REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

JUDICIAL REVIEW 10 OF 2017

BALDWIN LUGANGALE ANYIGA.....APPLICANT

VERSUS

THE COUNTY DIRECTOR OF HOUSING.....1ST RESPONDENT

THE ESTATE OVERSEER JOGOO ROAD

GOVERNMENT QUARTERS.....2ND RESPONDENT

THE PUBLIC SERVICE COMMISSION.....3RD RESPONDENT

THE HON. ATTORNEY GENERAL.....4TH RESPONDENT

RULING

1. By a motion filed on 15th May, 2017 the claimant applicant sought orders in the main that;

a) That the honourable court be pleased to grant order of CERTIORARI to bring into this court the decision of the County Director of Housing, Nairobi, decision that is adverse to the rights of the applicant through an order issued by the 1st respondents on 14th March, 2017 for the purposes of being quashed and quash the order therein.

2. The application was based on the grounds among others that;

a) That the applicant Baldwin Anyiga be granted order of Mandamus directed to the Respondent to restore, implement and safeguard his rights therein that is in his house number MG425/16 situated at Government quarters jogoo road Nairobi.

b) That the applicant who is a civil servant in the office of the President (Regional Administration and Internal Security) received an order from the 1st Respondent demanding that he vacate his house MG425/16 (Situated at Jogoo Road Government quarters) within or be forcefully evicted.

c) That the rent for aforesaid premises is deducted

monthly from his salary and forwarded to the relevant ministry.

d) That the applicant swapped his former house LG996/3A with Ms. Eve Adeke Ewagata also a civil servant and served the notices to the relevant authorities who included the Respondents.

e) That the housing is an entitlement provided for in the applicant employment terms and the respondent orders to the applicant orders to vacate his house are unjustified, harsh cruel and unlawful as rent for the said premises is duly paid not in arrears.

f) That the respondents in the morning of 14th March, 2017 broke into the applicant's house removed his goods, properties and forced his young family out of the subject house without any lawful notice, order which unlawfully action was stopped by the intervention of the applicant's neighbours who were disturbed by the respondents cruel action against the applicant.

g) That the respondents are keen to allocate the

subject house to their kin/friend through their concerted unjustified eviction threats.

h) That the applicant stands to suffer irreparable harm

should the respondents be allowed to continue with

their unlawful eviction threats.

3. It was further supported by the affidavit of the claimant in which he deponed on the main that;

1) That I am an officer employed by the Government of Kenya and currently serving in the Interior Ministry attached at the Government printer in Nairobi.

2) That in December, 2016 I swapped my house LG996/34 with Ms. Eve Ndeke and allotee of the house number MG425/16. Annexed and marked BLA 1 is a copy of our agreement duly served upon the respondents.

3) That housing is a benefit/right under my employer's terms annexed and marked BLA2 is a copy of a letter from my employer in support of my claim.

4) That my employer has been deducting rent due to the premises and remitting the same to the Respondent's ministry.

5) That the 1st and 2nd Respndents in the morning of 14th March, 2017 while I was away on official duties attempted to evict my family and in the process damaged my household goods.

6) That my good neighbours intervened and demanded to know from the Respondents agents and persons executing their cruel orders whether they had given me any notice which they failed to produce.

4. The respondents opposed the application and filed a replying affidavit through one James Ngugi Kimani in which he deponed on the main that;

1) That I have personal knowledge of the matter by virtue of being the holder of the County Director for the 1st Respondent and that I am conversant with the facts pertaining to this matter and I am duly authorized by the respondents to swear this affidavit on their behalf hence competent to do so.

2) That the ex-parte applicant is currently serving at Government Press under the Ministry of Interior and Coordination of National Government and his personal number is 2005023516.

3) That the ex-parte applicant was allocated a unit (LG 996/34)

and occupied the same on 1st June, 2008.

4) That the ex-parte applicant vacated the unit on 22nd December, 2016 without following the proper procedure of surrender of the unit of the County Director of Housing in vacant possession for inspection and clearance, as per existing house occupation/Vacation regulations for Government Houses.

5) That the ex-parte applicant instead of following the existing house occupation/vacation Regulations for Government Houses but instead left the House (LG 996/34) and occupied MG 425 "F12" without approval from our ministry.

6) That the unit which the ex-parte applicant had been officially allocated is still vacant thus exposing the unit to vandalism and denying deserving officers opportunities to occupy the same.

7) That the 1st respondent pleaded with the 1st respondent to vacate MC 425"F16" and return to LG 996/34 unit which he had officially been allocated to no avail. Consequently, the ex-parte applicant was given notice to vacate the unit by 21st March, 2017 which he did not honour and has since resisted to move.

