



**Mutegi v Chief Executive Officer, Kenya Development Leather Council & another
(Petition E125 of 2021) [2024] KEELRC 1447 (KLR) (14 June 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1447 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E125 OF 2021**

J RIKA, J

JUNE 14, 2024

**IN THE MATTER OF: ARTICLES 2, 3, 20, 21, 23, 41, 47, 50, 162, 165 [5] 232 AND 236 OF THE
CONSTITUTION,**

AND;

**IN THE MATTER OF: THE EMPLOYMENT ACT;
THE FAIR ADMINISTRATIVE ACTION ACT; THE
EMPLOYMENT AND LABOUR RELATIONS COURT [PROCEDURE]
RULES 2016; AND ALL OTHER ENABLING PROVISIONS OF THE LAW**

BETWEEN

PAUL EPHANTUS MUTEGI PETITIONER

AND

**CHIEF EXECUTIVE OFFICER, KENYA DEVELOPMENT LEATHER
COUNCIL 1ST RESPONDENT**

KENYA DEVELOPMENT LEATHER COUNCIL 2ND RESPONDENT

JUDGMENT

Court Assistant: Emmanuel Kiprono

K. Mberia & Partners, Advocates for the Petitioner

Attorney-General for the Respondents

1. The Petitioner filed an Amended Petition, dated 15th May 2022. The initial Petition is dated 30th July 2021.



2. The Petition is founded on his Affidavit, sworn on 30th July 2021, and his Supplementary Affidavit, sworn on 7th October 2021.
3. He states that he was employed by the 2nd Respondent, a State Corporation, on 1st October 2019. He was contracted for 5 years. He was employed as Manager, Capacity Building. His contract is dated 1st October 2019.
4. His role included ensuring that the Respondent's Training Centres, which are headed by Centre Administrators, are operational and well-maintained.
5. Centre Administrators belong to job group 'R.' They reported to the Petitioner, who was in job group 'S.' The Petitioner reported to the CEO, the 1st Respondent herein.
6. The dispute arose on 9th July 2021, when the 1st Respondent wrote a letter to the Petitioner, transferring him to Thika Training and Production for Shoe Industry [TPSI].
7. He submits that he was transferred to the position of a Centre Administrator. He was demoted. He was not consulted by the Respondents. The decision was drastic, oppressive and unfair.
8. He submits that his right to fair labour practices [Article 41]; right to fair administrative action [Article 47]; right to fair hearing [Article 50]; and right against demotion and victimization [Article 236], among other constitutional rights, have been violated.
9. He prays for: -
 - a. Declaration that alteration of his terms and conditions of employment, vide the letter of transfer/demotion dated 9th July 2021, is illegal, null and void for want of consultation and due process of the law.
 - b. A declaration that the Respondents violated the Petitioner's rights by demoting the Petitioner without due process of the law. [Repetitious. See [a] above].
 - c. An order of compensation to issue, directing the Respondents to recompense the Petitioner the salary for the time worked as a Centre Administrator pursuant to the letter dated 9th July 2021, at the rate of Kshs. 101,477 being the Centre Administrator's monthly salary.
 - d. An order for general damages for the violation of constitutional and other employment rights.
 - e. An order awarding costs to the Petitioner.
 - f. Interest.
 - g. Any other suitable relief.
10. The Respondents rely on the Replying Affidavit of the 1st Respondent, Dr. Issack M. Noor, sworn on 29th September 2021.
11. Noor confirms that the Petitioner was indeed employed and transferred by the 2nd Respondent, as petitioned.
12. The 2nd Respondent is a state agency within the Ministry of Agriculture, Livestock, Fisheries and Cooperatives, responsible for leather development and the value chain.
13. The 2nd Respondent is a young Organization. It operated for long, without staff. It had only one Employee, the 1st Respondent herein, until 1st November 2019. It relied on a few Employees, seconded



