



**Wamalwa v Cabinet Secretary, Ministry of Lands, Housing and Urban  
Development & 5 others; Ethics and Corruption Commission (Interested Party)  
(Petition E229 of 2025) [2026] KEELRC 289 (KLR) (3 February 2026) (Ruling)**

Neutral citation: [2026] KEELRC 289 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E229 OF 2025**

**JW KELL, J**

**FEBRUARY 3, 2026**

**IN THE MATTER OF ARTICLES 2,3,10,19,20,21,22,23,27,41,47,73,232 AND 258 OF THE  
CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND  
FREEDOMS UNDER ARTICLES 27,41,47 AND 232 OF THE CONSTITUTION OF KENYA,  
2010**

**AND**

**IN THE MATTER OF ABUSE OF PUBLIC OFFICE,  
DISCRIMINATION AND VIOLATION OF  
FAIR ADMINISTRATIVE ACTION AND FAIR LABOUR PRACTICES WITHIN THE  
MINISTRY OF LANDS AND PHYSICAL PLANNING**

**BETWEEN**

**AGGREY W WAMALWA ..... PETITIONER**

**AND**

**CABINET SECRETARY, MINISTRY OF LANDS, HOUSING AND URBAN  
DEVELOPMENT ..... 1<sup>ST</sup> RESPONDENT**

**CABINET SECRETARY, MINISTRY OF PUBLIC SERVICE AND HUMAN  
CAPITAL MANAGEMENT ..... 2<sup>ND</sup> RESPONDENT**

**CHIEF EXECUTIVE OFFICE SECRETARY , PUBLIC SERVICE  
COMMISSION ..... 3<sup>RD</sup> RESPONDENT**

**CHAIRMAN PUBLIC SERVICE COMMISSION ..... 4<sup>TH</sup> RESPONDENT**



**PRINCIPAL SECRETARY STATE DEPARTMENT FOR PUBLIC  
SERVICE ..... 5<sup>TH</sup> RESPONDENT**

**JANEROSW KARANJA, THE DIRECTOR OF HUMAN RESOURCE  
MINISTRY OF LANDS AND PHYSICAL PLANNING ..... 6<sup>TH</sup> RESPONDENT**

**AND**

**ETHICS AND CORRUPTION COMMISSION ..... INTERESTED PARTY**

## **RULING**

1. The applicant filed Notice of Motion application dated 26<sup>th</sup> January 2026, brought under Articles 2, 10, 19, 20, 21, 22, 23, 27, 28, 41, 47, 73, 232 and 236 of *the Constitution* of Kenya, 2010; the *Fair Administrative Action Act*, 2015 and all enabling provisions of law, seeking for the following orders-
  - a. Spent
  - b. That pending inter partes hearing of this Application, a conservatory order do issue suspending, staying, and/or halting the decision, directive, implementation and/or operationalisation of the Applicant's transfer/deployment from the Ministry of Lands, Public Works, Housing and Urban Development/State Department for Lands and Physical Planning to the Ministry of Public Service and Human Capital Development or to any other Department, as communicated by the Public Service Commission, and/or any consequential action arising therefrom.
  - c. That pending the hearing and determination of ELRC Petition No. E229 of 2025, a conservatory order do issue suspending, staying, and/or halting the said transfer/deployment and/or any implementation steps, and the Applicant be allowed to remain in the current office and continue discharging her functions.
  - d. That pending the hearing and determination of ELRC Petition No. E229 of 2025, the Honourable Court be pleased to restore and maintain the status quo ante that obtained prior to the impugned transfer decision.
  - e. That the Respondents be restrained whether by themselves, agents, servants or any person acting under their authority from issuing, gazetted, communicating, enforcing, or otherwise effecting the Applicant's exit from office pursuant to the impugned transfer, pending determination of this Petition.
  - f. That this Honourable Court be pleased to issue such further, other and/or consequential orders as it may deem fit to safeguard constitutional values, fair labour practices and fair administrative action.

