



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT KERICHO

JUDICIAL REVIEW NO. 3 OF 2017

(Before D. K. N. Marete)

REPUBLIC.....APPLICANT

VERSUS

THE NANDI COUNTY PUBLIC SERVICE BOARD.....1ST RESPONDENT

THE COUNTY GOVERNMENT OF NANDI.....2ND RESPONDENT

PETER ACHENCHI MOKORO.....EX-PARTE APPLICANT

RULING

This is an application by way of Notice of Motion dated 26th May, 2017 as follows;

- i) The 1st Respondent decided to take action against the Applicant on a matter which had been authorized and or sanctioned by the ex-parte applicant's supervisor.*
- ii) The applicant's rights of natural justice have been violated.*
- iii) The applicant was never accorded an opportunity to be heard/air his views.*
- iv) The applicant does not make decisions as an individual so as to be told to account for the outcome.*
- v) The applicant is answerable to the County Secretary.*
- vi) The County Secretary absolved the applicant from any wrong doing.*

The application is subject to an order granting leave to commence judicial review proceedings issued on 17th May, 2017 in an application dated 16th instant.

The 1st respondent in a Replying Affidavit sworn on 15th August, 2017 opposes the application and prays that the same be dismissed with costs.

The 2nd respondent, however, in a Replying Affidavit sworn on 22nd June, 2017 supports the application and deems the actions of the 1st Respondent as *ultra vires*, without legal basis and unfounded. Talk of sibling rivalry.

The applicant's case is that on 9th November, 2015 he secured employment with the 2nd respondent as Assistant Director (Human Resource Development.) This was on recommendation of the Transitional Authority. He served with due diligence and utmost good faith and was answerable to the County Secretary.

It is the applicants further averment that on 3rd February, 2017 and 15th February, 2017 he was served with a show cause letter requiring that he shows cause as to why disciplinary action should not be taken against him within seven days on allegations of irregular recruitment of casual employees. He further avers that he read malice in the manner of address to him as an individual instead of office.

The applicant's further case is that these letters were forwarded to the County Secretary who by a letter dated 24th February, 2017 did a letter absolving him and also confirming approval of his actions by his office. He further avers that on 4th May, 2017 the 1st respondent illegally interdicted him.

The applicant avers that his show cause and interdiction was *ultra vires* the 1st respondent's powers and a consequence of a power struggle between herself and the county secretary. He therefore seeks judicial review orders as prayed so as to forestall his legal position and imbue justice to him in the circumstances.

The 1st respondent in a Replying Affidavit sworn on 15th August, 2017 acknowledges and justifies the decision and action on interdiction communicated vide a letter dated 4th May, 2017. She deposes that the 1st respondent's action is not in any way illegal, unprocedural, high handed or *ultra vires* her powers.

She avers that her decision was within the confines of the County Governments Act and the Discipline Manual for the Public Service. The applicant was interdicted for refusal to appear before the Board and answer issues of irregular employment of casual workers and this was communicated to the County Secretary.

The 2nd respondent a Replying Affidavit sworn 22nd June, 2017 rubbishes the actions and defence by the 1st applicant. It is her further averment that the issues raised in this application had been addressed by her office and communication made to the 1st respondent. A case of default and no fault on the part of the 1st respondent vis-à-vis the applicant had been communicated to the 1st respondent and therefore the non sustainability of this application for lack of merit. Overall, the 1st respondent's disciplinary action was borne out of jurisdiction, without consultation and was always whimsical and therefore lacking in legal basis.

This is an interesting piece of litigation. What with infighting and power outages in employment circles and particularly public service? This is dastardly. The essence of employment is twofold: on the one hand, this is to imbue self realization and actualization to the employee. The other is to enhance productivity with a view to creating wealth so as to aggrandize societal welfare. Period. This should not be frustrated by workers who in the course of their employment lose their way, as is in this case. It is very unfortunate and unnecessary.

The work place is a test of performance through good will: a trade of ability not power play or power relations. Humankind should come out clever, appreciate and realize that this mischief is a threat to good economics and survival. So long, so little.

I am therefore inclined to allow this application and order relief as follows;

- i. An order of certiorari be and is hereby issued to quash the decision of the 1st respondent made on 4th May, 2017 or thereabout effecting an interdiction of the applicant.
- ii. An order of prohibition be and is hereby issued to prohibit the 2nd respondent from executing

the decision of the 1st respondent made on 4th May, 2017 interdicting the applicant, or at all.

iii. The costs of this application shall be borne by the 1st respondent.

iv. The costs of this application be and are hereby assessed at Kshs.70,000.00 in all.

v. The costs of this application shall be payable by the secretary of the 1st respondent in person.

vi. No costs whatsoever shall be payable to the 2nd respondent.

Delivered, dated and signed this 15th day of November 2017.

D.K.Njagi Marete

JUDGE

Appearances

1. Mr. Nyamberega instructed by Nyamberega & Company Advocates for the Ex-party applicant.
2. Mr. Kiprono instructed by Boinnet & Bett Advocates for the 1st respondent.
3. Mr. Magare instructed by Magare Musundi & Company Advocates for the 2nd respondent.