleased to grant them interlocutory orders inter alia "reinstating the Petitioners" to their previous positions.***

***8. That the said "Reinstatement" Orders have become impossible to obey and or effectuate for cause inter alia because:***

***i. That the termination letters dated 22<sup>nd</sup> May 2015 to the respective Petitioners have not been quashed and/or declared null and void as they are the subject of the instant Petition.***

***ii. That there have been persons already appointed to the positions previously held by the Petitioners albeit not substantively.***

***iii. That the impugned interlocutory orders were granted upon the Court relying on gross misrepresentation of facts and/or withholding of material facts by the Petitioners.***

***iv. That the interlocutory orders are conclusive in nature thereby rendering the entire Petition and proceedings thereof nugatory.***

***v. That the orders offend the constitutional doctrine of separation of powers.***

***vi. That the orders offend the Rules of granting mandatory injunctions at an Interlocutory stage as herein granted.***

***vii. That the subsistence of the interlocutory orders is against the public interest.***

***viii. That the Petitioners will suffer absolutely no prejudice if the application herein were granted and or the impugned orders vacated, set aside and or varied.***

***ix. That the Petitioners approached the Honourable Court with unclean hands.***

***x. That the ends of justice will best be served if the prayers sought herein are granted.***

***9. That further, the Petitioners will not suffer any irreparable damage not incapable of being compensated in damages in the event the orders sought herein are granted.***

***10. That an order of reinstatement can only properly be granted by the Employment and Labour Relations Court after the inter partes hearing and upon determination of the substantive Petition herein.***

***11. That no prejudice would be suffered by the Petitioners herein if the orders sought herein are granted as they have already filed a Petition challenging their removal from office.***

***12. That the balance of convenience ways totally against the orders granted to the Petitioners on***

*the 27<sup>th</sup> May 2015 and it is therefore just and equitable that the orders sought herein be granted.*

19. In their averments the Respondents position is that the Applicants were until 22/5/2015 County Executive Committee Members of 1<sup>st</sup> Respondent on appointment by the 2<sup>nd</sup> Respondent.

20. However, they aver that they were terminated on 22/5/2015 by the 2<sup>nd</sup> Respondent exercising his constitutional and statutory rights due to their incompetency and failing to perform work entrusted to them.

21. The Respondents further aver that on 25/5/2015, the 2<sup>nd</sup> Respondent in his statutory powers, appointed persons to fill the positions previously held by the Petitioners herein as shown in **Appendix MHM 2 A, B & C.**

22. The Respondents also contend that prior to their termination the Applicants had been asked to render an explanation on 23/2/2015 concerning foreign trips they had made as per **Appendix MHM 4 A & B.**

22. (a). That the 1<sup>st</sup> and 3<sup>rd</sup> Petitioners refused, failed and/or neglected to respond to the inquiry letter dated 23/2/2015 as required and inspite of several reminders. The Respondents also contend that there were also complaints of absenteeism against the 1<sup>st</sup> and 3<sup>rd</sup> Petitioners on 18/5/2015 from their respective Ministries (**Appendix MHM 6**) and when their vehicles work tickets were cross-checked, it was confirmed that they were absent within the period complained of and it is during the same period that the said Petitioners had undertaken foreign trips among other personal errands.

23. The Respondents aver that there was no authority sought for the foreign trips by 1<sup>st</sup> and 3<sup>rd</sup> petitioners and they also took government imprest and drew allowances from public coffers for unauthorized foreign trips.

24. Concerning the 2<sup>nd</sup> Petitioner, the Respondents aver that he was in charge of water projects and he was asked to give an explanation of his failure and/or delay in advancement of a water project proposed by Garissa County Assembly and he also refused, failed and/or neglected to respond to the request inspite of reminders.

25. The Respondents aver that the 2<sup>nd</sup> Respondent lawfully exercised his statutory powers and dismissed the three Petitioners.