- by the parent Ministry. In the Financial Year 2019/2020, it was granted authority by the relevant authorities, to recruit 41 Employees.
14. The Petitioner was a beneficiary under this pioneering recruitment. He was employed as Manager, Capacity Building.
 15. His letter of appointment, under clause 3, states that his duties were not limited to his job description. He could be assigned “any other duties.”
 16. The 2nd Respondent interdicted its Centre Administrator, Thika. There was an urgent need to fill the position. The Centre at Thika is at the heart of the 2nd Respondent’s mandate. It is the only revenue-generating project run by the 2nd Respondent. It is the only training hub and capacity building Centre, owned by the 2nd Respondent.
 17. The Petitioner was the only officer qualified to fill the position. There was a freeze by the Government of recruitment of new staff. The Petitioner was aware of the circumstances. He was a member of the 2nd Respondent’s Complaints and Grievance Committee. He was directly in charge of the Centre affairs and had a wealth of experience and expertise in leather sector, to hold together, Thika Centre.
 18. He was not demoted. He was advised in the letter of transfer that all other terms and conditions of service remained the same. He was in fact, promoted. He was placed at the head of the 2nd Respondent’s only training and production hub, with over 20 Employees directly under him. At the Head Office, he had a paltry 3 supervisees.
 19. The Respondents state that the Petitioner’s reference to job grades in the civil service is misconceived. The 2nd Respondent has its own job grades, KLDC 1 to 10.
 20. Clause 2.31.2 of the 2nd Respondent’s Human Resource Manual, provides that an Employee may be transferred to work at any station, provided that he possesses the core competencies. Clause 2.35.9 allows the 2nd Respondent to transfer its Employees as part of change management and development strategy.
 21. Similar transfers were made with regard to other senior officers. The Manager, Promotions and Marketing was transferred to Kariakor Common Manufacturing Facility, Nairobi.
 22. The Petitioner is not eligible for additional remuneration. He was laterally transferred, with no change in remuneration, in accordance with clause 2.35.6 of the Human Resource Manual.
 23. The Respondents were not actuated by malice. The Petitioner indeed reported to his new station at Thika. He was paid transfer allowance of Kshs. 162,622, which he gratefully pocketed. He has not refunded the payment, even as he pursues his claim for violation of his right to fair labour practices. The Respondents have continued to facilitate him to discharge his role at Thika, and other responsibilities as the Manager, Capacity Building.
 24. It is not true that the Petitioner was not consulted. His grievance was reviewed by the Principal Secretary in the Ministry through the Director, Human Resource Management. The Director held a meeting with the Petitioner on 30th July 2021, and with the Respondents on 3rd August 2021. Even after the Petitioner filed the Petition, the Respondents continued to engage him. He held a meeting with the Human Resource and Development Manager on 12th August 2021. On 13th August 2021 he held another meeting with the parent Ministry, where he was reported to have voluntarily agreed to withdraw his Petition.
 25. The Respondents pray the Court to dismiss the Petition with costs.



26. The Court directed the Parties on 4th February 2022, to canvass the Petition through Written Submissions, based on the Affidavits and Documents on record.
27. The Respondents filed their Submissions on 7th April 2022. The Petitioner, who suffered significant health challenges in the pendency of his Petition, appears not to have filed any Submissions.
28. At the last mention on 2nd February 2024, his Advocate informed the Court that he had drawn an Application for leave to cease acting for the Petitioner. The State Counsel appearing for the Respondent vehemently opposed further delay in delivery of the Judgment, pointing out that the Respondents filed their Closing Submissions on 7th April 2022.
29. The Court directed the Petitioner to file and serve his Submissions within 7 days, and directed further that Judgment would be delivered on notice. Parties had intimated that they were still negotiating. The Court directed that if they reached voluntary settlement, they would notify the Court, any time before delivery of its Judgment.
30. There has been no indication that Parties have reached any out-of-court settlement, and no Application was presented by the Petitioner's Advocates, for leave to cease acting.
31. The issues are whether the transfer of the Petitioner by the Respondent, from the Head Office at Nairobi, to the Training and Production Centre at Thika, violated the Petitioner's constitutional, statutory and contractual rights; and whether he merits the remedies sought.

The Court Finds: -

32. The Petitioner was appointed by the 2nd Respondent in the position of Manager, Capacity Building. The letter of appointment is dated 1st October 2019. The letter indicates that the Petitioner would be based at the Corporation's Headquarters.
33. On 9th July 2021, he was transferred to Training and Production Centre for Shoe Industry [TPSCI], Thika.
34. He was instructed that in addition to his current duties as Manager, Capacity Building, he would henceforth take over and manage all the operations of the TPSCI; investigate why the order of back to school shoes placed by Kobe Tough Limited in November 2020, had not been finalized, and come up with a way forward, in finalization of the order by 30th July 2021; investigate and concluded any other pending orders; and review the operation of the Centre and align them to the Council's current needs, in regard to the Common Manufacturing Facility and Training functions.
35. He was advised that his terms and conditions of service remained the same.
36. The Petitioner's letter of appointment listed his core duties. It also stated that the list was not exhaustive. He could perform any other duties allocated to him.
37. The allocation of other duties at Thika, was therefore done in accordance with his letter of appointment.
38. Clause 2.35.9 of the 2nd Respondent's Human Resource Manual allowed the 2nd Respondent to transfer its Employees as part of its change management and development processes. It is explained that by transfer, Employees would be broadly exposed to, and gain experience on, the various functions of the Organization.
39. Other relevant clauses in the Human Resource Manual, which are not contested by the Parties, include clause 2.35.6 which provides for lateral transfer to the same area or department; and clause 2.31.2,



