



REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NAIROBI

MISC. E003 OF 2020

(FORMERLY MISC. NO. 67 OF 2020)

REPUBLIC.....APPLICANT

VERSUS

INDEPENDENT ELECTORAL BOUNDARIES COMMISSION...RESPONDENT

1. ALIVIDZA AKATSA GEORGIANNA

2. DANIEL KINGORI MATHENGE

3. FAITH WANJIKU NJERI

4. SAMUEL MBURU MACHUA.....EX PARTE APPLICANTS

RULING

1. The Notice of Motion application by the *Ex Parte* Applicants dated 23rd July 2020 seeks the following orders:-

1. THAT an Order of Mandamus be and is hereby issued compelling the Respondent:

- a. To issue the 1st *Ex-Parte* Applicant with a letter of appointment as an Administrative Officer and specifying her terms and conditions of service.
- b. To issue each of the 2nd and 3rd *Ex-Parte* Applicants with a letter of appointment as Communication Officer/Website Administrator and specifying their terms and conditions of service.
- c. To issue the 4th *Ex-Parte* Applicant, who has since left the employment of the Respondent, with a Certificate of Service recognizing his employment in a permanent capacity for the period he worked for the Respondent.
- d. To pay each of the *Ex-Parte* Applicants a month's salary in lieu of the leave days not taken for each completed year of service, with interest at Court rates from the date of filing of Cause No. 1503 of 2013 till payment in full, computed in accordance with the leave allowance computation dated 20th November 2018 and adopted by the Court on 3rd December 2018, which amounts now stand at Kshs. 415,659/- for each of the 1st, 2nd and 3rd *Ex-Parte* Applicants, and Kshs. 298,327/- for the 4th *Ex-Parte* Applicant.
- e. To pay the 1st, 2nd and 3rd *Ex-Parte* Applicants salaries and allowances commensurate with their positions of Administrative Officer and Communication Officer/Website Administrator, i.e. Kshs. 148,109/- per month each, inclusive of house allowance and transport allowance with effect from the date of the judgment, i.e. 31st July 2018.

2. THAT costs of this Application be borne by the Respondent.

The motion as supported by the affidavit of Faith Wanjiku Njeri and the grounds on the face of the motion. The motion was urged by Mr. Kangatta for the *Ex Parte* Applicants while Ms. Gathoni opposed the motion on behalf of the Respondent.

2. Despite service in July 2020, the Respondent did not file any response to the motion though counsel for the Respondents was allowed to argue the motion despite the omission by the Respondent to respond to the motion. The *Ex Parte* Applicants have sought *mandamus* in relation to the decision of the Court given in August 2018. The Judgment required computation to be undertaken by the Claimants in the case (*Ex Parte* Applicants herein) and the Respondent. The computation was done in November 2018 and adopted as an order of the Court. It is this that the *Ex Parte* Applicants seek to compel the Respondent to comply with.

3. The order of *mandamus* is a court order issued by a judge at the request of a party seeking to compel someone to execute a duty that they are legally obliged to undertake. The Respondent IEBC was obliged by the Court order to do certain things which it has failed to do thus making the issuance of the order of *mandamus* necessary. In my considered view, having been party to the decision and having been made aware of the need to comply as was done here, the order that commends itself for this Court to make is as follows:-

a. an order of *Mandamus* be and is hereby issued compelling the Respondent to comply with the decision of the Honourable Court in Cause No. 1503 of 2013 within the next 14 days.

b. Costs of this motion be borne by the Respondent.

It is so ordered.

Dated and delivered at Nairobi this 15th day of December 2020

Nzioki wa Makau

JUDGE