



**Maya Agricultural Traders Limited v Cabinet Secretary Ministry of Labour Social Security and Services & another (Miscellaneous Application 001 of 2021) [2022] KEELRC 12814 (KLR) (6 October 2022) (Ruling)**

Neutral citation: [2022] KEELRC 12814 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**  
**MISCELLANEOUS APPLICATION 001 OF 2021**  
**DN NDERITU, J**  
**OCTOBER 6, 2022**  
**IN THE MATTER OF A NOTICE FOR LABOUR**  
**AUDIT/INSPECTION OF MEYA TRADERS LTD**  
**AND**  
**IN THE MATTER OF SECTION (1) AND (2) EMPLOYMENT ACT, 2007**  
**AND**  
**IN THE MATTER OF SECTION 35(1) OF THE LABOUR INSTITUTION ACT**  
**AND**  
**IN THE MATTER OF INTENTION TO PROSECUTE FOR**  
**NON-PRODUCTION OF EMPLOYMENT RECORDS**

**BETWEEN**

**MAYA AGRICULTURAL TRADERS LIMITED ..... APPLICANT**

**AND**

**CABINET SECRETARY MINISTRY OF LABOUR SOCIAL SECURITY AND SERVICES ..... 1<sup>ST</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**Introduction**

1. In a chambers summons application dated December 7, 2021 the applicant is seeking the following -
  1. Spent -



2. That this honourable court be pleased to grant leave to the applicant to institute judicial review proceedings in the nature of:
  - I. An order of prohibition prohibiting the respondent from conducting auditing and/or prohibition prohibiting the respondent from preferring any criminal charges against the applicant.
  - II. An order of prohibition prohibiting the respondent from preferring any criminal charges against the applicant.
  - III. That the said leave, if granted, do operate as a stay of any precipitate action that would adversely affect the applicant pending hearing and determination of this application.
  - IV. The cost of this application be provided for.
2. The application is expressed to be brought under sections 8 and 9 of the *Law Reform Act* and order 53 rule 1(1) (2) and 4 of the *Civil Procedure Rules* and is based on the grounds on the face of it.
3. When the matter came up in court (Wasilwa J) on December 20, 2021 the applicant was ordered to serve the respondents for inter-partes hearing.
4. On January 31, 2022 it was directed, with concurrence from counsel for all the parties, that the said application be heard by way of written submissions.
5. The applicant's counsel, instructed by Frank Mwangi & Co. Advocates, filed written submissions on June 14, 2022 while Counsel for the Respondents, Sonia Wanjeri, instructed by the Attorney General, filed her submissions on May 13, 2022.

## **II. Applicant's case**

6. The application is supported by an affidavit sworn by Daniel M. Ngunia, the applicant's director, sworn on December 7, 2021 and a statement of facts of even date.
7. The applicant is a trading limited liability company operating in the City of Nakuru, within Nakuru County.
8. The Applicant states that vide a letter dated November 29, 2021 the County Labour Officer, Nakuru, sought to audit the applicant's employment records. The said employment records as per the said letter are -
  - i. Payroll for contractual and permanent employees
  - ii. Muster roll/attendance records for permanent, contractual and casual employees.
  - iii. Payment sheets for casual employees
  - iv. Rest day and public holiday payment sheets for all your employees
  - v. Leave register for all your employees
  - vi. Overtime payment sheets for permanent, contractual and casual employees
  - vii. Copies of payslips for permanent, contractual and casual employees
  - viii. Copies of appointment letters and contract letters



- ix. Records of NSSF, NHIF, NITA, WPRC (work place registration certificate) and KRA Pin Numbers.
9. The applicant argues that the request by the Labour officer was unreasonable, unfair, and in bad faith. Further, the applicant argues that the request is an abuse of power, for improper purpose, and that the labour officer took into consideration irrelevant factors in issuing the said letter/notice.
10. The applicant alleges that the labour officer intends to use the records obtained to prefer criminal charges against the applicant and its director in abuse of power and in bad faith.
11. The applicant argues that the period given to compile and avail records for 24 months preceding then notice was too short. It argues that the said documents are bulky and cannot practically be delivered to the county labour office within the short period that was given.
12. The applicant affirms that it is compliant with all labour laws and regulations and that the labour officer may visit their premises and carry out the inspection at its premises.
13. The applicant alleges that the labour officer has severally harassed, intimidated, and or threatened the applicant with institution of criminal proceedings and hence the applicant views the notice as unreasonable, issued in bad faith, and for ulterior motive.
14. The applicant has annexed two other requests dated April 18, 2019 and November 26, 2019 wherein the County labour office was requesting for the same or similar employment records as those requested for in the subject notice dated November 29, 2021.
15. It is on the basis of the foregoing that the applicant sought for leave to apply for judicial review order of *certiorari* to quash the notice dated November 29, 2021 and for an order of prohibition to stop the labour officer, who is under the 1<sup>st</sup> respondent, from issuing similar notices(s) or instituting criminal proceedings based on the intimated inspection.

