



REPUBLIC OF KENYA



**KENYA LAW**  
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**Manyasa v Director, Directorate of Criminal Investigations (Judicial Review  
E044 of 2024) [2024] KEELRC 13368 (KLR) (5 December 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13368 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
JUDICIAL REVIEW E044 OF 2024  
MN NDUMA, J  
DECEMBER 5, 2024**

**BETWEEN**

**JOSEPH ANDESIO MANYASA ..... APPLICANT**

**AND**

**DIRECTOR, DIRECTORATE OF CRIMINAL  
INVESTIGATIONS ..... RESPONDENT**

**RULING**

1. By a notice of motion application dated 11/9/2024, the Respondent seek an order in the following terms: -
  1. Spent
  2. Spent
  3. The court be pleased to set aside expert orders issued on 29/8/2024 by Justice James Rika and in particular order 4 and 5 pending the hearing and determination of judicial review application dated 27<sup>th</sup> August 2024.
  4. Each party to bear its own costs.
2. The application is premised on grounds 5 to 14 set out on the face of the notice of motion the nub of which is that the court per Rika J. issued Ex-parte orders on 29/8/2024 in favour of the respondent ordering the 1<sup>st</sup> and 2<sup>nd</sup> respondents to immediately issue the respondent with a discharge certificate and last pay certificate following his transfer of service to the County Government of Kakamega.
3. That the orders were issued under non-disclosure of crucial material facts in that the respondent failed to disclose to the court that he did not follow the discharge procedure as set out under section B. 32(3) and B.32(5) of the Public Service Human Resource Policies and Procedures Manual 2016 that requires an officer intending to take up an appointment in another administration to do so through his/her



- authorised officer (the Inspector General of Police in this case) or else resign in accordance with the provisions of the same manual section D. 19(1) and D. 19(2) as well as the service standing orders.
4. That this matter is one of great public interest and directly affects the discharge procedure in the manual.
  5. That it is in the interest of justice that the orders be set aside pending the hearing and determination of the suit.
  6. That the applicant has a strong defence and the Inspector General may be held in contempt of court orders.
  7. That the court should determine the matter on the merits. The application is buttressed by the supporting affidavit of Charles Peter Mutua, Deputy Director of Personnel at the Directorate of Criminal Investigations Headquarters who has attested to the aforesaid facts.
  8. The application is opposed vide replying affidavit of the Respondent who states that, contrary to the assertions by the applicants, he fully complied with the clearance process and was officially released as per the letter of approval and a clearance kit attached to the application.
  9. The kit clearance certificate dated 1/7/2024 is signed by sub-county commander Kisumu Central and Stores Officer for the Kisumu Central.
  10. That the respondent had “returned all items of police uniform prior to his discharge from the service with effect from 15<sup>th</sup> May 2024 and nothing had been found deficient.”
  11. The respondent also filed Government Liability Clearance Certificate mandated to be filled by all officers on transfer on leaving the service of the Government.
  12. Furthermore, the respondent refer to a letter dated 15/5/2024 served by Eliud Kinuthia chairperson of the National Police Service Commission in which the chairperson states: -

"The commission has considered your recommendation; and approved the transfer of service of the above officer to the County Government of Kakamega on the basis of fair administrative practice following his successful appointment. You are requested to facilitate his exit and discharge from the service and transfer of his payment details to the County Government of Kakamega to enable him take up the appointment."
  13. The letter is written to Mr. Japheth N. Koome Inspector General National Police Service.
  14. The County Secretary and Head of Public Service of Kakamega County, wrote to the 3<sup>rd</sup> respondent on 4/6/2024 following up on submission of the last pay certificate for the respondent who was now already working for the Kakamega County Government. The respondent concludes that he had fully complied with all requirements of transfer from police service and the respondents were unduly hindering his progress without any good reason or justification. That the respondent was not guilty of any material non-disclosure. That there was no reason shown to justify setting aside of the interim orders issued by the court, Ex-parte, the respondent having disclosed a prima facie case, with a probability of success, ex-face the notice of motion application dated 28/4/2024 pursuant to which Rika J. granted the Ex-parte orders on 28/4/2024.
  15. The court has considered the deposition by the parties and the written submissions filed thereto.
  16. The court has weighed the principles for grant of interim orders set out in the case of Giella vs. Cassman Brown Company Ltd 1978 including that the applicant must--



- a. Demonstrate a prima facie case with a probability of success.
  - b. Show that if the interim orders are not granted, he would suffer irreparable harm not capable of being resolved by damages.
  - c. That the balance of convenience is in favour of granting the reliefs sought.
17. The court is aware that it should refrain from predetermining the facts on merit at this point of the proceedings, but has carefully weighed the principles above on the matter and is satisfied that the duty Judge was justified to grant the interim orders Ex-parte and there is no justification shown to set aside the same pending determination of the judicial review application on the merits.
  18. The respondents are bound to obey the court orders accordingly to enable the respondent to be paid his remuneration by the new employer. The respondent has failed to demonstrate that any prejudice that may be suffered by the applicant outweighs the inconvenience being suffered by the respondent due to the failure by the respondent to produce the essential documents required by the new employer.
  19. The application lacks merit and is dismissed.
  20. Costs in the cause

**DATED AT NAIROBI THIS 5<sup>TH</sup> DAY OF DECEMBER 2024**

**Mathews Nderi Nduma**

**JUDGE**

Appearance:

Attorney General for the Respondent/Applicant

Odhiambo Owino & Company for Respondent

Court Assistant, Kemboi

