



**Dima v Kenya National Trading Corporation Limited (Employment and Labour Relations Petition E211 of 2024) [2025] KEELRC 1220 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1220 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS PETITION E211 OF 2024**

**HS WASILWA, J  
APRIL 30, 2025**

**BETWEEN**

**HUSSEIN ELEMA DIMA ..... PETITIONER**

**AND**

**KENYA NATIONAL TRADING CORPORATION LIMITED ..... RESPONDENT**

**RULING**

1. The Petitioner/Applicant filed a Notice of Motion dated 19<sup>th</sup> December 2024 seeking orders that: -
  1. Spent
  2. pending the hearing of this Application inter partes, a conservatory order be and is hereby issued suspending the decision of the Respondent contained in an email dated 17<sup>th</sup> December 2024 revoking the appointment of the petitioner/Applicant to the position of Business Development Manager, KNTC 3 which is slated to commence on 1<sup>st</sup> January 2025.
  3. pending the determination of this Application, a conservatory order be and is hereby issued suspending the decision of the Respondent contained in an email dated 17<sup>th</sup> December 2024 revoking the appointment of the petitioner/Applicant to the position of Business Development Manager, KNTC 3 which is slated to commence on 1<sup>st</sup> January 2025.
  4. pending the hearing and determination of the Petition, a conservatory order be and is hereby issued suspending the decision of the Respondent contained in an email dated 17<sup>th</sup> December 2024 revoking the appointment of the petitioner/Applicant to the position of Business Development Manager, KNTC 3 which is slated to commence on 1<sup>st</sup> January 2025.
  5. Any other order that the court may deem fit in the circumstances.



2. The Application was brought pursuant to Article 23(3)(a) of the Constitution of Kenya, 2010, Rule 23 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (Mutunga Rules) and all other enabling provisions of law.

### **Petitioner/Applicant's Case**

3. The Applicant avers that following his application for the post of Manager, Business Development, the Respondent through its Senior Human Resources Officer, invited him for an interview on 19<sup>th</sup> March 2024 at 10am. After the interview, the Respondent wrote him an email inviting him for a follow-up discussion on 9<sup>th</sup> August 2024 which was successful and the issue of salaries and benefits was discussed and agreed.
4. The Applicants avers that consequently, the Respondent appointed him on 29<sup>th</sup> October 2024 as its Business Development Manager, KNTC 3 on a 5-year contract commencing on 1<sup>st</sup> January 2025: He executed the letter of appointment on 21<sup>st</sup> November 2024.
5. The Applicant avers that upon acceptance of the offer in the letter of appointment, he resigned from his previous work station Vernadsky Investment Limited on 29<sup>th</sup> November 2024 and shifted from Mombasa to Nairobi in readiness for the new role in Kenya National Trading Corporation Limited on 1<sup>st</sup> January 2025.
6. It is the Applicant's case that vide an email of 2<sup>nd</sup> December 2024, from Ms. Maureen Dwallo, the Respondent's Acting General Manager, Corporate Services requested for other documents which were purportedly missing in his application. He sent the documents to Ms. Maureen Dwallo on the 2<sup>nd</sup> December 2024 and more on 4<sup>th</sup> December 2024.
7. The said documents were: relevant membership- (as at the time of interview); proof of management course, lasting not less than four weeks (i.e. SLDP, SMC) or its equivalent (as at the time of interview); employment contract to demonstrate your position in senior management role for a period not less than four years; which the Applicant previously availed to the Respondent at the time of the recruitment process.
8. The Applicant avers that despite availing the requested documents, the Respondent vide an email of 17<sup>th</sup> December 2024, informed him that his appointment had been revoked since the documents availed were not harmonious with the job specifications.
9. The Applicant avers that revocation of the appointment amounts to termination of his employment which it infringes upon his rights to dignity, fair labour practices and fair administrative action.
10. It is the Applicants case that the revocation is illogical, unreasonable, arbitrary, malicious and baseless and that he has demonstrated sufficient grounds to show that he has a prima facie case.

### **Respondent's Case**

11. In response to the Application, the Respondent filed a replying affidavit dated 6<sup>th</sup> January 2025 sworn by Maureen Dwallo, its Human Resource Manager.
12. It is the Respondent's case that the recruitment process for the position of Business Development Manager, KNTC 3 was conducted in accordance with its Human Resource Policy and Procedure Manual which sets out specific qualification in line with Article 232 of the Constitution.