26. The Respondents further aver that on 27/5/2015, when this Hon Court granted orders, the Petitioners herein had since been dismissed from their respective positions and as such the said orders had been overtaken by events.

27. They also aver that since the reinstating orders, there have been serious malfunctioning and stagnations of activities within the County Executive Committee Members offices previously held by the Petitioners as it is uncertain of exactly which persons are properly in the said offices.

28. The Respondents have submitted that Petitioners application and prayers do not lie at the Interlocutory stage but lie after hearing and determining the application. They cited **Alfred Njugu Kimingu vs Bomas of Kenya 620/2013** in this court.

29. The Respondents also aver that the orders granted to the Petitioners offend the constitutional doctrine of separation of powers between the judiciary and executive.

30. It is also the Respondents position that the Petitioners are demanding that this court insulates them from any questioning/accountability and stepping aside while performing public duty. That, this is fettering the 1<sup>st</sup> Respondent's constitutional role which includes oversight work which will put public

funds in jeopardy.

31. The Respondents have further submitted that they were in process of performing their duties under Section 40 of County Government Act (CGA) when they were derailed by the court order they are challenging. As to Section 31 of County Government Act (CGA) the Respondents aver that the Respondent properly exercised his powers.

32. They cited **C.A No.2/2015 V. Cecilia Wangechi Ndungu** paragraph 37, 38, 29 and 42 of the decision. They asked court to allow their application and disallow the prayers of the petitioner and vacate the Interim orders granted.

33. As a rejoinder to the Respondents submission, the Applicants insist that the orders they seek are valid flowing from the court's powers which cannot be limited or be circumscribed by statute and can even be granted at the Interlocutory stage. They also submit that the orders sought are not final. They want the Respondents application dismissed.

34. Having considered the submissions of both parties and issues for consideration are as follows:

1. **Whether this court has powers to issue orders sought.**
2. **Whether a prima facie case is established to warrant issuance of orders sought.**
3. **What orders can be granted in the circumstances.**

35. On 1<sup>st</sup> issue, the Respondents submitted that this court cannot issue the orders sought as it is an infringement on Legislative Powers by virtue of the doctrine of separation of Powers.

36. In answering this aspect, this court reverts back to authority cited by the Applicant: **Erastus Onyango Nyamori vs County Government of Migori & Another (2014) eKLR** where this court directed itself as follows:

*“It has been submitted that the removal of County Executive Committee Member is a political decision which is his prerogative and not subject to its intervention. I disagree with this submission. The Constitution of Kenya is a People Constitution and all sovereign power is exercised by the people as provided for under the Constitution. Every person should obey and respect the Constitution”.*

37. The case of **Richard Bwogo Birir v Narok County Government & 2 others - Industrial Court Nakuru Petition No. 1 of 2014** was cited in the **Erastus Nyamori** case and the court found that the court has its mandate to consider the legality or otherwise of any state action and consider whether the law and procedure has been adhered to. Under Article 162 (2) (a) of the Constitution the court also has power to determine any issues relating to employment and labour relations and the issue of separation of power cannot arise if the court is interpreting regulations. I therefore find that this court has jurisdiction to make a finding on prayers sought herein.

38. On the 2<sup>nd</sup> issue, the principle of a prima facie case is well expounded in various cases. The case of **Giella vs Cassman Brown** has expounded what a prima facie case is and stated as follows:

- a. **An Applicant must show a prima facie case with a probability of success;**
- b. **An injunction will not be granted unless the Applicant might otherwise suffer irreparable injury which would not be compensated by award of damages; and**
- c. **When the Court is in doubt, it will decide the application on the balance of convenience.**

The principle in **Giella v Cassman Brown** has been further refined in Halisbury's Laws of England, Vol.