- which allows the 2nd Respondent to transfer its Employees to any station, provided they possess the core competencies.
40. The CEO Dr. Isaack Noor, named as the 1st Respondent, explains in clear terms in his Replying Affidavit, that the 2nd Respondent was at the time, a young Organization. It had just been allowed to recruit its own staff, and the Petitioner was recruited against this background.
 41. The TPSCI is focal to the mandate of the Organization. It is the only training hub and capacity building Centre owned by the 2nd Respondent. The Officer manning the Centre had been interdicted, and the most qualified Officer, with experience and expertise in capacity building, was the Petitioner.
 42. He was not being transferred to a new designation. He remained Manager, Capacity Building, but with additional duties at Thika.
 43. His protestation that he was being demoted, is farfetched. His job grade was not altered. His fundamental terms and conditions of employment remained unaffected. His salary did not change. He was facilitated in discharging his duties at Nairobi and Thika.
 44. He was paid transfer allowance of Kshs. 162,622, which he gratefully pocketed, and reported for duty at Thika.
 45. He explained rather unconvincingly, that he could not refund the transfer allowance, because he was critically ill. He has not refunded the allowance at any time during the pendency of his Petition. His position is not that he remained critically ill. He in fact accepted payment of transfer allowance, and actually transferred to Thika. He is even claiming additional salary for the position of Centre Administrator, which is not payable under the Human Resource Policy on lateral transfers.
 46. It is difficult to accept that an Employee who has received and accepted transfer allowance, and reported at the new station, can turn around and dispute the legality and fairness of transfer.
 47. The decision by the Respondents was founded on the contract of employment, human resource policy, and did not violate any of the Petitioner's constitutional and statutory rights.
 48. There is evidence that consultations ensued involving him, the Respondents and the parent Ministry on transfer. The reasons were explained to the Petitioner. He was well-placed in the 2nd Respondent, and familiar with the human resource policies, and challenges faced by the 2nd Respondent as a formative state agency. He was aware about the centrality of TPSCI to the mandate of the 2nd Respondent. Other Officers were similarly transferred. The 2nd Respondent was a newly established entity, at its formative years, and was still designing suitable staff structures, and job assignments. It was a toddler among state agencies, learning to walk. There was nothing personal or ulterior, in the transfer of the Petitioner.
 49. Courts have upheld the managerial prerogative, which includes the power to manage industrial capital and command labour. It includes the discretion in transfer of Employees, allocation of duties, disciplinary control, and regulation of working hours among others.
 50. In *Raphael Kibara Rutbuku v Kenya Revenue Authority* [2019] e-KLR and *Mugo v. ASP Company Limited* [Appeal E103 of 2021] [2024] KEELRC 191 [KLR] [12th February 2024] [Judgment], the Courts upheld the managerial prerogative on transfer of Employees. Courts will not interfere with the prerogative, unless transfer is inhumane, actuated by malice or bad faith, or otherwise exercised unreasonably.



51. In E&LRC decision, Theresa Wanjiru *Mwaniki v. Registered Trustees of the Sisters of Mercy [Kenya] & 2 Others [Cause Number E573 of 2020]*, the Court held that the managerial prerogative doctrine, provides that every Employer has the right to regulate, according to its own discretion and judgment, all aspects of employment. Transfer must not be made in bad faith, or intended to circumvent the law. The Court held also, that the Employee had not been demoted as alleged, but was laterally moved, without change to her salary, status and other essential terms and conditions of service. The Court held further that a job title, or description, is not cast in bronze, and could be changed in accordance with Section 10 of the *Employment Act*. There was no change to the Petitioner's job title however, just added responsibilities at Thika. The Petitioner was fully facilitated in discharge of the added responsibilities.
52. He did not give evidence to back up his theory, that transfer was made to disorganize him, and was calculated to cause him difficulty, and ensure that he did not perform all his duties as contracted. What would be the rationale in an Organization setting up its own officers for failure, in performing of their contractual obligations? What was to be gained by the Respondents in the Petitioner's failure to perform? It is strange that a Senior Officer such as the Petitioner, who was highly valued by his Organization, and given responsibility to oversee the Organization's only training and production hub, would come up with such a strained theory. He did not offer evidence to establish malice and bad faith, or any intention on the part of the Respondents, to circumvent the law, by transferring him to Thika.
53. The Court finds the entire Petition to have no merit. The Court notes that the Petitioner suffered significant ill-health in the course of this dispute, and does not think it would be prudent, to burden him with an order for payment of costs to the Respondents.

It is ordered: -

- a. The Petition 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

