



**Shollei v Judicial Service Commission & 3 others (Petition 421 of 2013)  
[2013] KEHC 6008 (KLR) (Constitutional and Human Rights) (22 August 2013) (Ruling)**

*Gladys Boss Shollei v Judicial Service Commission & 3 other [2013] eKLR*

Neutral citation: [2013] KEHC 6008 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CONSTITUTIONAL AND HUMAN RIGHTS**

**PETITION 421 OF 2013**

**DAS MAJANJA, J**

**AUGUST 22, 2013**

**BETWEEN**

**GLADYS BOSS SHOLLEI ..... PETITIONER**

**AND**

**JUDICIAL SERVICE COMMISSION ..... 1<sup>ST</sup> RESPONDENT**

**HON. MS. EMILY OMINDE ..... 2<sup>ND</sup> RESPONDENT**

**AHMEDNASIR ABDULLAHI ..... 3<sup>RD</sup> RESPONDENT**

**WARSAME, JA ..... 4<sup>TH</sup> RESPONDENT**

**Final orders cannot be granted in an ex parte application**

*In the instant case, the petitioner sought final orders in an ex parte application. The court held that the prayers for an order of certiorari to temporarily quash the order of compulsory leave and a conservatory order reinstating the petitioner to office could not be granted as they were final orders and it would be proper to hear all the parties before making those orders.*

Reported by Kakai Toili

**Civil Practice and Procedure** – conservatory orders – ex-parte conservatory orders – where a party sought both temporary and permanent ex-parte conservatory orders – whether the court could grant ex-parte conservatory orders whether they were either temporary or permanent in nature.

**Brief facts**

The matter had been brought by the Chief Registrar of the Judiciary contesting the decision of the Judicial Service Commission to send her on compulsory leave. She stated that the decision was a violation of her rights under the Constitution and also a contravention of the provisions of the Judicial Service Act, 2011. The instant application sought among other orders; that pending *inter partes* hearing an order of *certiorari* be issued



to temporarily quash the respondents' order of compulsory leave; and that pending *inter partes* hearing, a conservatory order reinstating the petitioner to office be issued.

### **Issues**

i. Whether the court could grant final orders in an *ex-parte* application.

### **Held**

1. In an *ex-parte* application, the court had to act with caution as all the facts may not have been before it and in particular where orders of some finality were sought.
2. A conservatory order was intended to ensure that the rights and fundamental freedoms of the applicant were not rendered nugatory before the *inter partes* hearing.
3. The prayers for an order of *certiorari* to temporarily quash the order of compulsory leave and a conservatory order reinstating the petitioner to office could not be granted as they were final orders and it would be proper to hear all the parties before making those orders.
4. From the evidence before the court, a case had been made out for the court to issue orders to prohibit the Judicial Service Commission from taking disciplinary proceedings against the petitioner so that the matter could be ventilated in court.

*Application partly allowed.*

### **Orders**

- i. *1<sup>st</sup> respondent restrained from commencing or continuing any disciplinary proceedings against the petitioner pending inter partes hearing of the application.*
- ii. *The notice of motion and petition were to be served forthwith.*

### **Citations**

None referred to

### **Statutes**

#### ***East Africa***

1. Judicial Service Act, 2011 (Act No 1 of 2011) –(Interpreted)

## **RULING**

1. This matter has been brought by the Chief Registrar of the Judiciary contesting the decision of the Judicial Service Commission to send her on compulsory leave on 19<sup>th</sup> August 2013. She states that this is a violation of her rights under the Constitution and also a contravention of the provisions of the Judicial Service Act, 2011. The Notice of Motion before me seeks, inter alia, the following orders:  
  
[2] That pending interparties hearing an order of certiorari do issue to temporarily quash the Respondents' order of compulsory leave.  
  
[3] That pending interparties hearing, a conservatory order reinstating the petitioner to office as existing ante 19<sup>th</sup> August 2013.  
  
[4] That pending interparties hearing, an order of prohibition do issue to prohibit the Respondents from commencing the disciplinary proceedings against the petitioner.
2. As this is an *ex-parte* application, the Court acts with caution as all the facts may not be before it and in particular where orders of some finality are sought. However, a conservatory order is intended to ensure that the rights and fundamental freedoms of the applicant are not rendered nugatory before the *inter partes* hearing.



3. In the circumstances, I decline to grant the prayer [2] and [3] of the Motion as these are final orders and it would be proper to hear all the parties before making those orders. However, from the material before the court, I am satisfied that case has been made out to prohibit the Judicial Service Commission from taking disciplinary proceedings against the petitioner so that the matter may be ventilated in court.
4. In the circumstances, I grant the following orders;
  - 1) The 1<sup>st</sup> respondent is restrained by way of a conservatory order from commencing or continuing any disciplinary proceedings against the petitioner pending interparties hearing of the application on 27<sup>th</sup> August 2013.
  - 2) The Notice of Motion and Petition shall be served forthwith.

**DATED AND DELIVERED AT NAIROBI THIS 22<sup>ND</sup> DAY OF AUGUST 2013.**

**D.S. MAJANJA**

**JUDGE**

Mr Kipkorir instructed by KTK Advocates for the petitioner ex-parte.