### **Grounds of the application**

2. The Applicant is the 6th Respondent in this Petition, sued in both official and personal capacity, and has filed a Replying Affidavit contesting the allegations as false, malicious and unsupported.
3. The Petition remains undetermined, and the Applicant remains entitled to the full protection of the Court process, due process, and fair hearing without administrative retaliation or punishment disguised as "administrative action".



4. The Public Service Commission has communicated a decision transferring/deploying the Applicant pending investigations and requiring implementation by 2nd February 2026, creating imminent and irreversible prejudice unless stayed.
5. The impugned transfer, coming in the midst of these proceedings and pegged to "investigations", is punitive in character and amounts to victimisation and/or discrimination for the performance of lawful functions, contrary to Article 236 of *the Constitution*.
6. The transfer undermines and chills the Applicant's constitutional protections and labour rights under Articles 41 and 47, and is procedurally unfair for want of lawful justification, proportionality, and reasons commensurate with the drastic administrative outcome.
7. The transfer threatens to render the Petition and the Applicant's defence nugatory by creating a fait accompli, eroding institutional integrity, and unlawfully punishing an officer before due process is concluded.
8. This Honourable Court has jurisdiction and a constitutional duty to preserve the substratum of proceedings and protect constitutional values through conservatory orders, including restoring and maintaining the status quo ante.
9. The balance of convenience and public interest favour preservation of stability in public administration and protection of public officers from retaliation, while the Respondents suffer no prejudice by waiting for the Court's determination.
10. The applicant filed her affidavit dated 26<sup>th</sup> January 2026 in support of the application and annexed as JK-1 is the transfer directive, JK-2 being the first transfer directive, Marked JK-3 is the Principal Secretary's letter appealing the said transfer, and Marked JK-4 is the letter from the Public Service Commission putting the transfer to abeyance, JK-5 is the Principal Secretary's letter in respect to the summons for hearing.
11. The application was opposed by the 3<sup>rd</sup> respondent vide grounds of opposition dated 29<sup>th</sup> January 2026 as follows-
  - a. By dint of Article 234(2) of *the Constitution* as read together with the *Public Service Commission Act*, Cap.185 of the laws of Kenya and the Public Service Commission Regulations, 2020, the Public Service Commission as the Applicant's employer has the requisite powers to deploy her to work in any Ministry or State Department in the Government of the Republic of Kenya.
  - b. The Commission's decision to redeploy the Applicant to the State Department of Public Service is not a punishment but solely to protect the integrity of investigations that are to be undertaken by the Commission against her arising from repeated allegations of inter alia: a. Abuse of office; b. Intimidation and victimization of staff;
  - c. Corruption; d. Maladministration; e. Irregular appointments; f. Illegal payment of per diem; g. Initiation and execution of arbitrary transfers within the State Department for staff who have lodged complaints against her.
12. By dint of Article 234(2)(d) and 252(1)(a) and (b) of *the Constitution* as read together with the *Public Service Commission Act*, Cap.185 of the laws of Kenya and Regulation 77 of the Public Service Commission Regulations, 2020, the Public Service Commission may, on its own initiative or on a complaint made by any person, investigate any issue relating to the Commission's constitutional or statutory functions and powers and make such determination as may be just in the circumstances.



