



Lopite & 45 others v County Government of Turkana & 5 others (Cause E001 of 2021) [2022] KEELRC 12854 (KLR) (14 October 2022) (Ruling)

Neutral citation: [2022] KEELRC 12854 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KITALE
CAUSE E001 OF 2021
NJ ABUODHA, J
OCTOBER 14, 2022**

BETWEEN

**REUBEN LOWOTE LOPITE 1ST CLAIMANT
AMOS ABONG OPEENY 2ND CLAIMANT
ETABO JOHN LOKENO & 43 OTHERS 3RD CLAIMANT**

AND

**COUNTY GOVERNMENT OF TURKANA 1ST RESPONDENT
COUNTY GOVERNMENT OF TURKANA PUBLIC SERVICE
BOARD 2ND RESPONDENT
SECRETARY COUNTY GOVERNMENT OF TURKANA 3RD RESPONDENT
CHIEF OFFICER OF HEALTH COUNTY GOVERNMENT OF
TURKANA 4TH RESPONDENT
CHIEF OFFICER OF FINANCE COUNTY GOVERNMENT OF
TURKANA 5TH RESPONDENT
ATTORNEY GENERAL 6TH RESPONDENT**

RULING

1. By a motion dated February 24, 2021 the claimants/applicants sought orders among others that:
 - a. That this hon court be pleased issue mandatory injunction compelling to the 1st and the 3rd respondents to issue the claimants with the deployment letters in terms of the offer of their respective appointment letters issued by the 2nd respondent pending the hearing and determination of this claim.



- b. That upon deployment the 4th respondent be ordered and directed to post the claimant to their respective work places in accordance with the needs of the residents of Turkana county.
 - c. That the respondents be compelled and or ordered to perform their part of the contract of employment with the claimants.
2. The application was supported by the affidavit of one Amos Abong Apeeny who stated that he swore the affidavit on behalf of the other applicants. He deponed in the main that:
- a. That in diverse dated between October and November 2020 I and my fellow claimant were interviewed by the 2nd respondent and found to be suitable to work for the 1st respondent and we were all issued with offer of appointment letters.
 - b. That upon receipt of the offer of appointment letters I and my fellow claimants accepted the offer of appointment signed the requisite documents and returned to the Respondents.
 - c. That as per the instructions on the offer of appointment letters I and my fellow claimants accepted the offer of appointment signed the requisite documents and returned to the respondents.
 - d. That as per the instructions on the offer of appointment letters on various dates in the months of October and November 2020 I reported to the office of the county secretary /head of public service for deployment who in turn refused to issue me with the deployment letter
 - e. That I went to the office of the 4th respondent for deployment but he advised me to get the deployment letter from the 3rd respondent first
 - f. That for several days all the claimants and I camped in the office of the county secretary waiting for the deployment letters but the office bearer chose to absent himself from the office and duty to avoid giving us the requisite deployment letters.
 - g. That being frustrated by the 3rd respondent, appealed and petitioned the county assembly for interventions on April 29, 2021 and July 7, 2021, however, the county assembly gave us a deaf ear.
 - h. That since I was offered the appointment letter is now over one year and I have not been given any explanation as to why the 3rd respondent cannot allow us to work so that I can make the ends meet and perform my obligations as a family person.
 - i. That some of the claimants upon receipt of offer of appointment letters resigned from their earlier employment with hope to be deployed in greener pastures but now they are in problems.
 - j. That the county of Turkana is a semi-arid region with very little economic activities hence without gainful and meaningful employment the claimants will be condemned to hardship and object poverty, while the 2nd respondent is claiming an achievement of employing 391 workers.
 - k. That it is my constitutional fundamental right to be employed by the respondents after finding that I have the qualification relevant to the opportunities available in the government which the 2nd respondent confirmed and issued appointment letters.
3. The respondents in opposition to the application filed grounds of opposition in which they contended among others that:



- a. That the orders being sought by the applicants as crafted in this notice of motion application are a summation of the very same orders being sought in the main suit as he evident from prayers (a), (b) and (d) of the statement of claim dated August 10, 2021.
 - b. That in the instant case, the claimants statement of claim seeks an order directing the 2nd, 3rd and 4th respondents to unconditionally and immediately deploy the claimants in terms of the offer of appointment letters issued to them and an order directing the 5th respondent to pay the claimants their respective salary in arrears including their allowances from October, 2020 to date. These are the same orders sought in prayers (b), (c) and (d) of the notice of motion application.
 - c. That the orders sought in the said notice of motion application are final in nature and if granted, at this interlocutory stage, will only serve to effectively determine the main suit without the benefit of a trial thereby rendering of the main suit unnecessary.
 - d. That it is trite law that no court of law ought to grant interim relief which amounts to final relief without the existence of special circumstances warranting the same. The applicants herein have not demonstrated the existence of any special or exceptional circumstances which would warrant granting of the final orders sought in this interlocutory stage.
 - e. That there is no existing employer-employee relationship between the applicants and the 1st respondents herein and there is, therefore, no basis for the grant of the orders sought in the application.
 - f. That none of the applicants have presented any evidence that they reported to the office of the county secretary as required in the offer of appointment letters on the specific days within which they were required to report.
4. In the submissions in support of the application, Mr. Nyakundi for the claimant submitted among others that there was an offer of employment by the 1st respondent and an acceptance by the applicants thus forming contract of service between the respondent and the claimants. The claimants had performed their part of the contract and were ready and willing to work however the 3rd respondent had adamantly refused, neglected and discriminated against the claimants by refusing to issue them with deployment letters. According to counsel the claimants were living in hardship after resigning from their former employment after they got greener pasture with the respondent.
 5. Mr Nyakundi further submitted that April 29, 2021, the applicants feeling frustrated by the 3rd respondent petitioned the county assembly of Turkana to intervene on their behalf but the said assembly turned a deaf ear on the applicants' grievances. The respondent could not therefore allege that the applicants refused to accept the offer. Their conduct and effort demonstrate that throughout they have always been ready and willing to work for the county government of Turkana.
 6. Mr. Nyakundi further submitted that section 17(a) of the [ELRC Act](#) provided that a party may respond to an application by filing grounds opposition verified by an affidavit. The respondent however never verified their grounds of opposition hence are mere denials of the claimants' rights. The respondents never filed any document to show that although the claimants were offered employment opportunity they failed to accept the offers.
 7. On the issue of seeking final orders, counsel submitted that they were not asking for final orders as alleged. The applicants were merely asking the court to order the 1st respondent to perform its obligation in the contract and deploy the claimant in accordance with their offer of appointment letters. Other issues shall then be determined on merit.