13. The Respondent avers that among the mandatory qualifications for the position was membership in a recognised professional body relevant to business development and evidence of completion of a senior management course (SMC) or its equivalent as at the time of interview.
14. The Petitioner/Applicant submitted two certificates from the Institute of Economic Affairs with conflicting information: one stated membership was valid from 25<sup>th</sup> May 2013 to 25<sup>th</sup> May 2023 while the other stated membership was valid from 25<sup>th</sup> May 2013 to 25<sup>th</sup> May 2029. This raised concerns of their authenticity and credibility of his application.
15. The Respondent avers that upon inquiry, the Petitioner failed to provide satisfactory explanation and despite efforts by the Respondent to conduct due diligence over the accreditation certificates confirming that the Institute of Economic Affairs is a recognised professional body in business development, the same was not available.
16. It is the Respondent's case that the Petitioner later submitted a certificate from the Institute of Marketing Society of Kenya on 29<sup>th</sup> July 2024 along with other documents including a Senior Management Course certificate vide an email dated 2<sup>nd</sup> December 2024 long after the recruitment process had concluded and well out of time.
17. The Respondent avers that the Institute of Economic Affairs offers training in economic studies focusing on the analysis and management of economic systems, policies and trends and is distinct from marketing studies which is a core requirement for the position of Business Development Manager.
18. The Respondent avers that the offer of appointment does not waive its right to further interrogate academic and professional credentials of candidates as provided under the *Constitution* which provides that all public servants are subject to reviews of their academic credentials by oversight such as EACC. Therefore, proceeding to onboard a candidate with identified gaps in their qualifications would compromise the integrity of the Respondent and render future reviews an exercise in futility.
19. The Respondent avers that having reviewed the gaps in the Petitioner's qualifications post appointment, the Board acted fairly by providing him an opportunity to address the gaps, however, the Petitioner's response failed to cure the gaps in his qualifications.
20. It is the Respondent's case that the revocation of the Petitioner's appointment was within its mandate and in accordance with the law to safeguard the recruitment process and prevent prejudice to other candidates who met the required qualifications.

### **Applicant's Submissions**

21. The Applicant submitted on whether the Applicant has met the threshold for issuance of conservatory orders.
22. The Applicant relied on *Gatirau Peter Munya vs. Dickson Mwenda Kithinji & 2 Others* [2014] eKLR in which the Court states as follows on grant of a conservatory orders: -

“The principles to be considered before a Court of law may grant stay of execution have been crystallized through a long line of judicial authorities at the High Court and Court of Appeal. Before a Court grants an order for stay of execution, the appellant, or intending appellant, must satisfy the Court that:

- (i) the appeal or intended appeal is arguable and not frivolous; and that



- (ii) unless the order of stay sought is granted, the appeal or intended appeal, were it to eventually succeed, would be rendered nugatory. [88] These principles continue to hold sway not only at the lower Courts, but in this Court as well. However, in the context of the Constitution of Kenya, 2010, a third condition may be added, namely:
- (iii) that it is in the public interest that the order of stay be granted. [89] This third condition is dictated by the expanded scope of the Bill of Rights, and the public spiritedness that run through the Constitution. (Emphasis added).”
23. It is the Applicant’s submission that he has established a prima facie case as the Respondent revoked his employment after he had successfully undergone a competitive recruitment process and issued with the letter of appointment in violation of his right to fair labour practices provided under Article 41 of the Constitution and his legitimate expectation that he could serve in his new role for a term of 5 years beginning 1<sup>st</sup> January, 2025.
24. The Applicant submitted that the Respondent revoked his appointment unfairly and without valid and fair reasons contrary to Section 45 of the Employment Act. The Applicant successfully completed a Senior Professional Management Course at Vantage Africa on 7<sup>th</sup> July 2023 hence the Respondent’s claim that he had not taken a Senior Management Course or its equivalent at the time of recruitment is baseless. Additionally, the Respondent failed to appreciate that the Applicant’s membership to the Institute of Economic Affairs was valid and his standing was regular.
25. It is the Applicant’s submission that he relied on the Respondent’s representation that he would assume a new role as from 1<sup>st</sup> January, 2025; and consequently, resigned from his previous role at Vernadsky Investment Limited and relocated from Mombasa to Nairobi. Hence, the Respondent’s decision to revoke the appointment renders the Applicant unemployed and without a source of livelihood to survive and support his family. Further, revocation will result in continued violation of his rights, which the Petition is meant to cure. Therefore, if the conservatory order will not be issued, the Petition will be rendered nugatory and a mere academic exercise.
26. The Applicant submitted that it will be against public interest to let the Respondent expend public resources to conduct another recruitment exercise after having undertaken a recruitment process leading to his appointment of the Applicant. Additionally, the Respondent’s decision lacks legitimacy and erodes public confidence in the integrity of recruitment processes by state departments.
27. I have considered the averments and submissions of the parties herein. The application sought to stop an appointment by the respondent which appointment had already been revoked. The application cannot therefore stand having been overtaken by events.
28. I therefore find the application not merited and I disallow it accordingly. The petitioner to proceed with main petition. Costs in the petition.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30<sup>TH</sup> OF APRIL, 2025.**

**HELLEN WASILWA**

**JUDGE**

