



REPUBLIC OF KENYA



**KENYA LAW**  
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**Nyakundi v Nairobi City County & 3 others (Employment and Labour Relations Judicial Review E006 of 2025) [2025] KEELRC 3152 (KLR) (13 November 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3152 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**EMPLOYMENT AND LABOUR RELATIONS JUDICIAL REVIEW E006 OF 2025**  
**MN NDUMA, J**  
**NOVEMBER 13, 2025**

**BETWEEN**

**WINFRIDA KEMUNTO NYAKUNDI ..... APPLICANT**

**AND**

**NAIROBI CITY COUNTY ..... 1<sup>ST</sup> RESPONDENT**

**NAIROBI COUNTY PUBLIC SERVICE BOARD ..... 2<sup>ND</sup> RESPONDENT**

**COUNTY CHIEF OFFICER ECD AND VOCATIONAL  
TRAINING ..... 3<sup>RD</sup> RESPONDENT**

**WESTLANDS SUB-COUNTY EDUCATION OFFICE ..... 4<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. The Ex-parte Applicant brought a notice of motion application dated 17/2/2023 seeking an order in the following terms:-
  1. Spent
  2. An order of certiorari to bring into this honourable court and quash the decision by the Respondents herein to transfer the Applicant from Visa Oshwal Pre-School to Muguga Pre-School as a classroom teacher.
  3. An order of prohibition to issue against the Respondents prohibiting them from transferring the Applicant from Visa Oshwal Pre-School to Muguga Pre-School and interfering with the Applicant's employment.
  4. An order of declaration that the decision of the Respondents to transfer the Applicant from Visa Oshwal Pre-School to Muguga Pre-School through a transfer letter dated 14<sup>th</sup> January, 2025 is unlawful, ultra vires and void.



5. That costs of this application be provided for.
2. The application is premised on grounds (a) to (i) set out on the face of the notice of motion and buttressed in the supporting affidavit of the Applicant annexed to the application.
3. The nub of the application is that the Applicant was a Pre-primary School teacher employed at Visa Oshwal Pre-primary School from 16<sup>th</sup> January 2024 by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.
4. By a letter dated 14/1/2025, the Respondents transferred the Applicant from Visa Oshwal Pre-school to Muguga Pre-school as a classroom teacher with immediate effect.
5. The Applicant was first employed as an Early Childhood Development Educator teacher by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents by a letter dated 12<sup>th</sup> July 2021 on a 6<sup>th</sup> month probation and was confirmed to the service by a letter dated 4<sup>th</sup> April 2023. The Applicant was serving SSD – Pre-primary school until she was transferred to Visa Oshwal Pre-primary school by a letter dated 16/1/2024.
6. The grievance by the Applicant is that the Applicant’s transfer has been done in less than one year since the transfer to Visa Oshwal from SSD – Pre-primary school is dated 16<sup>th</sup> January 2024, while the transfer letter to Muguga Pre-school is dated 14<sup>th</sup> January 2025.
7. That the transfer to Muguga Pre-primary school is an inconvenience to the Applicant and her family who have to move their children from one school to another over such a short period of time.
8. That no similar transfer of other pre-primary school teachers has been made in Visa Oshwal pre-primary school in the last 4 years.
9. That the Applicant is being discriminated being the only one being transferred from the school having served for less than a year.
10. That due to the transfer on short notice the Applicant is not able to gauge her performance due to the short term stay at the school.
11. That it is in the interest of justice and fair play that the application be granted.

### **Replying Affidavit**

12. The Respondents filed a replying affidavit sworn to by Lucy Volemi, Acting Assistant Director of Early Childhood Development and Education Officer of Nairobi City County Government, the 1<sup>st</sup> Respondent.
13. The deponent states that she serves under the office of the 2<sup>nd</sup> Respondent, the Nairobi City Public Service Board.
14. The deponent states that the Applicant has acted against the doctrine of exhaustion which requires persons to utilize all available administrative or alternative dispute resolution mechanisms before seeking judicial interventions in any matter.
15. That the Applicant’s grievance ought to have been referred to an appeal to the Education Appeal Tribunal pursuant to section 93 of the *Basic Education Act*. That the Applicant did not make any such appeal. That this is a statutory procedure that the Applicant is bound to follow first.
16. That the orders sought would amount to usurpation of the statutory mandate of the Education Appeals Tribunal and that of the employer.