8. Mr Kiza for the respondents on his part submitted that none of the claimants reported to the county secretary for deployment on specific dates by which they were required to do so. It was therefore not possible to deploy persons who had not reported to work. The claimants never placed anything before the court to demonstrate they reported to work on specific dates between October 19, 2020 and November 4, 2020.
9. Mr Kiza further submitted that the claimants filed their statement of claim dated August 10, 2021 seeking inter alia an order directing the 2nd, 3rd and 4th respondents to unconditionally and immediately deploy them in terms of the offer of appointment letters issued to them on diverse dates. The claimants have filed the present notice of motion seeking similar orders. This, according to counsel would serve to determine the main suit without the benefit of the trial thereby rendering the hearing of the main suit unnecessary.
10. Counsel further submitted that one of the orders sought in the motion are in the nature mandatory injunction and yet it was trite law for one to be entitled to issuance of a mandatory injunction, it must be demonstrated that there are exceptional and special circumstances and that the case was clear.
11. The crux of the claimants' case was that they were issued with offer of appointment letters on diverse dates between October, and November, 2020. The letter required the claimants to report to the county secretary/head of public Service for deployment with specific time lines. There was no indication that the claimants complied with the letters or communicated their acceptance of employment.
12. This is an interlocutory application and the role of the court is usually to make an over view of the claim and persuade itself if the claim raises a prima facie case with probability of success and further if damages would not adequately compensate the applicant if successful. If the court is not sure the matter will be decided on a balance of convenience.
13. The claimants herein alleged that through letters issued between October 19, 2020 and November 4, 2020 the respondents offered them employment in various capacities. The respondent however has refused and or ignored to deploy them to their respective work stations to enable them perform their work as per their letters of appointment.
14. The claimant alleged that despite several attempts including seeking the intervention of the county assembly, the respondent has refused and or ignored to deploy them prompting them to file the present suit on 13th August, 2021 seeking orders to compel the respondent to deploy them to work. The claimants further on 2nd March, 2022 brought the present motion seeking similar orders.
15. The respondent on the other hand has contended that the claimants despite being given offer letters, never reported as directed for deployment. The respondent though pleaded this in their response to the claim did not factually respond with this in a form of replying affidavit in the motion before me. The respondent further contended that the orders sought in the motion are similar to those in the main suit, therefore if granted there would be no need to proceed with the main suit.
16. The court makes the following critical observations. First, the applicants were issued with offer letters on diverse dates between October, and November, 2020. They were however never deployed and on August 13, 2021 brought the present suit as an ordinary claim. They never filed concurrently with the suit, a motion under certificate of urgency seeking interlocutory orders. The suit was filed some nine months later after the claimants were issued with letters of appointment. The present application was filed on March 2, 2022 some seven months after filing the main claim and some one and a half years after the claimants were issued with offer letters.



17. An injunction is an equitable remedy and one of the principles governing equitable remedies is that a party seeking them must do so vigilantly. The party must not be guilty of laches. The applicants before me have not endeavored to explain why they did not seek to move the court at the earliest opportunity for interlocutory remedy which they now sought some one and a half years later after they suspected foul play by the respondent.
18. It is the courts view that the lapse of time alone, makes it unsafe to issue any interlocutory orders. However, the respondent has put forward a very compelling argument that the orders sought in the motion are similar to those in the main claim and are final in nature. The court has carefully reviewed and considered the prayers in the motion and the statement of the claim and agree with the counsel for the respondent that the prayers sought at the two levels are similar.
19. The court always leans against issuing orders which are final in nature without hearing the main suit on merit. An interlocutory order which would disincentivise the prosecution of the main claim ought not to issue unless with the consent of the parties and with the sole intention of compromising finally, the main claim.
20. From the material presented before the court and contention by the parties the court is disinclined to issue any interlocutory order an instead directs the parties to fast track the claim for hearing and disposal on merit.
21. It is so ordered

Dated and delivered at Eldoret this 14th day of October, 2022

Abuodha Nelson Jorum

Judge ELRC

