



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MISC. (JR) APPLICATION NO. 44 OF 2013

**IN THE MATTER OF: AN ORDER ISSUED BY THE MOMBASA COUNTY
DIRECTOR DATED 10TH JUNE, 2013**

AND

**IN THE MATTER OF: ARTICLE 47, 39(3) AS READ TOGETHER WITH ARTICLE
21(1) & (2), ARTICLES 10 AND 22 OF THE CONSTITUTION OF KENYA, 2010**

AND

IN THE MATTER OF: THE LAW REFORM ACT, CAP 26 LAWS OF KENYA

AND

IN THE MATTER OF: THE COUNTY GOVERNMENTS ACT, 2012

JAMES OBURA OBONYO..... APPLICANT

VERSUS

MSA COUNTY DIRECTOR OF HOUSING.....RESPONDENT

RULING

1. This is a very sad case, and this Court has a lot of sympathy with the *ex parte* Applicant, a civil servant who under the conditions of service is subject to transfer to any station within and even outside the country.
2. The Applicant is one of the lucky few civil servants who in the course of his work in Mombasa had also the privilege of being allocated Government residential premises where he lived with his family. However, upon his transfer he was given notice by the Respondent (a Government agency) to surrender his house so that it could be occupied by another civil servant working and residing in Mombasa, within the civil service.
3. In this case, the *ex parte* Applicant having been transferred out of Mombasa, was given a notice of thirty (30) days to vacate the Government Quarters, and because the *ex parte* Applicant had family and school going children in Mombasa, he was granted extended occupancy of the house up to 31st December, 2014. The Applicant however found this period inadequate, and demanded in his Further/Supplementary Affidavit dated 27th November, 2014 that it is his children's right to have secure accommodation as guaranteed by the Constitution; and Sections 3

and 4 of the Children Act 2001 (No. 8 of 2001).

4. However, in his Further Replying Affidavit, sworn on 6th March, 2015, the Assistant Director of Housing (for the Respondent) avers that the Civil Servants Code of Regulations and in particular Section L.5 clearly disentitles the Applicant or any Civil Servant from occupying a Government Quarter in a station other than where he works. The said Section L.5 says **inter alia**:

“Government quarters are allocated at the station where an officer is posted for duty.”

5. The Respondent consequently argues that having been posted to Malindi within Kilifi County, the Applicant is entitled to be allocated a Government Quarter in Malindi and should vacate the quarter in Mombasa.
6. The Applicant argues through submissions by his Advocate on record that the regulation requiring a civil servant to vacate his quarter upon a transfer is so unreasonable within the *Wednesbury* principles of unreasonableness that the decision is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at and therefore irrational per Lord Diplock, in **COUNCIL OF CIVIL SERVICE UNION VS. MINISTER FOR CIVIL SERVICE [1985] AC 374** and **ASSOCIATED PROVINCIAL PICTURE HOUSES VS. WEDNESBURY CORP [1947] 2ALL ER 480 [1948] I.K.B. 223CA**.
7. The question therefore to be determined in this case is whether the Government Code of Regulations and in Section L.5 (supra), is so unreasonable as to be irrational under the “*Wednesbury*” principle.
8. With respect, I do not think so. In saying so, I acknowledge that it is both expensive and inconvenient to any civil servant to suddenly move away to another station, and be expected to be settled in a period of thirty days. A parent in that category may have a candidate in pre-secondary or (KCPE) or pre-university qualification examination in a school where the parent was stationed before the transfer came. It would be traumatic to uproot such a child from the quarter or house where he always runs there for lunch in the afternoon or to school early in the morning. It may affect the child’s performance. Unless successfully appealed, the parent has no choice, but to take the transfer, or else be subject to disciplinary action for disobedience to lawful orders by the employer.
9. When the civil service numbers were small, it was possible for the Government, national, (central) local (or County), to house its civil servants or workforce. With the policy changes in the 1980’s that housing was not Government’s or employer’s core business, the Government abandoned investment in housing for civil servants, and other Government workers were left to source private housing with their enhanced house allowances. Consequently, getting the few Government houses became very competitive, and whoever was lucky enough to be allocated one used every excuse to retain it. The use of such house by children due to write final public examinations is one legitimate excuse, and this is recognized even where transfers come in the middle of the year. The principle however remains good that a civil servant is expected to be housed in the station where he/she works, always, subject to availability of Government housing. Quite often neither Government nor private housing is available, and where such a situation arises, a civil servant will work in one County and reside in another and commute, always depending on the distance. In the ultimate the civil servant is expected to find accommodation in the area where she/he is working.
10. In the instance case therefore, to allow the Applicant to continue occupying a Government quarter in a station he is not currently posted to, will be amount to denying another civil servant stationed in Mombasa an opportunity to occupy that Government quarter. If the Applicant is interested in retaining his family in Mombasa, he is at liberty to source private accommodation for the family to allow another officer posted to Mombasa station to occupy that Government quarter.
11. In conclusion, there is nothing unreasonable or in defiance of logic in the Code of Regulations requiring a civil servant to vacate a Government quarter in one station upon transfer to another station. I think it is both equitable and just that no one civil servant should enjoy both a right to enhanced house allowance and simultaneously enjoy the privilege of occupying a Government Quarter, which is allocated on the basis of being stationed where the civil servant works.
12. Having said this, a civil servant who has children preparing to sit for pre-secondary school public

examination, or pre-university/tertiary examination, should generally be allowed to occupy the quarter upon strict agreement that the quarter shall be vacated, and given vacant possession to the Government agency responsible for housing for allocation to the in-coming civil servant of that Department, including the Judiciary.

13. Save aforesaid, I find no other merit in the Motion dated and filed on 22nd July, 2013, and dismiss the same with a direction that each party bears its own costs.

Dated, Signed and Delivered in Mombasa this 27th day of April, 2015.

M. J. ANYARA EMUKULE

JUDGE

In the presence of:

Mr. Gikandi for Applicant

Ms. Namaihya for Respondent

Court Assistant Mutisya