



**Qanchora v County Government of Isiolo & another (Cause E013 of 2020)  
[2022] KEELRC 12748 (KLR) (28 September 2022) (Judgment)**

Neutral citation: [2022] KEELRC 12748 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI  
CAUSE E013 OF 2020  
DKN MARETE, J  
SEPTEMBER 28, 2022**

**BETWEEN**

**ROBA ABDUBA QANCHORA ..... CLAIMANT**

**AND**

**COUNTY GOVERNMENT OF ISIOLO ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY PUBLIC SERVICE BOARD OF ISIOLO ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. This matter came to court by way of a Memorandum of Claim dated 2nd December, 2020. It does not disclose of issue in dispute on its face.
2. The Respondent in a Reply to Claim dated 28th July, 2021 denies the claim and prays that this be dismissed with costs.
3. The claimant's case is that through a competitive process, he was appointed to the position of Head of Treasury by the 2nd Respondent. Thereafter, the 1st Respondent challenged this in court but this was dismissed.
4. The claimant's further case is that after the confusion, he was on 30th September, 2017 issued with a letter of offer for this office w.e.f. 10th October, 2016.
5. The Claimant's further case is that he diligently worked for the 1st Respondent until 15th June, 2020 while through a letter of the said date he was advised by the 2nd Respondent that he had been re-designated as a Director Accounting Services, Job Group R. This was upon his request.
6. The claimant's further case comes out as follows;The letter advised him that his job description remained as it was, and that he would now be Head of Accounting Unit (HAU).On 5th November, 2020, barely 5 months from the date of re-designation, IFMIS payment rights were withdrawn without notice and awarded to Jackline W. Njue Job Group L.It was only on 9th November, 2020 that he



was handed a letter from the Chief Officer Finance re-designating him to the Office of Director of Budget. Through this letter, the claimant learnt of another letter dated 4th November, 2020 authorising the said changes in light of what was alleged to be supervisory and chain of command challenges. He had not known of any changes in the chain of command or challenges in supervision neither had he applied for transfer to the Department of Budget. It is distinct from Accounts. The Office of Director of Budget does not exist within the establishment of the 1st Respondent. The transfer was illegitimate and in violation of Section 59 and 76 of the County Government Act as read with Article 235 of *the Constitution*. This action reeks of discrimination, spite and unfair labour practices and violates Article 41 of *the Constitution* of Kenya, 2010. All these happened in the absence of any complaints by the 1st Respondent as far as his performance of duty was concerned.

7. The claimant's other case comes out thus;
  18. Claimant avers that there is no complaint at all by the 1st Respondent concerning his performance of duty and the alleged challenge in supervision and chain of command is a creation of the respondents so that they could remove the claimant from his position unlawfully and irregularly and the claimant is aggrieved
  19. His claim is for declaration that the actions of the respondents are in bad faith and this court should reject them and order that the alleged re-designation is null for want of compliance with section 69(2) (d) of the *County Governments Act*, Number 17 of 2012.
8. He prays thus;
  - a. A declaration that the re-designation of the claimant to the position of Director Budget County Government of Isiolo is null and void.
  - b. An order directing the respondents to reinstate the claimant to his position as Director Accounting Services County Government of Isiolo.
  - c. An order directing the 1st respondent to restore claimant's IFMIS.
  - d. A permanent injunction preventing the respondents from unlawfully and irregularly removing the claimant from his position.
  - e. An order stopping the unlawful appointment of Jackline W.Njue or any other person to the position of Director Accounting Services County Government of Isiolo.
  - f. Any other or better order that the court may deem fit to grant.
  - g. Costs of the suit plus interest.
9. The Respondent in a Replying Affidavit sworn on 28th July, 2021 denies the claim.
10. It is his case that the claimant's case has failed to make a cordial disclosure of his employment history. Indeed, he was employed and designated to the position of Director Accounts on 16th June, 2020.
11. Their further case is an admission of the various changes in their designation of the claimant which was within the power of the Respondents as employers.
12. The Respondents' other case is that the claimant has not been demoted or his salary and other emoluments affected and the re-designed programs fell within the same Job Group as his previous positions. He did not raise a finger on this either.
13. Again, the claimant has no liberty to choose which designation to occupy or not as this is the province of the employer and outside the whims and self-interest of the claimant.



