



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA**

**AT KISUMU**

**CAUSE NO. 50/2014**

**(Before Hon. Lady Justice Hellen Wasilwa on 30.4.2014)**

**KENYA COUNTY GOVERNMENT WORKERS UNION.....CLAIMANTS**

**VERSUS**

**KISUMU COUNTY ASSEMBLY PUBLIC SERVICE BOARD.....RESPONDENTS**

**R U L I N G**

The application before court is the one dated 11.3.2014. The application was filed under certificate of urgency by the firm of Otieno, Yogo, Ojuro & Co. Advocates. It was brought through a Notice of Motion filed on the same day and brought under Section 3A and 63(c) and (e) of the Civil Procedure Act Cap 21 Laws of Kenya and Order 40 Rules 2, 3, 4, and 8 and Order 51 Rules 1, 3, and 4 of the Civil Procedure Rules 2010 and Constitution of Kenya and Sections 62 and 63 of the County Government Act. Sections 72, 74, 75 and Section 6 of the Guidebook to Governors and any other applicable provisions of law. The applicants seeks order that:-

- 1. That this application be heard as a matter of urgency and ex parte in the first instance.**
- 2. That pending the hearing and determination of this matter inter parties there do issue a temporary order of injunction against respondent, its agents, officers or persons acting under their instruction from carrying on with any interviews scheduled for 11.3.14 to 3.4.14 or other date, recruitment or employment of any staff to the County Assembly before staff rationalization and deployment to determine the vacancies that cannot be filled by the interested parties.**
- 3. That pending the hearing and determination of this matter there do issue an order of injunction against respondent, its agents, officers or persons acting under their instruction from carrying on with any interviews scheduled for 11.3.14 to 3.4.14 or other date, recruitment or employment of any staff to the County Assembly before staff rationalization and deployment to determine the vacancies that cannot be filled by the interested parties.**
- 4. An order directing the respondent to first take staff rationalization of the staff working in the Kisumu County Assembly and determine vacancies that exists and thereafter place advertisements for only those positions that cannot be filled by current staff form the claimants membership.**
- 5. An injunction against the respondent from termination and/or dismissal of the claimants from their employment without following the law and their terms and conditions of employment.**

**6. Costs of this suit plus interests at court rates.**

**7. That costs of this application.**

And the application is supported by the annexed affidavit of Joel Omondi Ondu and William Otieno Didi and further on following grounds:-

**(a) The interested parties were deployed The County Assembly of Kisumu from various local authorities within the Kisumu County by virtue of the County Government Act after the general elections held on 4.3.2013.**

**(b) The interested parties have worked diligently from the months of March, 2013 to-date.**

**(c) The respondent in the months of October to December 2013 placed advertisements in the national print media in which it advertised for various vacancies within the Kisumu County Assembly which positions some were being held by the interested parties.**

**(d) The transitional authority in a letter and press release to the county governments did advice against such recruitment without staff rationalization, deployment and audit to determine the vacancies that exist to determine the positions to be advertised for recruitment.**

**(e) The claimant did write to the Interim Secretary to object to the action being taken by the Respondent to no avail.**

**(f) The Respondent action violated Constitution of Kenya 2010, Sections 59, 61, 63 and 72, 74, 75 and 76 of the County Government Act, Section 6 of the Guidebook for Governors.**

**(g) The claimants state that the Respondents lacks the legal or contractual authority or basis to act as they purport to do until and unless staff audit, rationalization, placement, deployment and staff to determine the vacancies that exist for recruitment ought to be prevented from such acts.**

**(h) The interested parties are likely to lose their employment without due process of the law or following their terms and conditions of employment hence they are likely to face extreme hardship and injustice by the actions of the Respondent and unless the Respondent are restrained, the claimants' legal and constitutional rights shall continue to be infringed upon.**

It is the applicant's case that the County Assembly of Kisumu advertised for various positions to be filled without taking into account the interest and/or job security of the interested parties who were earlier were employees of various Local Authorities in Kisumu County prior to 4.3.2013. The applicant is a Union registered as per its' registration certificate annexed as **JOO 1(a) and (b)**. The interested parties were deployed to Kisumu County Assembly by their respective deployment letters **JOO2**. They were deployed as watchmen, clerks, drivers, hansasd reporters etc. they were however surprised that the respondents advertised their jobs without carrying out an audit and even rationalization as provided for in the Transition to Devolved Government Act. **JOO3** is the advertisement. The jobs were advertised and several people short-listed some without indicating their identity card numbers an indication that the process is not fair.

The applicants further content that contrary to respondents response, the County Assembly Service Board is rightly sued as is the body that placed the advertisement and it cannot be divorced from the County Government as the 2 bodies are created under Article 176 of the Constitution and Section 12 of County Government Act establishes the office of the County Public Service Board.

