



REPUBLIC OF KENYA



KENYA LAW
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Mogere v Principal Secretary, State Department for Roads & 4 others (Judicial Review E014 of 2025) [2026] KEELRC 931 (KLR) (14 April 2026) (Ruling)

Neutral citation: [2026] KEELRC 931 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
JUDICIAL REVIEW E014 OF 2025**

HS WASILWA, J

APRIL 14, 2026

BETWEEN

KENNEDY MOGUCHE MOGERE APPLICANT

AND

**PRINCIPAL SECRETARY, STATE DEPARTMENT FOR ROADS 1ST
RESPONDENT**

**DIRECTOR, HUMAN RESOURCE STATE DEPARTMENT FOR
ROADS 2ND RESPONDENT**

**CHIEF MECHANICAL ENGINEER STATE DEPARTMENT FOR
ROADS 3RD RESPONDENT**

THE HON. ATTORNEY GENERAL 4TH RESPONDENT

AND

PETER MIGIRO MOGOI INTERESTED PARTY

RULING

1. The Applicant filed a Notice of Motion dated 18th March 2025 seeking: -
 1. An Order Of Declaration to bring this Honourable Court and quash the decision by the respondents to transfer the applicant from Regional mechanical office Kajiado to Mechanical headquarters Nairobi.
 2. An Order Of Prohibition to issue against the respondents restraining them from transferring the applicant from Regional mechanical office Kajiado to Mechanical headquarters Nairobi.
 3. An Order Of Declaration that the decision of the respondents to transfer the applicant from Regional mechanical office Kajiado to Mechanical headquarters Nairobi is unlawful and void.



4. That the leave so granted operates as a stay of the decision of the 1st, 2nd and 3rd respondents in respect to the transfer of the applicant from regional mechanical office Kajiado to Mechanical headquarters Nairobi.
5. That costs of this application be provided for.

Applicant's Case

2. The Applicant avers that he has been working for the State Department for Roads as a superintendent mechanical and head of mechanical at the regional mechanical office in Kajiado effective 26th July, 2024.
3. The Applicant avers that he was subsequently issued with a transfer letter dated 20th February, 2025, transferring him to Mechanical Headquarters in Nairobi, with a reporting date of 20th December, 2024, but he only received the letter on 27th February, 2025.
4. He contends that the transfer was irregular and ambiguous, as it was communicated after the effective reporting date and did not indicate to whom he was to hand over or from whom he was to take over. He further avers that the transfer was effected barely five months after his previous deployment from Makueni County vide a letter dated 24th July, 2024.
5. The Applicant states that the transfer is inconvenient and disruptive, as it requires relocating his children and interferes with their schooling, without consideration of their best interests.
6. He also avers that no reasons were given for the transfer and that he has been subjected to discriminatory treatment, being the only officer transferred after such a short period.
7. He maintains that the short duration at the Kajiado station has hindered his ability to assess his performance, and reiterates that he was required to report to Nairobi with effect from 20th December, 2024.
8. On the issue of the motor grader GKB 277F, the Applicant avers that the equipment developed a mechanical breakdown and was parked at Kavingoni Primary School in accordance with guidelines. He contends that the responsibility to provide security and arrange for its removal lay with the Chief Mechanical Engineer, whom he notified through letters dated 1st August, 2022 and 23rd October, 2023, as well as through regular monthly reports, but no action was taken.
9. He states that the grader remained at the site for over three years and was only discovered missing during a handover exercise, after which a report was made to the police, and that the loss was due to administrative negligence on the part of the Chief Mechanical Engineer.
10. The Applicant further avers that he responded to the allegations against him by a letter dated 24th October, 2024, but the Respondents failed to respond and instead convened a meeting in his absence and made a unilateral decision to transfer him. He states that ongoing investigations by the Directorate of Criminal Investigations have not implicated him in any criminal wrongdoing.
11. Regarding the fuel allegations, the Applicant maintains that fuel amounting to Kshs. 1,544,492.70 was properly utilized and fully accounted for, and denies any knowledge of the alleged additional fuel of Kshs. 797,190, stating that no requisition or LPO was raised. He avers that he was nonetheless pressured and intimidated into assuming liability and made a partial payment under duress.
12. The Applicant asserts that he had revitalized the Kajiado station and secured a contract with the County Government, and that the transfer was intended to frustrate his professional progress.



13. The Applicant therefore maintains that the Respondents' actions are discriminatory, unreasonable, and an abuse of administrative power, and prays that the application be allowed in the interest of justice.