13. The actions of the Commission are in compliance with the court order issued by this Honourable Court (Hon. Byram Ongaya, J as he then was) on 19th November, 2025, to the effect inter alia that: Pending the return date, PSC to consider the Petitioner's complaint herein in terms of the general powers and functions vested per Article 252(1)(a) and (b) of *the Constitution* with a view of reporting to the court on the return date as appropriate and for further directions.
14. The Applicant's conduct as evidenced in the instant Application reeks of malice and bad faith and is wholly aimed at frustrating the court sanctioned investigations into her conduct as the Director in charge of Human Resource Management and Development in the State Department for Lands and Physical Planning.
15. In accordance with the provisions of Article 47 of *the Constitution* as read with the provisions of the *Fair Administrative Action Act* and Regulation 77(2) of the PSC Regulations, the Commission is legally required in conducting an investigation to afford every relevant party an opportunity to be heard before the Commission makes a determination in the matter. Accordingly, the Applicant will not suffer any prejudice at all in view of the redeployment decision to protect the integrity of the intended investigations in that: a. Her terms and conditions of service remain the same; b. She is not being disciplined at the moment; c. She will be protected by Article 236 of *the Constitution*, that is why the investigations are to be done in order to authenticate the veracity of the allegations being made against her.
16. Contrary to the Applicant's allegations, the redeployment decision has been undertaken after according the Applicant an opportunity to be heard which happened on 21st January, 2026.
17. Contrary to the Applicant's allegations, no disciplinary action has been initiated against her at the moment since the investigations are yet to be carried out to ascertain and/or verify the veracity of the allegations made against her.
18. It would be against the public interest and the exercise of the Commission's mandate for the Applicant to continue being present in the same office during the pendency of the intended investigations for the reasons that: a. The integrity of the investigations may be compromised. b. She may interfere with and/or intimidate potential witnesses that the Commission may interview in the State Department for Lands and Physical Planning. She may interfere with documents and material that may be required by the Commission during the investigations. d. It would be proper and good for the Applicant to be out of her current duty station so as not to be accused of any form of interference with the intended investigations.
19. The Application is bad in law for having been done in gross violation of Section 9(2) of the *Fair Administrative Action Act*, in that: a. By dint of the PSC Regulations, 2020, the Applicant has not lodged her dissatisfaction to the Commission to reconsider the redeployment decision with sufficient grounds and/or reasons. b. Through the instant Application, the Applicant urges this Honourable Court to enter into the realm of administrative matters reserved for the employer before an actual cause of action has arisen. c. In view of points (a) and (b) above, the Application offends the doctrine of exhaustion of remedies.
20. The Applicant has not sought to be exempted from the application of the doctrine of exhaustion as prescribed under Section 9(4) of the *Fair Administrative Action Act*.
21. The Applicant has come to this Honourable Court with unclean hands hence unfit to benefit from the interim reliefs sought as she has failed to disclose material facts to this Honourable Court to the effect that: a. Serious allegations and complaints have been lodged against her, which allegations, if proven



- to be true are likely to dent her image and reputation as well as the dignity and authority of the office she holds as a public officer.
22. She has failed to disclose to this Honourable Court that whereas an initial decision had been made by the Commission to transfer her out of the State Department for Lands and Physical Planning, that decision was kept in abeyance at her request to be heard on the same and she was actually accorded a hearing before the Commission on 21st January, 2026 as a result of which she was redeployed instead of being transferred. c. The instant application was never served upon the Commission contrary to the orders issued by this Honourable Court on 27th January, 2026 and the Commission only became aware of the same on the CTS and through pleadings served upon it in reply thereto by the Petitioner herein.
  23. The instant application is aimed at undermining the authority of the Public Service Commission as enshrined in *the Constitution*, the PSC Act and the PSC Regulations, 2020 and the orders of this Honourable Court as issued on 19th November, 2025.
  24. The instant application forms a classical description of an abuse of the due process of this Honourable Court.
  25. The petitioner also responded to the application vide notice of preliminary objection dated 29<sup>th</sup> January 2026 as follows-
    - a. That the Application is incompetent, misconceived, and an abuse of the court the process Public as it Service seeks to restrain an administrative transfer lawfully undertaken by Commission within its constitutional mandate under Article 234 of *the Constitution*.
    - b. That this Honourable Court lacks jurisdiction to pre-emptively interfere with internal process human resource deployment decisions absent a concluded disciplinary or a final administrative determination capable of constitutional review.
    - c. That the Application offends the doctrine of exhaustion, the 6th Respondent having failed to pursue or conclude available internal administrative review mechanisms before invoking this Court's jurisdiction.
    - d. That the Application does not raise a pure constitutional question but seeks to elevate a routine administrative transfer into a constitutional dispute without meeting the established legal threshold.
    - e. That the Application is speculative, premature, and improperly invites the Court to descend into managerial functions reserved for constitutional commissions.
  26. The petitioner further swore an affidavit dated 29<sup>th</sup> January 2026 in opposition to grant of orders sought in the application.
  27. The applicant filed a further affidavit dated in response to the foregoing responses as follows-
  28. That I have read the Response/position taken by the Public Service Commission ("PSC") and I swear this Further Affidavit to place before this Honourable Court additional facts and material demonstrating that the impugned deployment/transfer is unreasonable, disproportionate, actuated by bad faith, and is not supported by any compelling reasons or exigency of service.
  29. That vide Circular Ref: PSC/GEN/12/(50) dated 7th December 2021, the Commission issued an advisory that public officers aged 58 years and above should be retained in their current stations, save



where there are compelling reasons or where exigency of service dictates otherwise. (Annexed hereto and marked "JK-1" is a copy of the said Circular).

