



Longolenyang v Principal Secretary State Department of Lands and Physical Planning- Ministry of Lands, Public Works, Housing and Urban Development & 2 others (Employment and Labour Relations Petition E125 of 2023) [2025] KEELRC 206 (KLR) (31 January 2025) (Judgment)

Neutral citation: [2025] KEELRC 206 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E125 OF 2023
AN MWAURE, J
JANUARY 31, 2025

BETWEEN

BENSON LIMO LONGOLENYANG PETITIONER

AND

PRINCIPAL SECRETARY STATE DEPARTMENT OF LANDS AND PHYSICAL PLANNING- MINISTRY OF LANDS, PUBLIC WORKS, HOUSING AND URBAN DEVELOPMENT 1ST RESPONDENT

JANEROSE KARANJA-DIRECTOR, HUMAN RESOURCE MANAGEMENT & DEVELOPMENT UNIT 2ND RESPONDENT

PUBLIC SERVICE COMMISSION 3RD RESPONDENT

JUDGMENT

1. The Petitioner filed a Notice of Motion and Petition both dated 27th June 2023.

Petitioner's case

2. The Petitioner avers that the 3rd Respondent employed him as a Chief Land Registration Officer in 2011 working in the State Department of Lands and Physical planning under the Ministry of Lands, Public Works, Housing and Urban Development.
3. The Petitioner avers that he was promoted to Principal Land Registration Officer effective 3rd November, 2021. However, the 2nd Respondent unlawfully refused to implement the promotion decision and as a result, his employment record and payslip have not been updated to reflect the change.
4. The Petitioner avers that he underwent more than three transfers from his current workstation to various areas in Kenya, including the Ministry of Petroleum and Mining.



5. The Petitioner avers that he has challenged some of the transfers in court and obtained orders against the Respondents whereas the 3rd Respondent rescinded the transfer to another ministry.
6. The Petitioner avers that on 14th April 2022, the Cabinet Secretary for the Ministry of Lands wrote to the 3rd Respondent seeking concurrence and approval for the re-deployment of certain officers, including himself from the Ministry on allegations of sabotaging the Ardhisa management system.
7. The Petitioner avers that the 3rd Respondent responded vide a letter dated 15th June 2022 deploying him and other officers to different ministries, and he was deployed to the Ministry of Petroleum and Mining-legal department.
8. The Petitioner avers that on 5th July 2022, he lodged a joint appeal against the decision of the 3rd Respondent with other officers which was dismissed through letters addressed to the officers individually on 21st September 2022 and upon prayer for revision of that decision he was directed to report back to his work station on 20th March 2023.
9. The Petitioner avers that he received yet another letter on 10th May 2023 transferring him to Taita Taveta Land registry and protested against the said transfer vide a letter dated 15th May 2023.
10. The Petitioner avers that he obtained court orders in Nairobi Civil Appeal No. E433 of 2021: Benson Limo Long'olenyang versus The Principal Secretary, Ministry of Lands and Physical planning & 2 others.
11. The Petitioner avers that he did not report to the Taita Taveta land registry according to the letter dated 10th May 2023 and continued discharging his duties in Nairobi as he had a court order barring the said transfer to any other station pending the case filed in Nairobi Civil Appeal 433 of 2021.
12. The Petitioner avers that the locks to his offices were changed sometime in May 2023 and as a result, he could not access his offices but he continued reporting to work in Nairobi on a day-to-day basis operating from another office.
13. The Petitioner avers that he received a letter from the State Department's legal office on 14th June 2023 warning him that the Ministry shall take disciplinary action against him if he fails to comply with the transfer directive.
14. The Petitioner avers that on 19th June 2023, he received a letter requiring him to show cause within 21 days why he should not be summarily dismissed on account of absence from duty without reasonable cause.
15. The Petitioner avers that his transfer to Taita Taveta Land registry was done without sufficient and reasonable notice and the Respondents ignored the court orders.
16. The Petitioner avers that the Respondents violated Articles 41, 47 and 236 of *the Constitution* and he was summarily dismissed from his employment without fair reasons.

1st and 2nd Respondents' replying affidavi

17. In opposition to the petition, the 1st and 2nd Respondents filed a replying affidavit dated 12th July 2023 and a further affidavit dated 18th December 2023.
18. The 1st and 2nd Respondents aver that the Petitioner has not responded to the allegations raised in the show cause letter, despite being served with the warning letter and show cause letters.



