



Republic v Lapfund; Guyo (Exparte) (Judicial Review Application E050 of 2023) [2024] KEELRC 923 (KLR) (9 April 2024) (Judgment)

Neutral citation: [2024] KEELRC 923 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
JUDICIAL REVIEW APPLICATION E050 OF 2023**

B ONGAYA, J

APRIL 9, 2024

**IN THE MATTER OF AN APPLICATION BY ISACK
LANGO GOYO FOR ORDERS OF CERTIORARI
IN THE MATTER OF RECRUITMENT OF THE
CHIEF EXECUTIVE OFFICER (CEO) LAPFUND**

-BETWEEN-

BETWEEN

REPUBLIC APPLICANT

AND

LAPFUND RESPONDENT

AND

ISACK LANGO GUYO EXPARTE

JUDGMENT

1. The ex-parte applicant filed the application by the way of the notice of motion dated 21.10.2023 through KMK Law LLP. The application was under order 53 of the Civil Procedure Rules 2010, section 1A, 1B, and 3A of the Civil Procedure Act Cap. 21 and all other enabling laws. The prayer was for an order of certiorari to bring the Honourable Court for purposes of being quashed the respondent’s decision contained in the advertisement made on the daily nation on 27.11.2023 requiring the applicants to have relevant professional qualifications in:1. Corporate Governance Training and, 2. Trustee Development Program Kenya; costs; and any other relief the Court may deem appropriate and just to grant. The application was based on the applicant’s verifying affidavit.



2. The applicant's case was that the respondent advertised the vacancy in the office of its CEO on 13.09.2023 and subsequently cancelled on 24.11.2023. On 27.11.2023 the position was re-advised introducing the two impugned qualification requirements. That the said introduction is irregular and in conflict with Mwongozo Code issued by Public Service Commission and State Corporation Advisory Committee. Under the Presidential Order pursuant to section 7 of *State Corporations Act*. The parent Act is the *Local Authorities Provident Fund Act*, Cap 272 and it does not provide for qualifications for the CEO. The applicant has protested but the respondent has declined to recall the advertisement.
3. The respondent filed the replying affidavit of Bernard Mbogoh, the CEO, sworn on 23.01.2024 through Koceyo & Company Advocates. It was stated and urged as follows:
 - a. No leave was sought and obtained prior to filing the notice of motion as required in law.
 - b. Section 5 of the Lapfund Act establishes the respondent's Board with powers and duties to manage the Fund and perform duties specified in the Act. Recruitment of the CEO is one of functions of the Board and the appointment is made by the designated Cabinet Secretary. The Board undertakes the recruitment as guided by the Lapfund Act, *State Corporations Act*, Mwongozo Code and its HR Procedures Manual. The applicant has not shown any breach of a relevant provision in the manner the impugned qualifications were introduced.
 - c. The CEO vacancy was advertised on 13.09.2023, cancelled on 24.11.2023, and re-advertised on 27.11.2023. The two qualifications were introduced to ensure that the respondent got a suitable leader CEO and the evolving pension landscape.
 - d. The Board had authority to amend the qualifications of the CEO position and the alleged ultra vires is not established at all. The advertisement meets the legal threshold.
 - e. The application is an abuse precious judicial time and it be dismissed with costs.
4. The applicant filed no submissions. The respondent filed submissions. The Court has considered the material on record and returns as follows:
 - a. As submitted for the respondent the applicant appears not to have obtained the requisite leave to file the notice of motion as leave to file is not referred to and the applicant has not exhibited the order of leave or answered the objection in that regard.
 - b. The claimant has not shown the basis of the allegation and claim that the respondent Board introduced the two impugned qualifications in an ultra vires manner. It has not been shown that the introduction suffered procedural impropriety, unreasonableness, irrationality, illegality or unconstitutionality. The application must therefore collapse and certiorari is not available.
 - c. The applicant has not shown prejudice suffered by any person following the cancellation of initial advertisement and then re-advertisement. The changes affected all potential applicants in like manner.
 - d. In view of the findings the application for judicial review herein must fail and is liable to dismissal with costs
5. In conclusion, the notice of motion for the judicial review order of certiorari filed for the ex-parte applicant and dated 21.10.2023 is hereby dismissed with costs.



**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS
TUESDAY 9TH APRIL 2024.**

BYRAM ONGAYA

PRINCIPAL JUDGE