30. That I fall within the category contemplated under the said Circular and, to date, the Commission has not demonstrated any compelling reason and/or exigency of service that would warrant my removal from station, particularly on an urgent basis and under the guise of "temporary deployment."
31. That the Commission's justification that the move is "temporary" is contradicted by its own earlier written communications and conduct.
32. That in the Commission's letter dated 17th December 2025, the PSC authorized the Principal Secretary State Department for Public Service and Human Capital Development to implement my transfer and to ensure that another officer is installed and/or takes over my position. (Annexed hereto and marked "JK-2" is a copy of the PSC letter dated 17th December 2025).
33. That the direction to install another officer is, by its plain meaning and practical effect, not temporary. It evidences an intention to dislodge me from office and to effect a substantive replacement, which is inconsistent with the description of the action as a mere holding measure.
34. That the Commission's shifting characterization of the action, first as a transfer, then an abeyance, and later branding it as "deployment", betrays inconsistency, caprice, and lack of candour, and is a hallmark of administrative action taken in bad faith.
35. That the Commission has asserted that my removal is necessary to facilitate investigations. However, the PSC conducts annual audits to the Human Resource Department, touching on recruitment, appointment, promotions, discipline, leave management, payroll administration and other core HR functions.
36. That in the year 2025, the PSC conducted its audit exercise within the State Department for Lands and Physical Planning between 7th July 2025 and 30th September 2025.
37. That subsequently, the Commission conducted a special audit between 18th November 2025 and 1st December 2025. That during the said audit exercise, officers from the PSC Audit Department, particularly Ms. Shamala, attended at my office and took and reviewed extensive records including, but not limited to: payroll records, special duty allowances, responsibility allowances, officers on secondment, minutes of the HRMAC Committee, and other HR-related records and documentation. (Annexed hereto and marked "JK-3" is the annual and special audits)
38. That it is therefore apparent that the Commission has already been accorded access to institutional records and has already undertaken intensive scrutiny of the Human Resource Department's documentation and has not demonstrated that I have been un-cooperative, that I have interfered with investigations or potential witnesses or how I am likely to engage in it.
39. That in the premises, the assertion that further "investigations" cannot be undertaken unless I am removed from station is a mere allegation and must be particularized and substantiated, including: the specific nature of the investigations; the specific materials required; the specific risk alleged; and why ordinary institutional measures cannot secure the integrity of the process.
40. That the Commission has not demonstrated at all how I have interfered or am likely to interfere with any investigations; and I reiterate that mere apprehension, conjecture or generalized allegations do not meet the threshold of reasonable administrative action, especially where the effect is to stigmatize and dislodge a public officer.