19. The 1st and 2nd Respondents aver that the Petitioner has also not demonstrated how the notice to show cause is unlawful or irregular, having admitted to refusing a transfer and neglecting his job which inconveniences residents of Taita Taveta.
20. The 1st and 2nd Respondents aver that they have a right to transfer employees as part of their administrative duties, and that the employees cannot choose their preferred workstations.
21. The 1st and 2nd Respondents aver that the transfer decision was reasonable and fair, and the Petitioner's refusal to report to the new workstation was unjustified and maintain that the transfer did not affect the Petitioner's benefits or position.
22. The 1st and 2nd Respondents aver that the Petitioner filed two petitions in Nairobi ELRC Petition No. E044 of 2020: Benson Limo Long'olenyang and Nairobi ELRC Petition No. E045 of 2020: Edwin Munoko Wafula, Benson Limo challenging his transfer to Nairobi Land Registry to Mwingi Land Registry.
23. The 1st and 2nd Respondents aver that the two petitions were both heard and dismissed vide a judgment delivered on 16th July 2021 by Justice Maureen Onyango.
24. The 1st and 2nd Respondents aver that the Petitioner filed a memorandum of appeal together with a Notice of Motion both dated 4th August 2021 in Nairobi Civil Appeal (Application) No. E433 of 2021 seeking an injunction against the Respondents restraining them from transferring him from Nairobi Headquarters to any other station outside Nairobi pending hearing and determination of the appeal.
25. The 1st and 2nd Respondents aver the application seeking stay was compromised by both parties to fast track the main hearing of the appeal and issued orders on 21st September 2021.
26. The 1st and 2nd Respondents aver that the Petitioner filed another suit vide ELRC Petition No. E106 of 2023 dated 29th June 2022 challenging his transfer from the Ministry of Lands to the Ministry of Petroleum and Mining.
27. The 1st and 2nd Respondents aver that the Petitioner accepted the transfer to Taita Taveta vide a letter dated 18th May 2023 that was addressed to the Ministry of Lands and Physical Planning and requested the Ministry to ignore his Advocate's letter challenging his transfer.
28. The 1st and 2nd Respondents aver that the Petitioner despite accepting the transfer he failed to report to his new station prompting them to issue a warning letter and show cause letter.
29. The 1st and 2nd Respondents aver that the Petitioner is abusing the court process by repeatedly filing cases about his transfer and his employment contract states that he can work anywhere within the Republic of Kenya, and if he is unwilling to perform his duties, he can leave and find another job elsewhere.
30. The 1st and 2nd Respondents aver that the Petitioner was required to exhaust the internal mechanism, and subsequently appeal to the 3rd Respondent then proceed to file an ordinary claim if not satisfied.
31. The 1st and 2nd Respondents aver that the Petitioner's allegation of his constitutional rights being breached is mere speculation, vexatious and abuse of the court process.
32. The 1st and 2nd Respondents in their submission and further affidavit aver that the Petitioner accepted a transfer from Nairobi to Kiambu Land Registry which was communicated vide a letter dated 19th September 2023 and the Petitioner is working there now.



33. The 1st and 2nd Respondents aver that the Petition and application are incompetent before this Honourable Court and both therefore should be dismissed.

3rd Respondent's replying affidavit

34. The 3rd Respondent filed a replying affidavit sworn on 5th July, 2023 by Dr. Simon K. Rotich, CBS, the then Secretary/CEO.

35. The 3rd Respondent avers that the Petitioner's transfer was lawful administrative action being implemented internally by the Ministry of Lands and Settlement and therefore prays for the dismissal of the application.

36. The application and petition were both canvassed by way of written submissions.

Petitioner's submissions

37. The Petitioner submitted that he was subjected to multiple transfers, which he claims are baseless and motivated by ulterior motives by the Respondents.

38. The Petitioner submitted that there is a valid court order from the Court of Appeal in Nairobi Civil Appeal E433 of 2021 prohibiting his transfer, which the Respondents allegedly ignored and his rights to fair labour practices and fair administrative action under Article 4(4) and 47 of *the Constitution* have been violated.

39. The Petitioner submitted that the Respondents' actions are malicious, arbitrary, and intended to punish him for undisclosed reasons.

40. The Petitioner relied on section 4(2) of the *Fair Administrative Action Act* which provides as follows:

“Every person has the right to be given written reasons for any administrative action that is taken against him.”

41. In Republic V CEO, Youth Enterprise Development Fund, Board of Directors, Youth Enterprise Development Fund Ex-parte Entone Wasonga [2018] KEELRC 2026 (KLR) the court issued orders for certiorari quashing the directive that the Applicant to proceed on transfer.

