



Makhanu v Nairobi County Commissioner & 7 others (Petition E074 of 2025) [2025] KEELRC 1868 (KLR) (26 June 2025) (Ruling)

Neutral citation: [2025] KEELRC 1868 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E074 OF 2025**

**B ONGAYA, J
JUNE 26, 2025**

BETWEEN

SAMMY KOUNS MULONGO MAKHANU PETITIONER

AND

NAIROBI COUNTY COMMISSIONER 1ST RESPONDENT

PAYROLL MASTER (INTEGRATED PAYROLL AND PERSONNEL DATA BASE OFFICE), MINISTRY OF INTERIOR AND NATIONAL ADMINISTRATION 2ND RESPONDENT

HUMAN RESOURCE OFFICER, NAIROBI COUNTY COMMISSIONER'S OFFICE 3RD RESPONDENT

DEPUTY COUNTY COMMISSIONER, KASARANI SUB-COUNTY, NAIROBI COUNTY 4TH RESPONDENT

DIRECTOR, HUMAN RESOURCE, MINISTRY OF INTERIOR AND NATIONAL ADMINISTRATION 5TH RESPONDENT

PRINCIPAL SECRETARY, STATE DEPARTMENT FOR INTERNAL SECURITY AND NATIONAL ADMINISTRATION, MINISTRY OF INTERIOR AND NATIONAL ADMINISTRATION 6TH RESPONDENT

MINISTRY OF INTERIOR AND NATIONAL ADMINISTRATION ... 7TH RESPONDENT

THE HON ATTORNEY GENERAL 8TH RESPONDENT



RULING

1. The case initially came up under certificate of urgency on 29th April 2015. The Court considered the nature of the application dated 25th April 2025 and directed the same be served forthwith on 29th April 2025 for inter partes hearing or consideration of ad-interim prayers on 6th May 2025 at 9:30 am. On 6th May 2025, the Petitioner's Counsel was present and the Respondent's Counsel was absent.
2. The Court after listening to Counsel for the Petitioner, considered the gravity of the issues and time lapse since November 2023 when the cause of action was pleaded to have accrued and made orders thus:
 - a. Hearing is adjourned for Respondents to file substantive answer to petition and application by close of 16th May 2025 and Petitioner may file and serve a responding affidavit by 23rd May 2025.
 - b. Hearing of application on 27th May 2025 at 9:30 am or thereafter.
 - c. Parties are encouraged to compromise dispute with a view of recording a consent on the return date.
3. On 27th May 2025, the parties' Advocates attended Court. The Respondents had filed a replying affidavit of 25th May 2025. Counsel for the Petitioner sought to file a responding affidavit. Counsel submitted that in view of a recommendation for reinstatement, the Petitioner ought to be paid salary. He urged that prayer 3 in the application dated 25th April 2025 for reinstatement of payment of salaries and allowances be allowed. Counsel for the Respondent submitted and urged that salary and allowances should not be reinstated at this stage as prayed for in view that the salary had been stopped considering the ongoing disciplinary process against the Petitioner whereby the Petitioner had abandoned work for four months.
4. Counsel for Respondent requested for time to provide status on the pending disciplinary case. Counsel for the Petitioner then submitted in response thus: "There is no hearing at Public Service Commission. We can go to main Petition. I can put responding affidavit in seven days together with submissions 14 days."
5. The Court then ordered:
 - i. The replying affidavit deemed duly filed and served and a responding affidavit thereto and Petitioner's final submissions on the petition be filed and served by 10th June 2025 and Respondents to file and serve final submissions by 24th June 2025.
 - ii. The application dispensed with for priority disposal of main petition.
 - iii. Highlighting of submissions on 26th June 2025, 9:30 am for thirty minutes.
6. Today 26th June 2025 Counsel for the Petitioner says the file be placed before another Judge because the Presiding Judge is biased upon two grounds:
 - a. The Respondent has been favoured in that the belated affidavit was allowed on record (a position obviously misconceived as it was deemed duly filed and served) with no leave: and,
 - b. The Court declined to grant interim order per prayer 3 while the application was unilaterally dispensed with (a misconception since Counsel submitted for direction to go to main petition).



7. It appears to the Court that the record is elaborate. It is upon Petitioner's Counsel's request to fast track the case and application be dispensed with that those directions were made for expeditious hearing of main petition.
8. It also appeared to the Court that it was not an obvious case for grant of the mandatory temporary relief in terms of prayer 3 of application in view of the several factual disputes between the parties such as whether stoppage of salary was verbal, the applicable law or policy, and whether such reinstatement would be proper while the Petitioner is not working.
9. Looking at the record, the matter has been expeditiously managed towards disposal but for the instant oral application for the Judge to recuse.
10. The Court holds that decisions by the Judge made in good faith towards ends of justice and expeditious hearing of the main petition do not constitute a good reason for recusal.
11. Further, while the Judge has a compelling duty to recuse where a good reason is shown, the Judge also has a compelling duty to hear and determine the case where no good reason to recuse is not shown, like in the instant case. The oral application to recuse is found unjustified.
12. However, the Judicial Review and Labour Rights Division in Nairobi has three Judges deployed to serve. It might serve the Petitioner to be heard before any other Judge and in the interest of best application of judicial time.
13. Accordingly, the Court directs and orders as follows:
 - a. The oral application to recuse is declined.
 - b. In view of the number of Judges in the Division, the case is referred to the Presiding Judge of the Judicial Review and Labour Rights Division, Nduma J. for further directions, orders and disposal thereof.
 - c. Mention before Nduma J., Court No. 5 on 16th July 2025 at 9:00 am or thereafter per cause list and video link.

DELIVERED VIRTUALLY ON 26TH JUNE 2025 AT 10:55 AM

BYRAM ONGAYA

PRINCIPAL JUDGE.

in presence of parties' Advocates.

