



**Okindi v Kenya Maritime Authority (Cause E093 of 2024)
[2025] KEELRC 174 (KLR) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEELRC 174 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E093 OF 2024
M MBARŪ, J
JANUARY 30, 2025**

BETWEEN

JULIUS MATUSIA OKINDI CLAIMANT

AND

KENYA MARITIME AUTHORITY RESPONDENT

RULING

1. The claimant filed an application dated 30 October 2024 seeking orders that;

Pending the hearing and determination of the suit, the respondent be restrained from persecuting or victimizing him for filing this claim or for agitating for his rights either by way of disciplinary proceedings or transfer from Mombasa headquarters or in any other way whatsoever.
2. The claimant filed his supporting affidavit in support of his application. He avers that his case against the respondent violates his rights against unfair treatment and discrimination, unfair labour practices, hurdles in career progression, and unfair administrative action. The claimant has previously filed his grievances against the respondent in Mombasa ELRC Constitutional Petition E005 of 2024. On 30 September 2024, the court delivered a ruling and struck out the petition.
3. In his affidavit, the claimant avers that immediately upon filing his petition, the respondent retaliated and victimized him in a series of ways. He was transferred from Mombasa headquarters to the Lodwar branch, and he felt the transfer was punishment for filing the petition against the respondent. It took the intervention of the court to stop the transfer.
4. The respondent also directed the claimant to return his work laptop. He has been working without the tool since August 2024. The respondent also served the claimant with a notice to show cause dated 19 August 2024 accusing him of an array of charges revolving around the disclosure and use of information without authorization by the director general and infringement of security measures



- to access the respondent's computer system again. The claimant was directed to submit his response within 21 days.
5. The claimant avers that the charges made against him by the respondent were unclear. The respondent directed him to disclose to whom he had disclosed the information, where he had used the information, and what security measures he had infringed to gain access to the computer system. The respondent did not give the particulars of the charges. The disciplinary process had been initiated in bad faith until the court stopped the process.
 6. The claimant was also threatened by one of the managers in the presence of the assistant director of human resources and administration and two other employees. He stated that he had a jail plan and would make appropriate arrangements to ensure his safety.
 7. Immediately after these events, the claimant was summoned to appear before the Director of Criminal Investigations (DCI) because the respondent had lodged a complaint against him relating to documents he had filed in his petition. The DCI wanted the claimant to disclose where he got the documents, how he used them, and to whom he had disclosed them. The claimant cooperated with the police and gave his statement.
 8. The claimant also aver that the assistant director of human resources and administration has on several occasions told him that a decision has already been made to terminate his employment for agitating for his rights, and the respondent is formalizing the termination process. The respondent has shown tenacity in victimizing the claimant since he began agitating for his rights, and the claimant is reasonably apprehensive that if the court does not intervene to protect his rights at the workplace upon filing suit, the respondent will terminate his employment unfairly.
 9. The claimant avers that the organizational structure, grading, and staff establishment did not support his transfer from Mombasa headquarters to Lodwar. Senior administration officers are not provided at branches such as Lodwar. He is currently studying law at the University of Nairobi, Mombasa campus, as a part-time student with the approval of the respondent. The transfer to Lodwar will interfere with his studies and make him unable to attend classes. He worked at the Lamu branch from 1 June 2016 to 30 September 2019 and was recalled to the head office. His second tour of duty to a hardship area while other employees have not been transferred from the headquarters is unfair. The respondent's policy on transfers and rotation of employees is that they have to be fair and equitable. The physical threats by another employee have been brought to the attention of the director general but ignored.
 10. The claimant also avers that he has an underlying medical condition that requires constant monitoring by his consultant doctor. The advice is that transferring to Lodwar will be prejudicial to his treatment.
 11. The claimant appealed against his transfer on 10 July 2024 but has refused to respond.
 12. On 26 July 2024, the claimant was directed to submit his old laptop for configuration and re-issuance. He submitted it on 5 August 2024, and it has not been returned. He is currently working without the tool. Unless the orders sought are issued, the claimant will suffer irreparable loss and damage.
 13. In reply, the respondent filed the Replying Affidavit for Henry Mwasaru, the assistant director of human resources and administration. He avers that the claimant is the employee of the respondent as the senior administration officer job group 5. The respondents internally advertised positions for job groups 2, 3, and 4 for staff to apply by 7 August 2023, and among the positions advertised was the position of principal human resource officer (Talent management) in job group 4.
 14. The claimant and another employee were shortlisted and interviewed. However, both were unable to attain the board-set mark pass. The respondent advertised externally for the positions of



