



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

JUDICIAL REVIEW CASE NO. 18 OF 2019

IN THE MATTER OF: APPLICATION FOR JUDICIAL REVIEW

ORDERS OF CERTIORARI AND PROHIBITION

IN THE MATTER OF: ARTICLES 10, 47 AND 50 OF THE CONSTITUTION OF KENYA

IN THE MATTER OF: APPLICATION FOR JUDICIAL REVIEW UNDER

SECTION 8 AND 9 OF THE LAW REFORM ACT, CHAPTER 26 OF THE

LAWS OF KENYA AND ORDER 53 OF THE CIVIL PROCEDURE RULES

IN THE MATTER OF: IN THE MATTER OF IRREGULAR DEPLOYMENT FROM

THE NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY TO THE

MINISTRY OF ENVIRONMENT AND FORESTRY

IN THE MATTER OF: IN THE MATTER OF FAIR ADMINISTRATIVE ACTION ACT (NO. 4 OF 2015)

IN THE MATTER OF: IN THE MATTER OF EMPLOYMENT AND LABOUR RELATIONS RULES 2016

BETWEEN

KIPKOSGEI LANGAT.....APPLICANT

AND

MAMO BORU, AG. DIRECTOR GENERAL, NATIONAL

ENVIRONMENTAL MANAGEMENT AUTHORITY.....1st RESPONDENT

CHAIRPERSON BOARD OF DIRECTORS, NATIONAL

ENVIRONMENTAL MANAGEMENT AUTHORITY.....2nd RESPONDENT

LABAN GICHOHI, SENIOR STORES OFFICER, NEMA.....3rd RESPONDENT

PRINCIPAL SECRETARY,

MINISTRY OF ENVIRONMENT AND FORESTRY.....4th RESPONDENT

PRINCIPAL SECRETARY,

PUBLIC SERVICE COMMISSION.....5th RESPONDENT

CEO & SECRETARY, PUBLIC SERVICE COMMISSION.....6th RESPONDENT

HONOURABLE ATTORNEY GENERAL.....7th RESPONDENT

JUDGMENT

1. On 14 August 2019, the Director-General of the National Environmental Authority (NEMA) notified the applicant that the Board of NEMA, had pursuant to a request from the Cabinet Secretary, Ministry of Environment and Forestry decided to deploy him to the Ministry to assist in the implementation of critical programs and activities in the Ministry.
2. The deployment notice advised the applicant that he would continue serving as an employee of NEMA and therefore the Authority would continue to pay his remuneration.
3. On 16 September 2019, the applicant moved the Court seeking leave to commence judicial review orders and the Court granted the leave.
4. Pursuant to the leave, the applicant filed a Notice of Motion on 19 September 2019, seeking judicial review orders to quash/(prohibit) the decision to deploy him to the Ministry of Environment and Forestry.
5. The application was served upon the Respondents, and the Chief Human Resource Management Officer of the Ministry of Environment and Forestry filed a replying affidavit to the application on 21 November 2019. The Court took arguments on 26 November 2019.
6. Although the applicant relied on Order 53 of the Civil Procedure Rules, he did not file a *Statement* as required under the Order.
7. The applicant sought to challenge the decision to deploy him to the Ministry of Environment and Forestry on the grounds that he was not consulted; the length of the secondment was not disclosed; the Principal Secretary did not initiate the request for deployment; the deployment did not follow the procedures contemplated by the Public Service Commission Guidelines on secondment in the public service; that his services were not needed at the Ministry and the deployment was in bad faith because a junior officer was nominated to perform his duties at NEMA.
8. The Respondents in opposing the application contended that a request came from the Cabinet Secretary, Ministry of Environment and Forestry for the deployment of a senior officer to the Ministry and that the Board of NEMA met and resolved that the applicant be deployed (other employees were also affected) and that the Cabinet Secretary in exercise of authority delegated by the *Public Service Commission* and/or as an authorized officer in terms of the Public Service Commission Regulations and could make a request for deployment.
9. The Respondents also urged that the deployment of the applicant was in line with the *Public Service Commission Guidelines* on secondment in the public service 2016, and *Public Service Commission Delegation of Public Service Commission Human Resource Instrument* published in 2015.
10. Under the *Delegation Instrument*, the Public Service Commission has delegated some of its human resource functions to Cabinet Secretaries in terms of Article 234(5) of the Constitution.
11. The Court, therefore, finds no merit in the contention by the applicant that exclusive power to deploy a public officer is reposed in the Principal Secretary as the Accounting Officer. In requesting for the deployment, the Cabinet Secretary was exercising a delegated power from the Public Service Commission.
12. It is correct that the deployment of the applicant was open-ended though indicated as short-term. The Guidelines on secondment in the public service provide for the disclosure of period(s) of secondment among other conditions.
13. The letter deploying the applicant did not set out the length of secondment, and other terms and conditions.
14. In the view of the Court that was an administrative lapse or irregularity which can be cured without warranting judicial review orders of certiorari and prohibition.
15. Judicial Review being a discretionary remedy will only issue if it will serve some purpose.
16. Halsbury's Law of England 4th Ed Vol II page 805 para 1505, says of the order of certiorari certiorari is a discretionary remedy which a court may refuse to grant even when the requisite grounds for its grant exist. The court has to weigh one thing against another to see whether or not the remedy is the most efficacious in the circumstances obtaining. The discretion of the court being a judicial one must be exercised on the basis of evidence and sound legal principles.
17. The dispute presented by the applicant, in the view of the Court could have easily been resolved had the applicant used internal administrative structures available within the public service instead of moving the Court, at the first instance.
18. From the foregoing, the Court declines to issue any judicial review orders but in lieu thereof, orders the Respondents to notify the applicant of the length of secondment and other terms and conditions of service as contemplated by the *Delegation of Public Service*

Commission Human Resource Functions to the Cabinet Secretary and the Public Service Commission Guidelines on Secondment in the Public Service.

19. Each party to bear own costs.

Delivered, dated and signed in Nairobi on this 11th day of December 2019.

Radido Stephen

Judge

Appearances

For applicant Mr. Nyabuto instructed by Omboga & Co. Advocates

For 1st – 3rd Respondents Mr. Makambo instructed by Ojiambo & Co. Advocates

For 4th – 7th Respondents Ms. Chesyna, State Counsel, Office of the Attorney General

Court Assistant Judy Maina