



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR**

**RELATIONS COURT AT MOMBASA**

**PETITION NO. 3 OF 2017**

**IN THE MATTER OF THE ENFORCEMENT OF BILL OF RIGHTS UNDER ARTICLES 22[1]  
[2][C],23,70,41,47,27,165[3][B]OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF KENYA PORTS AUTHORITY HUMAN RESOURCE MANUAL 2011;**

**BETWEEN**

**1. STANLEY KUPATA LEWA**

**2. BASHIR SWALEH HAMISI .....PETITIONERS**

**AND**

**KENYA PORTS AUTHORITY ..... RESPONDENT**

**RULING**

1. The Petitioners, in their Notice of Motion dated 8<sup>th</sup> March 2017, seek an order of temporary injunction against the Respondent, on the following terms:-

a. There be a temporary injunction against the Respondent, its agents, employees and/or servants from receiving applications and conducting interviews, for posts No. 530-2005, 530-2006, 530-2003, 530-2004 and 530-2007 as per the contents of its letter dated 22<sup>nd</sup> February 2017 in the Department of Marine Engineer of the Respondent, pending hearing and determination of the Petition.

2. An *ex parte* order of interim injunction issued in these terms on 9<sup>th</sup> March 2017. Parties agreed to have the Application considered on the strength of their Affidavits and Submissions. They confirmed the filing of Submissions on 25<sup>th</sup> September 2017.

3. The Application is supported by the Affidavit of the 1<sup>st</sup> Petitioner sworn on 8<sup>th</sup> March 2017. The Petitioners argue they have worked for a considerable number of years, on board Tug Boats SIMBA 3 and KIBOKO 2. They work as Engineers in these Boats.

4. They expected, after they were recommended by General Manager Marine Engineering Services, to be appointed to the positions which the Respondent has advertised. The Respondent raised the bar, asking

for Bachelor Degree-Holders to fill the positions, overlooking the Petitioners' long experience and skills. They, in their Petition, argue that their right to fair labour practices, under Articles 41 of the Constitution of Kenya, is likely to be violated if the Respondent is not restrained.

5. The Respondent filed a Replying Affidavit sworn by Amani Mambo, Assistant Personnel Officer on 3<sup>rd</sup> March 2017. It is conceded the Petitioners were employed by the Respondent on various dates and capacities as shown in their Petition. The Respondent concedes it advertised for various positions in the Organization, including those of Senior Marine Engineers. The Petitioners did not meet the professional requirements, to be appointed in the advertised positions. The 1<sup>st</sup> Petitioner had made several requests for promotion to the position of Senior Marine Engineer but did not meet the cut. The 2<sup>nd</sup> Petitioner has been trained as Marine Engineer, under the sponsorship of the Respondent, in the UK. He however failed to acquire the required Class 1 Marine Engineers' Certificate.

**The Court Finds:-**

6. The dispute is whether the Petitioners merit consideration, by dint of their years of experience, to be promoted to the positions of Senior Marine Engineers which have fallen vacant. They are Marine Engineers, but do not according to the Respondent qualify for the positions of Senior Marine Engineers.

7. The Court is persuaded that it is convenient to grant the order of injunction. The Department of Marine Engineer, of the Respondent State Corporation is not prejudiced by not having the positions of Senior Marine Engineers occupied immediately. There are Marine Engineers presently serving the Department, and it is important any vacancies are filled in accordance with the Human Resources Policy in place, the Law, and the Constitution of Kenya. The Respondent is not prejudiced by not having the positions immediately filled. Operations in the Department would not come to a standstill, or in any way become stymied. The Petitioners on the other hand, would lose out immeasurably if the positions are filled immediately, and it turns out they merit promotions by dint of their long experience. Filling of the positions would render the whole Petition purposeless. To allow the recruitment to go on, could result in a situation where existing, probably meriting Employees, are left feeling demoralized and treated shabbily after long years of service. It is worth giving them a chance to show in which way they merit promotion.

IT IS ORDERED:-

**[a] An order of temporary injunction is hereby issued, restraining the Respondent, its agents, employees and/or servants from receiving applications or conducting interviews, for posts No. 530-2005, 530-2006, 530-2003, 530-2004, and 530-2007 as per the contents of Respondent's letter dated 22<sup>nd</sup> February 2017, the Department of Marine Engineer of the Respondent, pending hearing and determination of the Petition.**

**[b] The Petition shall be fixed for hearing on an accelerated basis.**

**[c] Costs in the Petition.**

**Dated and delivered at Mombasa this 9<sup>th</sup> day of November 2017**

**James Rika**

**Judge**