



Ahmed v Ministry of Interior and National Administration & 5 others (Petition E050 of 2024) [2024] KEELRC 1937 (KLR) (26 July 2024) (Judgment)

Neutral citation: [2024] KEELRC 1937 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E050 OF 2024**

B ONGAYA, J

JULY 26, 2024

**IN THE MATTER OF CONTRAVENTION OF
FUNDAMENTAL RIGHTS AND FREEDOMS
IN THE MATTER OF ARTICLES 2 (1) & (2), 3 (1), 10(1) (2) (B)
(C), 19, 20(1) &(2), 21(1), 22, 27, 28, 41(1), 47, 232, 258 AND 259(1)
OF CONSTITUTION OF KENYA**

**IN THE MATTER OF THE REINSTATEMENT OF YUSUF
OSMAN AHMED AS ASSISTANT CHIEF GRADE II OF
MAROTHILE SUB-LOCATION, MAROTHILE LOCATION,
ASHABITO DIVISION, MANDERA NORTH SUB-COUNTY
IN THE MATTER OF THE FAIR ADMINISTRATIVE
ACTION ACT, NO. 4 OF 2015**

BETWEEN

YUSUF OSMAN AHMED PETITIONER

AND

**MINISTRY OF INTERIOR AND NATIONAL ADMINISTRATION 1ST
RESPONDENT**

**REGIONAL COMMISSIONER, NORTH EASTERN REGION 2ND
RESPONDENT**

COUNTY COMMISSIONER, MANDERA COUNTY 3RD RESPONDENT

**DEPUTY COUNTY COMMISSIONER, MANDERA NORTH SUB-
COUNTY 4TH RESPONDENT**



JUDGMENT

1. The petitioner filed the petition dated 11.04.2024 through N.O.Sumba & Company Advocates. The petitioner prayed as follows:
 - a. Order of *certiorari* to issue to remove to the Honourable Court and quash the 1st and 2nd respondents letter dated 05.04.2024 Ref. No 20210498574/26 to the petitioner summarily dismissing him from employment as the Assistant Chief for Marothile Sub-location, Mandera North Sub-county.
 - b. An order of judicial review of *certiorari* to issue to bring to the Honourable Court to quash the letter Ref. No 20210498574/49 dated 03.04.2024 from the 1st respondent's principal secretary to the 4th respondent regarding the petitioner's summary dismissal.
 - c. An order of judicial review of *certiorari* to issue to bring to the Honourable Court to quash the letter by the 6th respondent Ref. No REF PSC/LEG/002/21/558(18) dated 14.03.2024 addressed to the 1st respondent's principal secretary regarding the petitioner's summary dismissal.
 - d. A declaration that the petitioner's appointment as Assistant Chief for Marothile Sub-location, Mandera North Sub-county vide the 1st and 4th respondent's letter dated 18.11.2021 is valid and is irrevocable except on any other ground other than on account of lack of qualifications.
 - e. A declaration that the petitioner met the academic qualifications for employment as the Assistant Chief Marothile Sub-location, Mandera North Sub-county by virtue of the 6th respondent's circular (waiver on requirements of scheme of service) dated 12.06.2014 Ref No PSC/1/67 addressed to the 1st respondent's principal secretary and further that the petitioner's disqualification on account of age is discriminatory, unconstitutional, and in breach of Article 27 (1) (4) and (5) of the *Constitution* of Kenya, 2010.
 - f. An unequivocal mandatory order reinstating the petitioner to his employment as the Assistant Chief Marothile Sub-location, Mandera North Sub-county.
 - g. A prohibitory order prohibiting the respondents from advertising or enlisting any 3rd party or filling the position of Assistant Chief, Marothile Sub-location, Mandera North Sub- County on account of lack of qualifications on the part of the petitioner.
 - h. Any further orders as may be just, expedient, and appropriate in the circumstances.
 - i. Respondents to pay costs of the petition.
2. The petition is based upon the petitioner's supporting affidavit. The petitioner has urged as follows:
 - a. On 08.06.2021 the position of Assistant Chief, Marothile Sub-location, Mandera North Sub-county was advertised. He applied and was shortlisted. He was interviewed on 08.09.2021. The 4th respondent appointed him to the position by the letter dated 18.11.2021.



