



**Abdullahi v Marsabit County Public Service Board (Cause 2374 of 2017)
[2022] KEELRC 12947 (KLR) (28 October 2022) (Judgment)**

Neutral citation: [2022] KEELRC 12947 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 2374 OF 2017
J RIKA, J
OCTOBER 28, 2022**

BETWEEN

ADANO ISACKO ABDULLAHI CLAIMANT

AND

MARSABIT COUNTY PUBLIC SERVICE BOARD RESPONDENT

JUDGMENT

1. The claimant filed his statement of claim on November 30, 2017.
2. He states that he was employed by the respondent, on February 13, 2017, as a personal assistant in the governor's office for a period of 4 years.
3. On or about August 23, 2017, the respondent extended his contract and redeployed the claimant to the Department of Lands and Energy as Chief Community Liaison Officer. He reported to the new station, on or about September 1, 2017. His salary as of October 2017, was Kshs 101,250, monthly.
4. On October 19, 2017, the respondent issued the claimant a 30-day notice to vacate office. There was no hearing. No valid reason was given to justify revocation of the contract. Revocation violated the County Public Service Human Resource manual, the *Employment Act* and the *Constitution*. The claimant expected that his contract would lapse on August 31, 2022. The decision amounted to unfair labour practice.
5. He prays for: -
 - a. Declaration that revocation is unlawful.
 - b. Declaration that the respondent has acted unfairly, unlawfully and un-contractually.
 - c. Reinstatement with back-pay.

Alternatively-



- d. General damages for violations of contractual, constitutional and employment rights.
 - e. 3 months' salary *in lieu* of notice at Kshs 303,750.
 - f. 12 months' salary in compensation for unfair dismissal at Kshs 1,215, 000.
 - g. Retirement benefits at the rate of 31% of the annual basic salary for every year served, at Kshs 1,729,576.
 - h. Group life assurance for a value equivalent to 3 times the annual basic salary at Kshs 1,394,820.
 - i. Group personal accident cover for a value equivalent to 3 times annual basic salary at Kshs 1,394,820.
 - j. Salary for the remaining contractual period of 4 years and 9 months at Kshs 5,771,250
6. The respondent filed its statement of response on June 12, 2018. Its position is that the governor's personal assistant, serves at the pleasure of the governor, and as such, his employment is tied to the governor' term. The office of Chief Community Liaison Officer to which the claimant was allegedly appointed, is not an office established by the respondent, and the claimant is not a County Public Officer, appointed by the Public Service Board. The term of the governor in the first county government ended on August 21, 2017. This affected the term of the claimant's employment. The extension of service and redeployment of the claimant, to the position of Chief Community Liaison Officer by then acting county secretary Isacko Galgallo, was irregular and illegal.
 7. The respondent is mandated to regulate engagement of persons in its service. It investigated and found the redeployment of the claimant, and his extension of service, irregular and illegal. The respondent is mandated, in such event, to revoke the irregular and illegal decision; direct the concerned head of department or lawful authority to commence the process afresh; or take any corrective action, including disciplinary action. Revocation was therefore within the law. Notwithstanding the illegal appointment, the claimant was accorded an opportunity to explain his position. The respondent prays the court to dismiss the claim with costs.
 8. The hearing date was scheduled in court by counsel for both parties on January 25, 2022. The date appointed for the hearing was June 9, 2022. The respondent and its counsel, did not attend court. The claimant gave evidence and rested his claim on June 9, 2022. The claim was last mentioned in court on July 27, 2022, when both parties confirmed filing and exchange of their final submissions.
 9. The claimant adopted as his evidence, his witness statement on record, and exhibited his documents as listed, on record. He clarified that at the time of filing the claim, he was an employee of the respondent. He was personal assistant to the governor, in a 4- year contract. It was extended for another 4 years. He worked in continuity. He was redeployed to the lands department as a Liaison Officer, through a letter dated August 23, 2017, issued by the County Secretary. It was the same entity which issued him the initial letter of employment. His salary did not change.
 10. His contract was revoked on October 19, 2017. There was no reason given to him. He was not given a hearing. He was paid salary as a liaison officer. He urges the court to grant him the remedies set out at paragraph 5 of this judgment.
 11. The issues as understood by the court are: whether the claimant's contract was unfairly and unlawfully revoked; and whether he merits the remedies sought.



