



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

MISC. APPLICATION NO. 58 OF 2015

REPUBLICAPPLICANT

VERSUS

B. NDUVA, DEPUTY COUNTY COMMISSIONER

MARAKWET WEST SUB-COUNTY.....1ST RESPONDENT

THE PRINCIPAL SECRETARY MINISTRY

OF INTERIOR AND CO-ORDINATION2ND RESPONDENT

HON. ATTORNEY GENERAL3RD RESPONDENT

EXPARTE – LEAH CHEPTUM ROTICH

JUDGMENT

By her notice of motion dated 24/9/2015 the exparte applicant prays for an order that;

1) This court do issue an order of Certiorari to remove into this Honourable court and quash the decision of the 1st respondent embodied in a letter dated 12/8/2015 re- advertising the post of an Assistant Chief, for Kamoi Sub location within Marakwet West Sub - County and intending to employ an officer to that office.

The application is supported by the verifying affidavit of the applicant as well as the statement thereof.

The facts leading to this application are clear and straightforward. The applicant vide an application for assistant chief of Kamoi sub location did succeed during an interview conducted on 2/12/2014 by the 1st respondent. Upon such successful interview she was issued with a letter of appointment dated 12/3/2015 by the 1st respondent. She accepted the same vide her letter dated 12/3/2015 which she handed over to the said 1st respondent.

Subsequently and on 20/3/2015 the 1st respondent visited the applicant's home and demanded the said original appointment letter and thereafter refused to return it. The respondent then re-advertised the applicant's position which prompted the applicant to seek legal redress through this court.

On his part the 1st respondent vide a replying affidavit sworn on 2nd November 2015 denied the applicant's averments. He however stated that the said letter of appointment was revoked pursuant to what transpired after the applicant's appointment. He stated that there was protest from the ground as

the applicant did not come from Kamoi sub location and that the occupants of that location wanted people from Sengwer tribe and further that she was not validly married and thus the re-advertisement was valid.

The 1st respondent further stated that the applicant was issued with the letter revoking her appointment before the advertisement was effected.

Analysis and Determination

I have perused the lengthy submissions by both counsels for the applicant and the respondents together with the attendant authorities. What is abundantly clear is that the applicant went through a competitive recruitment prior to getting her appointment. That the respondents revoked her appointment based on public outcry and other political considerations.

Whereas the above reasons are not the province of this court, the issue to be determined by this court is whether the respondents acted procedurally and in compliance with the law and the rules of natural justice.

In terms of the procedure which the respondent applied he argued that a notice was issued to the applicant prior to the said revocation. I have perused the 1st respondent's letter dated 15/9/2015 and that dated 24/3/2015 as well as the response dated 22/5/2015 and none of the letters was copied to the applicant. The said communications despite being done with full knowledge that she already had a letter of appointment and had already taken up the office, they chose not to copy to her.

Natural justice requires that the other side ought to be heard and even for whatever reasons, she ought to be notified. **Section 47(1) of the Constitution** requires that;

“Every person has the right to administrative action that is expeditious efficient, lawful, reasonable and procedurally fair”

Sub Section 2 requires that the individual affected ought to be given reasons for the action taken.

Section 4(3) (a) of the Fair Administrative Action Act 2015 demands that **“Prior adequate notice of the nature and reasons for the proposed administrative action”** be given where fundamental rights of an individual are adversely affected.

In the instant case none of the letters was copied to the applicant and neither was any delivered to her. This in my view ran against the Principles espoused by Article 47 of the Constitution.

In any case I do not find the reasons really plausible. Assuming the reasons given by the respondents hold any weight, the said public ought to have perhaps raised it during the interview process. The respondents have exhibited list of the applicants who included the applicant. There are also the qualities required which I suppose the respondent followed during the interview process. In my view the said interviews were so transparent that the entire location including the local politicians perhaps ought to have raised their objections.

In this case the process pursued in issuing the cancellation letter was improper as due process was not followed. The legitimate expectation of the applicant was not taken into account.

The final issue raised by the respondent was that the said letter does not comply with Order 53 of the Civil Procedure Rules. In other words IT cannot be quashed. On the contrary the said letter was already effecting a decision. It follows that the same IS capable of being quashed.

In the premises the application dated 24/9/15 is allowed with costs to the applicant.

Delivered this 31st day of January, 2017.

H.K. CHEMITEI

JUDGE

In the presence of;

Kiarie for the Applicant

No appearance for the Respondents

Court Assistant - Kirong