



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

PETITION 209 OF 2019

IN THE MATTER OF VIOLATION OF ARTICLES 3, 10, 20, 21, 22, 23, 27, 28,

41, 47, 73, 79, 232, 234, 236 AND 258 OF THE CONSTITUTION OF KENYA

IN THE MATTER OF THE EMPLOYMENT ACT, ETHICS AND ANTI-CORRUPTION

COMMISSION ACT AND LEADERSHIP AND INTEGRITY ACT

IN THE MATTER OF THE INVESTIGATION OF THE LIVE

PROCEEDINGS OF THE COURT AND OTHERS

BY ETHICS AND ANTI-CORRUPTION COMMISSION

BETWEEN

DR. PIUS WANJALA.....PETITIONER

VERSUS

ETHICS AND ANTI-CORRUPTION COMMISSION.....RESPONDENT

AND

MS. SICILY KARIUKI,

CABINET SECRETARY MINISTRY OF HEALTH.....1ST INTERESTED PARTY

THE LAW SOCIETY OF KENYA.....2ND INTERESTED PARTY

RULING

1. The Application herein is the Respondent's Notice of Motion dated 16.12.2019 seeking the following orders: -

- a. That the application be certified urgent and heard ex-parte at the first instance.
- b. That the petition herein be transferred to the Anti-Corruption and Economic Crimes Division of the High Court for hearing and determination.
- c. That costs of the application be in the cause.

2. The Application is premised on the grounds set out on the body of the motion and the supporting Affidavit sworn by Mr. Culet Simiyu Lunyolo on 16.12.2019. In brief, the applicant's case is that the petition before the court does not relate to employment as envisaged by Article 162(2) of the Constitution and Section 12 of the Employment and Labour Relations Court Act. On the contrary, the applicant contended that the petition is the proper subject matter of the Anti-Corruption and Economic Crimes Division of the High Court. She therefore urged the court to allow the application.

3. The Petitioner and the 2nd Interested Party opposed the application and maintained that the issues cited for investigation by the applicant fall within employment relations between the petitioner and the 1st Interested Party and as such this court is the proper court to hear and determine this suit as envisaged under the Constitution. However, the 1st respondent has supported the application for transfer of the suit to the High Court.

4. The application was canvassed by written submissions.

Issues for determination and analysis

5. I have carefully considered the application and also perused the Court record to see what other Judges stated when the matter was placed before them. Of relevance to this ruling is the orders made by the Principal Judge on 17.12.2019 when the application was placed before her as the Duty Judge under Certificate of Urgency. The Judge made the following pronouncement: -

“I do not discern any urgency in the application. I further do not see how an application filed in a Civil Court can be transferred to a Criminal Court as the same is not demonstrated in the pleadings filed.

In view of the fact that the petition herein is fixed for hearing on 20th January 2020, this application will be heard together with the petition on the said date. The applicant is directed to serve the petitioner forthwith. [Emphasis added]

6. The above ruling and directions by the Principal Judge was not challenged by way of appeal or review and in my opinion I should eschew from rendering any further ruling on the application which seemed to have been declined in principle. By the judge directing that the petition to proceed together with the application on 20.1.2020 in my view points to a summary rejection of the request for transfer of the suit to the High Court.

7. Flowing from the foregoing view, unless the said orders and directions by the Principal Judge are clarified, reviewed, varied and/or set aside, prudence dictates that making further ruling on the application for transfer of the suit to the High Court poses the risk of having conflicting and embarrassing opinions. Consequently, I refer the file to the Principal Judge to clarify, vary or review her orders of 17.12.2019, and deal with the matter to its logical conclusion. Accordingly, the matter will be mentioned before the Principal Judge on 18.11.2020 for further orders or directions.

Dated and delivered at Nairobi this 5th Day of November, 2020.

ONESMUS N MAKAU

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the Covid-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th April 2020, this judgment has been delivered to the parties online with their consent, the parties having waived compliance with Rule28(3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N. MAKAU

JUDGE