41. That there are multiple lawful and practical ways to conduct investigations without removing me from office, including: securing records directly from custody; issuing preservation directions; conducting interviews outside the station; summoning officers to PSC; and/or restricting access to specific files, thus deployment is not the only way to conduct investigations, and has not been shown to be necessary.
42. That I reiterate that the allegations lodged against me are misconceived and borne of ignorance, malice and witch-hunt, and is revealed when some of the allegations complained of relate to periods when I was not in office, a matter which the Commission has not candidly confronted. (Annexed hereto and Marked "JK-4" is my response to the baseless allegations for purposes of context to the Honourable Court)
43. That administrative action must be lawful, reasonable and procedurally fair as contemplated under Article 47 of *the Constitution* and Section 4 of the *Fair Administrative Action Act*, and must also be proportionate to the legitimate objective pursued.
44. That on a balance of probabilities and from the totality of the Commission's conduct, it is more likely than not that the impugned deployment is a targeted witch-hunt and not a reasonable administrative measure grounded on necessity.
45. That the events and sequence of communications reveal bad faith and an orchestrated plan to remove me from office: the PSC issued a transfer letter on 17th December 2025, then placed the same on abeyance on 7th January 2026, then renewed/reissued the directive on 21st January 2026 branding it as a "deployment."
46. That further, the so-called "hearing" or appearance on 21st January 2026 was not a genuine process of fair administrative action, but was conducted in a manner that was coercive, aimed at pressuring me to vacate office so that the removal would appear voluntary, and to sanitize a pre-determined outcome.
47. That the issuance of the subsequent letter/directive immediately after the said appearance confirms that the decision had effectively been made and that the process was utilized to create a façade of compliance.
48. That this matter is not about clinging to office; it is about integrity, personal dignity, and the right to be treated as an upright public officer whose reputation should not be sullied through unsubstantiated allegations.
49. That it is also a matter of public interest that constitutional commissions exercise their powers in a manner that is consistent, reasonable, evidence-based, and not susceptible to manipulation by anonymous petitioners seeking to advance personal and factional interests within the State Department on behalf of corrupt persons within Ministries.
50. That I am aware that similar allegations have previously been levelled against my predecessor, and in that regard, vide a letter dated 22nd January 2025, the Principal Secretary noted that it is a common occurrence for officers of virtue to be attacked maliciously. (Annexed hereto and marked "JK-5" is a copy of the letter dated 22nd January 2025).
51. That the Commission has failed to provide any compelling reason under its own Circular and has equally failed to show any exigency of service that would warrant the impugned action, and the resultant deployment is therefore unreasonable, disproportionate, and tainted with bad faith.
52. That my performance in the State Department has been exemplary and in an upward trajectory since I joined the State Department, and as such the allegations, on prima-facie, are primarily baseless and unfounded. The witch-hunt has arisen as a result of my nature to be strict, moral and up-right in the



undertaking and fulfilling of my obligations. (Annexed hereto and Marked "JK-6" is the performance index score for values and principles of governance)

53. That I therefore pray that this Honourable Court be pleased to allow the Application dated 26th January 2026 as prayed and to grant such further orders as will safeguard the rule of law, fair administrative action, and my dignity, rights, and the public interest.

### Decision

54. The root cause of the impugned transfer was the Order by Justice Ongaya dated 19<sup>th</sup> November 2025 as follows- 'This matter coming up for Hearing of Application before Honourable Justice Byram Ongaya on the 19th day of November 2025, in the presence of the Petitioner in person and in the absence of the Respondent.

It Is Hereby Ordered That:

1. Replying affidavits to application and petition be filed and served by 3/12/2025.
  2. The Petitioner to file and serve responding affidavit by mention on 16/12/2025 9:30 am or thereafter for further directions on the petition and application.
  3. Pending the return date the 3rd respondent to consider the petitioner's complaint herein in terms. of the general powers and functions vested per article 252 (1) (a) and (b) with a view of reporting to the court on the return date as appropriate and for further directions.
  4. The Deputy Registrar to issue the instant order today for the petitioner to serve it forthwith. Given under my Hand and Seal of this Honourable Court at Nairobi this 19th day of November, 2025"(Emphasis given to the relevant order).
55. In the quest to enforce the Order, the 3rd respondent issued the applicant a deployment letter. The court noted that a previous transfer of the applicant was held in abeyance following the intervention of the Public Secretary in charge of the docket in which the applicant is serving. The Public Secretary, in justifying the non-transfer request, further alleged that the matter had been investigated and affidavits recorded, and further contended that the officers were being targeted maliciously. It is not in dispute that the 3<sup>rd</sup> respondent is the applicant's employer and has not only the management prerogative but also a constitutional mandate to transfer or deploy her. The letter that ignited the instant application is dated 21st January 2026. The letter states as follows- 'Transfer Of Ms Janerose Karanja: Director, Human Resource Management And Development

Further to our letters Ref. No. PSC/LEG/011/25/149 (8) and PSC/3/1/1/(65) dated 17th December, 2025 and 7th January, 2026 respectively, and following Ms Karanja's appearance before the Commission on 21 January, 2026, the Public Service Commission has decided that:

