



REPUBLIC OF KENYA



KENYA LAW
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**Kirigha v Kenya Revenue Authority (Cause E114 of 2024)
[2026] KEELRC 348 (KLR) (5 February 2026) (Judgment)**

Neutral citation: [2026] KEELRC 348 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E114 OF 2024
K OCHARO, J
FEBRUARY 5, 2026**

BETWEEN

KENNETH MWANYUMBA KIRIGHA CLAIMANT

AND

KENYA REVENUE AUTHORITY RESPONDENT

JUDGMENT

1. At all material times, the Claimant was, and is, an employee of the Respondent Authority. Contending that the Authority's decision to transfer him from his current work station to another was illegal, malicious, and without consideration of his health condition, the Claimant sued the Respondent seeking declaratory and directory relief against them.
2. In response to the claim, the Respondent filed a Response to the Statement of Claim dated 15th January, 2025, asserting that the actions complained of by the Claimant were lawful and justified, in accordance with its Transfer Policy, and that the reliefs sought cannot be meritoriously availed to him.

Claimant's case

3. The Claimant states that he is an employee of the Respondent and has been serving as a Domestic Taxes Department Officer at the Voi Tax Service Office since 2019.
4. On 26th September 2024, he received a letter from the Respondent, transferring him from Voi to Hola. Considering his medical condition, he was constrained to appeal the Respondent's decision. The appeal was not duly considered by the Respondent, as their focus was on the operationalisation of their Hola Tax Service Office, more than his health situation.
5. The Claimant contends that he is pre-diabetic and has hypertension, conditions that require close medical supervision, constant monitoring by a doctor, and dietary management. and that the Respondent failed to adequately consider his medical condition before effecting the transfer.



6. The Claimant further avers that he appealed against the transfer on medical grounds, but the appeal was not fairly or adequately considered, as the Respondent prioritised the operationalisation of the Hola Tax Service Office over his health and welfare.
7. He asserts that the transfer and subsequent non-consideration of his appeal were unfair and unlawful, as the Respondent didn't care about his medical condition mentioned above, give him adequate notice to relocate, notwithstanding the distance between his current station and the station to which he was being transferred, and despite appealing, he was condemned unheard in violation of the tenets of natural justice. Further, the Respondent declined his appeal without giving any justifiable reason. They did not have a genuine reason for transferring him.
8. By reason of the premises, he is entitled to;
 - a. A declaration that his transfer by the Respondent was illegal, malicious, and unlawful for lack of consideration of his medical condition.
 - b. An order directing the Respondent to consult him and consider his medical condition before effecting any transfer to another station.
 - c. Costs of this claim.
9. Cross-examined by Counsel for the Respondent, the Claimant stated that previously he had been transferred, and that the decisions to transfer were made without him being consulted first. However, the impugned transfer was unique in that he had a medical condition. The Respondent was aware of his condition.
10. The Respondent's Transfer Period stipulated that an employee would be transferred to work anywhere within Kenya and East Africa.
11. He further testified that the Policy set out clearly three instances when the Respondent's decision to transfer an employee would be challenged: if he or she was sick, or where he or she had been in a hardship area for more than three years.
12. The policy further provided for the process of appeal and, more particularly, to whom it would be directed. He appealed to the Commissioner General through his Regional Head.
13. He also testified that his wife works at Voi Hospital and relies on her for ongoing support. He particularly needs her because staying alone can be risky, especially since his condition sometimes worsens at night.
14. After appealing, he received a letter from the Commissioner stating that the Respondent would consider his appeal at some point in the future. This did not sit well with him, as his health was paramount.
15. He stated that the Respondent provides medical cover for all its employees. Questioned further, he stated that there is an Agha Khan Hospital in Hola town and that they could handle his condition.
16. He did not report to Hola. The Respondent paid him a transfer allowance; however, he is waiting for this court's decision to determine how to handle the allowance.
17. In his evidence under re-examination, he asserted that his appeal followed the right channel and that the Respondent did not at any time inform him that he had approached the process of appeal improperly.



Respondent's case

18. The Respondent presented one witness, Sylvia Santalan, to testify on its behalf. The witness stated that the Claimant was employed by the Respondent on a fixed-term contract as an officer in the Domestic Taxes Department on 1st and was later confirmed to permanent and pensionable on 1st January 2022.
19. In line with the Respondent's transfer policy, the Claimant was issued with a letter dated 26th September transferring him from Voi TBE to Hola.
20. The Respondent's decision to transfer the Claimant was guided by its Transfer Policy and, more particularly, clauses 34.3.1, 34.3.7 and 34.3.13[c].
21. Aggrieved by the decision, the Claimant appealed the same on medical grounds through his letter dated 30th September 2024, addressed to the Commissioner of Domestic Taxes and copied to the Head of Operations, Southern region.
22. In a letter dated 2nd October 2024, the Respondent informed the Claimant that the operationalisation of the Hola Tax Service Office was critical and that granting his request would greatly hamper the process. Accordingly, he was asked to resubmit his request at the end of the financial year for consideration.
23. He was guided to resubmit his transfer appeal to the Human Resource Department, and on 4th October 2024, the Claimant resubmitted his request via email to the Deputy Commissioner of Human Resources.
24. In the appeal, the Claimant indicated that he had been diagnosed with High blood pressure and pre-diabetes, which requires him to live close to medical facilities and not reside alone.
25. According to the witness, appeals on medical grounds are only considered where there is documented evidence of a serious terminal illness, as specified in clause 9.0 of the Policy, which was not demonstrated in the Claimant's case. Hypertension and pre-diabetes are chronic conditions but not terminal, and therefore did not justify exemption from transfer.
26. The Respondent considered the appeal and declined it. The decision was communicated by letter dated 7th November 2024. The Claimant was directed to report to the new station without further delay. The appeal was rejected on the principal ground that hypertension and pre-diabetes were chronic illnesses, not terminal.
27. The Claimant was adequately informed and given proper notice of transfer by the Respondent. The letter dated 26th September 2024 was received on 27th September 2024, and the Claimant had until 28th October 2024 to report to the new station. This was in accordance with Clause 5 of the Respondent's Transfer Policy.
28. The Respondent's transfer policy was strictly adhered to by the Respondent, initiating the transfer of the Claimant.
29. The Respondent provides a comprehensive medical insurance cover to its employees, and the Claimant failed to provide evidence that, indeed, such medical insurance coverage was impossible or insufficient to provide in Hola.

