



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE NO. 401 OF 2015

ALBERT MWILITSA

CLAIMANT

v

THE HON ATTORNEY GENERAL RESPONDENT

JUDGMENT

1. By an *Amended Memorandum of Claim* lodged in Court on 9 July 2019, Albert Mwilitsa (Claimant) contended that the failure by the Cabinet Secretary, Ministry of Industrialisation and Enterprise Development to allow him assume the office of the Chairman of the Standards Tribunal was unfair and unlawful.
2. The Attorney General (Respondent) on behalf of the Cabinet Secretary, Ministry of Industrialisation did not file an amended Response but opted to rely on the *Response* filed earlier on 8 April 2019.
3. On 4 December 2019, the parties proposed that the Cause be determined on the basis of the record and submissions to be filed.
4. The Claimant filed his submissions on 27 February 2020 (should have been filed/served by 20 December 2019) while the Respondent filed its submissions on 4 February 2020.
5. The Respondent identified 2 Issues for determination in his submissions while the Claimant identified 1 Issue.
6. The facts in this Cause are not in dispute.
7. On or about 3 January 2014, the Cabinet Secretary, Ministry of Industrialisation issued a gazette notice under section 16A (2) of the Standards Act appointing the Claimant as the Chairman of the Standards Tribunal for a period of 5 years.
8. Soon thereafter, on 17 January 2014, the Cabinet Secretary issued another gazette notice revoking the appointment of the Claimant.
9. The reason given for the revocation of the Claimant's appointment, according to an affidavit filed in Court 23 September 2015 was that he did not meet the qualifications set out in section 16A (3) of the Standards Act. The qualifications are that the Chairman of the Tribunal must be an advocate of at least seven years standing or must have been a judge of the High Court.
10. The Claimant, a long standing public administrator holds a Bachelor's degree in Administration and Anthropology.
11. He did not suggest or pretend that he is an advocate of the High Court or has served as a judge of the High Court.
12. Simply put, the Claimant did not meet the set statutory qualifications and in the circumstances, he could not validly qualify to hold the position of Chairman, Standards Tribunal or have a legitimate expectation to the benefits appertaining to the office such as remuneration and other fringe benefits.
13. The gazette of the Claimant to serve as Chairman of the Standards Tribunal was thus void *ab initio* for being contrary to the enabling statute.
14. The Claimant's contention therefore, that his fundamental rights and freedoms have been breached is but just a mirage.
15. The Court finds no merit in the Cause and orders the Memorandum of Claim filed in Court on 17 March 2015 dismissed. Respondent to have costs.

Delivered, dated and signed in Nairobi on this 28th day of February 2020.

Radido Stephen

Judge

Appearances

For Claimant Khalwale & Co. Advocates

For Respondent Ms. Oyugi, Senior Litigation Counsel, Office of the Attorney General

Court Assistant Judy Maina