



Grobler v Cabinet Secretary for Interior and Co-ordination of National Government (Civil Appeal E658 of 2021) [2024] KEHC 16882 (KLR) (Civ) (9 September 2024) (Judgment)

Neutral citation: [2024] KEHC 16882 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E658 OF 2021

CJ KENDAGOR, J

SEPTEMBER 9, 2024

BETWEEN

MARETHA GROBLER APPELLANT

AND

**CABINET SECRETARY FOR INTERIOR AND CO-ORDINATION OF
NATIONAL GOVERNMENT RESPONDENT**

*(Being an appeal from the decision of the Cabinet Secretary for Interior
and Co-ordination of National Government on non-renewal of
Class-D Work Permit vide Notification dated 11th February, 2021)*

JUDGMENT

1. The Appellant, a national of the Republic of South Africa, applied for a work permit in Kenya in 2018 through Morgan Air and Sea Freight Logistics Kenya Limited (hereinafter referred to as Morgan Cargo) and was issued with a Class-D work permit for two years, starting on 04/12/2018. In November 2020, through Morgan Cargo, she applied for a renewal of her work permit, which was due to expire in December, 2020. In the paperwork, her job description in Morgan Cargo is indicated as Office Manager, coordinating and facilitating communication between Morgan Cargo's Head Office in South Africa and the local office in Kenya, and also acting as the personal assistant to the director. The Director General, Immigration Services (hereinafter referred to as "The Director") declined the application for renewal in a notification dated 23rd November, 2020 for reasons that the work could be done by a Kenyan. On 01st December, 2020, the Appellant through Morgan Cargo addressed a letter to the Respondent requesting a review of the Director of Immigration's decision. A notification dated 11th February, 2021 communicated that the appeal was unsuccessful.



2. Being aggrieved by the aforementioned decision, the Appellant submitted an appeal to this court. The appeal seeks that the court set aside the decision and issue an order compelling the Department of Immigration to approve the application for the renewal of the work permit. In the Memorandum of Appeal dated 7th August, 2022, the Appellant raises eight grounds of appeal which are as follows:
 - I. That the Cabinet Secretary for Interior and Co-ordination of National Government erred in both law and, in fact, in making a decision to reject the Appellant's Review Application to renew her Class D- Employment work permit without first giving the Appellant any notice or opportunity to be heard.
 - II. That the Cabinet Secretary for Interior and Co-ordination of National Government erred in both law and fact by failing to appreciate the principles laid down for a fair hearing, in violation of Article 50 (1) of *the Constitution* of Kenya 2010 and the rules of natural justice.
 - III. That the Cabinet Secretary for Interior and Co-ordination of National Government erred in both law and fact by failing to give reasons leading to his decision made on 11th February 2021, in violation of Section 4 (2) *Fair Administrative Action Act*. 2015.
 - IV. That the Cabinet Secretary for Interior and Co-ordination of National Government erred in both law and fact by failing to consider the material placed before him by the Appellant before arriving at his decision dated 11th February, 2021.
 - V. That the Cabinet Secretary for Interior and Co-ordination of National Government so misdirected himself on matters of both law and fact as to occasion a miscarriage of justice against the Appellant.
 - VI. That the Cabinet Secretary for Interior and Co-ordination of National Government erred in fact and in law by failing to uphold the principle of equity in determining the Appellant's Class D- Employment work permit Review Application.
 - VII. That the Cabinet Secretary for Interior and Co-ordination of National Government's decision to reject the Appellant's Review Application for Class D- Employment work permit was otherwise draconian, undeserved and excessive.
 - VIII. That the Cabinet Secretary for Interior and Co-ordination of National Government's decision made on 11th February, 2021, albeit a discretionary one, was plainly wrong in both law and fact by giving a decision without any basis in law or fact, contrary to Article 47 of *the Constitution* of Kenya 2010.
3. The appeal was canvassed by way of written submissions, for which this court gave due consideration.

