



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

JUDICIAL REVIEW APPL. NO. 9 OF 2012

IN THE MATTER OF APPLICATION BY NELSON MAROA M. MAITARIA FOR JUDICIAL REVIEW (CERTIORARI)

AND

IN THE MATTER OF THE ADMINISTRATION POLICE ACT CAP 85 LAWS OF KENYA

AND

IN THE MATTER OF PROCEEDINGS OF 14TH DECEMBER 2011 BY CHIEF INSPECTOR RICHARD OKERIO

AND

IN THE MATTER OF DISMISSAL LETTER DATED 5TH JANUARY 2012 BY THE PROVINCIAL COMMISSIONER - NYANZA

BETWEEN

REPUBLIC APPLICANT

-VERSUS-

CHIEF INSPECTOR RICHARD OKERIO 1ST RESPONDENT

THE PROVINCIAL COMMISSIONER – NYANZA 2ND RESPONDENT

THE HON. ATTORNEY GENERAL 3RD RESPONDENT

AND

AP COMMANDANT DAVID NGETICH INTERESTED PARTY

VERSUS

APC NELSON MAROA M. MAITARIA EX-PARTE APPLICANT

RULING

1. The Ex-parte applicant, **APC Nelson Maroa Maitaria**, vide a chamber summons dated 5th march 2012, sought and was granted leave to apply for an Order of **Certiorari**, to remove and bring into this court for purposes of quashing proceedings of the first respondent, **Chief Inspector Richard Okerio**, and the subsequent letter of dismissal dated 5th January 2012.

The present application vide a Notice of Motion dated 16th March 2012, was consequently filed against the first respondent and two others i.e **The Provincial Commissioner, Nyanza** and the **Attorney General of Kenya**.

2. A supporting affidavit dated 16th March 2012, deponed by the applicant bears the grounds for the application in addition to the grounds contained in the aforementioned chamber summons.

A replying affidavit in opposition to the application and dated 18th July 2012, was filed by the first respondent on his own behalf and that of the second and third respondents.

The application was argued by way of written submissions and in that regard, the applicant filed his through **G.M. Nyambati & Co. Advocates** and the respondents through the learned litigation counsel, **M/s Winny Ochwal**.

3. Both sides relied on their respective submissions and affidavits to argue their respective cases for and against the application. This court has given due consideration to the rival arguments and the question arising is whether the applicant has made out a cogent case for the grant of an order of certiorari against the respondents.

Basically, judicial review is a process of the rule of law which bears upon the interplay between the courts and the administrative process of a public body or any body exercising quasi-judicial functions. It is thus, the means by which the administrative decision maker is prevented from exceeding the powers and functions conferred by the law, with the consequence that individual interests are protected accordingly (see, **“The tension between Legislative Supremacy and Judicial Review (2003)77 ALJ 803 and Judges & Magistrates Vetting Board & Others Vs. The Centre for Human Rights & Democracy & Others Supreme Court of Kenya Petition No. 13A of 2013**).

4. In judicial review cases, the business of the court is to ensure that decisions made by the relevant bodies are lawful and if a decision is unlawful the court would have a duty to safe guard the rule of law and individual rights by quashing the decision and ensure that decision makers take responsibility for making lawful decisions. A decision already made can be quashed by an order of certiorari which will normally issue if the decision is made without or in excess of jurisdiction or where the rules of natural justice are not complied with.

In this case, the applicant contends that the first respondent acted in excess of his jurisdiction purportedly under S.20 (1) (ii) (iii), of the Administration Police Act (Cap 85 LOK) in dismissing him from duty vide a letter dated 5th January, 2012.

5. The said letter is annexed to the supporting affidavit dated 5th March 2012, and is marked exhibit **“NMMM-01”**.

The applicant alleges that the proceedings leading to the letter were conducted on 14th December 2011, by the first respondent without necessary authority under the aforementioned provisions of the AP Act. Therefore, the first respondent had no jurisdiction to conduct the proceedings.

In the replying affidavit dated 18th July 2012, the first respondent indicated that the applicant was taken through orderly room proceedings and four witnesses testified against him after which he pleaded for forgiveness. A proposal was ultimately made that the applicant be dismissed from service and this was confirmed by the District Commissioner and the Provincial Commissioner.

6. The Provincial Commissioner (second respondent) confirmed as much in his replying affidavit dated 18th July 2002. Indeed, the subject letter of dismissal was signed by the second respondent himself.

S.20(1) of the Administration Police Act generally provides for penalties for offences committed by officers. Such penalties include dismissal from the force and an officer is liable for punishment by a District Commissioner or District Officer or by any public officer duly authorized in writing by a Provincial Commissioner.

Apparently, the applicant was subjected to an internal disciplinary proceeding which recommended his dismissal. He was heard and given the opportunity to defend himself prior to the making of the recommendation. This is clearly demonstrated by a copy of the record of the proceedings (Annexure marked "RO1, in the replying affidavit by the first respondent).

7. The recommendation was either to be approved or disproved by the officer conferred with the power to dismiss and this was the second respondent. Indeed, the subject dismissal letter was signed by the second respondent and not the first respondent. It cannot therefore be said that the dismissal was undertaken by the first respondent. It cannot also be said that the rules of natural justice were not adhered to in the orderly room proceedings which were merely chaired by the responsible officer i.e the first respondent.

There was nothing from the applicant to demonstrate that the proceedings were conducted contrary to the law so that the recommendation which came from them could be said to have been "null and void" ab initio.

9. From all the foregoing, it is evident that the ex-parte applicant was unable to establish that his dismissal by the second respondent was in excess of jurisdiction and/or that the proceedings which led to that action were unlawful and devoid of the rules of natural justice.

In sum, the applicant has failed to show good or cogent cause for the grant of an order of certiorari against the respondents. Consequently, this application is hereby dismissed with costs to the respondents.

Ordered accordingly.

[Read and signed this 8th day of December 2016.]

J.R. KARANJAH

JUDGE

In the presence of

Mr. Ondari for Mr. Nyambati for Applicant

Njoroge/Saitoti CC