Respondents' Case

14. In opposition to the application, the 1st Respondent filed a replying affidavit dated 12th January 2026.
15. The 1st Respondent avers that the Ex-Parte Applicant's allegation of discrimination is baseless, as he has failed to demonstrate any unreasonableness or arbitrariness in the said transfer.
16. He contends that the Applicant has not established the alleged discrimination with specificity, has not demonstrated with specificity the alleged discrimination as was held in *Odhiambo v Attorney General & 2 others; Nyanhoga (Interested Party)* [2024] KEHC 354 (KLR); wherein it was emphasized that for a party alleging discrimination, it is necessary to demonstrate unreasonableness and arbitrariness in the differentiation.
17. The 1st Respondent avers that *the Constitution* only prohibits unfair and demeaning differential treatment, which the Applicant has failed to demonstrate. It is further stated that the Applicant was duly served with a notification and hearing notice on grounds of misconduct in compliance with Section 41 of the *Employment Act*.
18. The 1st Respondent contends that the claim of discrimination lacks merit, as the Applicant has failed to discharge the burden of proof as required under Sections 107, 108 and 109 of the *Evidence Act*, which place the obligation on the claimant to prove such allegations as was held in *Bakhoya v Chane & another* [2024] KEELRC 293 (KLR).
19. It is the 1st Respondent's case that the Applicant breached his contractual obligations by engaging in fraudulent activities contrary to Section 44(4)(g) of the *Employment Act* that bars employees from engaging in criminal offenses that have a substantial detriment to an employer or employer's property.
20. The 1st Respondent avers that the Applicant is facing disciplinary charges for loss of government property i.e. Motor Grader in Makueni County that was under his supervision, as well as the fraudulent loss of fuel amounting to Kshs. 797,190.30.
21. It is the 1st Respondent's case that the Applicant has been engaging in fraudulent activities aimed at improperly enriching himself contrary to the Public Service Code of Conduct and Ethics; failed to take reasonable steps to ensure that public property in his custody is taken care of and is in good repair and condition; and failed to take proper care of the motor grader that was in his custody resulting in its loss.
22. The 2nd Respondent further filed a replying affidavit dated 12th January 2026 in opposition to the application.
23. The 2nd Respondent states that it has custody of the records of the Ministerial Human Resource Management Advisory Committee (MHRMAC), the body mandated to advise on staff deployment and related human resource matters.
24. It contends that, contrary to the Applicant's allegations, the Applicant was not subjected to a punitive transfer but was lawfully deployed to the Mechanical and Transport Directorate Headquarters in Nairobi for purposes of close supervision and enhanced service delivery.
25. The 2nd Respondent avers that the MHRMAC met on 20th December, 2024 and, upon deliberation, recommended the Applicant's deployment, as reflected in duly approved minutes.



26. The 2nd Respondent further states that the minutes indicate that while serving in Makueni County, the Applicant was implicated in irregularities involving the disappearance of motor grader GKB 277F and fuel accountability issues, which were referred to the Directorate of Criminal Investigations.
27. The 2nd Respondent avers that the Committee, acting within its mandate under the Public Service Commission Human Resource Policies and Procedures Manual (2016), resolved to deploy the Applicant to Headquarters for closer supervision pending investigations and to safeguard service delivery.
28. The 2nd Respondent maintains that deployment is a routine administrative action and does not constitute a disciplinary or punitive measure, and that the Applicant's characterization of the same as an irregular transfer is misleading and unfounded. Therefore, it asserts that the process was lawful, transparent, and in compliance with applicable public service procedures, and that the Respondents acted within their mandate.
29. In opposition to the application, the 3rd Respondent also filed a replying affidavit dated 12th January 2016.
30. It is the 3rd Respondent's case that while serving as County Mechanical Officer in Makueni, the Applicant was entrusted with a fuel card under the Mechanical and Transport Fund project, and investigations revealed an overdraw of fuel amounting to Kshs. 797,190.90 which was not consumed by government equipment.
31. The 3rd Respondent avers that the Applicant admitted to the overdraw and undertook to repay the same to Ramji Harbhai Devani Limited but failed to do so, raising integrity concerns.
32. It is further stated that during the handover process in Makueni, motor grader GKB 277F, which had broken down, was found to be missing from its parking site, and that the Applicant reported the loss belatedly. The matter was subsequently referred to the Directorate of Criminal Investigations under OB No. 07/01/08/2024.
33. The 3rd Respondent avers that the unresolved issues relating to the fuel overdraw and the missing grader raised serious concerns on accountability and service delivery. Consequently, it recommended to the Ministerial Human Resource Management Advisory Committee (MHRMAC) that the Applicant be redeployed, leading to his transfer from Makueni to Kajiado and subsequently to Nairobi Headquarters for closer supervision pending investigations.
34. It is contended that the transfer was an administrative action taken in good faith, within the lawful mandate of the Directorate and MHRMAC, and was necessary to safeguard public resources and ensure operational efficiency.
35. The 3rd Respondent maintains that the Applicant's claim that the transfer was irregular or punitive is unfounded, as the decision was based on documented integrity issues and effected in accordance with the applicable Public Service procedures.

