



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**JUDICIAL REVIEW DIVISION**  
**JR CASE NO. 387 OF 2012**

**REPUBLIC .....APPLICANT**

**VERSUS**

**ATTORNEY GENERAL .....RESPONDENT**

(Sued on behalf of the Permanent Secretary,

Ministry of Provincial Administration & Internal Security

**Ex-parte**

**MOHAMED HASSAN TAKOI**

**JUDGEMENT**

The Applicant (Mohammed Hassan Takoi) was by a letter dated 31<sup>st</sup> August, 2012 appointed the Chief of Batalu Location, Buna District. Prior to his appointment he had served as an Assistant Chief, in one of the sub-locations of Buna Division, with effect from 14<sup>th</sup> October, 2002. Before the Applicant could enjoy the fruits of his new office, his appointment as a Chief was revoked by a letter dated 1<sup>st</sup> October, 2012 and one Abdinur Mohamed Ibrahim appointed in his place. The Applicant through these proceedings therefore seeks an order of certiorari to quash the decision of the Respondent (the Ministry of Provincial Administration and Internal Security)

It is the Applicant's case that the revocation of his appointment as Chief Grade II was contrary to the principles of natural justice, in bad faith and ultra vires.

The Respondent opposed the application through grounds of opposition dated 14<sup>th</sup> March, 2013 and a replying affidavit sworn by Cornelius W. Sangura, the District Commissioner, Buna. From the said documents, the Respondent's case is that the appointment of the Applicant was revoked for two reasons. The first reason is that the Applicant did not meet the qualifications for appointment as a chief since he did not have a minimum grade of C+ in the Kenya Certificate of Secondary Education. Secondly, the Respondent states that the appointment of the Applicant who hails from the minority Ajuran clan had resulted in threats to his life from members of the majority Degodia clan.

The facts of this case are not disputed. The Applicant was appointed a chief by a letter dated 31<sup>st</sup> August,

2012 which read as follows:-

**“Following your interview for the post of Chief II Batula Location, I am pleased to inform you that you were successful and you are hereby appointed to the post. The appointment which takes effect from 1<sup>st</sup> September, 2012 calls for your high levels of integrity had work and dedication.**

**I take this opportunity to thank you for the good service you offered while you were assistant chief for Batalu sub-location and congratulate you for being appointed as a Chief. I wish you the best in your new deserving promotion.”**

The letter was signed by C.W. Sangura, the District Commissioner, Buna District.

The appointment was revoked a month later through a letter dated 1<sup>st</sup> October, 2012 which stated that:

**“This is to inform you that your appointment as chief for Batalu location has been revoked with immediate effect. However you will continue serving as assistant chief for Batalu sub-location.**

**Meanwhile we are going to recommend you to be paid for having acted as Chief for Batalu location from January 2010 to September 2012.”**

The letter is signed by the same C.W. Sangura.

Counsel for the Applicant submitted that the Respondent’s decision contravened Articles 10, 27, 28 & 47 of the Constitution. I agree. It is not disputed that no reasons were given to the Applicant for the revocation of his appointment. The reasons were only given when he filed this application. The reasons given are not satisfactory. The claim that the Applicant did not meet the qualifications for appointment as a chief as per the Scheme of Service for Chiefs and Assistant Chiefs is not true since the qualifications for one to be appointed a chief or assistant chief were waived for certain districts and the entire former North Eastern Province through a letter dated 13<sup>th</sup> July, 2011 issued by the Public Service Commission. Buna District falls within an exempted area. The minimum qualification as per the said letter is a Certificate of Primary Education. The fact that the Applicant was interviewed for the post meant that those who interviewed him were aware that he was qualified for the post. This particular reason does not therefore hold any water.

The other reason is that the appointment of the Applicant had caused tension in the location since he come from a minority clan. It is admitted that the Applicant was number one in the interview and had by his own industry worked for the appointment. He therefore deserved to be given the post. The revocation of his appointment also went against the letter and spirit of the Constitution which provides for the protection of the minorities. The decision was therefore an affront to Article 56 which states that:

**“56. The State shall put in place affirmative action programmes designed to ensure that minorities and marginalised groups—**

- (a) participate and are represented in governance and other spheres of life;**
- (b) are provided special opportunities in educational and economic fields;**
- (c) are provided special opportunities for access to employment;**
- (d) develop their cultural values, languages and practices; and**
- (e) have reasonable access to water, health services and infrastructure.”**

The Applicant was not taken through a fair administrative process since he was never asked for his input before his appointment was revoked. This was clearly in breach of Article 47 of the Constitution and the rules of natural justice. The Applicant was entitled to be heard before any action was taken. The Applicant has therefore established grounds for the grant of an order of certiorari.

However, judicial review remedies are discretionary in nature. There is evidence that one Abdinur Mohamed Ibrahim was appointed in place of the Applicant. The Applicant did not serve the said Abdinur Mohamed Ibrahim as an Interested Party. If the application is allowed, it would mean removing the said Abdinur Mohamed Ibrahim from office without giving him an opportunity to be heard. The Court would be perpetuating the ill complained of by the Applicant. The Applicant was under a duty to serve any person who is likely to be affected by the outcome of these proceedings – see **Order 53 Rule 3(2) of the Civil Procedure Rules, 2010**. Failure to serve Abdinur Mohamed Ibrahim means that the orders prayed for cannot issue. The application therefore fails and it is dismissed. Considering the circumstances leading to the dismissal of the application, there will be no order as to costs

Dated, signed and delivered at Nairobi this 21<sup>st</sup> day of February , 2014

**W. K. KORIR,**

**JUDGE OF THE HIGH COURT**