### III. Respondents' case

16. In opposition to the application the respondents filed a replying affidavit sworn by Margaret Obegi, a labour officer based at Nakuru County office, on February 7, 2022.
17. The deponent states that in issuing the notice dated November 29, 2021 the labour office was exercising the powers donated by section 74(1) and (2) of the *Employment Act* and section 35(1)(a) to (g) of the *Labour Institutions Act* which authorizes a labour officer to enter into work places and demand for employment records for the purposes of monitoring and ensuring that minimum working conditions are met and for enforcing compliance with the law.
18. The deponent states the employment records sought for should always be ready and available for inspection and that is why the law does not provide for issuance of a notice before an inspection is carried out by a labour officer.
19. The deponent states that a person(s) who obstructs a labour officer from carrying out the inspection or audit commits an offence under section 38(a) and (b) of the *Labour Institutions Act*.
20. The deponent is categorical that the application herein is in total abuse of the court process and prays that the same ought to be dismissed as there are no lawful reasons or grounds upon which the same may be allowed.



#### IV. Issues for determination

21. Flowing from the foregoing analysis and the positions taken by the parties there is only one issue for determination in this cause –
  - i. Should the leave sought for by the applicant to file judicial proceedings be granted?
  - ii. Costs.
22. Order 53 Rule 1 of the [Civil Procedure Rules](#) provides that before a party applies for an order of judicial review, in mandamus, prohibition, or certiorari, such a party shall first apply and obtain leave from court by filing an ex-parte chamber summons. However, a court may direct, as it happened in this matter, that the chamber summons be served upon the Respondents for inter-partes hearing.
23. The purpose for an application for leave is to ensure that only deserving cases go to the next stage for consideration in a judicial review hearing. It is a filter to ensuring that frivolous, vexatious, unreasonable, or illogical proceedings in judicial review are filtered out at the earliest opportunity - See [Republic v Chief Magistrate & another ex-parte Tusker Mattresses](#) (2013) eKLR.
24. For an application in judicial review to succeed an Applicant has to demonstrate that the decision or act complained of is tainted with illegality, irrationality, and procedural impropriety. Judicial review is concerned with the procedure and lawfulness thereof rather than the decision arrived at - See [Republic v Kenya Revenue Authority Ex-parte Yaya Towers Limited](#) (2008) eKLR.
25. Sections 10 and 74 of the [Employment Act](#) obligates an employer to keep employment records. Section 35(1)(a) to (g) of the [Labour Institutions Act](#) provides a labour officer with powers to enter into work places and demand to inspect the said records for purposes of monitoring and ensuring that minimum working conditions are observed, and for purposes of enforcing labour laws.
26. Further section 74(2) provides that a labour officer may request for the above mentioned records for a period of upto 36 months preceding the inspection.

#### V. Determination

27. This court has carefully gone through the pleadings and the submissions filed by both sides. There is no evidence whatsoever on how the labour officer has violated the above provisions of the law. There are no procedural irregularities and or illegalities or abuse of power exhibited in the materials placed before the court.
28. It was incumbent upon the applicant to demonstrate, prima facie, that the action taken by the labour officer is illegal, illogical, unreasonable, unfair, based on bad faith, or ultra vires the law. In other words, the applicant has to demonstrate that in issuing the notice dated November 29, 2021 the labour officer acted in an illegal or unlawful manner or against the rules of natural justice.
29. The applicant has alleged that the labour officer is or has been harassing or intimidating it. However, the question remains – where is the evidence?
30. How has the labour officer acted against the law that gives such officer the power for inspection of employment records? Where is the evidence that indeed the labour officer intends to use the said records to initiate criminal proceedings against the applicant? in any event if the applicant has complied with the law as pleaded, there is no fear of any criminal proceedings being filed as the Director of Public Prosecutions (DPP) shall not accept frivolous or unlawful charges.



31. This court should not interfere with the work of labour officers or indeed any other officers, or office, or institutions unless it is demonstrated that such officers or offices have acted ultra vires the law, or that they are illogical, unreasonable, or unprocedural in their actions.
32. The applicant has completely failed to establish any ground(s) and or reasons(s) upon which this court may grant the leave sought to file judicial review proceedings.
33. It is clearly a criminal offence for any person to obstruct a labour officer from performing his or her lawful duties under Section 38(a) and (b) of the *Labour Institutions Act*.
34. For all the reasons above, the application by the applicant is frivolous, devoid of merits, and clear abuse of court process and the same is hereby dismissed with costs to the respondents.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 6<sup>TH</sup> DAY OF OCTOBER, 2022.**

.....

**DAVID NDERITU**

**JUDGE**