Applicant's Submissions

36. The Applicant submitted on three issues: whether the Applicant's transfer was irregular and an abuse of power by the respondents; whether the respondents adduced grounds are justified; and who bears the costs of this application.
37. On the first issue, the Applicant submitted that he is aggrieved by the decision transferring him from Kajiado Regional Office to Mechanical Headquarters, Nairobi, on grounds that the same was effected



in an opaque manner and in total disregard of his constitutional and statutory rights, particularly the right to fair administrative action under Article 47 and fair labour practices under Article 41 of *the Constitution*.

38. It is the Applicant's submissions that the impugned transfer offended the provisions of Section 43 of the Public Service Act which obligates the Respondents, inter alia, to ensure that: the transfer is not arbitrary; the interests of the employee, including those of his children, are considered; and the requisite approvals and procedural safeguards are adhered to.
39. The Applicant submitted that Section 10(5) of the *Employment Act* imposes a mandatory obligation upon the employer to consult the employee and notify him in writing of any changes to the terms of employment. No such consultation or notification was undertaken prior to the impugned transfer.
40. It was submitted that the transfer letter is dated 20th February, 2025, yet purports to take effect from 20th December, 2024, thereby rendering the decision irregular, unlawful and procedurally flawed. The said letter is indicated to have been forwarded on 2nd February, 2025, prior to its date of issuance, which inconsistency raises serious doubts as to the authenticity and propriety of the process.
41. It is the Applicant's submissions that section 43 of the Public Service Act requires the Respondents to consider the interest of the children, if any, of the affected public officer and that the transfer should not be arbitrary means that in any transfer under the section some form of consultation must be held with the employee to ascertain these particulars.
42. It was submitted that the Respondents acted arbitrarily by failing to consult the Applicant prior to the transfer. The Applicant relied on the definition of the term "arbitrary" as set out in Black's Law Dictionary:

"Depending on individual discretion; of. relating to, or involving a determination made without consideration of or regard for facts, circumstances, fixed rules or procedures; or founded on prejudice or preference rather than on reason or fact."

He further cited *Wanjohi v Public Service Commission & another* [2023] KEELRC 2914 (KLR), where the Court held:

"The use of the word arbitrary in the section therefore means that that the employee must be consulted where a transfer to a different ministry is being considered to find out his circumstances such as whether he has children likely to be adversely affected by the transfer. The word arbitrary also means that the employee's other circumstances must be taken into account. Such circumstances can only be ascertained through consultation with the employee. Any action taken without consultation with the employee is therefore arbitrary."

43. The Applicant submitted that the Respondents did not at any one point while considering to transfer the applicant consult him, neither did they consider that he has school going children whom he had transferred from Makueni to Kajiado barely six (6) months into his transfer from Makueni regional office to Kajiado regional office.
44. It was further submitted that the transfer letter failed to disclose the reasons for the transfer and did not indicate the handover arrangements, as is the norm and requirement.
45. It is the Applicant's submission that the impugned transfer was therefore irregular, arbitrary, and an abuse of power, and in violation of Section 43(3) of the Public Service Act, Section 10(5) of the



- Employment Act*, and Articles 41 and 47 of *the Constitution*. Therefore, he urged the Court to quash the decision to on account of its illegality, procedural impropriety, and violation of the Applicant's rights.
46. On the second issue, the Applicant submitted that the Respondents have sought to justify the transfer on the basis of the alleged loss of motor grader GKB 277F. However, the Applicant argues that the responsibility for assigning security to the stalled motor grader lay with the 3rd Respondent, being the Chief Mechanical Engineer, and not him.
 47. It is the Applicant's submissions that he duly discharged his obligations by informing the office of the Chief Mechanical Engineer through various correspondences, including letters dated 1st August, 2022 and 23rd October, 2023, as well as through monthly serviceability reports submitted to the Chief Mechanical Engineer. Therefore, the loss of the motor grader was a direct consequence of administrative negligence of the 3rd Respondent, yet the respondents have sought to shift the entire burden of liability onto the Applicant.
 48. The Applicant submitted that the reason offered by the respondents was in fact an afterthought as to why they transferred him. There are pending ongoing investigations by the Criminal Investigations Department (CID), which have not implicated the Applicant in the alleged loss of the motor grader.
 49. It is the Applicant's submissions that the alleged meeting held by the respondents was irregularly held as the applicant was not called in for a hearing on the grounds offered by the Respondents. The Applicant thus argues that the Respondents are on a fishing expedition for the reason for transfer yet he has continually proven to be a hardworking employee over the year and performed his duties exemplary.
 50. On costs, the Applicant submitted that costs follow the event, and having demonstrated the irregularity and unlawfulness of the Respondents' actions, he is entitled to costs of the application.

