



**Omar v Ministry of Interior and Coordination of National
Government & 3 others (Employment and Labour Relations Petition
E156 of 2023) [2024] KEELRC 609 (KLR) (14 March 2024) (Ruling)**

Neutral citation: [2024] KEELRC 609 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E156 OF 2023
MN NDUMA, J
MARCH 14, 2024**

BETWEEN

ABEY HISH OMAR PETITIONER

AND

**MINISTRY OF INTERIOR AND COORDINATION OF NATIONAL
GOVERNMENT 1ST RESPONDENT**

THE PUBLIC SERVICE COMMISSION 2ND RESPONDENT

THE ATTORNEY GENERAL 3RD RESPONDENT

THE COUNTY COMMISSIONER WAJIR COUNTY 4TH RESPONDENT

RULING

1. In the application dated 8/8/2023 the applicant, one Abey Hish Omar, prays for an order in the following terms:-
 - a. Spent
 - b. Spent
 - c. Pending the hearing and determination of the applicant’s petition, a conservatory order do issue stopping any intended recruitment of Chief II of Anthibohol Location by the 1st respondent.
 - d. Pending hearing and determination of the motion, an order be and is hereby issued directing the 1st and 2nd respondents to reinstate the applicant as Chief II of Athibohol Location, Hadado Division of Wajir West Sub-County with full remunerations and benefits.



- e. Pending hearing and determination of the applicant's petition, an order be and is hereby issued directing the 1st and 2nd respondents to reinstate the applicant as Chief II of Athibohol Location, Hadabo Division of Wajir West Sub-County with full remunerations and benefits.
 - f. An order be and is hereby issued that the applicant's petition be heard and dispensed off within three years.
 - g. Costs be in the cause.
2. The application is premised on grounds 1 to 26 set out on the face of the application and buttressed in the supporting affidavit of the respondent. The basis of the application may be summarized that the applicant was appointed as Chief II of Athibohol Location, Hadabo Division of Wajir West Sub-county on 11/6/2021.
 3. That by a letter dated 25/11/2022 the respondent unlawfully, unfairly and unconstitutionally terminated the said appointment of the applicant.
 4. That the applicant seeks unconditional reinstatement to the position he had been lawfully appointed to.
 5. The application is opposed vide replying affidavit of 2nd respondent dated 13/10/2023 sworn to by Rosemary N. Mutati, then Deputy Commission Secretary (Corporate services) primarily stating that final orders are being sought by the applicant and in terms of the case of *East Africa Portland Cement Company Ltd versus Attorney General and another* [2013] eKLR, per Rika J, the said orders cannot be granted in the interim pending the hearing of the main suit:
 25. Interim orders are granted where the court, exercising its discretion is satisfied that they are necessary due to urgency and nature of the circumstances. They are mostly injunctive in nature, putting on hold an action, maintaining the status quo, until the substantive dispute can be investigated and resolved. The applicant must establish genuine urgency. Interim orders are not suitable if by their grant, they finally determined the substantive dispute. The courts must be wary of prejudgment of substantive merits."
 6. The applicant has restated the prayers sought in the application in the supplementary affidavit sworn to by the applicant on 31/10/2023.
 7. The court having considered the deposition by all the parties; the submissions filed and the authorities placed before the court including the case of *Vivo Energy Kenya Limited v Malaba Petrol Station Limited and 3 others* [2015] J. eKLR in which the Court of Appeal stated:

"We are satisfied that the learned judge erred by making several definitive and final conclusions without the advantage of hearing and seeking witnesses who have been subjected to cross-examination" and the well-known case of *Giella v Cassman Brown Company Ltd* [1958], the applicant has not satisfied the requirements for grant of a mandatory injunction, reinstating the applicant to the position he held hitherto pending the hearing and determination of the petition.
 8. In short, the triple requirement of establishing a *prima facie* case with a probability of success, that irreparable harm will be visited on the applicant should the court not issue interim orders of reinstatement and that the balance of convenience favours, the issuance of the interim orders have not been established.



9. Accordingly, this application lack merit and is dismissed awaiting the hearing and determination of the pending petition.

It is so ordered

DATED AT NAIROBI THIS 14TH DAY OF MARCH 2024

MATHEWS NDERI NDUMA

JUDGE

Appearance:

**Mr. Omwanza for Petitioner/Applicant

Ms. Wangeci for 2nd respondent

Mr. Kemboi Court assistant