human resources officer (learning and development) and principal human resource officer (talent management), and applicants were to respond by 8 January 2024.

15. The claimant applied for both positions and was not shortlisted. He had not met the board's requirements. The respondent allowed other applicants after internal advertisements were unsuccessful.
16. Mwasaru aver that the claimant's employment history with the respondent is that of a senior administration officer in job group 5. The claimant was fairly treated with career advancement opportunities through training, promotion, and skills enhancement facilitated by the respondent. The claim that the reasons for not being shortlisted were not provided with interview results is incorrect. As is usual with recruitment practice, only the successful candidate is notified without disclosing results to those who are unsuccessful. The claimant did not request to be furnished with reasons for the internal and external applications. Instead, he rushed to court without exhaustion of internal procedures.
17. The claim for an automatic promotion arose following the claimant's unsuccessful application to the principal human resource officer position. The claimant had never made a formal request for promotion and is aware that promotions were under the recruitment requirements based on the policy.
18. The claimant's letter of release was specific and specified the annual increment and pension contributions to be affected by the County Government of Lamu. He accepted the terms and took the secondment. The allegations that Ksh.6, 509,000 was underpaid in salary are misleading the court. This was factored in his salary upgrade at job group 5, backdated from the time of his secondment to the County Government of Lamu.
19. Mwasaru avers that on 2 July 2021, after the claimant returned from the County Government of Lamu, he raised concerns over unpaid annual increases when acting as director general. The matter was resolved with a reimbursement of Ksh.630, 000 for the duration of his secondment.
20. The allegations that there was a demotion are not correct. Upon secondment to the County Government of Lamu, the claimant returned to job group 5, the same position he left before secondment. The secondment arrangements were made without the respondent's involvement.
21. Mwasaru aver that the claimant's employment history demonstrates an employee with diverse career ambitions, to the point that he seems unsure about which career path to follow. His qualifications demonstrate a person keen on the legal profession, maritime safety, seafarer relations, and county governments, where he sought secondment with the County Government of Lamu. He has shown interest in the human resources profession since 2021.
22. The allegations that there were unfair labour practices are fictitious and without evidence. The alleged injustices and discrimination only mirror the claimant's conduct as an employee who lacks professional ethics, as displayed by his unauthorized access to the personal files of other staff. Such acts and disclosure of unauthorized information are greatly prejudicial to other employees whose information has been disclosed to the public.
23. The claimant's illegally obtaining confidential information of the respondent and releasing it to the public by attaching copies of the same to his claims is contrary to the Policy and Data Protection Act and the Official Secrecy Act. The respondent reserves the right to institute disciplinary proceedings against the claimant for such disclosures. The orders sought should not be issued.
24. The claimant submits that the principal order sought in the application is to restrain the respondent from persecuting or victimizing the claimant for filing the claim or agitating for his rights. The



respondent violated the claimant's rights through unfair treatment and discrimination, unfair labour practices and hurdles in career progression, and unfair administrative action.