42. In Geoffrey Mworira V Water Resources Management Authority and 2 others [2016] KEELRC 860 (KLR) where the court held that it would rarely intervene in the employer's HR functions, such as recruitment, appointment promotion, transfer, and disciplinary control. Intervention would only occur if the Applicant can prove the employer is violating constitutional provisions, legislation, or an agreement, acting unfairly under the circumstances, failing to exhaust internal dispute procedures, or engaging in conduct that hinders addressing breaches of internal processes.

43. In the supplementary submissions dated 25th October 2024, the Petitioner further submitted that this Honourable Court has jurisdiction to hear and determine this matter as it was moved appropriately under Articles 28, 31, 47, 73, and 165 of *the Constitution* together with section 17 of the *Fair Administrative Action Act*.

44. The Petitioner submitted that the Court Appeal Civil Appeal No. E433 of 2021 is different from the current case as the two cases have separate cause of action touching on different transfers.

45. The Petitioner submitted that the order recorded in the Court of Appeal was neither vacated nor withdrawn and cannot be waived as alleged by the Respondent.



1st and 2nd Respondents submissions

46. The 1st and 2nd Respondents submitted that the application and petition before this Honourable Court is sub judice, as it seeks similar orders to those in the ongoing Court of Appeal case.

47. The 1st and 2nd Respondents relied on section 6 of the Civil Procedure Act which provides for sub judice as follows:

No court shall proceed with the trial of any suit or proceedings in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.

48. The 1st and 2nd Respondents relied on the case of Kenya National Commission on Human Rights V Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested parties) [2020] KESC 54 (KLR) where the Supreme Court addressed the issue on sub judice as follows:

“The term ‘sub-judice’ is defined in Black’s Law Dictionary 9th Edition as: “Before the Court or Judge for determination. The purpose of the sub-judice rule is to stop the filing of a multiplicity of suits between the same parties or those claiming under them over the same subject matter so as to avoid abuse of the Court process and diminish the chances of courts, with competent jurisdiction, issuing conflicting decisions over the same subject matter. This means that when two or more cases are filed between the same parties on the same subject matter before courts with jurisdiction, the matter that is filed later ought to be stayed in order to await the determination to be made in the earlier suit. A party that seeks to invoke the doctrine of sub-judice must therefore establish that; there is more than one suit over the same subject matter; that one suit was instituted before the other; that both suits are pending before courts of competent jurisdiction and lastly; that the suits are between the same parties or their representatives.

49. The 1st and 2nd Respondent submitted that the Petitioner waived his right upon writing the letter to accept his transfer to his new workstation and requested the Respondent to ignore the letter from his advocates.

3rd Respondent’s submissions

50. The 3rd Respondent submitted that the Petitioner has not provided sufficient evidence to support his claims and that it acted within its constitutional and statutory mandates as set out in Article 234 of the Constitution which provides as follows:

The Commission shall—

- a. subject to this Constitution and legislation—
 - i. establish and abolish offices in the public service; and
 - ii. appoint persons to hold or act in those offices, and to confirm appointments;
- b. exercise disciplinary control over and remove persons holding or acting in those offices;
- c. promote the values and principles referred to in Articles 10 and 232 throughout the public service;



- d. investigate, monitor and evaluate the organisation, administration and personnel practices of the public service;
 - e. ensure that the public service is efficient and effective;
 - f. develop human resources in the public service;
 - g. review and make recommendations to the national government in respect of conditions of service, code of conduct and qualifications of officers in the public service;
 - h. evaluate and report to the President and Parliament on the extent to which the values and principles referred to in Articles 10 and 232 are complied with in the public service;
 - j. hear and determine appeals in respect of county governments' public service; and perform any other functions and exercise any other powers conferred by national legislation.
51. The 3rd Respondent submitted that under section 43 of the *Public Service Commission Act*, 2017, the Commission and its authorized officers have the authority to transfer officers within the public service.
52. The 3rd Respondent submitted that the Petitioner was deployed to the Ministry of Petroleum and Mining as per the letter dated 15th June, 2022 and he appealed this deployment vide a letter dated 5th July, 2022. The decision for his appeal was addressed in a letter dated 21st September 2022.
53. The 3rd Respondent submitted that the Petitioner challenged his transfer from the Ministry of Lands in the Employment and Labour Relations Court, which dismissed his case on 16th July 2021. He subsequently appealed this dismissal in the *Court of Appeal vide Civil Appeal No. E433 of 2021*. The appeal process included a consent agreement that he retains his position in the Ministry of Lands pending determination and therefore the said orders issued were valid.
54. The 3rd Respondent also contended that the Petitioner should have exhausted internal appeal mechanisms before approaching the court in accordance with Regulation 77 of the Public Service Commission Regulation 2020.
55. The 3rd Respondent urges this Honourable Court to dismiss the petition as it is unmeritorious and an abuse of the court process.

