



**Kavua v Managing Director, Nairobi City Water and Sewerage Company Limited
(Cause E112 of 2024) [2024] KEELRC 1457 (KLR) (14 June 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1457 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E112 OF 2024**

J RIKA, J

JUNE 14, 2024

BETWEEN

BENEDICT KIEMA KAVUA CLAIMANT

AND

**THE MANAGING DIRECTOR, NAIROBI CITY WATER AND SEWERAGE
COMPANY LIMITED RESPONDENT**

RULING

1. The Claimant filed an application dated 13th February 2024, asking the Court to restrain the Respondent from transferring the Claimant and/or changing his job designation.
2. The application is founded on the affidavit of the Claimant, sworn on 13th February 2024. He explains that he was employed as a Supply Chain Manager in 2012. His contract was renewed for 5 years in June 2022. On 12th February 2024, the Respondent purported to transfer the Claimant to Non-Revenue Water Department, as a Non-Revenue Water Manager, grade 3, with immediate effect.
3. The Claimant explains that he is a qualified supply chain professional, licenced to practice as such, by the Kenya Institute of Supplies Management. The position he has been directed to move to, has no relation with his profession. He joined the Nairobi Water and Sewerage Company, on the strength of his professional qualifications.
4. Interim orders issued on 13th February 2024.
5. The Respondent filed a replying affidavit sworn by him on 26th February 2024. He states that the Claimant was employed prior to 2012, as a Procurement Officer. It is in the mandate of the Employer to transfer and reassign Employees roles. An Employee can be required to serve in any part of the country. The Claimant's contract provides that he can be transferred to any part of the country. The position he serves, and the position he has been moved to, are management positions. The Employer has moved various managers to different managerial roles, within the organization.



6. Parties agreed that the application is considered and determined, on the strength of their affidavits and submissions. They confirmed filing and exchange of submissions at the last mention before the Court, on 3rd April 2024.

The Court Finds:

7. Transfer and designation of Employees, is a managerial prerogative. Courts will not interfere with the exercise of this prerogative, unless it is shown that it has been exercised in bad faith, irrationally, maliciously, illegally or contrary to the contract.
8. It is correct that the Claimant's contract dated 22nd June 2012, appointed him as Supply Chain Manager. It is correct that the Claimant's contract was renewed on 22nd June 2022, for 5 years, in the same position of Supply Chain Manager.
9. The Court does not think that the dispute concerns the transfer of an Employee from one geographical area to another. The clause on place of work, which the Respondent referred to, is not in dispute. The Claimant has not been transferred from Nairobi to another region.
10. He is disputing a departmental transfer and re-designation. The Employer proposes the Claimant to work as the Non-Revenue Water Manager, from his position as Supply Chain Manager.
11. In *Mwaniki v. Registered Trustees of the Sisters of Mercy t/a Mater Misericordiae Hospital & Others* [2023] eKLR, the Court upheld transfer and re-designation in the role of an Employee, holding that these are in the discretion of the Employer, and that job designation is not cast in bronze.
12. The Employer submits that the Claimant has worked in other roles, prior to his contract of 2012, as renewed in 2022. He has not shown that he was recruited on the strength of his supply chain management practicing licence. The licence is issued annually and the one exhibited by the Claimant, issued in January 2024. Where are his academic and professional certificates on whose strength he was employed, to support his position that he could only serve as a Supply Chain Manager?
13. The Employer has shown that it is within the employment policy, to transfer and re-designate Employees, particularly those in management. Other Managers have been transferred to different portfolios within the organization. Regional Manager Informal Settlements was transferred to Manager, Non-Revenue Water, the position the Claimant is refusing to move to. Customer Relations Manager has been moved to Human Resource Manager. The Claimant's transfer and re-designation is not an isolated, or new occurrence. It is a human resource and administration policy that has been implemented in the past.
14. The Claimant's licence to practice supply chain management does not bar the Employer from moving him to another management position, unrelated with supply chain management. It is a professional requirement to have the licence, just as much as human resource managers and lawyers within the organization have licences. Professional licensing does not prevent the respective professionals from serving in other management capacities, the Employer, in exercising managerial prerogative, feels the particular professional, is best suited to serve. It does not determine what role a manager is allocated. The license allows the professional to discharge professional services in accordance with the rules and regulations of the profession. It does not bar the professional from discharging other roles, not necessary in alignment with his particular profession, in an organization. An organization must be allowed the flexibility, in managing its human resource function, without undue intervention from the Courts.



15. The Claimant has not demonstrated that departmental transfer, and re-designation, is in fundamental breach of the terms and conditions of service. Job designation is not cast in bronze.
16. Lastly, why has the Claimant brought the Managing Director to Court and not the Nairobi Water and Sewerage Company Limited, whom he entered into a contract of employment with? Is not the Managing Director himself an Employee of the Company? Did the Managing Director employ him? There is no explanation why the Managing Director alone, or at all, is the Respondent to this Claim.

It is Ordered:

- a. The application filed by the Claimant dated 13th February 2024 is declined.
- b. No order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 14TH DAY OF JUNE 2024.

JAMES RIKA

JUDGE