- b. The requirements for the appointment in the advertisement included being Kenyan citizen; KCSE Grade C- or equivalent; be not less than thirty years of age; be a resident of the sub-location; certificate of good conduct; good communication skills; and, a certificate in computer application skills from recognised institution.
 - c. The petitioner received the letter dated 05.04.2024 from the 1st and 4th respondents summarily dismissing the petitioner because he did not meet the qualifications to be appointed. The ensuing vacancy was re-advertised. In the meantime the petitioner's appointment had been challenged in ELRC Petition 183 of 2021 at Nairobi filed by Abdullahi Abdirizak Ali. The judgment in that case was set aside because the petitioner had not been served to appear in that case. That petition was subsequently withdrawn.
 - d. The petitioner alleges that he met the qualifications to be appointed to the position as at initial appointment. In particular, the 6th respondent had issued a waiver on qualifications by the circular dated 12.06.2014. The waiver with respect to the position the claimant was appointed for academics is minimum Kenya Certificate of Primary Education (KCPE). The 6th respondent revoked the waiver effective 06.07.2022 per its letter Ref. No PSC/54/14(88) dated 06.07.2022 exhibited on the 6th respondent's replying affidavit.
 - e. The petitioner alleges the summary dismissal violated his constitutional rights as cited in his petition. He says the termination was unilateral. He alleges violation of Articles 27, 41, 47 of the Employment Act and sections 45 of the Employment Act. He seeks to be reinstated to the position he had served for two years and unilaterally removed by the respondents.
3. The 6th respondent filed the replying affidavit of Remmy N. Mulati, MBS sworn on 07.05.2024 and through Ms. Wangeci Gichangi, Assistant Director, Legal Services. The 6th respondent's case was as follows:
- a. The judgment in petition ELRC E183 of 2021 at Nairobi nullified the petitioner's appointment because he did not meet the qualifications for appointment in terms of required age and academic qualifications. He was below 30 years of age and scored a D- in KCSE. In exercise of its constitutional mandate per Article 234(2) (a) (ii) and by letter dated 06.07.2022 the Ministry was directed to comply with the judgment in the said petition ELRC E183 of 2021. A consent was recorded in Court to stay implementation of the judgment upon which, the Ministry for Interior wrote to the Commission the letter dated 06.190.2023 that the petitioner be reinstated. The Commission, the 6th respondent herein had not been a party to the consent. Thus, the request for reinstatement was declined by the 6th respondent's letter dated 14.03.2024. Thus, by letter dated 05.04.2024 the Ministry conveyed the decision of the 6th respondent that the petitioner vacates office. The other impugned letters subject of the reliefs in the instant petition issued.
4. Final submissions were filed for the petitioner and the 6th respondent. The Court has considered all the material on record and returns as follows:
- b. Per the findings in petition, ELRC E183 of 2021 it is obvious that the petitioner lacked the qualifications to hold the office he was appointed to hold. With or without the waiver the petitioner did not meet the express requirements as to age as stated in the advertisement he was responding to. It is that he was irregularly shortlisted for the position, an obvious case of incurable irregularity in his appointment. It appears to the Court that the appointment could not stand at all because the petitioner never met the requirements on age of at least 30 years and



KCSE mean grade C-. How then can he expect his appointment to stand while other qualified Kenyans must have been locked out unfairly?

- c. The Court further returns that the claimant's vacation from office followed the judgment and findings in petition ELRC E183 of 2021 that the petitioner lacked due qualifications. That decision has not been set aside and the instant petition is really an abuse of Court process.
- d. The Court returns that the alleged violation of rights and freedoms stood on loose sand in the face of the petitioner's lack of qualifications and his having been found as such in petition ELRC E183 of 2021. The reason for his removal from office is found fair in terms of sections 43 and 45 of the *Employment Act*, 2007.
- e. In view of the findings, the petition must collapse as unjustified.
- f. The Court has considered all circumstances of the petition and no orders on costs.

In conclusion, the petition is hereby dismissed with no orders on costs.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS
FRIDAY 26TH JULY 2024.**

BYRAM ONGAYA

PRINCIPAL JUDGE

