



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 374 OF 2017

OMONDI CHARLES ALAO.....CLAIMANT

v

COUNTY ASSEMBLY SERVICE

BOARD, MIGORI COUNTY.....RESPONDENT

JUDGMENT

1. On or around 31 March 2014, the County Assembly Service Board Migori (the Board) appointed the Omondi Charles Alao (the Claimant) to the position of Hansard Editor.
2. However, on 1 August 2017, the Board deployed the Claimant to the position of Senior Research Officer.
3. The Claimant was not satisfied and he sued Board on 25 August 2017, alleging unfair labour practices and breach of contract.
4. The Claimant sought orders:
 - (a) A declaration that the deployment of the Claimant from the position of Head of Hansard Editors to the position of Head of Research is malicious, illegal, unfair, unlawful, and therefore null and void.
 - (b) An injunction to restrain the Respondent from effecting their letter dated 1st August 2017 and to permanently restrain them from deploying the Claimant to any department that requires different qualifications, duties, and responsibilities before adequately training the Claimant.
 - (c) An order compelling the Respondent to pay the Claimant his allowance dues as particularised above.
 - (d) Costs of this claim
5. On 31 August 2017, the Court issued an order to stay the deployment of the Claimant as a Senior Research Officer.
6. The Board filed a Response on 21 May 2018, and the Cause was heard on 2 October 2018 when the Claimant testified. The Board's case was adjourned to 14 February 2019.
7. The Board secured several adjournments, but it never presented a witness, and on 3 February 2022, the Court deemed its case closed.
8. The Claimant filed his submissions on 3 March 2022 and the Board on 1 April 2022.
9. The Claimant asserted that the decision to deploy him was not lawful because the Board being his employer had not made such a decision or given its approval to the decision.
10. He further contended that the position of Senior Research Officer did not exist in the approved staff establishment.
11. In its submissions, the Board asserted that since the Claimant was deployed on the same terms of service upon deployment, there was no illegality or unfairness in the decision and that it had the power to deploy the Claimant by dint of section 11(1)(b) of the County Assembly Services Act, 2017.

12. The Court has considered the pleadings, evidence, and submissions.

13. The Claimant was appointed to a specific office and was issued a letter of appointment. He had a job description and terms and conditions of service as contemplated by section 10(2) of the Employment Act, 2007.

14. The terms included payment of allowances (the Claimant stated that the Board had not paid him allowances amounting to Kshs 146,000/-).

15. When the Board deployed the Claimant, the deployment altered the job description fundamentally.

16. Under section 10(5) of the Employment Act, 2007, the Board was under a legal obligation to consult with the Claimant.

17. The Board did not present any evidence before the Court to show that it consulted with the Claimant, and the Court has no option but to find that there was an unfair labour practice and unlawfulness in the deployment.

Conclusion and Orders

18. From the foregoing, the Court orders:

(a) A declaration is hereby issued that the deployment of the Claimant from the position of Head of Hansard Editors to the position of Head of Research was unfair, unlawful, and therefore null and void.

(b) An order reinstating the Claimant to the position of Head of Hansard Editors forthwith.

(c) An order compelling the Respondent to pay the Claimant allowances of Kshs 146,000/-.

19. The Claimant to have costs on half-scale as the Cause was not substantively defended.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED ON THIS 27TH DAY OF APRIL 2022.

Radido Stephen, MCI Arb

Judge

Appearances

For Claimant N.E. Mogusu & Associates

For Respondent Odhiambo Kanyangi & Co. Advocates

Court Assistant Chrispo Aura