The Appellant's Case

4. The Appellant submitted that the Respondent's decision was unreasonable, unjustifiable, and procedurally unfair, violating her constitutional rights and freedoms. She argued that the Respondent failed to consider the unique circumstances in her case despite Morgan Cargo having provided further information in the correspondence seeking review. She faulted the Respondent for failing to give reasons for the decision.

The Respondent's Case

5. The Respondent submitted that the appeal was time-barred and that the Applicant was not entitled to the orders sought. The Respondent argued that the Appellant had failed to demonstrate how her



rights and freedoms had been violated as the decision was duly communicated after consideration of the work permit application.

Issues for Determination

6. The issues arising for determination are as follows;
 - a. Whether the appeal is time-barred;
 - b. Whether the decision by the Respondent was procedural and valid;

Whether the appeal is time-barred;

7. Class D Work permit is classified in The Kenya Citizenship and Immigration Regulations as follows:-

“A person who is offered specific employment by a specific employer, the government of Kenya or any other person or authority under the control of the Government or an approved technical aid scheme under the United Nations Organization or some other approved Agency (not being an exempted person under section 34(3), who is in possession of skills or qualifications that are not available in Kenya and whose engagement in that employment will be of benefit to Kenya.”

8. The Appellant has anchored the appeal under Section 40 (12) of The [Kenya Citizenship and Immigration Act](#), 2011, which provides as follows:-

“(12) Where the notification issued under subsection (11) is for the rejection of the application, an aggrieved applicant may apply for a review of the Cabinet Secretary’s decision within a period of ninety days from the date of receipt of the notification and may appeal the decision of the Cabinet Secretary to the High Court.”

9. This provision gives an aggrieved party the option of either applying for a review of the Cabinet Secretary’s decision or appealing the decision at the High Court. From the provision, the time frame for lodging the review of the Cabinet Secretary’s decision has been capped at 90 days. However, no specific mode, procedure, or time is prescribed for approaching the High Court on appeal against the decision.

10. Section 58 of the [Interpretation and General Provisions Act](#) CAP 2, provides as follows:-

“Where no time is prescribed or allowed within which anything shall be done, such thing shall be done without unreasonable delay, and as often as due occasion arises.”

The Memorandum of Appeal dated 06th August, 2021 was filed on 14th October, 2021. The notification declining the review/appeal that gave rise to the appeal is dated 11th February, 2021. Subsequently, the Appellant sought stay orders in May, 2021 in High Court Misc. Application [No. E228 of 2021](#). The time issue was raised and addressed in the current file vide the ruling delivered on 08th December, 2023 and the court admitted the matter to trial with conditions which the Appellant has since complied with on their part. In view of the above-cited provisions, the claim is not time-barred, and this court has jurisdiction to entertain the appeal.



Whether the decision by the respondent was procedural and valid;

11. The Applicant had been issued with a Class-D work permit for two years, and she followed the correct procedure in applying for its renewal. The notification that is the subject of this appeal is signed off by the Director General, Immigration Services. The notice is e-generated by the Foreign Nationals Portal. It communicates that the appeal was unsuccessful (denied). There are no reasons advanced in the notification.
12. The appeal/review by the Appellant through Morgan Cargo was vide a letter dated 01st December, 2020, outlining five Grounds of Appeal that they wanted the Respondent to consider and review the decision made by the Director declining to renew the work permit:
 1. Morgan Air & Sea Freight Logistics Kenya is a subsidiary company of Morgan Air & Sea Freight Cargo South Africa. Being a foreign company they have a right to a company representative. (Annexed herein is a copy of the letter from the Head Office in South Africa marked as “F”).
 2. Mrs. Grobler Maretha has had a class D permit for two years and he has a right to apply for extension pursuant to Section 24 of the Immigration Regulations which provides that a work permit may be renewed for further periods on the payment of the renewal fee.
 3. Mrs. Grobler Maretha is a representative of the company and the contact person with the South African parent company pursuant to her fluent understanding and speaking of Afrikaans which is the main language spoken in South Africa.(Annexed herein is a letter dated November 26th 2020 confirming the same marked as “G”).
 4. Morgan Cargo has employed one hundred and twenty six Kenyan citizens who are under the supervision of Mrs. Grobler Maretha to ensure effective production, and consequently contribute to generation of tax revenue for the Kenyan economy.(Annexed herein is a copy of the form 27 marked as “H”).
 5. Mrs. Grobler Maretha has specialized skill in operations management as evidenced by her academic and professional certificates. Her exposure in the international market brings a lot of exposure to the employees in the Kenyan subsidiary by teaching them the best practice in the global market. This in turn improves the skills of the Kenyans employed leading to increased output by the Company. The Kenyan economy is the main beneficiary as the revenues generated are used to develop the economy.
13. Under Section 40 of The [Kenya Citizenship and Immigration Act](#), 2011, the Respondent has the authority to review a decision made by the Director General, Immigration Services, within the limits established by law. The Respondent should consider the review/appeal independently and based on the merits.
14. Article 47 of [the Constitution](#) provides for fair administrative action;
 - “ 47(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
 - (2) If a right or fundamental freedom of a person has been or is [Constitution of Kenya, 2010](#) 33 likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action”.



