



**Kirigha v Kenya Revenue Authority (Cause E114 of 2024)
[2025] KEELRC 2414 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2414 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E114 OF 2024**

**K OCHARO, J
JUNE 12, 2025**

BETWEEN

KENNETH MWANYUMBA KIRIGHA CLAIMANT

AND

KENYA REVENUE AUTHORITY RESPONDENT

RULING

1. By the Notice of Motion application dated 14th November 2024, the Claimant/Applicant sought;
 - a. That this application be certified urgent and service thereof be dispensed with in the first instance.
 - b. That pending the hearing and determination of this application, this Honourable Court be pleased to issue a temporary injunction restraining the respondents, either by itself, their agents and servants, from transferring the Claimant from Voi to Hola or any other station.
 - c. That Pending the hearing and determination of this cause, this Honourable Court be pleased to issue a temporary injunction restraining the respondent, either by itself, their agents and servants, from transferring the Claimant from Voi to Hola or any other station.
 - d. That the costs of this application be borne by the respondent.
2. The application is anchored on the grounds set out on the face of the application, and the supporting and supplementary affidavits sworn by the Applicant and filed herein.
3. The Respondents vehemently oppose the application through a replying affidavit sworn by Sylvia Santilan Lenaiyarran on 15th January 2025.



The Application

4. The Applicant stated that he works for the Respondent as a Domestic Taxes Department Officer at its KRA Tax service Office stationed at Voi Station.
5. On 26th September 2024, he received a transfer letter requiring him to move from Voi to Hola, despite having appealed against the transfer several times, citing medical reasons. However, the appeals were never properly considered; instead, the Respondent focused on operationalising their Hola Tax Service Office at the expense of his medical condition.
6. He asserted that he was diagnosed with prediabetes and began treatment in April 2023 at Aga Khan in Voi. He resorted to medication after his blood pressure did not respond to lifestyle interventions. His condition requires dietary management and close supervision by a doctor, which might be impossible at Hola.
7. The appeals were summarily considered by the Respondent and determined without affording him an opportunity to be heard. The Respondent insisted that he must report to the new station. The Respondent's insistence was without any justifiable cause.
8. He further asserted that if the orders are not granted, he will suffer irreparable harm, as without the medical support he receives at Voi, along with that from his family, his health will deteriorate.

The Response.

9. It was claimed that the Applicant was initially based at Wilson Airport in the Nairobi region when he was appointed in 2019. He was then transferred to Voi-TBE station in the Southern region on 16 December 2020, where he worked for four years until his recent transfer to Hola. As per the Respondent's transfer policy, he received a letter dated 29 September 2024 relocating him to the new station.
10. The decision to transfer him was premised on clauses 34.1.3.1, 34.3.7, and 34.3.13[c] of the Respondent's transfer policy, which provided that an employee may be posted anywhere in the Republic of Kenya or the East African Community; the Respondent initiated transfers will be carried out to address staffing needs and will be initiated by CG, HOD, C-CSS or DC-HR; and employees will not remain in the area of assignment for more than the stipulated periods as follows—all other areas of assignment, not more than four years.
11. Aggrieved by the transfer, the Applicant appealed on medical grounds in a letter dated 30 September 2024, addressed to the Commission of Domestic Taxes and copied to the Head of Operations, Southern Region.
12. In a letter dated 2nd October 2024, the applicant was informed that the operationalisation of the Hola Tax Service Office was critical, and granting his request would significantly hinder this process.
13. The Respondent further advised the Applicant to resubmit his request for consideration at the end of the financial year. As such, the Respondent was ready and willing to accommodate the Applicant's request for transfer at the end of the financial year.
14. It was further stated that the Claimant resubmitted his transfer request to the Human Resources Department and, on 4th October 2024, to the Deputy Commissioner of Human Resources via email. 15 Under clause 34.3.17 of the Respondent's transfer policy, an appeal against a transfer may be considered on grounds of a medical condition if an employee or their immediate family member has documentary evidence of a serious terminal illness.



- 16 The Respondent considered the Applicant's appeal, which was declined through a letter dated 7 November 2024. The Applicant was directed to report to the new station without further delay.
- 17 The Applicant's appeal was rejected on the grounds that the Applicant has primary hypertension and pre-diabetes, which are chronic conditions and not terminal illnesses.
- 18 The application herein does not meet the threshold for granting conservatory orders.
- 19 The failure by the Respondent to hold a physical hearing of the Applicant's appeal cannot be equated to the assumption that the Applicant was not given an opportunity to be heard, as the Respondent considered the letter and the evidence attached. In practice, the Respondent does not conduct physical hearings in cases of appeals against transfers. It has always proceeded on documentary evidence.
20. The Applicant cannot be allowed to hold the Respondent at ransom by asserting that he cannot be transferred from Voi to any other station.
21. The Respondent further stated that the Applicant has not provided sufficient evidence that dietary management and close supervision by a doctor are impossible at Hola or the neighbouring towns.
22. Staff deployment is a management prerogative, and the courts seldom intervene except in exceptional circumstances. The applicant has not demonstrated that such exceptional circumstances exist to justify this Court's intervention.
23. The grant of the orders sought will render the entire suit nugatory, as the Applicant's case is based on the transfer to Hola, which was carried out in strict accordance with the law and the Respondent's internal policies.
24. It was asserted that the failure by the Applicant to report to Hola TSO is hampering service delivery to Kenyans living in Hola, as the station is currently short-staffed. It is in the public interest that the Respondent be allowed to transfer the Applicant to Hola to ensure the Respondent addresses its staffing needs to enhance revenue collection, which is the Respondent's core mandate. 25 Additionally, it is in the public interest that the Respondent be allowed to carry out its mandate as per its policies to ensure uniformity in applying its policies, especially its transfer policy, to ensure accountability and transparency.