17. That the Applicant is “notorious for non-teaching; The Applicant has been found and warned severally to adhere to her mandate and scope of work as per her employment contract to no avail.”
18. That the Applicant notoriously marks no register, nor has she been taking her roles and responsibilities seriously per the job design. The Applicant insisted on teaching primary school instead of ECDE. The Applicant also had no lesson plan.”  
That despite several warnings, the Applicant never changed her ways.”
19. That the Respondents do not discriminate the Applicant but a vacancy arose at Muguga primary school on a need basis for a pre-school teacher and the Applicant fit in the need and in accordance to the provisions of the Teachers Service Commission (TSC) on equitable distribution of teacher, optimal utilization of and availability of vacancies the transfer of the Applicant was done.
20. That in addition, the Respondents relied on the Nairobi City County Human Resource Management Manual, particularly, the evaluation of employee performance and fitting employees where need of that resource arise.
21. That there is no evidence that the transfer was unlawful and/or motivated by ill will.
22. That Respondents only move/transfer teachers to schools where they have a shortage to balance staff against the teaching needs and such decisions are on need- basis and on the last-in-first-out basis. That the Applicant was the last in hence the decision to transfer her first.
23. That the narrative of discrimination presented by the Applicant is false and the reliefs sought by the Applicant be dismissed.

#### **Applicant’s Further Affidavit**

24. That the Respondents are in contempt of the interim orders of the court and ought not to be given any audience.
25. That section 93 of the *Basic Education Act*, on Appeals to the Education Board is not applicable in the circumstances of the case.
26. That this court has original jurisdiction to review illegal decisions of the Respondents and section 93 aforesaid is not a bar.
27. That Respondents have denied the Applicant audience and made it difficult for the Applicant to continue teaching at Visa Oshwal pre-school despite the court orders.
28. That there is no evidence attached to the replying affidavit regarding allegation of poor work performance made against the Applicant. That the same are false and scandalous and meant to bring down the reputation of the Applicant as a passionate teacher.
29. The Applicant denies having been served with any warning letters nor has she any report indicating non-teaching as alleged by the Respondents or at all.
30. That the Respondents would not be transferring the Applicant if she was not a well performing teacher.
31. That the Applicant is extremely passionate about her work and the children she teachers. That the principle of “last-in-first-out” does not apply to transfers but to redundancies.  
That the Respondents should be punished for contempt of court.



## DETERMINATION

32. The parties filed written submission which the court has carefully considered together with the deposition by the parties. The issues for determination are: -
- i. Whether the Applicant is guilty of failure to exhaust internal statutory mechanisms and if so if this is fatal to this application.
  - ii. Whether the Applicant has proved her case on a balance of probabilities.
  - iii. Whether the Applicant is entitled to the reliefs sought?
33. The grievance by the Applicant is that her transfer from Visa Oshwal pre-primary to Muguga pre-school was pre-mature in that she had hardly served a period of one year since her arrival at the school.
34. That the transfer is irrational and discriminatory since no other teacher of the school has been transferred after such a short stint of service and is a violation of her rights protected under Article 41 of [\*the Constitution\*](#) which binds employers from exercising unfair labour practices against their employees.
35. Article 41 provides,
- (1) Every person has the right to fair labour practices
  - (2) Every worker has the right-
    - (a) to fair remuneration
    - (b) to reasonable working conditions.”
36. That the transfer has subjected the Applicant to unreasonable working conditions in that she is unable to evaluate her performance in such a short time and is an inconvenience to herself, her school going children and the pupils she teachers at the pre-school.
37. The Applicant refers to section 43 of the Public Service Act which provides: -
- 3 in effecting a transfer the following shall be taken into account:
- a. The transfer shall lead to improved service delivery;
  - b. the interest of the children, if any, of the affected public officer; and the transfer shall not be arbitrary.”
38. The Respondent in this case has without prompting indicated in paragraphs 12, 13 and 14 of the replying affidavit stated that the main reason why the Applicant was ripe for transfer after serving Visa Oshwal Pre-school for a period of less than one year is for her “notorious non-teaching” has been “warned severally to adhere to her mandate;” “notoriously marks no register” and has not been “taking her roles and responsibilities seriously per the job design.”
39. The Respondent has not provided any evidence to support these very serious allegations of gross misconduct.
40. This deposition has revealed bad faith and ill motive on the part of the Respondents in making the transfer of the Applicant from one school to another. (Emphasis added)
41. No school deserves the services of a non-performing teacher. Transfer does not constitute disciplinary action and ought not to be used for that purpose. The action by the Respondents seen in this right is arbitrary, irrational, unlawful and unfit for the intended purpose. It is a blatant abuse of authority on



the part of the Respondents especially because the Applicant is completely unaware of these allegations against her and no single evidence in writing to the Applicant by the Respondents in these stated respects has been presented to the Applicant before or during these proceedings.