25. The claimant had previously filed Constitutional Petition No E005 of 2024 - Julius Matusia Okindo versus Kenya Maritime Authority on 6 June 2024, but the same was struck out. Immediately after filing the dismissed petition, the respondent retaliated by transferring the claimant from Mombasa Headquarters to the Lodwar Branch. On 9 July and 16 August 2024, the claimant wrote to the respondent appealing against the transfer as he had a medical condition requiring constant monitoring and was also pursuing a Bachelor of Laws degree at the University of Nairobi, Mombasa campus. The respondent's organizational structure did not support the transfer. Branch offices are to be headed by officers within job grade KMA 8/7. The person promoted to fill the position of Administrative Assistant in the Lodwar branch had not completed 3 months since being posted to the Lodwar branch. Yet, the respondent's Human Resource Manual provides that an employee must serve in one department or region for 3 years, after which they may be eligible for consideration for job rotation. The claimant served at the respondent's branch in Lamu between 1 June 2016 and 30 September 2019, a hardship area.
26. Only the claimant filed his written submissions.
27. The claimant submitted that he had brought to the respondent's attention a matter of physical threats to his person, which would have been made worse by transferring him to Lodwar, where there is perennial insecurity. The respondent retaliated against the claimant by asking him to return his work laptop. He has not been given any work assignments since 5 August 2024. He was served with a show cause letter dated 19 August 2024 accusing him of charges revolving around disclosure and use of information without authorisation. He was given 21 days to respond to the letter. The claimant requested more information, but it was not provided.
28. The claimant submitted that the respondent's managers threatened him that they had a plan to take him to jail and make appropriate arrangements to ensure that he was harmed while in prison. After this, he was summoned to appear before the DCI Mombasa because the respondent had complained for him to be investigated on documents he had filed in the dismissed petition. In *Sarah Njuhi Mwenda v Head of Public Service & 4 others* [2020] eKLR, the court held that an employer has the prerogative to transfer/deploy his employees. However, prerogative should be exercised reasonably and not arbitrarily. In the case of *James Aganyo Mokaya v Teachers Service Commission* [2019] eKLR, the court held that;

Under Article 41 of the *constitution*, every worker has the right to fair labour practices. Such rights extend to fair treatment in relation to the transfer of workers from one station to another, with more consideration given to employees with families and health issues. It is not fair labour practice for a public officer to chest thumb that all authority to hire and fire or to transfer and deploy under the law or policy belongs to him. Every authority must now be viewed through Article 10 of the *constitution*..."
29. In *Kharey v Northern Water Works Development Agency & another* [2024] KEELRC 330 (KLR), the court, in addressing an application for a temporary injunction to restrain the respondents from frustrating the applicant's job performance on account of filing the case, held that the employee should be protected.
30. In *Agnes Ogadi v Kenya Electricity Transmission Company Limited* (2016) eKLR the court held it is not the duty of the Court to supervise the internal affairs of an employer as such must be left for the parties to the employment relationship to address, but the employee retains the right to approach the



Court where there is reasonable basis that there is no fairness. There must be a claim that is responsible and has a foundation. The court will, therefore, interfere with the internal disciplinary process if it is flawed, as held in *MTM v KIE Limited & another* [2020] eKLR.

31. The claimant seeks to protect his rights as he litigates over violating his rights in employment and fair labour practices.
32. In *Leland I. Salano v Intercontinental Hotel* [2013] eKLR, the court restated the following principles that guide courts in deciding whether confidential documents should be used in court:
 - a. Whether the employee came upon the documents in the regular course of business, as opposed to rummaging through the files.
 - b. Whether the employee shared the documents with other employees or persons or shared them with his Advocates.
 - c. The nature and content of the particular document are used to weigh the employer's interest in keeping the documents confidential.
 - d. Whether the employer kept a clear, uniformly applied confidentiality policy in place.
 - e. Balancing of the relevance of the documents against the consideration of whether their use or disclosure unduly disrupts the employer's business.
 - f. Consider the right of the employer to conduct business legally and efficiently, weighed against the employee's right to be free from unfair labour practices.
33. The claimant submitted that his application is with merit and should be allowed as prayed.

