



Ahmed v Ministry of Interior and National Administration & 5 others (Petition E050 of 2024) [2024] KEELRC 13239 (KLR) (27 November 2024) (Ruling)

Neutral citation: [2024] KEELRC 13239 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E050 OF 2024
B ONGAYA, J
NOVEMBER 27, 2024**

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**

THE HON ATTORNEY GENERAL 5TH RESPONDENT

THE PUBLIC SERVICE COMMISSION 6TH RESPONDENT

RULING

1. The petitioner filed the notice of motion application dated 02.08.2024 through N.O. Sumba & Company Advocates. He seeks the following orders:
 - i. Spent.
 - ii. That the Honourable Court do order, in the interim that the status quo prevailing in this matter prior to the date of delivery of judgment on 26.07.2024 in respect to the recruitment of the assistant chief for Marothile Sublocation, Mandera County do prevail pending the hearing and determination of the intended appeal.



- iii. That the Honourable Court do order, in the interim, the suspension of the recruitment of the assistant chief for Marothile Sublocation, Mandera County pending the hearing and determination of the intended appeal.
 - iv. That the respondents be condemned to pay the costs of the application herein.
 2. The application was supported by the affidavits of the petitioner and Nicholas Sumba who aver as follows:
 - a. The petitioner is aggrieved with the judgment delivered in the suit on 26.06.2024 and wishes to contest the said decision as per the copy of notice of appeal filed on 01.08.2024.
 - b. The intended appeal will be overtaken by events if the orders sought herein are not granted. The petitioner will not stand a chance to be reinstated to the said position of assistant chief Marothile Sublocation, Mandera County once the position is advertised and filled. He also stands to suffer substantial loss should the appeal eventually be allowed.
 - c. The petitioner is ready to abide by whatever terms as may be directed by the Court for the satisfaction and performance of the order.
 - d. Justice dictates that the orders sought herein be granted so that the status quo is maintained to enable the petitioner/applicant exercise his constitutional right of appeal to the Court of Appeal.
 3. In response, the 6th respondent filed its grounds of opposition dated 16.09.2024 through its Assistant Director of Legal Services, Wangeci Gichangi. It opposed the petitioner's application on the following grounds:
 1. The application is misconceived and incapable of granting since it seeks to stay execution of a negative order which dismissed the petition.
 2. There is no substantial loss or irreparable injury that the applicant will suffer nor will the appeal be rendered nugatory if the orders are not granted.
 3. The application is therefore frivolous, vexatious and devoid of merit and should be dismissed with costs to the 6th respondent.
 4. The 1st to 5th respondents did not file any responses to the application before Court.
 5. The applicant filed his written submissions dated 16.10.2024 and the 6th respondent filed its written submissions dated 06.11.2024. The Court has considered the parties' respective positions and returns as follows:
 - a. On 26.07.2024, the Court dismissed the petition with costs. As submitted for the 6th respondent, there is no shown order by the Court that can be stayed. The application is misconceived, as it does not meet the known threshold for grant of stay of execution.
 - b. In any event, it appears to the Court that the prayer is in the nature of a relief that could be properly applied to the Court of Appeal as may be appropriate. The applicant has cited cases on grant of injunctions or stay orders by the Court of Appeal under that Court's rules.

In the circumstances, the application is dismissed with no orders on costs.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS WEDNESDAY 27TH NOVEMBER 2024.



BYRAM ONGAYA
PRINCIPAL JUDGE

