



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS**

**COURT OF KENYA AT NYERI**

**JUDICIAL REVIEW NO. 2 OF 2019**

**IN THE MATTER OF AN APPLICATION BY JOSEPH MWANGI MAINA FOR JUDICIAL REVIEW ORDERS OF  
CERTIORARI AND PROHIBITION**

**AND**

**IN THE MATTER OF THE COUNTY GOVERNMENTS ACT, 2012**

**AND**

**IN THE MATTER OF THE LAW REFORM ACT CAP 26 LAWS OF KENYA**

**AND**

**IN THE MATTER OF FAIR ADMINISTRATIVE ACTIONS ACT NO. 4 OF 2015**

**AND**

**IN THE MATTER OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF THE EMPLOYMENT AND LABOUR RELATIONS COURT ACT, 2011**

**AND**

**IN THE MATTER OF THE EMPLOYMENT ACT 2007**

**AND**

**IN THE MATTER OF ORDER 53 OF THE CIVIL PROCEDURE RULES, 2010**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**AND**

**THE COUNTY GOVERNMENT OF LAIKIPIA.....RESPONDENT**

***EX PARTE JOSEPH MWANGI MAINA***

**RULING**

1. Before me is the *ex parte* Applicant's notice of motion application dated 6<sup>th</sup> March 2019 seeking orders of certiorari and prohibition. The Applicant is a Director Water and Soil Conservation in the Respondent. He seeks an order of certiorari directed at the County Government of

Laikipia quashing the decision of the County Secretary on behalf of the County Government of Laikipia dated 15<sup>th</sup> August 2018 and delivered on 5<sup>th</sup> September 2018 interdicting him from his position and an order of mandamus compelling his unconditional reinstatement to the position he was interdicted from. He also seeks damages for the interdiction. The motion is supported by grounds on the face of it as well as the affidavit of the *ex parte* Applicant, Joseph Mwangi Maina. He asserts in his affidavit that the officials of the Respondent have hatched a scheme to siphon money from the County Government of Laikipia and have in the process realized he is not willing to sacrifice his honour for the illegal activities to take place. He thus faces a disciplinary process to remove him as the Director as he is a stumbling block to the evil scheme. He avers that he has reported the issue to the Police and EACC who have refused to investigate. The Respondent did not respond to the application despite service and the motion was heard without a response being on record. In support of the arguments advanced and submissions made, Mr. Abwour for the *ex parte* Applicant stated that the Respondent's actions were an affront to the rules of natural justice as the *ex parte* Applicant has not been heard despite being accused of misconduct. Counsel submits that despite many efforts to get heard the *ex parte* Applicant has not been heard and the appeal to the County Public Service Board has gone unheeded prompting the *ex parte* Applicant to seek legal redress. He submitted that under the Fair Administration Act the actions of the Respondent are illegal and untenable in view of Article 47 of the Constitution of Kenya and provisions of the Employment Act 2007. He relied on the authorities of **Rahab Wanjiru Njuguna v Inspector of Police & Another [2013] eKLR** where Odunga J. held that illegality, irrationality, impropriety of procedure are the three 'i's' that judicial review is concerned with. He thus urged the court to grant the relief sought by the *ex parte* Applicant.

2. From the foregoing and on the material before me, the issues that fall for determination in the motion can be summed up as follows:-

- i. Whether the court has the jurisdiction to grant the relief sought
- ii. Whether the letter of interdiction breached the provisions of the Fair Administration Act and Article 47 of the Constitution and whether the rules of natural justice were abridged thereby

Judicial review is a remedy available to parties such as the *ex parte* Applicant where there is failure to accord the citizen the tenets of fair administrative procedures. In arguing the matter, the *ex parte* Applicant cited a number of decisions some of which were not relevant and in the determination will not need to be delved into. As to whether the court has the jurisdiction to grant the relief sought, the court is established under Article 162(2) of the Constitution of Kenya. Under Article 47, public bodies are enjoined to avail the right to administrative action that is efficient, lawful, reasonable and procedurally fair. Arising from this Article, the Fair Administration Action Act was passed by Parliament. It is an Act that makes provision for the grant of relief that this court is empowered to give.

3. It bears no need for repetition. Judicial review is not concerned with the decision but the decision-making process. In the motion before the court, the *ex parte* Applicant has been dislodged from his position in dubious fashion in contravention of the strict limits of the law. He was suspended and since the suspension nothing has taken place lending credence to his allegations that the so called 'disciplinary action' is merely a cover for the illegal activities to take place. The court is enjoined when considering the grant of the relief sought by the *ex parte* Applicant to ensure there is proportionality in the remedy given. As the *ex parte* Applicant has suffered ignominy on account of the three 'i's' namely illegality, irrationality, impropriety in procedure, he is entitled to the remedy of judicial review as sought. To quote Nyamu, J. as he then was in the case of in **Republic v The Commissioner of Lands, ex parte Lake Flowers Limited Nairobi Misc. Application No. 1235 of 1998** stated as follows:

*"..Courts must resist the temptation to try and contain judicial review in a strait jacket.....Although judicial review has been bequeathed to us with defined interventions namely illegality, irrationality and impropriety of procedure the intervention has been extended using the principle of proportionality.....The court will be called upon to intervene in situations where authorities and persons act in bad faith, abuse power, fail to take into account relevant considerations in the decision making or take into account irrelevant considerations or act contrary to legitimate expectations.....Judicial review is a tool of justice, which can be made to serve the needs of a growing society on a case-to-case basis.....The court envisions a future growth of judicial review in the human rights arena where it is becoming crystal clear that human rights will evolve and grow with the society."*

4. Applying the principles to the facts in this case it is clear the Respondent has failed to uphold the safeguards in the Constitution and the Fair Administration Act. Consequently the *ex parte* Applicant is entitled to the orders as follows:-

- a. An order of certiorari directed at the County Government of Laikipia quashing the decision of the County Secretary dated 15<sup>th</sup> August 2018 interdicting the *ex parte* Applicant from his position as a Director Water & Soil Conservation.
- b. An order of mandamus compelling the unconditional reinstatement of the *ex parte* Applicant to the position of Director Water & Soil Conservation position.
- c. An order of prohibition prohibiting the Respondent from sacking or removing the *ex parte* Applicant on the grounds impugned by this decision.
- d. An order for payment of damages set at Kshs. 500,000/- for the interdiction.
- e. Costs of the suit.

It is so ordered.

Dated and delivered at Nyeri this 8<sup>th</sup> day of April 2019

Nzioki wa Makau

**JUDGE**

I certify that this is a

true copy of the Original

Deputy Registrar