Analysis and determination

26. I have carefully considered the Notice of Motion, the grounds upon which it is premised, the supporting and supplementary affidavit, the replying affidavit by the Respondent, and the submissions by Counsel for the parties, and hold that the success or failure of the application revolves around to issues, first, does this Court have the power to award the interlocutory orders sought? Second, are the orders sought entitled to in this matter?
27. This Court recognises that the interlocutory orders sought are based on the same factual foundation as the central claims in the statement of claim. In my view, given the purposes for which interlocutory orders are granted — including preventing threatened or ongoing unlawful, unfair, and unjust actions where the justice of the case requires, and preserving the core of the case so its ultimate success is not rendered futile — I have no doubt that courts possess the authority to issue temporary restraining orders that can interfere with the managerial prerogatives of the employer. The Court would, for instance, intervene to prevent threatened or ongoing actions, including transfers and demotions, when statutory, constitutional, and common law rights are threatened. 28 It is important to point out that the persuasive authority of *Professor Gitile Naituli v University Council, Multimedia University College* and another -Industrial Court Cause No. 1200 of 2012, did not suggest that the court does



not entirely have the power to intervene with the managerial prerogative of the employer, as submitted by Counsel for the Respondent. The Court indicated that the courts' authority would not freely intervene, but in exceptional circumstances. In my view, whether those exceptional circumstances exist depends on the circumstances of each case. 29 However, the Court must exercise caution so as not to intervene in a way that suggests it is deciding the main claim at the interlocutory stage, or inadvertently gives the impression of having a predetermined view, as this could undermine the parties' trust and confidence in the court and the judicial system. With this in mind, I will be careful but clear in this ruling.

30. It bears repeating that the authority to intervene with the employer's managerial prerogative at an interlocutory stage of the proceedings requires that the employee first establish a clear prima facie case, a well-grounded apprehension of irreparable harm without relief, and a balance of convenience tilts in his favour.
31. Both counsel for the parties accurately reflected these requirements in their submissions. The only point of divergence was concerning how they related to the facts of this case.
32. In the case of *Mrao Limited v First American Bank of Kenya and 2 Others*, [2003], the Court of Appeal defined a prima facie case, thus;

“ 17. So, what is a prima facie case? I would say that in civil cases, it is a case in which, on the material presented to the Court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party, as to call for an explanation or rebuttal from the latter.”

30. 3 the Claimant's sole reason for challenging the decision to transfer him from his current station, Voi, to Hola, both through an appeal to his employer [the Respondent] and before this court via the current suit, is that his health will be seriously affected, as he would not have access to the medical facilities he currently enjoys at Voi, along with the additional family support he receives, especially from his wife, who is a nurse.
31. The Claimant states that the Respondent is more focused on its business operations and does not care about the Claimant's health.
32. I have carefully considered the Respondent's response on this issue as expressed in the replying affidavit, and I fear that it contains, in text, self-defeating content which only demonstrates that the Claimant has a prima facie case with a chance of success.
33. In paragraphs 10, 11 and 12 of the Replying affidavits, the deponent stated;
 - “ 10. That aggrieved by the transfer, the Applicant appealed the same on medical grounds through a letter dated 30th September 2024, which was addressed to the Commissioner of Domestic Taxes and copied to the head of operations at the Southern region.
 11. That the Applicant was in a letter dated the 2nd October 2024, advised that the operationalisation of the Hola Tax Service Office was critical and granting them their request would greatly hamper the operationalisation of the TSO.
 12. That the Respondent further advised the Claimant to resubmit their request at the end of the financial year for consideration, meaning that the Respondent



was ready and willing to accommodate the Applicant's request for transfer at the end of the financial year"

37. The above-cited paragraphs give one clear impression: an employer [the Respondent] who believed that their employee's appeal against the transfer decision had merit, but who prioritised its operational needs and chose not to rescind the transfer on those grounds, without adequately considering the employee's health needs.
38. Having cited operational needs as the reason for the transfer and promising to review the application shortly after the operationalisation mentioned above, it is interesting that in the paragraphs of the replying affidavit, succeeding paragraphs 10,11, and 12, they detailed policy justifications for their insistence on the transfer. The in-text conflict that this Court has mentioned becomes apparent.
39. The Respondent asserts that the Claimant's illness is chronic, not terminal. It is common place that without proper medical facilities where one can get adequate medical attention, the former can morph into terminal illness or activate a terminal illness. The affected employee [read the Applicant shall suffer irreparable loss.
40. The Respondent promised to reconsider the Applicant's application at the end of the financial year. The year is close to ending, by a few days. This factor and the foregoing premises signal that the balance of convenience tilts in favour of the Applicant.
41. By reason of the foregoing premises, I find the Applicant's application meritorious. The Respondent, its agents, and or servants are hereby temporarily restrained from transferring the Applicant from Voi to Hola, pending the hearing and determination of this suit. However, the matter shall be heard on a priority basis. Hearing shall be on 9th July 2025.

READ, SIGNED AND DELIVERED VIRTUALLY IN MOMBASA THIS 12TH JUNE, 2025.

SIGNED BY: HON. MR. JUSTICE OCHARO KEBIRA

THE JUDICIARY OF KENYA.

MOMBASA ELRC

EMPLOYMENT AND LABOUR RELATIONS COURT DATE: 2025-06-25 19:07:00

The Judiciary of Kenya



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