



Republic v Permanent Secretary/Provincial Administration & Internal Security Office of the President & another; Maengo (Exparte Applicant) (Judicial Review Application E040 of 2024) [2025] KEELRC 1548 (KLR) (29 May 2025) (Judgment)

Neutral citation: [2025] KEELRC 1548 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
JUDICIAL REVIEW APPLICATION E040 OF 2024**

B ONGAYA, J

MAY 29, 2025

JUDGMENT

**IN THE MATTER OF JUDICATURE ACT, SECTION 8 AND 9 OF
THE LAW REFORM ACT, ORDER 53 OF THE CIVIL PROCEDURE
RULES AND ALL OTHER ENABLING PROVISIONS OF THE LAW**

AND

**IN THE MATTER OF AN APPLICATION FOR
JUDICIAL REVIEW FOR THE ORDER OF MANDAMUS**

BETWEEN

REPUBLIC PROSECUTION

AND

**PERMANENT SECRETARY/PROVINCIAL ADMINISTRATION & INTERNAL
SECURITY OFFICE OF THE PRESIDENT 1ST RESPONDENT**

ATTORNEY GENERAL 2ND RESPONDENT

AND

MOSES OTIENO MAENGO EXPARTE APPLICANT

JUDGMENT

1. The ex-parte applicant first instituted civil proceedings against the respondents in the High Court at Kisii in 2005. However, the suit was transferred to the Judicial Review Division in the High Court at Nairobi in 2007 and then transferred to the Employment and Labour Relations Court.



2. Preceding the transfer to this Court, the High Court (John Chigiti, J.) delivered a judgment on 06.10.2023, finding that the High Court lacked jurisdiction, and ordered the transfer of the suit to the Employment and Labour Relations Court for hearing and determination.
3. Consequently and purpordly, before this Court is the ex-parte applicant's notice of motion dated 08.11.2021 filed through Muttisya & Company Advocates, under Order 53 rules 3 and 4 of the Civil Procedure Rules, Section 3A of the Civil Procedure Act, and all other enabling provisions of the law and procedure. He sought for orders:
 1. That this Honourable Court be pleased to issue an order of mandamus against the respondent to compel him to reinstate the applicant to his old position as a Chief Grade II of Suna Raha Location or re-deployment.
 2. That this Honourable Court be pleased to issue an order of mandamus against the respondent to compel him pay the ex-parte applicant dues and arrears or special damages amounting to Kshs. 2,083,079 together with interest.
 3. That this Honourable Court be pleased to issue an order of mandamus against the respondent to compel him pay the ex-parte applicant general damages amounting to Kshs. 3 million.
 4. That the costs of this application be provided for.
4. The application was based on the grounds set out in the motion application and supported by the ex-parte applicant's supporting affidavit and statement dated 08.11.2021. The ex-parte applicant's case was as follows:
 - a. He was an employee of the 1st respondent.
 - b. On or about 25.01.2001, a servant or employee of the 1st respondent sent a letter of dismissal to him terminating his employment for no apparent reason.
 - c. He had corresponded with the 1st respondent on numerous occasions, requesting to be furnished with the grounds that called for his dismissal without either warning or notice.
 - d. He claims reinstatement to his position as the Chief Grade II of Suna Raha Location, or be redeployed.
 - e. Further and in the alternative, the 1st respondent or his employee or servants and/or agents unlawfully dismissed the applicant from his employment.
 - f. He further claims against the 1st respondent, general damages, terminal dues amounting to Kshs. 140,029/=, and lost earnings amounting to Kshs. 1,943,050/= as computed in his motion application.
 - g. The respondent's action is irrational and without any reasonable cause.
 - h. His right to fair labour practice and other rights provided for in the Constitution have been seriously breached.
5. The applicant filed submissions and learned State Counsel E.S Karbolo filed submissions on behalf of the respondent.
6. The Court has considered all the material on record and returns the instant proceedings which appear ill-fated must fail upon the following reasons:



- a. There is a judgment on record by Chingiti J who found that the High Court lacked jurisdiction. It appears that once that finding was made that the Court lacked jurisdiction, the matter rested as is doubtful that there existed residual jurisdiction to transfer the file.
 - b. As submitted for the respondent the applicant has failed to show the public duty subject of the prayer for mandamus that the respondent failed to perform and should be compelled by order herein to perform. The applicant was dismissed and it is the view of the Court that if he was dissatisfied with the merits of the decision, he ought to have filed an appropriate ordinary action to test the merits at a full hearing.
 - c. While making this decision, the Court considers that the absurdity of purportedly two judgments herein suggest that the old good principle that where a court lacks jurisdiction it downs the tools as the proceeding is struck out with effect that the party initiating the proceedings retains the prerogative on further steps, should prevail in such circumstances. It appears that there exist no jurisdiction to transfer or otherwise decide for the litigant the further steps once a finding of lack of jurisdiction is returned.
 - d. The instant proceedings are liable to termination with no orders on costs.
7. In conclusion, the court determines the proceedings herein with orders:
- a. The proceedings are terminated.
 - b. No orders on costs.
 - c. The case file closed.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 29TH MAY, 2025

BYRAM ONGAYA, PRINCIPAL JUDGE