The Court Finds: -

12. The claimant was employed through a letter of appointment dated February 13, 2014, signed by Umuro Roba Godana, County Secretary. He was designated as the personal assistant, governor's office. Appointment was effective from February 15, 2014. He was placed on a contract of 4 years, with a minimum monthly salary of Kshs 41,590; house allowance of Kshs 20,000 per month, and commuter allowance of Kshs 8,000 monthly.
13. The letter informed the claimant that "you will serve at the discretion of the undersigned."
14. At the end of the 4 years, he received a letter dated August 23, 2017 from county secretary Isacko G. Mamo, communicating the decision of 'the authorizing officer,' to extend the terms of his contract and deployment by the office of the governor to the Department of Lands and Energy, as Chief Community Liaison Officer. The new contract was for 5 years, effective from September 1, 2017, up to and including August 31, 2022.
15. But on October 17, 2017, barely two months after extension and redeployment, Acting County Secretary J.W Guyo wrote to the claimant revoking extension and redeployment. The claimant was advised that extension, was without consultation of the authorizing officer, and hence irregular. He was issued 30-day notice of the end of his previous contract.
16. It is against this background, that the claim is filed.
17. The two letters respectively appointing the claimant and extending his contract, do not show that the County Public Service Manual and the *County Governments Act* No 17 of 2012 were followed.
18. The first contract was issued by the county secretary. It states that the claimant had been appointed as a personal assistant to the governor, and that he held this position at the discretion of the county secretary.
19. The County Public Service Human Resource manual, clause 8.3, defines the powers of appointment and procedures to be followed, on appointment and promotion in the County Public Service.
20. The governor is empowered to appoint county secretary; county executive members; county chief officers; chairperson of the county public service board; county public service board members; and the secretary to the county public service board. Appointments are made with the approval of the County Assembly and/or on the recommendation of the County Public Service Board.
21. The county executive committee with the approval of the County Assembly, is empowered to appoint city board members; municipality board members; and town committee members.
22. The county public service board will appoint and promote city/ municipality managers; sub-county administrators; and other staff of the County Public Service.
23. Lastly appointment in the public service may be made by other authorities, officers or institutions, to which the county public service board, has delegated its functions, in accordance with the section 86 of the *County Governments Act*, 2012.
24. The county secretary has no mandate as an individual, to employ.
25. The claimant has not come out clearly and established to the court, who appointed him in 2014, and 2017. He has sued the County Public Service Board, but did the board employ him? The letter appointing him does not disclose which of the authorities listed above, carried out the claimant's appointment, as the governor's personal assistant. Was it the governor, and if so, on what authority



- of the law? Was it the Public Service Board, or any other authority, officer, or institution, having the written authority of the Public Service Board? There is no evidence by the claimant, showing that the respondent employed him.
26. And why was the claimant to serve at the discretion of the County Secretary? Do county public servants serve at the discretion of the county secretary?
 27. It would seem to the court that the claimant's employment was a private arrangement between him of the one part, and the county secretary and the governor of the other part. He was never in the County Public Service.
 28. The county secretary and the governor employed the claimant at their discretion. The claimant had no enforceable contract against the county government, in particular against the county public service board, and had no basis for expecting renewal of a contract which was shrouded in illegality and irregularity. His arrangement with the county secretary, which was discretionary, ended with the term of the county government in 2017.
 29. He did not even allude to any application he made; interview attended; and recruitment made competitively, as the governor's personal assistant or the Chief Community Liaison Officer. He did not establish that there was an office of chief community liaison officer, established by the County Public Service Board, in accordance with sections 60 and 63 of the *County Governments Act*, which he could serve in. Clause B.5 of the County Public Service Human Resource manual requires vacant posts in County Public Service, to be declared by authorized officers. Clause B.6 requires that recruitment to these posts, will be guided by the values and principles of the public service, spelt out in article 232 of the *Constitution*. The appointment, reappointment and redeployment of the claimant, fell far short or the values and principles spelt out in article 232 of the *Constitution*.
 30. The contract of 2014 ending in 2017, and the contract of 2017 which was intended to lapse in 2022, are legally infirm and cannot have the protection of the court. The claimant has sued the County Public Service Board, but failed completely, to show that that the board employed him, or offered to extend his contract, to serve in a position that was not created by the board.
 31. In the end, it appears to the court that the claimant was in a private arrangement with powerful officers within the county government of Marsabit, and was irregularly hired, and an illegal attempt made at ensuring he continued to work for the county government of Marsabit, when the term of that government came to an end in 2017.
 32. Revocation of the extension and redeployment was made within the law. The respondent acted in the interest of the people of Marsabit county, and in accordance with its statutory obligation. The claim has no merit.

It Is Ordered:

- a. The claim is declined.
- b. Costs to the respondent.

DATED, SIGNED AND DELIVERED ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 28TH DAY OF OCTOBER, 2022.

JAMES RIKA

JUDGE

