



**Juma v Cabinet Secretary Ministry of Health & 3 others; Kariuki & 4 others (Interested Parties) (Judicial Review Miscellaneous Application E022 of 2022) [2023] KEELRC 493 (KLR) (28 February 2023) (Ruling)**

Neutral citation: [2023] KEELRC 493 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E022 OF 2022  
J RIKA, J  
FEBRUARY 28, 2023**

**BETWEEN**

**MATHEWS JUMA ..... APPLICANT**

**AND**

**CABINET SECRETARY MINISTRY OF HEALTH ..... 1<sup>ST</sup> RESPONDENT**

**THE ASSOCIATION OF PUBLIC HEALTH OFFICERS  
KENYA ..... 2<sup>ND</sup> RESPONDENT**

**PUBLIC HEALTH OFFICERS AND TECHNICIANS COUNCIL .... 3<sup>RD</sup>  
RESPONDENT**

**THE HONOURABLE ATTORNEY-GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**DR. JOHN KARIUKI ..... INTERESTED PARTY**

**MATHEW KORE ..... INTERESTED PARTY**

**MOHAMED DUBA ..... INTERESTED PARTY**

**ANTONY NGAIRA ..... INTERESTED PARTY**

**DR. SUSAN MAMBO ..... INTERESTED PARTY**

**RULING**

1. The Ex-Parte Applicant was granted leave to apply for orders of certiorari, mandamus, and prohibition against the respondents, on August 22, 2022.



2. Leave so granted was to operate as an order for stay of implementation of Gazette Notice No. 9331 of August 5, 2022, through which the 1<sup>st</sup> respondent announced the appointment of the interested parties, as members of the Board of Directors of the 3<sup>rd</sup> respondent.
3. The Substantive Application was to be filed within 21 days. The ex-parte applicant did not do so.
4. The respondents and the interested parties have moved the court to vacate the orders granted in favour of the ex parte applicant, on the ground that 21 days lapsed on September 12, 2022.
5. The ex- parte applicant filed an Application dated September 30, 2022, asking the court to allow him to filed the substantive motion out of time.
6. Parties agreed to have the application by the respondents; the preliminary objection by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> interested party; and, the Application for extension of time by the ex parte applicant, considered on the strength of their affidavits and written submissions. The Preliminary objection raises similar grounds to the application filed by the respondents. The matter was last mentioned on December 14, 2022, when Parties confirmed filing of their Submissions.

### **The Court Finds**

7. The ex-parte applicant was granted specific period of time, of 21 days to file and serve his Substantive Application. Leave was to operate as stay of implementation of the legal instrument through which the interested parties were appointed as board members, of the 3<sup>rd</sup> respondent.
8. The ex parte applicant has not established any convincing ground why he did not file the substantive application within the stipulated time. He was aware that he had obtained orders, which were to operate as stay of implementation of the decision which is sought to be quashed. Fair hearing required that the Parties against whom the orders had been obtained, are made aware of the matter subject of the Judicial Review, and that they are given a fair opportunity to answer to those allegations substantively.
9. The ex parte applicant plea for the court to grant leave to bring his substantive application out of time, is in abuse of the process of the court. The court cannot grant leave upon leave, to a Party who appears intent of abusing the orders of stay of implementation of Gazette Notice Number 9331.
10. It is ordered :-
  - a. The Orders given by the court on 22<sup>nd</sup> day of August 2022, and all consequential orders given in favour of the ex-parte applicant are set aside.
  - b. The respondents are at liberty to implement Gazette Notice Number 9331 of August 5, 2022.
  - c. No order on the costs.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, THIS 28<sup>TH</sup> DAY OF FEBRUARY 2023.**

**JAMES RIKA**

**JUDGE**

