



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 381 OF 2018

MICHAEL MURUNGA AMBUNDO.....CLAIMANT

VERSUS

THE OFFICER IN CHARGE, NAIROBI REMAND & ALLOCATION PRISON...1st RESPONDENT

PRINCIPAL SECRETARY, MINISTRY OF THE INTERIOR & COORDINATION

OF NATIONAL GOVERNMENT.....2nd RESPONDENT

THE HON ATTORNEY GENERAL.....3rd RESPONDENT

RULING

1. Michael Murunga Ambundo (applicant) is a Chief Inspector of Prisons.
2. Around 2007, while serving at the Prisons Headquarters, Nairobi, the applicant was provided with housing accommodation within the Nairobi Remand and Allocation Prison.
3. In the course of 2013, the applicant was transferred to Kiambu Prison. He continued/(retained) to stay within the Nairobi Remand Prison.
4. On 13 August 2013, the Officer in Charge, Nairobi Remand Home sent a signal to the Officer in Charge, Kiambu Prison asking him to notify the applicant (and others) to vacate the quarters he had been allocated while serving at Nairobi or he would be evicted.
5. It appears the applicant did not heed the call for on 17 February 2014, the Officer in Charge wrote directly to him directly asking him to vacate so that the house could be allocated to other officers serving within Nairobi.
6. Yet another signal was sent to the Officer in Charge Kiambu Prison on 8 August 2016 asking him to inform the applicant to vacate the quarters so that the house could be reallocated.
7. The signal was not heeded and the Officer in Charge, Nairobi sent another signal to his counterpart in Kiambu to ask the applicant to report in Nairobi so as to facilitate vacation and reallocation of the house.
8. On 13 March 2018, a Housing Committee meeting was held and it resolved to allocate the house that had been retained by the applicant to another officer.
9. On the same day, the 1st Respondent sent a signal to the Officer in Charge Kiambu Prison where the applicant is currently based to inform him to make arrangements to vacate the house he had retained at the Nairobi Remand because the house had been allocated to another officer.
10. On 21 March 2018, the applicant moved Court under certificate of urgency seeking orders
 - a) ...
 - b) **THAT** the Respondents by themselves, their servants, agents or officers acting under them be ordered to restore the Claimant into those premises known as Block N Unit C, Reg. No. NAI/PRIS/1/179 House No. MG. 135(A+ 1) Nairobi Remand and Allocation Prison and be restrained from interfering with his access to the said premises pending the hearing and determination of this application.

c) **THAT** the Respondents by themselves, their servants, agents or officers acting under them be ordered to restore the Claimant into those premises known as Block N Unit C, Reg. No. NAI/PRIS/1/179 House No. MG. 135(A+ 1) Nairobi Remand and Allocation Prison and be restrained from interfering with his access to the said premises pending the hearing and determination of this Cause.

11. When the application was placed before the Duty Court, it certified the application urgent and allowed order (b) and directed that the application be served for *inter partes* hearing on 4 April 2018.
12. The *inter partes* hearing could not proceed on 4 April 2018 because the Respondents had not filed their responses to the application (a replying affidavit was filed on 12 April 2018), and the applicant filed a further affidavit on 18 April 2018.
13. The Court took arguments from the parties on 19 April 2018.
14. The applicant did not deny that he had been transferred to Kiambu in 2013.
15. His case was that he had not been allocated with a house in Kiambu and that he was being deducted rental house allowance and that despite these facts, the Respondents had padlocked the house he had retained in Nairobi without giving him reasonable notice.
16. For the Respondents, it was contended that in terms of the *Human Resource Policies and Procedure Manual for Public Service* (section D (D.1), the applicant ought to be accommodated within Kiambu which is his current work station.
17. It was also asserted that the house which the applicant had retained despite the transfer had been reallocated to another senior officer who had been transferred to Nairobi Remand Prison.
18. The Respondents admitted that the prisons service had a serious housing shortage, and therefore the available houses should be shared fairly.
19. That there is a serious housing shortage within the public service is a notorious fact.
20. And in that regard, if all transferred public officers were to insist on retaining the houses allocated to them in the previous stations for whatever reasons, including convenience, the housing problem would only get worse.
21. For, would the applicant had insisted in retaining the house at the Nairobi Remand if he had been transferred to Kingongo Prison?
22. The mere fact that the applicant has been deducted rental house allowance can be no justification for him to insist on retaining the house.
23. Any deductions made towards rent can be easily quantified and refunded were the applicant to vacate the present quarters and fail to be provided with alternative accommodation at his *new* station.
24. And the applicant cannot feign surprise or unreasonable notice. He was put on notice more than 5 years ago that the house he had been allocated while serving in Nairobi was required for reallocation.
25. In the view of the Court, the applicant has not met the threshold for the grant of proposed order (c) in the motion dated 20 March 2018.
26. That motion lacks merit and is dismissed with no order as to costs considering that there is an on-going employment relationship between the parties.
27. Purely for the sake of the applicant's dignity and civility, the Respondents should grant access to the him to collect his properties from the house within the next 7 days.

Delivered, dated and signed in Nairobi in open Court on this 4th day of May 2018.

Radido Stephen

Judge

Appearances

For applicant Mr. Odhiambo instructed by Maina Makome & Co. Advocates

For Respondents Ms. Wangeci, State Counsel, instructed by Charles Mutinda, deputy Chief State Counsel, Office of the Attorney General

Court Assistant Lindsey