Analysis and determination

30. I have carefully considered the pleadings, evidence and submissions by the parties, and the following issues emerge for determination;



- a. Whether the Respondent's transfer of the Claimant from Voi to Hola was unlawful, malicious, or unfair.
- b. Whether the reliefs sought are merited.
- c. Who should bear the costs of the suit?

Whether the transfer was unlawful, malicious, or unfair

31. Before I delve further into this issue, and although the parties have not addressed the Court on this vital point, I would need to point out that where a party contends that the act complained of was a product of malice, the malice must be particularised in that party's pleadings.

32. Order 2 Rule 10 of the Civil Procedure Rules provides;

“(1) subject to sub-rule [2], every pleading shall contain the necessary particulars of any claim, defence or other matter pleaded, including, without prejudice to the generality of the foregoing-

- a. Particulars of misrepresentation, fraud, breach of trust, wilful default, or undue influence, on which a party relies; and
- b. Where a party pleading alleges any condition of the mind of any person, whether any disorder or disability or any malice, fraudulent intention or other condition of the mind except knowledge, particulars of the facts on which the party relies.....”

33. The object of particulars is to prevent surprise at the trial by informing the opposite party what case he has to meet. Particulars supplement pleadings.

34. I have carefully considered the Claimant's pleadings. Although he alleges malice on the part of the Respondent, he has not particularised it. Furthermore, he has not presented any evidence to show malice or from which malice on the part of the Respondent can be discerned. I am therefore unpersuaded that the decision to transfer him was actuated by malice.

35. The transfer of employees within any organisation is a managerial prerogative on which courts seldom interfere. However, that isn't to say the prerogative is wholly insulated from court interference, even when the manner in which it is exercised is offensive to constitutional edicts, statutory stipulations, contractual terms, and the employer's own Human Resource policies and practices.

36. In the case of *Mworia v Water Resources Management Authority & 2 others* (Constitutional Petition 4 of 2015) [2015] KEELRC 1124 (KLR) (15 May 2015) (Ruling), cited by Counsel for the Claimant, the court aptly stated;

“The court will very sparingly interfere in the employer's entitlement to perform any of the human resource functions, such as recruitment, appointment, promotion, transfer, disciplinary control, redundancy, or any other human resource function. To interfere, the applicant must show that the employer is proceeding in a manner that is in contravention of the provision of *the Constitution* or legislation; or in breach of the agreement between the parties; or in a manner that is manifestly unfair in the circumstances of the case; or the internal dispute procedure must have been exhausted or the employer is proceeding in a



manner that makes it impossible to deal with the breach through the employer's internal process.”

37. This Court observes that the Claimant challenges the Respondent's transfer decision mainly on the grounds of unfairness and unlawfulness due to a lack of prior consultation. Nevertheless, it is evident that the Claimant has not shown that any particular instrument or workplace practice required the Respondent to consult him before the transfer. Moreover, in the absence of any statutory provision or workplace policy mandating consultation for such decisions, a broad requirement that employees be consulted on every issue can be unduly burdensome. Such a requirement could impede effective human resources management and adversely affect the employer's well-being.
38. The Respondent's Transfer policy explicitly provides, and it was undisputed that appeals from the Respondent's decision only lie in three situations, per paragraph 34. 3. 17, thus;
- a. Where an employee or his or her immediate family member has documented evidence of serious terminal illness.
 - b. Where the employee has three [3] years to retirement.
 - c. Where an officer transferred to a hardship area and had served in another hardship area before a lapse of five [5] years.
39. The Claimant did not assert or prove that his situation fell under any of the above-mentioned situations. In fact, in his evidence under cross-examination, he explicitly admitted that it didn't. Further, he hasn't challenged the reasonableness, fairness, or constitutionality of the stipulation. By reason of this premise, I am not persuaded to hold that the decision to transfer the Claimant was unfair or contrary to its policies and or the law.
40. Having found as I have hereinabove, in paragraph 39, I would have no reason to hold that the rejection of the Claimant's appeal was improper, unprocedural, or unfair. It is an appeal that the Transfer Policy didn't allow in the first place.
41. In the upshot, I find the Claimant's claim unmerited. It is hereby dismissed.

READ SIGNED AND DELIVERED THIS 5TH DAY OF FEBRUARY 2026.

OCHARO KEBIRA

JUDGE

