



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT NAKURU**  
**CAUSE NO. 576 OF 2014**

**HON. DANIEL WAITHAKA MWANGI**

**CLAIMANT**

v

**NELSON NGARUIYA NJOROGE**

**RESPONDENT**

**RULING**

1. Hon. Daniel Waithaka Mwangi (Applicant) is the Governor of the County of Nyandarua. On 2 October 2014, he reshuffled members of the County Executive Committee and dropped Nelson Ngaruiya Njoroje (Respondent).
2. On 7 November 2014 he removed the Respondent from membership of the County Executive Committee.
3. In a motion dated 10 November 2014, the applicant seeks mainly,

2. ***THAT*** this Honourable Court be pleased to issue temporally (sic) orders of injunction against the respondent from mobilizing members of the public to disrupt service delivery to the public at Nyandarua County Headquarters and a forceful entry (sic) to the offices of the County executive committee member until this application is heard *inter partes*.

3. ***THAT*** this Honourable Court be pleased to issue temporally (sic) orders of injunction against the respondent from mobilizing members of the public to disrupt service delivery to the public at Nyandarua County Headquarters and a forceful entry (sic) to the offices of the County executive committee member until this application is heard and determined.

4. The Court certified the motion urgent on 10 November 2014 and directed that it be served for *inter partes* hearing on 11 November 2014, but the *inter partes* hearing finally proceeded on 13 November 2014.
5. Upon service of the motion, the Respondent filed a Notice of Preliminary Objection and replying affidavit . Both the motion and the objection were taken together.
6. Prayer 2 as set out herein above is already spent and therefore the remaining substantive prayer is no. 3.

**Applicant's case**

7. The Applicant's case is that he reshuffled his County Executive Committee members on 2 October 2014 and on 7 November 2014, he removed the Respondent as a member of the County Executive Committee.
8. The applicant also submitted that pursuant to section 35 of the County Government Act, he had the power to nominate members of the County Executive Committee.
9. After the removal, the applicant deposes in his affidavit in support of the motion that he received

- verifiable information that the Respondent was mobilizing the public to disrupt service delivery at Nyandarua County Headquarters and also planning to forcefully enter his former offices and that this poses a security risk and would hamper service delivery.
10. On the preliminary objection, the applicant submitted that the High Court had no jurisdiction to entertain the present motion and that the issues raised in the High Court Petition had no bearing on the issues before this Court.

### **Respondent's case**

11. The Respondent in his replying affidavit deposed that the applicant had concealed material facts relevant to the case. This was that the Respondent had commenced legal proceedings against the Applicant in Nakuru High Court Petition No. 59 of 2014 on 13 October 2014, and secured injunctive relief against his removal from office.
12. The Respondent further deposed that despite the orders, the Applicant notified him on 29 October 2014 through a letter dated 27 October 2014 that he had removed him from office and because of the removal he sought to have the applicant cited for contempt before the High Court.
13. The Respondent also deposed that on 5 November 2014, the applicant withdrew the letter dated 27 October 2014 removing him from office and directed him to report back to office but when he reported on 7 November 2014, he was served with a letter of reinstatement to forestall to the contempt of court proceedings.
14. For the Respondent, it was submitted that the motion was incompetent and bad in law because of the pendency of Nakuru High Court Petition No. 59 of 2014 between the same parties and that the High Court had on 13 October 2014 ordered the applicant not to interfere with the Respondents employment.
15. It was also submitted that the motion was meant to forestall the proceedings before the High Court.
16. On the main motion, it was submitted that the allegations that the Respondent intended to storm the County Offices was not substantiated and that the Applicant had not met the principles for grant of injunctive relief set out in the case of *Giella v Cassman Brown & Bros Ltd*.
17. The Respondent further urged that there was no employer/employee relationship between the applicant and Respondent and that the Respondent was an employee of the County Government of Nyandarua and not the applicant. The County Government was not a party before Court.

### **Evaluation**

18. The legal principles as to the contents of affidavits are trite. The applicant's affidavit in support of the motion stated at paragraph
- 4 THAT there is verifiable information from the security of Nyandarua, that the Respondent has started mobilizing the public to disrupt service delivery in Nyandarua County headquarters and forcefully entry (sic) to the office.
19. This deposition does not meet the standard as to the disclosure of the source of the information disclosed in an affidavit. On that basis alone, the motion should be destined to fail.
20. However, the Court notes that the Respondent had instituted legal proceedings against the applicant and 2 others and the gravamen of the action therein was the removal from office of the Respondent.
21. Injunctive orders were granted by the High Court restraining the applicant from removing the Respondent from office.
22. The proceedings before the High Court and the injunctive orders granted were and are all material facts to the dispute now before this Court. The applicant should have disclosed these facts but did not for reasons unknown.
23. For this reason also, the motion should fail.
24. But there is a third reason why the motion should fail. There is an organ of state mandated with maintenance of law and order. Where there is security risk as is purported in the present motion, that organ of state should have been the first port of call for the applicant.

- 25.The applicant has not suggested that he made or caused a report to be made to the competent organ of state mandated with maintenance of law and order.
- 26.Considering the foregoing, the Court finds that the instant motion lacks merit and is an abuse of the Court process.

### **Conclusion and Orders**

- 27.For the above reasons, the Court dismisses the motion with costs to the Respondent.
- 28.Without prejudicing the main Cause on the merits, the Court directs the Respondent to file a Response and documents to be relied on before 18 December 2014.
- 29.The Cause to be mentioned on 15 January 2015 for further directions.

**Delivered, dated and signed in Nakuru on this 11<sup>th</sup> day of December 2014.**

**Radido Stephen**

**Judge**

### **Appearances**

For Claimant

Mr. Muthanwa instructed by Muthanwa & Co. Advocates

For Respondent

Mr. Chege instructed Gakuhi Chege & Co. Advocates