Determination

34. The claimant has filed the instant application and his Memorandum of Claim. His claim seeks various orders and declarations, mainly providing results for internal advertisements and interviews for the human resource officer position (talent management). He is seeking this information because he applied for this position but was discriminated against, and the respondent refused to provide the information he was seeking. The claimant is further seeking orders directing the respondent to promote him to the equivalent of job group 5 within the public service and to place him within the commensurate salary band with all benefits.
35. In the interim, the claimant seeks protective orders restraining the respondent from victimizing him for filing his claim and seeking his rights. He has challenged his transfer from Mombasa to Lodwar, and disciplinary proceedings commenced against him.
36. The claimant is seeking these protective orders because he is doing ongoing studies at the University of Nairobi, Mombasa campus, with the approval of the respondent. If transferred to Lodwar, he cannot attend his studies. His case is also that he has a medical condition, and his consultant has urged him not to move to Lorwar, which will affect his treatment. Further, the respondent has since withdrawn his laptop and tools of work since August 2024.
37. The employer has the prerogative to reorganize its business based on the available resources, including human capital. Whereas the employer can reorganize its business accordingly, where an employee's work location is stated, a transfer to another location should be done within reasonable time and notice. In the case of *Severine Luyali v Ministry of Foreign Affairs & International Trade & 3 others* [2014] KEELRC 754 (KLR), the court held that the employee was entitled to reasonable notice, taking into



account she was deployed in a foreign country and a time of 3 months to relocate back home was sufficient notice.

38. In this case, the claimant has argued that he had previously been deployed to Lamu, a hardship area, while other employees were not affected. He has now been transferred to Lodwar. However, Mwasaru clarified matters by taking into account that the claimant had been seconded to the County Government of Lamu. A secondment is not a transfer.
39. The claimant is an employee of the respondent upon sufficient transfer notice issued in July 2024.
40. Taking the transfer to Lodwar station will not bar these proceedings, which are largely virtual. The claimant has not stated any exceptional circumstances that his suit cannot be heard virtually.
41. The claimant only stated that he is pursuing his studies at the Mombasa campus. He does not indicate that he has to physically attend to them. With technological flexibilities, most educational institutions, like the Judiciary, have adopted virtual learning.
42. The claimant does not make a case for how often he has to consult with his doctor regarding the medical condition. Indeed, an institution such as the respondent has secured its employees through medical coverage countrywide. The claimant will join a team of colleagues at Lodwar who enjoy similar facilities. In any event, this is not the first time the claimant has served outside Mombasa headquarters. In his statement and evidence, he makes a perfect case of his outstanding service while seconded to the County Government of Lamu.
43. With regard to victimization for filing these proceedings, indeed, under Section 46(h) of the *Employment Act*, no employee should be victimized for filing suit with the court for good cause. The above analysis is considered; the balance is to hear the claimant's case on a priority basis and secure his employment pending the hearing of his case.
44. Concerning stopping the disciplinary process, the claimant admits that he has since been issued a notice to show cause and has replied. The court should allow the respondent to undertake the internal procedures to a conclusion without impediments. However, little progress has been achieved since the notices were issued, mainly due to various court orders.
45. In the case of Mutwol *v Moi University Civil Appeal 118 of 2019*, the court held that a prolonged period of the disciplinary process may lead to further violations of the employee's rights. The employer should expedite the process with a conclusion to allow the employee to resume normal dues if not culpable or sanction the employee if found guilty of the stated allegations. The employer is, therefore, expected to act in good faith and fairness when deciding to proceed with the disciplinary process against an employee. The decision should protect legitimate business interests and not be used whimsically as held in Francis Gathungu *v Kenyatta University* [2018] KECA 876 (KLR) that the employer should take into account that during the disciplinary process, the subject employee retains his employment, unlike a case where there is termination of employment. See Cabiakman *v Industrial Alliance Life Insurance Co.* (2004) SCC 55.
46. In Kilonzo *v Teachers Service Commission* [2017] eKLR, the court held that staying disciplinary procedures against a school teacher for over three (3) months was inordinate. In this case, the respondent was given three months to conclude the disciplinary proceedings against the claimant.

A hearing date will be allocated.

47. Accordingly, orders sought by the claimant shall not be issued in the interim. Mention on 5 May 2025 for hearing directions. Costs in the cause.



DELIVERED IN OPEN COURT AT MOMBASA ON THIS 30 DAY OF JANUARY 2025.

M. MBARŪ

JUDGE