The applicants have also submitted that Section 3 of the Transition to Devolved Government Act sets out objectives of the Authority on Sections 5(a) (b) and (c) provides fir the policy and operational procedures and audit of liabilities of assets – HR matters which applicants fall. Further Section 66 of the Governors Guidelines explain what happen to staff of former local authorities. The applicants contend that the

positions of the interested parties are being filled without staff rationalization and audit. The said staff had been deployed to the County Assembly and not seconded there as so their deployment was not a permanent placement.

It is applicants contention that the respondents have not carried out a staff audit and their action amounts to an unfair administrative action – contrary to what is envisaged under Article 47 of the Kenya Constitution. They further submitted that the principles of **Giella VS Cassman Brown** have been established and therefore the orders sought should be granted.

The respondents opposed the application. They filed their grounds of opposition dated 14.3.2014 through the firm of Okongo Wandago & Co. Advocates. It is their contention that the respondents have been wrongly sued as the respondents is created under Section 12 of the County Government Act, (CGA). This Section determines membership of the Board for which the respondent is not one of them. It is respondents further submission that the interested parties were previously employees of the Local Government. They were public servants and became employees of County government and not of the respondents. It is also their contention that Guidelines of Governors do not bind the speaker of the county Assemblies as they are different entities.

They asked the court to dismiss this application stating that te interested parties are free to apply for the advertised posts and have not been discriminated against.

Having heard submissions of both parties, issues for consideration are as follows:-

1. Whether the County Assembly Public Board is part of the County Government.
2. Whether the decisions of the County Assembly Public Board affects the County Government.
3. Whether the orders sought by the interested parties can be granted.

Article 176(1) of the Constitution states that:-

**“There shall be a County Government for each County consisting of a County Assembly and a County Executives”.**

Article 176(2) states that:-

**“Every County Government shall decentralize it's functions and the provisions of it's services to the extent that it is efficient and practicable to do so”.**

The respondents have argued that they were wrongly sued as they are not part and parcel of the County Government of Kisumu.

They argued that they are created under Section 12 of the County Government Act as the County Assembly Service Board and are not part of the County Government. They further argue that the interested parties were in place before the respondents were established in August 2013 and the deployment letters were done by the County Government of Kisumu and not by the respondents.

From the provisions of Article 176 of the Constitution, the County Government consists of the County Assembly and the County Executive. Under Article 176(2) this County Government can decentralize it's function and provision of it's service to the extent that is efficient and practicable to do so. The decentralization envisaged is the one broken down under the County Government Act which sets out various bodies and assigns them various duties. The argument by the respondents does not therefore have the force of law as the respondents are part and parcel of the County Government. The decision to be taken was going to affect the running of the entire County Government and therefore it is imperative that the respondents actions be properly calculated in order not to affect the rest of the County Government. Thus this answers my 2nd issue for determination that indeed the decision of respondents affect the

County Government and *vice versa* as they are part and parcel of one entity.

Having argued as above, the next issue for determination is whether the claimants are entitled to orders sought? The interested parties have submitted that their positions were advertised without consideration of their future positions. A press release by the Transition Authority dated 24.12.2013 – **App JOO4** advised that in view of the massive restructuring of both the National and county Governments following the Promulgation of the Constitution ---- rationalization of structure and staff is deemed necessary. The authority therefore advised as follows:-

**“The Authority therefore advises that both levels of Government should suspend recruitment of new staff from outside the Public Service until the rationalization exercise is finalized and the existing public officers deployed accordingly. This exercise will include:-**

**(a) Carrying out a capacity and skills need assessment of all devolved functions in line with Section 24 of the Transition to Devolved Government Act 2012 to determine areas of deficit and surplus.**

**(b) A thorough review of all structures, systems process, staffing levels and determining those that should be retained, transferred, merged, abolished, contracted out or privatized.**

**(c) Undertaking a comprehensive workload analysis to establish optimal staffing levels.**

**(d) Matching the existing staff to the established structures.”**

There is no evidence that this advise has been carried out by the respondents nor the County government of Kisumu.

The interested parties remain staff of the County Government of Kisumu and as deployed to the respondents. Their positions should not be disturbed without following the laid down procedures. I therefore find for applicants and make orders that:-

**1. Pending the hearing and determination of this suit, an order of injunction do issue against the respondents, it;s agents, officers or persons acting under their instructions from carrying on with any interviews they had scheduled for 11.3.2014 to 3.4.2014 or other date, recruitment on employment of any staff to the County Assembly before Staff rationalization and deployment to determine the vacancies that cannot be filled by the interested parties.**

**2. An order directing the respondents to 1st take staff rationalization of the staff working in the Kisumu County Assembly and determine vacancies that exists and thereafter place advertisements for only those positions that cannot be filled by the current staff from the claimants membership.**

**3. An injunction against the respondents from termination and/or dismissal of the claimants from their employment without following the law and their terms and conditions of employment.**

**4. The respondents to bear costs of this suit.**

**HELLEN S. WASILWA**

**JUDGE**

**30.4.2014**

**Appearances:-**

Omondi Advocate for claimants present

Okongo Advocates for respondents

CC. Wamache Sammy