



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 194 OF 2020

DR CHRISTOPHER WANGACLAIMANT

V

**CABINET SECRETARY, MINISTRY OF AGRICULTURE, LIVESTOCK, FISHERIES &
CO-OPERATIVES..... 1ST RESPONDENT**

PRINCIPAL SECRETARY, STATE DEPARTMENT OF LIVESTOCK...2ND RESPONDENT

HON. ATTORNEY GENERAL3RD RESPONDENT

RULING

1. At all material times, Dr Christopher Wangwa (applicant) served as the Director of Policy at the State Department of Livestock as well as Chairperson of the Kenya Veterinary Board.
2. On or around 4 May 2020, the Cabinet Secretary, Ministry of Agriculture, Livestock, Fisheries and Co-Operatives (the Cabinet Secretary) wrote to the applicant to inform him that by virtue of Circular No. OP/CAB.9/1A of 3 February 2016 and Circular No. OP/CAB.9/1A dated 18 October 2019 as read with Article 10 of the Constitution and section 4(5) of the Veterinary Surgeons and Veterinary Para-Professionals Act, No. 29 of 2011, he should not have offered himself for the chairmanship of the Kenya Veterinary Board as he was already a public officer and thus not eligible for appointment in his (individual) name to a State Corporation board.
3. The letter instructed the applicant to choose before the end of 15 May 2020 whether to continue as chairperson of the Kenya Veterinary Board or Director of Policy at the State Department of Livestock.
4. On 11 May 2020, before the lapse of the stated period, the Cabinet Secretary wrote to the applicant informing him that he had been deployed from the Directorate of Policy to the Meat Training Institute as Deputy Head of the Institute.
5. The applicant was aggrieved and he instituted these proceedings alleging the transfer and/or deployment was unlawful/unprocedural.
6. Filed together with the Memorandum of Claim was a motion under a certificate of urgency seeking orders

1. spent

2. spent

3. spent

4. **THAT** this Honourable Court do issue a temporary order of injunction staying the directive of the 1st Respondent purporting to transfer the Claimant from the Directorate of Policy in the Ministry of Agriculture, Livestock, Fisheries & Co-operatives to the Meat Training Institute, State Department of Livestock pursuant to the letter dated 11th May 2020 pending the hearing and determination of this suit.

5. **THAT** this Honourable Court do issue a temporary order of injunction restraining Dr Chares Ochodo or any other officer from assuming office, reporting to duty or performing the functions of the office of the Director of Policy at the State Department of Livestock in the Ministry of Agriculture, Livestock, Fisheries and Co-Operatives pending hearing and determination of this suit.

6. spent

7. **THAT** this Honourable Court do issue an order restraining the 1st Respondent or any other office from deploying and/or transferring or in any other way interfering with the Claimant pending the hearing and determination of this suit.

8. **THAT** the costs of this application be provided for.

7. The primary grounds/reasons advanced by the applicant were that the decision of the Cabinet Secretary was *ultra vires* as the function to transfer/deploy him was reposed in the Public Service Commission which in turn had delegated the function to the Human Resource Management Advisory Committee but the said Committee had not made any recommendation on his transfer, the deployment amounted to a demotion and that the Cabinet Secretary's decision was precipitated by Judicial Review proceedings by the Kenya Veterinary Board in the High Court questioning the Cabinet Secretary's appointment of members of the Council of the Veterinary Medicine Directorate in disregard of the law.

8. On 15 May 2020, the Court certified the application urgent and directed that it be served upon the Respondents and that responses and submissions be filed and exchanged. At the same session, the Court issued an order staying the deployment of the applicant.

9. The Respondents did not comply with the set timelines and on 12 June 2020, the Court allowed them more time.

10. The Cabinet Secretary filed a replying affidavit in opposition to the motion on 25 June 2020 in which it was deposed that the substratum of the motion and the suit had dissipated as the applicant had appealed on 13 May 2020 and the appeal was upheld leading to the revocation of the deployment/transfer through a letter dated 21 May 2020.

11. The Cabinet Secretary filed copies of the appeal letter, the letter revoking the deployment, and a Memo by the applicant dated 9 June 2020 giving an undertaking to withdraw the suit.

12. It is correct that the substratum of the applicant's motion and suit no longer hold as his deployment and/or transfer was revoked.

13. In the circumstances, it would be a mere academic sojourn for the Court to proceed any further. The motion is dismissed with no order on costs.

14. The applicant should promptly consider the utility of having the Cause remain on the Court's docket.

Delivered through Microsoft teams, dated and signed in Nairobi on this 5th day of August 2020.

Radido Stephen

Judge

Appearances

For applicant Mr. Gilbert instructed by George Gilbert Advocates

For Respondents Ms. Mbilo, Office of the Attorney General

Court Assistant Judy Maina