



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

PETITION NO. 57 OF 2015

(Before Hon. Justice Hellen S. Wasilwa on 19th February 2018)

ROBERT CHERUIYOT.....PETITIONER/APPLICANT

VERSUS

TEACHERS SERVICE COMMISSION ...1ST RESPONDENT

ATTORNEY GENERAL.....2ND RESPONDENT

RULING

1. The Application before Court is the one dated 5th January 2017. The Application was filed under Certificate of Urgency and brought through a Notice of Motion Application filed under Order 52 Rule 3(1) of the Rules of the Supreme Court of Kenya, Section 5(1) of the Judicature Act Cap 8 Laws of Kenya.

2. The Applicant seeks orders as follows:-

- 1. That this Honourable Court be pleased to find the Secretary Teacher's Commission in contempt of Court for willfully failing to obey the Court Orders given by this Honourable Court on 20th August 2013.***
- 2. That this application be certified urgent and the same be heard ex-parte in first instance.***
- 3. That this Honourable Court be pleased to commit the Secretary Teacher's Commission in contempt of Court to prison for a term of not exceeding one year for willfully failing to produce to the Court by failing to replace 16 teachers.***
- 4. That there be liberty to apply.***
- 5. That the costs of this application be borne by the Respondent.***

3. The application is based on the following grounds:-

- 1. That schools have re-opened and there is a shortage of teacher in Koibatek Sub-County.***
- 2. That the Court issued a writ of Mandamus compelling the 1st Respondent to replace teachers in Koibatek which has not yet been done.***
- 3. That schools in other areas have more teachers which means a better student to teacher ratio.***
- 4. That this disparity has translated to better performance in national examinations for the favoured regions.***
- 5. That this is a matter of great public interest as the interests of minors is at stake.***
- 6. That the interests of justice would be best served if this application is allowed.***

4. The Application is also supported by the supporting affidavit of Robert Cheruiyot the Petitioner herein who depones that this Court issued a writ of Mandamus compelling the 1st Respondent to replace teachers in Koibatek (Appendix RC1) which has not yet been done.

5. He avers that this is a matter of great public interest as the interest of the minors is at stake and schools in other areas have more teachers, which means a better student ratio.

6. He avers that the disparity has translated to better performance in national examinations for the favoured regions. He therefore depones that the 1st Respondent continues to breach the provisions of Article 27(4) of the Constitution of Kenya on discrimination despite this Court specifically ordering that the 1st Respondent's actions amounts to discrimination.

7. He submits that this Court should move with speed and uphold its integrity and assert its authority and punish disobedience of the Court's Orders.

8. The 1st Respondent filed its replying affidavit to this Application on 20th January 2017. The affidavit was sworn by the one Abdirizak Farah the 1st Respondent's acting Senior Deputy Director in charge of Teacher Management. He has deponed that in compliance with this Court's Order which directed the 1st Respondent to "replace the said 16 teachers in Koibatek within the financial year" they posted a total of 21 teachers to Koibatek Sub County.

9. They demonstrated compliance as follows:-

1. Six (6) teachers were transferred to Koibatek Sub County in 2014/2015 financial year between May and July of 2015.

2. Nine (9) teachers were recruited during the July/August 2015 teacher recruitment exercise in 2015.

3. The 1st Respondent cancelled transfers of six (6) teachers who had been initially posted outside Koibatek Sub County (Appendix AF.1).

10. They depones that the 1st Respondent went over and beyond the Court Orders and during the period beginning January 2016 and December 2016, recruited and deployed an additional 21 teachers to Koibatek Sub County. Out of the 21 teachers, 17 were recruited during the August 2016 teacher recruitment exercise while 4 were posted out of special consideration from other sub-counties to Koibatek Sub County.

11. They also depones that during the same period there were more teacher replacements, postings and recruitments in Koibatek Sub County in the year 2016 as compared to the entire Baringo County where Koibatek Sub County had 32 postings and the entire Baringo County (with 5 Sub Counties) had 127 postings.

12. They aver that Koibatek Sub County has more staff compared to other 5 Sub Counties in Baringo County. They therefore submit that they have fully complied with the Court's Orders and communicated their compliance to the Petitioner as per their Appendix AF3.

13. They depones that the application is baseless, unjustifiable and is devoid of merit and should therefore be dismissed.

14. The parties filed their respective submissions. I have considered the averments and submissions of the parties and issues for determination are as follows:-

"Whether the 1st Respondent omitted or did any act in contravention of the Court's orders dated 20th August 2015".

15. The 1st Respondent have submitted that they have complied with the Court orders. The order of 20th August 2015 directed the 1st Respondent to replace the 16 teachers in Koibatek within the Financial Year 2014/2015.

16. The insistence by the Petitioner that an advertisement had to be placed in the papers for that to be effected is not true. However, the 1st Respondent has demonstrated how they went about replacing the 16 teachers as directed by the Court. This is demonstrated by the way they conducted the replacements.

17. Other than that, the Petitioner Applicant never indicated who was being cited for contempt in the 1st Respondent's organization. They have not provided name, address and description of the person to be cited. The said person ought to have been served personally or be aware of the existence of the Court Orders. In the absence of this, I find that the Petitioner has not established his case and the application is therefore dismissed accordingly.

Read in open Court this **19th day of February, 2018**

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Ngombe holding brief Kuto for 1st Respondent – Present

No appearance for Petitioner