1. Ms Karanja be deployed to the Ministry of Public Service and Human Capital Development pending the frIALIZATION of the investigations by the Commission and filing of a report in Court; and
  2. You implement this decision and report to the Commission once the decision been acted upon and in any case not later than 2nd February, 2025."
56. I heard the parties orally on the 2<sup>nd</sup> February 2026. The legality of the decision was challenged on the applicant being over 58 years, thus not eligible for transfer pursuant to a PSC circular. The PS Korir further alleged that the matter had been investigated and affidavits recorded, and contended that the



officers were being targeted maliciously. The circular was uploaded by the 3rd respondent after the hearing with leave of the court, and it states as follows:- ‘7th December, 2021.

The Advisory On Transfer Of Public Officers Aged Fifty-eight (58) YEARS AND ABOVE was by the 3<sup>rd</sup> Respondent dated 7<sup>th</sup> December 2021 as follows-

‘As you may be aware, Section 43 of the *Public Service Commission Act* provides for transfers of officers from one Ministry/State Department (MDAs) to another or within the same State Department but different stations. Further, the Act provides that in effecting a transfer the transfer shall lead to improved service delivery and it shall not be arbitrary. Regulation 40(4) of the PSC Regulations 2020 provides for other considerations that may be taken into account in effecting a transfer.

Additionally, the transfer of public officers graded at CSG 6/Job Group ‘R’ and above across MDAs is managed by the Central Human Resource Management Posting Committee in consultation with the Public Service Commission. A

However. It has been observed that some posting proposals emanating from MDAs affect officers aged fifty-eight (58) years and above. Besides being disruptive to their preparation for retirement, generally such transfers cause delays in processing of officers documents for pension purposes

This is therefore to advise that public officers aged Fifty-Eight (58) years and above should be retained in their current stations except where there are compelling reasons or exigency of service dictates otherwise

Please bring this advisory to the attention of the Human Resources Advisory Committee and all officers working under you.’

57. The request for a report from the 3rd respondent was by Order of the court, as stated above. The deployment was pending investigation. The 3rd respondent has the power to transfer the applicant pursuant to its constitutional mandate under Article. 234(2)(D) to wit ‘investigate, monitor and evaluate the organisation, administration and personnel practices of the public service; The applicant is a senior office in the docket to be investigated.’ Further, the applicant is protected under Article 236 of *the Constitution*, to wit – ‘236. Protection of public officers

A public officer shall not be—(a) victimised or discriminated against for having performed the functions of office in accordance with this Constitution or any other law; or (b) dismissed, removed from office, demoted in rank or otherwise subjected to disciplinary action without due process of law.’

58. The court finds that the reason for the deployment was within the exception envisaged in the circular by PSC. The court cannot interfere with an employer’s internal process unless it is shown that the process is tainted by illegality. I found no evidence of malice, on a prima facie basis, in the decision by the 3rd respondent. It is unreasonable to expect the 3rd respondent to investigate an officer while the officer is in office. In many cases, the employer suspends the employee during the investigation. The deployment option is a soft landing. It is in the public interest for the applicant to step out of the office being investigated. I find no merit in the application. The application is dismissed with costs to the respondent and petitioner in the cause. The applicant ought to vacate the office and proceed on deployment as per the letter of 21st January 2026, with immediate effect, for the investigations to



commence. Mention on 9<sup>th</sup> March 2026 to receive the report of the 3<sup>rd</sup> respondent on the as directed by the Court(Justice Ongaya, as he then was).

59. It is so Ordered.

**DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 3<sup>RD</sup> FEBRUARY, 2026.**

**J.W. KELI,**

**JUDGE.**

In The Presence Of:

Court Assistant: Otieno

Petitioner - in person

6<sup>th</sup> Respondent - Danstan Omari

3<sup>rd</sup> & 4<sup>th</sup> Respondents - Ogosso

1<sup>st</sup>, 2<sup>nd</sup>, 5<sup>th</sup> Respondents: Mochoge

Interested Party - Absent