42. In Republic versus Deputy Inspector General of Police and 2 others Exparte PC Stephen Mathenge [2015] eKLR the court held per Odunga J. (as he then was),

Article 3(1) of *the Constitution* enjoins every person to respect, uphold and defend *the Constitution*. Therefore, in exercising the statutory powers the executive ought to ensure that its action is geared towards the recognition and protection of the family unit as far as is practicable. To take actions which are meant to place the family unit in jeopardy would be in violation of the need to recognize and protect the family therefore amount in my view to failure to take into account a relevant factor.

Where an officer is exercising statutory power, he must direct himself in law and procedure and must consider all matters which are relevant and avoid extraneous matters. see council of civil service union versus Ministry for the Civil Service (1988) AL374: Associated Principal Picture Houses Ltd versus Wednesbury Corporation (1948) IDK223.”

43. In the present matter, consideration of misconduct was not only an irrelevant consideration on matters transfer but it being without notice or hearing to the Applicant violated the Applicant’s right to equal protection and equal benefit of the law, right not to be subjected to unfair labour practices and the right to have the dispute resolved by the application of the law in a fair hearing.

#### **Exhaustion of statutory machinery.**

44. Section 93 of *Basic Education Act* No. 17 of 2017 provides,

The Education Appeals Tribunal

- (1) There is established an Education Appeal Tribunal
- (2) Any person aggrieved by the decision of the County Education Board may appeal to the Education Appeals Tribunal.”

45. The County Education Boards are established under section 17(1) of the Act. The County Education Board is established as an agent of the National Education Board under sub-section 17(2).

46. Section 18(1) provides for the statutory mandates of the County Education Boards. The mandates provided under 18(1)(a) to (n) do not include appointment, promotion, transfer, or discipline of teachers.

47. Under sub-section 18(1)(j) is provided that the Boards shall,

- (j) collaborate with the Teachers Service Commission on teacher management within the county.”

48. This is the closest that the County Education Board comes with regard to interacting with affairs of teachers employed in basic education institutions.

49. It follows that the mandate of the Education Appeals Tribunal which hears appeals from persons “aggrieved by the decisions of the County Education Board” has no jurisdiction over grievances by teachers in general and in this case ECDE teachers including the Applicant herein.



50. The preliminary objection raised by the Respondent is therefore misconceived and without basis. If the Board appoints, promotes, transfers and disciplines teachers as an authority delegated by the Teachers Service Commission (TSC), then due process with regard to appeals from any aggrieved teachers fall elsewhere not as stated by the Respondents in their defence of this matter. The preliminary objection is therefore misconceived and is not upheld.
51. The court holds that the Applicant has sufficiently proved that her rights under Articles 27 and 41 of *the Constitution* were violated by the Respondent.
52. The court holds that the decision by the Respondents to transfer the Applicant based on extraneous, irrelevant, irrational and arbitrary considerations was illegal, null and void and the Applicant is entitled to the reliefs sought.
53. Accordingly, the court makes the following orders in favour of the Applicant against the Respondents jointly and severally:
  - a. An order of certiorari is issued to quash the decision by the Respondents herein to transfer the Applicant from Visa Oshwal Pre-School to Muguga Pre-School as a classroom teacher.
  - b. An order of prohibition is issued prohibiting the Respondents from transferring the Applicant from Visa Oshwal Pre-School to Muguga Pre-School based on unlawful considerations.
  - c. The Respondents to pay the costs of the application

**DATED AT NAIROBI THIS 13<sup>TH</sup> DAY OF NOVEMBER 2025.**

**MATHEWS NDUMA**

**JUDGE**

Appearance:

M/s. Morara for Exparte Applicant

M/s. Mageto for 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents

Mr. Kemboi – Court Assistant