11 (2009) 5<sup>th</sup> Edition, paragraph 385 which states that:

***“On an application for an interlocutory injunction the court must be satisfied that there is a serious question to be tried. The material available to court at the hearing of the application must disclose that the Claimant has real prospects for succeeding in his claim for a permanent injunction at the trial. The former requirement that the Claimant should establish a strong prima facie case for a permanent injunction before the court would grant an interim injunction has been removed”.***

39. In the current case, the issue is whether the Applicants have established that they have a real strong case with prospects of succeeding. The Applicants demonstrated to court that they were terminated by the Respondents. They aver that the termination was unfair given that there were no valid reasons to warrant the termination but that the reasons advanced by the Respondents were untrue and based on clan politics within the Garissa County.

40. The Applicants also stated that the correspondence that the Respondents sought to reply on was a forgery.

41. The Respondents of course insisted that the reasons for the termination were valid based on the Applicants inability to perform their duties and also for travelling out of the county without proper sanctions from the office of the Governor amongst other reasons.

On the face of it, the Respondents produced documents showing the alleged travel. What plays out is that there were some concerns raised by the Respondents but which the Applicants failed to respond to citing constraints of time. On documents allegedly claimed to be forgeries, the Applicants didn't demonstrate the alleged forgery to court. This in itself creates doubt in the mind of the court that there could have been valid reasons proceeding termination of the Applicants.

The other issue is on due process which the Claimants aver they were denied. In determining the processes leading to the termination, this court will have to consider all the correspondence between the Applicants and Respondents and the validity or otherwise of the documents presented in court.

The Court of Appeal in **Civil Appeal No. 2 of 2015** considered the input of Section 31 (a) of the County Government Act (CGA) and rendered itself thus:

***“31. We are of the considered view that Section 31 (a) grants powers to a Governor to dismiss a member of the County Executive Committee at any time, that is, at his pleasure. However, we find that the said power is qualified to the extent that he can only exercise the same reasonably and not arbitrarily or capriciously. Why do we say so?.....”***

42. The Court of Appeal went on to qualify this statement by stating reasons why the power must be exercised reasonably.

43. It is the duty of the Applicants in this case to demonstrate the fact that the power was exercised unreasonably. In the instant case, the Applicants have not demonstrated this aspect other than just stating that the Respondents action was actuated by malice and clan politics.

44. To this courts assessment, the Applicants have failed to show that they have a prima facie case to warrant issuance of orders sought at this stage.

45. It is this court's finding that the orders sought cannot be given at this stage as they are orders in facility. Hon. J. Rika in **Alfred Njungu Kiungui vs Bomas of Kenya case No. 620/2013**, faced with a similar situation rendered himself thus:

***“The protection given under the Employment Act are to be taken by employees as a shield not a sword placed in their hands to impose themselves with the aid of the court at the workplace. The***

*court has witnessed a large inflow of Interlocutory application when the employees wish to be protected against disciplinary processes. Some of the employees have approached the court seeking ex-parte orders of reinstatement. Rule 16 (8) (a) of the Industrial Court (Procedure Rules) 2010, states that the court shall not grant an exparte order which reinstates an employee whose services have been terminated”.*

46. I do agree with my learned colleague that reinstatement as a remedy should only be granted sparingly after hearing both parties. This court had at an interlocutory stage ordered reinstatement of the Applicants which is tantamount to deciding this case to conclusion.

The Applicants have not demonstrated that they cannot be compensated adequately in damages if the Respondents are found to have been wrong in terminating them. This court still has powers to grant other reliefs including reinstatement, re-engagement and compensation in damages in event this petition succeeds.

47. The upshot of this decree is that the court vacates the interim orders granted reinstating the Applicants in the positions previously held before their dismissal as Garissa County Executive Committee Members.

48. To preserve the positions previously held by the Applicants however, the Respondents are precluded from substantively filling the said positions pending the hearing and final determination of this Petition which in any case should be handled on priority basis given the nature of the orders sought in the final analysis.

It is so ordered.

Read in open Court this 27<sup>th</sup> day of July, 2015

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Anyona holding brief for Kanjama for Petitioner

Miss Mwai holding brief for Mogaka for Respondents