



Omondi v Migori County Assembly; County Public Service Boards National Consultative Forums & 6 others (Interested Parties) (Constitutional Petition E004 of 2024) [2025] KEHC 6753 (KLR) (30 January 2025) (Ruling)

Neutral citation: [2025] KEHC 6753 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
CONSTITUTIONAL PETITION E004 OF 2024**

A. ONG'INJO, J

JANUARY 30, 2025

BETWEEN

CPA MARVIN NGEI OMONDI PETITIONER

AND

THE MIGORI COUNTY ASSEMBLY RESPONDENT

AND

THE COUNTY PUBLIC SERVICE BOARDS NATIONAL CONSULTATIVE FORUMS INTERESTED PARTY

HON JARED ODHIAMBO OPIYO – CHAIR INTERESTED PARTY

MS JEMIMAH ODHIAMBO – VICE CHAIR INTERESTED PARTY

MR HESBON OTIENO OMWA – MEMBER INTERESTED PARTY

MR ENOCK ODHIAMBO ACHIENG – MEMBER INTERESTED PARTY

MS PHOEBE ADHIAMBO ALOO – MEMBER INTERESTED PARTY

MR RANGE MWITA MAROA – MEMBER INTERESTED PARTY

RULING

1. The 2nd to the 7th Interested Parties filed an application dated 5th August 2024 seeking that this Honourable Court compel the Respondent to produce and show to the Court and the 2nd to 7th Interested Parties herein; for inspection of the documents, and for information related to the 2nd to 7th Interested Parties removal process by the Respondent as members of the County Public Service Board, as informed by the response of the 2nd to 7th Interested Parties through the 2nd Interested Party's Replying Affidavit sworn on 22nd July 2024, to facilitate the filing of further Affidavit as Ordered by



Court before the filing of substantive written submissions on or before 15/08/2024 which are or have been in its possession or power relating to any matter in question in this matter and specifically that the Migori County Assembly supplies them with the Hansard Report related to the removal of The Chairperson and Members Of The Migori County Public Service Board as Adopted By The Migori County Assembly on 6th of January, 2023.

2. This Application was filed following the failure by the Migori County Assembly to respond to the demand by the 2nd to 7th Interested Parties for the said Hansard Report.
3. Directions were taken on 16th September 2024 that the Application dated 5th August 2024 would be canvassed by way of written submissions. Ms. Muchiri for the 2nd to 7th Interested Parties confirmed to the Court that the Respondent had served her with the grounds of opposition and further affidavit dated 23rd of September in response to her application. In response to the grounds of opposition Ms. Muchiri filed a further affidavit.
4. Mr. Lusi, Advocate for the Petitioner supported the application dated 5th of August 2024 seeking that the Respondents release information in their custody. Parties filed the following submissions:
5. Ms. Muchiri, Advocate for the 2nd to 7th Interested Parties' submissions are dated 20th October 2024.
6. Mr. Lusi, Advocate for the Petitioner's skeletal submissions are dated 11th November 2024.
7. The Advocates for the Respondent's submissions are dated 11th November 2024.
8. Mr. Ngwele, Advocate for the 1st Interested Party seems not to have filed any submissions opposing or supporting the application by the 2nd to 7th Interested Parties.

Determination

9. This Court has considered the notice of motion application dated 5th of August 2024 together with the grounds and supporting affidavits as well as further affidavit and the grounds of opposition and the rival submissions by the parties. The Applicant's prayer is that the Respondent be compelled to supply the audio and visual Hansard Report of the Assembly sitting on 16th January, 2023 pursuant to Article 35 (1)(b) of *the Constitution* which guarantees the right to access information. The said Article provides as follows –

“Every citizen has the right of access to -

- (b) Information held by another person and required for the exercise or protection of any right or fundamental freedom.”

10. In *Opiyo, Chairperson & 5 others v Migori County Assembly & 6 others (Civil Appeal E174 of 2023)* [2024] KECA 529 (KLR) the Court of Appeal at Kisumu held as follows:

“..... Second, the requirement for a copy of the impugned decision to be attached to the judicial review proceedings is no longer an iron-clad talismanic requirement under our new jurisprudence where rigid technical requirements are unmoored by Article 159(2)(d) of *the Constitution*. This is to say that there may be circumstances where a party may benefit from a merit consideration of their judicial review application absent the impugned decision – for example, where it is unreasonably difficult to get the order; or where the existence of the decision is not contested; or where the decision is within the possession of the adversary who refuses to make it available to the applicant. In the present case, there is no indication that the learned Judge engaged in that kind of analysis before holding the proceedings



irregular merely for the absence of a copy of the impugned decision even though none of the respondents denied the existence of the decision.”

11. In the Employment and Labour Relations Court at Kisumu JR Application No. E001 of 2023 Christine N Baari J in her ruling delivered on 4th May 2023 ordered the Clerk of the Migori County Assembly to avail the Hansard Proceedings within fourteen days of that order.
12. It therefore goes without saying that the 2nd to 7th Interested Parties are entitled as of right to be availed the information they seek as it related to the tabling of the report of their removal from office. It is not true as submitted by the Respondent that the Applicants are seeking to have a fifth bite at the cherry as it appears that the Clerk of the Migori County Assembly either ignored and/or neglected to comply with this order issued by Hon Baari J. on 4th May 2023. The continued disobedience by the Clerk to the County Assembly to comply with court order that was issued over two years ago undermines the Judicial Authority and jeopardizes the rule of law. Having been aware of the court order the Clerk is obligated to follow it. The information that is required by the 2nd to the 7th Interested Parties is intended to assist them to pursue their rights in the current petition.
13. The application dated 5th August 2024 is allowed in its entirety with no orders to cost.

DELIVERED, DATED AND SIGNED AT MIGORI THIS 30TH DAY OF JANUARY, 2025.

A. ONGINJO

JUDGE

In presence of; -

