



**Muthui v Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works
& 2 others (Petition E027 of 2021) [2022] KEELRC 13464 (KLR) (8 December 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13464 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E027 OF 2021
MN NDUMA, J
DECEMBER 8, 2022**

BETWEEN

MARGARET WANJA MUTHUI PETITIONER

AND

**MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING, URBAN
DEVELOPMENT AND PUBLIC WORKS 1ST RESPONDENT**

KENYA RURAL ROADS AUTHORITY (KERRA) 2ND RESPONDENT

ATTORNEY GENERAL 3RD RESPONDENT

RULING

1. The applicant in the notice of motion application dated May 25, 2022 prays for an order in the following terms:-
 - (a) That the honourable court be pleased to stay and/or suspend the execution, implementation and/or enforcement of the 2nd respondent's letter dated February 10, 2021 deploying the petitioner's application to the 1st respondent's office pending the hearing and determination of this appeal challenging this honourable court's judgment and/or orders of April 28, 2022.
 - (b) That the respondent do pay the costs of the application.
2. The application is premised on the grounds set out on the face of the application and in the supporting affidavit of the applicant to wit that the court delivered judgment on April 28, 2022 and the applicant intends to file an appeal being dissatisfied with part of the judgment.
3. That the appeal has high chances of success since the deployment of the applicant to the 1st respondent's office had been outlawed by the court in its previous decision delivered on February 14, 2019 in Petition No 11 of 2017.



4. That the *status quo* prevailing then is still subsisting hence the need to extend and/or confirm the said orders pending the hearing and determination of the intended appeal.
5. That the intended appeal will be rendered nugatory should the 2nd respondent's letter dated February 16, 2021 be enforced.
6. That the applicant stands to suffer substantial loss should the orders sought be not granted and the appeal succeeds in due course.
7. That the applicant is ready to abide by whatever terms as may be ordered by the court.
8. The application is opposed *vide* a replying affidavit of the 2nd respondent sworn to by CPA Dan Manyasi, the director of the 2nd respondent who deposes *inter alia* that the judgment of this court delivered on April 28, 2022 is overtaken by the judgment of Hon Lady Justice Mbaru of June 30, 2022 in which the court enforced employment of the applicant to a position that was not the subject of the proceedings in the present suit being the position of Procurement Manager in terms of a letter dated June 15, 2015.
9. That the 2nd respondent aggrieved by the judgment of Hon Mbaru, J lodged a notice of appeal dated June 30, 2021 in terms of rule 75 of the [Court of Appeal Rules](#) and an application for stay of the judgment of Hon Mbaru J is pending before the Court of Appeal being Civil Application No E242 of 2022. – *Kenya Rural Roads Authority v Margaret Wanja Muthui*.
10. That the applicant acknowledged in the present suit that she is Deputy Director Supply Chain Management on contract with gross salary in excess of Kshs 550,000 and therefore her deployment to the Ministry was under the said position without loss of rank and allowances.
11. That the judgment of Mbaru J demoted the applicant to a non-existent position of Procurement Manager and to gross salary lower than Kshs 320,000.
12. That the petitioner was being deployed to the Ministry of Transport in her substantive position of Deputy Director Supply Chain Management on contract which lapsed on December 31, 2021.
13. That the judgment of the court delivered on April 28, 2022 has been frustrated and cannot be complied with following judgment of Mbaru, J on June 30, 2022 as the respondent will have to re-enact the retired schemes of service and grading structure in order to comply with the judgment of Mbaru, J before consulting the ministry to establish whether the position of procurement manager is available.
14. That the application lacks merit and is an abuse of the court process and it be dismissed with costs.
15. The parties filed written submissions which the court has considered together with the depositions before court.

Determination

16. In *Nicholas Okaka v Charity Njoki Mungai* – HCC [2022] eKLR, the court held citing Order 42 rule 6(2) of [Civil Procedure Rules](#) that no order of stay of execution shall be made unless the applicant satisfies the court that substantial loss may result to the applicant unless the order is made.
17. The judgment of the court in this matter simply declined to stop transfer of the applicant from a parastatal to the parent ministry on the same terms and conditions of service.
18. The applicant has failed to demonstrate that she would suffer any pecuniary loss and/or loss of any other kind if the judgment of the court is not stayed.



19. Furthermore, the judgment of the court did not order any positive action to be taken by the respondent. The judgment was of a negative nature and an order for stay of execution is inappropriate in the circumstances of this case.
20. The court notes the applicant has over time filed multiple suits to injunct any decisions of her superiors to deploy her to any other department or organization.
21. The court notes that an employee in public service accepts in signing the contract of employment to be deployed to any other appropriate office to serve the people of Kenya. No employee has a permanent interest in any public office.
22. The court is not satisfied that the intended appeal has prospects of success especially in view of the multiplicity of suits filed in this court and others pending in the Court of Appeal as has been demonstrated by the respondent herein.
23. The court has further considered decision of this court in *[Naiberi River Campsite & Resort v Andrew Injendi Jomo](#)* [2022] eKLR and finds that the applicant has failed to establish that the orders of stay sought are deserved.
24. Nothing stops the respondent from returning the applicant to her previous office should the intended appeal be successful.
25. Accordingly, the application lacks merit and is dismissed with costs.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 8TH DAY OF DECEMBER, 2022.

MATHEWS N. NDUMA

JUDGE

Appearances

M. Sumba for the Applicant

Odukenya for Respondent

Ekale – Court Assistant