Respondents' Submissions

51. The Respondents submitted on four issues: whether the Respondents were within their legal rights to transfer the Ex-Parte Applicant from Regional mechanical office Kajiado to Mechanical headquarters, Nairobi; and whether the Ex- Parte Applicant is entitled to costs of the suit.
52. On the first issue, the Respondents submitted that as deponed by Mr. James Gatere, the Director, Human Resource Management and Development in the State Department for Roads, in his Replying Affidavit dated 12th January, 2026, the transfer was not punitive but administrative in nature, aimed at facilitating close supervision of the Ex-Parte Applicant pending investigations and to safeguard improved service delivery.
53. It is the Respondents' submissions that the said decision was undertaken by the Ministerial Human Resource Management Advisory Committee (MHRMAC), a body mandated under the Public Service Commission Human Resource Policies and Procedures Manual (2016) to advise the Authorized Officer on deployment of staff and other human resource matters as evidenced by copy of minutes of 20th December, 2024.
54. The Respondents submitted that the transfer arose following the implication of the Ex-Parte Applicant in irregularities relating to the disappearance of Motor Grader GKB 277F and issues of fuel accountability contrary to Sec 44 (4) (g) of the *Employment Act*, which matters were referred to the Directorate of Criminal Investigations for investigations. Further, the minutes demonstrate other officers were also transferred
55. The Respondent submitted that the allegation of discrimination is without merit on the premise that Ex-Parte Applicant failed to demonstrate with specificity the alleged discrimination as was held in



- Anarita Karimi Njeru vs. Republic (1976-1980) KLR 1272. The Applicant failed to enumerate the alleged constitutional provisions infringed or violated by the Respondents.
56. It is the Respondents' submissions that this Court ought not to interfere with the administrative functions of the 2nd Respondent as was highlighted in High Court's decisions in Community Advocacy and Awareness Trust & 8 others v Attorney General & 6 others [2012] eKLR and Kenya Youth Parliament & 2 others v Attorney General & 2 others [2012] eKLR wherein it was held that the courts may not interfere with the decisions of other organs of government in the absence any illegality.
 57. On costs, the Respondents submitted that in Tolksdorf v Mwangi & 3 others [2025] KEELC 848 (KLR): "Additionally, this is an issue that was not pleaded in them Plaint dated 8th April 2022. It is trite that parties are bound by their pleadings and cannot be allowed to depart from the same."
 58. It is the Respondents' submissions that since the Ex-Parte Applicant did not specifically pray for costs in the suit, the claim for costs is untenable and ought to fail.
 59. I have examined all the averments and submissions of the parties herein. The applicant has averred that the transfer was made arbitrarily being 5 months after another previous transfer. He has in particular pointed out that the letter of transfer is dated 20th February 2025 9th EX (KMM2). It is to take effect from 20th December 2024 and was forwarded to him on 2/2/2025 even before it was issued and received on 27/2/2025. These are factual issues which raise issues of bad faith. It is not clear why a decision made on 30/12/2024 was communicated in February 2025 and back dated to 20/12/24. It is indeed true as submitted by the applicant that the respondents acted arbitrarily in the manner they effected and communicated the transfer.
 60. The respondents have averred that they were effecting an administrative decision which was aimed at facilitating close supervision of the ex parte application pending investigations.
 61. That as it may be an employer has a duty to effect an administrative decision but this must be fairly and justly done. For whatever reason the respondents had to effect the transfer of the applicant, they had to do it in a just and fair manner. I have pointed out from the transfer letter the discrepancies noted therein and why this court cannot sanction the said transfer.
 62. In the circumstances, the court finds that the applicant has established his case against, the respondents therefore confirm the orders staying the transfer of the applicant from Kajiado Regional Mechanical office to Nairobi headquarters.
 63. The respondent as an employer is however free to enforce their employer responsibilities but must adhere to the law and procedure. There shall be no order of costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 14TH DAY OF APRIL, 2026.

HELLEN WASILWA

JUDGE