15. Section 4(3) (d) of the *Fair Administrative Action Act* Provides that if an administrative action is likely to affect any person's rights or fundamental freedoms adversely, the administrator must provide the affected person with a statement of reasons. Therefore, in exercising the mandate bestowed by the *Kenya Citizenship and Immigration Act*, the Respondent has a duty to inform those affected by any adverse decision of its reasons.
16. In the present case, the notification, as earlier mentioned, is signed off by the Director. Compared with the first notification, the notice does not provide reasons why the appeal/review was unsuccessful/denied. The notification as signed off may suggest that the Director is conducting the review and making the recommendation rather than the Cabinet Secretary. Additionally, without communication from the Respondent or including details of consideration or any reasons being advanced in the notification, it cannot be assumed that the Appellant was heard on the application for review. It is crucial for anyone in a position of authority, empowered by the law, to make decisions to take tangible action. This highlights the significance of accountability and the consideration needed when a decision impacts the rights, freedoms, and privileges of others.
17. Under the provisions of Order 42, rule 13 of the Civil Procedure Rules, the Deputy Registrar of this Court called for the Respondent's records relevant to this appeal vide the letter dated 5th November, 2021. Reminders were sent via letters dated 06th December, 2021, 2nd reminder dated 13th January, 2022 and 3rd reminder dated 15th February, 2022. This non-compliance on the part of the Respondent amplifies the assertion that the Respondent failed to properly consider the review application.
18. The Respondent has discretion when discharging the mandate under Section 40 of The *Kenya Citizenship and Immigration Act*, 2011; however, it must be exercised responsibly and within the legal parameters of *the Constitution* and applicable laws.
19. The decision to reject the appeal against the non-renewal of the Appellant's work permit was not carried out procedurally and is therefore invalid. It also constitutes a clear violation of Article 47(2) of *the Constitution* and Section 4 of the Fair Administration Actions Act 2015. The appeal is meritorious.
20. I set aside the decision in the notification dated 11th February, 2021 and direct the Respondent to consider and determine the revision/appeal filed by the Appellant through Morgan Cargo regarding the issuance of a Class-D work permit for the Appellant, in accordance with the provisions of the law, within 90 days from the date of service of this Judgment upon the Respondent.
21. Under Order 42, rule 32 of the Civil Procedure Rules, the Court to which an appeal is preferred has the power to make such further or other decree or order as the case may require. The Appellant has stay orders that were issued on 08th December, 2023 allowing her entry and exit pending hearing and determination of the appeal; to prevent the risk of arrest and/or forceful deportation of the Appellant, the orders shall remain in force for 180 days from the date of this Judgment as the Respondent is processing and considering the revision/appeal and or any further necessary action as may result therefrom.
22. The Deputy Registrar shall effect service of a certified copy of this Judgment and the decree upon the Respondent within 14 days from the date of this Judgment.
23. Each party shall bear its own costs of this appeal.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON 09TH SEPTEMBER, 2024.



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C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Dalphin Kananu

Advocate for Appellant: Ms. Imali

Advocate for Respondent: No attendance