14. The Respondent further submits that Section 69 of the County Government Act lists out considerations to be made when undertaking re-designation, being inter alia; Vacancy of the position to be re-designated. Qualification by the concerned worker. If the concerned officer will suffer any disadvantage. If the concerned officer shall not suffer reduction in remuneration.
15. The Respondents' case is that all the said benchmarks were met by the Respondents during the said re-designation.
16. It is the Respondents ultimate submission that the re-designation of the claimant was lawful and in adherence with Section 65 and 72 of the County Governments Act. She therefore prays that this suit fails and be dismissed with costs.
17. The issues for determination therefore are;
  1. Whether the claimant is entitled to the relief sought.
  2. Who bears the costs of this claim.
18. The 1st issue for determination is whether the claimant is entitled to the reliefs sought. The claimant in his written submissions dated 2nd August, 2021 reiterates the contents of his claim. It is his position that his various re-designations were wrongful and unlawful and seeks, inter alia a permanent injunction preventing the Respondents from unlawfully and irregularly removing the claimant from his position. Two, he further seeks orders stopping the unlawful appointment of Jackline W. Njue or any other person to the position of Director of Accounting Services, County Government of Isiolo. He justifies this on grounds of irregularity on the part of his employer.
19. The Respondent in the written submissions dated 16th February, 2022 seeks to rely on the authority of Section 2 of the County Governments Act where re-designation is defined as follows;

“The conferment upon a person, of a county public office at a grade equal to or substantially equal to the one previously held by that person and whose major consequence is to change from one cadre to the other to facilitate that person.”
20. It is their submission that throughout this process of re-designation, which is not denied, the Claimant did not lose anything as he remained in the same job group and this did not affect his pay and emoluments in any manner. There was no demotion on his part.
21. The Respondents sought to rely on the authority of Josphine Wambura Gakuo –vs- Kirinyaga Water and Sanitation Company [2019] eKLR where the court observed as follows;

“In so far as the claimant’s remunerative pay, basic salary and monthly allowances would not be reduced consequential to the appointment and the redeployment, the court returns that the appointment and redeployment was within the parties’ memorandum of agreement.”

Further,

“Thus, the overriding consideration would be that the claimant is not demoted in the process of the deployment and appointment.”



22. They further sought to rely on the provisions of Section 69 of the *County Governments Act* which comes out as follows;

- “ 1) in selecting public officers for re-designation, the criteria for appointment as prescribed under this part shall apply.
- 2) A public officer shall not be re-designated to hold or to act in a public office if-
  - a. The office is not vacant
  - b. The public officer does not meet all the qualifications, except for experience at a lower grade in the relevant cadre, attached to the public office,
  - c. The decision to re-designate the officer may disadvantage any public officer already serving in the relevant cadre; or
  - d. The officer subject to re-designation has not consented to the re-designation.
- 3) If a public officer is re-designated, the officer shall not in any way suffer reduction in remuneration.

23. Section 72 of the *County Governments Act* vests the power to deploy a county public officer within a department to the relevant county chief officer. It also awards the head of County Public Service the power to deploy a county public officer from one department to another.

24. The law is succinct on the issue of deployment, re-deployment and re-designation of county public officers within their places of work. This is permissible as long as this is agreeable inter partes and does not affect the salary and benefits of the affected officer.

25. The Respondents' case answers to this. It is their case and submission that the process of re-designation did not affect the claimant's salary, allowances and emoluments in general. He remained in the same cadre and job group and therefore has no basis for complaint.

26. This is agreeable. The claim becomes a storm in a tea cup and is not tenable or sustainable. The claimant was deployed within the powers of his employer/respondent and did not have anything to lose. He therefore should not be heard to complain or raise issues on re-designation, or at all. I therefore find that the claimant is not entitled to the reliefs sought.

27. I am therefore inclined to dismiss the claim with orders that each party bears their costs of the same. This answers all the issues for determination.

**DATED AND DELIVERED AT NYERI THIS 28<sup>TH</sup> DAY OF SEPTEMBER 2022.**

**D.K. NJAGI MARETE**

**JUDGE**

**Appearances**

1. Mr. Kimunya instructed by Kimunya & Company Advocates for the Claimant
2. Mr. Muriuki instructed by Mbogo and Muriuki Advocates for the Respondents.