8) That it is standard practice for Government employees to officially request for the houses through writing and filing of prescribed house application form provided by the ministry.

9) That the ex-parte applicant wrote a letter to the County Director of housing indicating his intention to swap houses; although he had already swapped the houses.

10) That the same was declined as it was deemed unprocedural as per Human Resource Policies and Procedures Manual for the Public Service, 2016.

5. In support of the application Mr. Ndizo for the applicant submitted that the decision/order directed to the applicant in the back dated notice of 14th March, 2016 was harsh, cruel and condemned the applicant without hearing. There was no explanation given why the 1st and 2nd respondent failed to give the applicant a fair hearing before condemning him in case he was on the wrong.

6. Counsel further submitted that the decision to by the 1st and 2nd respondent to allocate an occupied and duly rented to a so called bonafide discerning civil servant was an abuse of the powers donated to the respondent by the Government. Mr. Ndiso further argued that the decision to allocate an occupied and rented house to the respondent's kin was a sign of bias against the claimant. According to Counsel, no prima facie case had been shown by the respondent to demonstrate before the court that swapping of houses between civil servants was outlawed or violated public interest and Government policy concerning the houses.

7. Mr. Kioko for the respondent submitted that Judicial Review was Concerned with the decision making process and illegality or otherwise of the decision rather than the metis thereof. The support he relied on the case of **Municipal Council of Mombasa -vs- Republic and Umoja Consultants Limited Civil Appeal No. 185 of 2001.** According to Counsel the ex-parte applicant was not entitled to any of the reliefs sought for the reason that the intended eviction and re-allocation of the Government unit was with the confines of the law. He submitted that the applicant was duly requested through a letter dated 14th March, 2017 to vacate the Government Unit MG 425 for reallocation to other discerning officers but unfortunately for reasons known to the applicant he failed or ignored the request and as such the hands were tainted contrary to the legal maxim that the who comes to equity must come with clean hands.

8. The respondent has a policy of allocating houses to diserving civil servants. It was not in dispute that the applicant herein had a house allocated to him to wit house number LG 996/34. He however entered into a local arrangement with one Eve Adeke Evagata to swap his house with hers. This was notified to the Respondent though a letter dated 22nd December, 2016 and received by the respondent on 3rd January, 2017. The reason for the two swapping house was given as financial constrain and family size. The claimant continued to pay rent to the respondent until 14th March 2017 when the respondent attempted to evict the claimant. This was thwarted by the claimant's neighbours and he was subsequently issued with a seven day's notice to vacate the premises. In the notice to vacate the respondent stated it had come to their attention that the applicant was occupying the house irregularly. This was in collusion with the allotee who vacated the same house. This implied the respondent received the applicant's notice of swapping houses dated 22nd December, 2016. There was nothing on record to show the respondent's disapproval of the arrangement between Ms. Eve Adeke and the applicant.

9. The Respondent reacted by attempting to evict him the applicant and thereafter issuing him a seven days' notice to vacate. The applicant was already an allotee of a Government house and the only reason the respondent wanted to evict from the house he occupied was because he swapped houses with another valid allotee allegedly contrary to the respondents Human Resource Policies and Procedures Manual. According to the respondent it was a standard practice for Government employees to officially request for the houses through filing of prescribed house application form provided by the Ministry. Upon vacation an officer surrenders the unit he or she was occupying in vacant possession for inspection and clearance. This procedure seems to provide only for cases of a person seeking allotment of a Government house and procedure when one vacates a house. It is silent on swapping houses between existing allotees.

10. To invoke the above procedure to justify dealing with the applicant's case therefore seems unreasonable. The infraction if any by the applicant could have been dealt with by respondent to his request dated 22nd December, 2016 by either declining or approving the same. In any event swapping of houses did not cause or interfere with the respondent's responsibility of allocating houses to discerning civil servants since there was no vacant house to allocate when the two civil servants swapped houses. Furthermore, even if the house vacated by the applicant was not occupied by Eve Adeke, the Respondent could still inspect the same and allocate it to another discerning civil servant.

11. In conclusion the court is persuaded that the applicant deserves the orders sought and hereby grants an order of certiorari to bring into this court the decision of the County Director of Housing, Nairobi issued on 14th March, 2017 for purposes of being quashed and the same is hereby quashed.

12. The applicant shall have costs of the suit.

13. It is so ordered.

Dated at Nairobi this 8th day of February, 2019

Abuodha Jorum Nelson

Judge

Delivered this 8th day of February, 2019

Abuodha Jorum Nelson

Judge

In the presence of:-

…….……for the Claimant and

…….……for the Respondent.

Judge