Analysis and determination

56. After carefully considering the pleadings and submissions by both parties, I find that the main issues for determination are whether the application and petition herein is merited and whether the Petitioner is entitled to the reliefs sought.
57. The Petitioner as the best can only be described as a serial litigator.
- On 15th June 2022 the Petitioner was transferred to the Ministry of Petroleum and Mining from the Ministry of Lands and he filed an appeal and a consent was recorded by the court of appeal on 21st September 2021.
58. Prior to that the Petitioner had been transferred to Mwingi and had filed a Petition. The suit was dismissed vide a judgment delivered on 16th July, 2021 (Petition 44/2020).
59. The consent order issued by the Court of Appeal was to the effect that –

“Status quo obtaining relating to the Applicant’s work station be maintained to the effect that will not be subjected to the intended transfer from the Ministry of Lands and



Physical Planning Headquarters at Nairobi to any other station pending the hearing and determination of the appeal.”

60. There is no evidence that the above order had been vacated or that the referred appeal (and Appeal No. 433 of 2021) has been heard and determined.
61. On 18th May 2023 the Petitioner wrote to the Principal Secretary of the Ministry of Lands and Physical Planning and accepted to proceed on transfer to Taita Taveta Lands Registry. He even retracted a letter written by his counsel prohibiting his transfer.
That would then without even saying much point out that the Petitioner agreed on this own volition to go on transfer to Taita Taveta.
62. There is no evidence that he proceeded on transfer and he continued reporting to the Ministry of Lands in Nairobi.
On 2nd June 2023 he wrote a complaint to the Ministry of Lands and Physical Planning to the effect that his locks had been changed and that he could not access his office.
63. On 14th June 2023 he got a response that he was meant to report to Taita Taveta Registry.
64. After all that the Petitioner then proceeded to file this petition dated 27th June 2023.
65. In all these applications the Petitioner has not proved how his constitutional rights have been breached by the respondent in transferring him.
66. Instead he has time and again disobeyed lawful orders from this employer to go on transfer whereas it is clear that unless there is an obvious and undisputed proof of malice and discrimination an employer has a right to transfer his employees if and when necessary.
67. The courts cannot be conduits to interfere with the internal mechanisms of employers from organising their employees except in very exceptional circumstances.
68. The Petitioner resisted to be transferred from Nairobi time and again and had no solid reasons for the said refusal. He finally agreed to move to Taita Taveta but when it came to moving there he declined to move. The court finds the Petitioner’s behaviour is tantamount to insubordination and he deserved to have disciplinary action taken against him.
69. The respondent in his submissions dated 8th October 2024 avers that the Petitioner has by his letter dated 19th September 2023 he accepted his transfer to Kiambu Land Registry and is currently working there. The Petitioner did not refute that allegation.
70. In that event this Petition pertaining to transfer of the Petitioner and all related prayers to do with disciplinary process, promotion and all the others as per prayers numbers 1-12 are overtaken by events and there are no basis to grant the same.
Further, the civil appeal vide case 433 of 2021 is not finalised and it was only prudent to finalise it being from a superior court before filing other suits in this court.
71. To buttress this point in the case No. Civil Appeal No. 13 of 2016 Equity Bank Limited V Bruce Mutie Mutuku t/a Diani Tour & Travel [2016] KECA 250 (KLR) the court held that the application had been overtaken. Also, in Kaushik Panchamatia, Sunrise Hauliers Limited, Rishi Hauliers Limited & Dunga Wholesalers Limited V Prime Bank Limited & Garam Investment Auctioneers [2020] KECA 418 (KLR) the court held that the 1st Respondent has demonstrated that what the applicants seek to restrain has been overtaken by events.



72. The same applies in this Petition.

73. In view of the foregoing and considering all the pleadings, submissions, precedents and the law the court finds the Petition dated 27th June 2023 is not proved and so is dismissed and all the attendant prayers are declined.

74. Each party will bear then respective costs.

Order accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 31ST DAY OF JANUARY, 2025.

ANNA NGIBUINI MWAURE

JUDGE

Order

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

