



**Chere & 4 others v Lake Basin Development Authority (Judicial Review
Application E002 of 2022) [2022] KEELRC 3782 (KLR) (29 June 2022) (Judgment)**

Neutral citation: [2022] KEELRC 3782 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
JUDICIAL REVIEW APPLICATION E002 OF 2022**

S RADIDO, J

JUNE 29, 2022

**IN THE MATTER OF AN APPLICATION BY FREDRICK ONYANGO
CHERE, NELSON OUMA ONYANGO, ALBERT OMONDI OJANGO**

GODFREY MAINA MWANGI

AND TERESIA ACHIENG

OCHAKA TO APPLY FOR

ORDERS OF MANDAMUS

AND CERTIORARI

AND

IN THE MATTER OF THE LAKE BASIN

DEVELOPMENT AUTHORITY ACT, CAP 442 LAWS OF KENYA

AND

IN THE MATTER OF ANTI-CORRUPTION AND

ECONOMIC CRIMES ACT NO. 3 OF 2003

AND

IN THE MATTER OF THE PUBLIC SERVICE COMMISSION ACT, 2017

AND

IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT, 2015

BETWEEN

BETWEEN

FREDRICK ONYANGO CHERE 1ST APPLICANT

NELSON OUMA ONYANGO 2ND APPLICANT



ALBERT OMONDI OJANGO 3RD APPLICANT
GODFREY MAINA MWANGI 4TH APPLICANT
TERESA ACHIENG OCHAKA 5TH APPLICANT

AND

LAKE BASIN DEVELOPMENT AUTHORITY RESPONDENT

JUDGMENT

1. On September 26, 2019, the Lake Basin Development Authority (the Authority) interdicted the 5 applicants after they were charged before the Magistrates Court with corruption offences. The interdiction letters indicated that the interdictions would continue until the finalisation of the criminal charges.
2. On November 2, 2021, the Director of Public Prosecutions applied to have the charges withdrawn under section 87(a) of the *Criminal Procedure Code*.
3. The magistrate duly discharged the applicants, and on November 15, 2021, the Authority notified them that the interdictions had been lifted. The Authority also instructed the applicants to apply for their accumulated leave days.
4. In a turn of events, the Authority wrote to the applicants on December 10, 2021, informing them that the Board had determined that the interdictions had been lifted prematurely, and the decision had been recalled pending further advice from the office of the Honourable Attorney General.
5. The Authority wrote to the Honourable Attorney General on December 16, 2021 seeking a legal opinion on whether the applicants should be reinstated to work considering the circumstances the criminal charges were terminated.
6. The applicants took the view that the decision to reinstate the interdiction(s) was without any legal foundation. On February 9, 2022, they moved the court seeking leave to commence judicial review proceedings.
7. Pursuant to directions by the court, the Authority filed a replying affidavit to the leave application on February 21, 2022.
8. The court granted the leave on February 22, 2022. The court ordered that the leave operates as a stay of the decision to reinstate the applicants' interdiction.
9. The applicants thereafter filed a substantive motion on March 7, 2022 seeking orders:
 - (1) An order of mandamus compelling the respondent to pay the applicants any withheld salary, allowances, and benefits during the period of interdiction.
 - (2) An order of certiorari removing to the High Court for the purposes of quashing, the decision of the Lake Basin Development Authority issued on the December 10, 2021, in particular, the following orders: -
 - (i) Putting on hold and holding in abeyance the lifting of the applicants' interdiction until:



- (a) The management receives a legal opinion from the Attorney General on the matter.
 - (b) The matter is discussed and approved by the Board.
- (3) Costs of and incidental to the application be provided for.
- (4) Such further or other relief as the honourable court may deem just and expedient to grant.
- 10. The Authority did not file a response/affidavit in opposition to the motion, and the court has, therefore, relied on the earlier replying affidavit filed in response to the application for leave.
- 11. The applicants filed joint submissions on June 7, 2022 (should have been filed and served on or before May 22, 2022), and the Authority, instead of filing submissions wrote to the applicants on June 23, 2022 in respect of settlement proposals. The letter was copied to the court.
- 12. The interdiction of the applicants was anchored on section 62 of the *Anti-Corruption and Economic Crimes Act*. The Authority informed the applicants that the interdiction(s) would subsist until the finalisation of the corruption charges.
- 13. The charges against the applicants were withdrawn by the Director of Public Prosecutions on November 2, 2021, as a result of which the Magistrates Court discharged the applicants.
- 14. The interdiction of the applicants was based on the operation of a provision of the *Anti-Corruption and Economic Crimes Act*. Under section 62(3) of the Act, the interdiction (suspension) lapses with the acquittal of the accused or discontinuation of the proceedings.
- 15. The section provides:
 - (3) The public officer ceases to be suspended if the proceedings against him are discontinued or if he is acquitted.
- 16. The proceedings against the applicants were withdrawn under section 87(a) of the *Criminal Procedure Code*, and the Magistrates Court made an order to discharge them.
- 17. The discharge amounted to a discontinuation of the criminal proceedings.
- 18. There is no evidence before the court that the Director of Public Prosecutions has intimated that the applicants would be charged afresh in the near future. The Honourable Attorney-General had no role in the proceedings.
- 19. In the court's view, in so far as the applicants' interdiction(s) was founded upon arraignment of the applicants on corruption offences which have been withdrawn and discontinued, by dint of section 62(3) of the *Anti-Corruption and Economic Crimes Act*, the Authority has no legal basis for continuing to place the applicants on interdiction.
- 20. The motion succeeds, and the court orders:
 - (i) An order of mandamus is hereby issued compelling the respondent to pay the applicants any withheld salary, allowances, and benefits during the period of interdiction.
 - (ii) An order of certiorari is hereby issued removing to the Employment and Labour Relations Court for the purposes of quashing, the decision of the Lake Basin Development Authority issued on the December 10, 2021, in particular, the following orders: -
 - (i) Putting on hold and holding in abeyance the lifting of the applicants' interdiction until:



- (a) The management receives a legal opinion from the Attorney General on the matter.
- (b) The matter is discussed and approved by the Board.

21. The applicants filed their submissions long after the agreed timeline and are denied costs. Each party to bear own costs.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 29TH DAY OF JUNE 2022.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For applicants Okello Adipo & Co Advocates

For respondent G & A Advocates LLP

Court assistant Chrispo Aura

