



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS**  
**COURT AT MALINDI**  
**MISCELLANEOUS CIVIL APPLICATION NO. 1 OF 2017**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW  
ORDERS OF CERTIORARI**

**AND**

**IN THE MATTER OF MALINDI CHIEF MAGISTRATE'S CRIMINAL CASE NUMBER 25 OF  
2017**

**AND**

**AND IN THE MATTER OF INTERDICTION LETTER DATED 10<sup>TH</sup> AUGUST, 2017**

**AND**

**IN THE MATTER OF THE TEACHERS SERVICE COMMISSION**

**BETWEE**

**REPUBLIC.....APPLICANT**

**AND**

**ATHMAN ADE MARO.....EX-PARTE APPLICANT**

**VERSUS**

**TEACHERS SERVICE COMMISSION.....RESPONDENT**

**AND**

**KILIFI TSC COUNTY DIRECTOR.....INTERESTED PARTY**

*Rika J*

*Court Assistant: Benjamin Kombe*

*Richard O. & Company Advocates for the Ex-parte Applicant*

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## RULING

1. The *ex parte* Applicant seeks leave, in his Application filed on 27<sup>th</sup> November 2017, to apply for judicial review orders of certiorari to remove into this Court, the decision of the Respondent interdicting the *ex-parte* Applicant before hearing him, and quash the decision of the Respondent.
2. The Application also seeks to have leave so granted, operate as stay of operation of the interdiction letter, dated 10<sup>th</sup> August 2017.
3. The Application is grounded on the Affidavit of the *ex-parte* Applicant sworn on 27<sup>th</sup> November 2017.
4. In a capsule, the *ex-parte* Applicant is the Principal of Ganda Secondary School, Kilifi County. He is an Employee of the Teachers Service Commission (TSC), the Respondent herein.
5. He has been charged before the Chief Magistrate's Court Malindi, in Criminal Case Number 25 of 2017, with the offence of rape, or indecent act, against one of his Pupils at Ganda Secondary School.
6. He was interdicted with effect from 10<sup>th</sup> August 2017. His position is that the Respondent has declared him guilty, even before his Criminal Case has been heard and judgment delivered.
7. The Application was heard at Malindi on 5<sup>th</sup> December 2017.

### **The Court Finds:-**

8. The *ex-parte* Applicant faces criminal charges for the offences of rape, or indecent act, against his Pupil. These are grave offences.
9. The criminal case is ongoing.
10. He has been interdicted under the Regulations applicable to Teachers, under the Teachers Service Commission Act, No. 20 of 2012.
11. These Regulations allow the TSC to interdict a Teacher who is under criminal trial. The letter of interdiction does not say the *ex-parte* Applicant has been found guilty; it merely calls on the *ex-parte* Applicant to step aside, as he makes his defence before the TSC.
12. The letter calls on the *ex-parte* Applicant to answer to an employment offence, specified under the 3<sup>rd</sup> Schedule of the TSC Act.
13. His guilt, or innocence, has not been adjudged through the interdiction letter.
14. The process before the Criminal Court, is different from the process at the Workplace.
15. The Court is not able to agree with the *ex-parte* Applicant, that the TSC has violated the principles of natural justice. The Respondent has acted in accordance with the TSC Act, and granted the *ex-parte* Applicant an opportunity to respond to the allegations against him. He ought to take up this opportunity, instead of seeking to quash the letter which has given him the opportunity.
16. In High Court decisions, *Lady Justice Joyce Khaminwa v. Judicial Service Commission & Another [2004] e-KLR*; *Republic v. County Council of Kwale & Another ex-parte Konde & 57 Others (Mombasa H.C. Misc. Civil Application Number 384 of 1996*; and *Polycarp Wathuta Kanyugo & 2 Others v. County Government of Kirinyaga*, it was held that leave to apply for judicial review orders, should not be granted as a matter of course, or as mere formality. The *ex-parte* Applicant must show he

has an arguable case, fit for further investigation, at a full *inter parte* hearing of the substantive Application.

17. The *ex-parte* Applicant has merely been interdicted. The action has been taken in accordance with the TSC Regulations applicable to him. He has not shown any real or apprehended breach of these Regulations. He has not demonstrated that he has an arguable case, fit for further investigation.

18. The Court does not think it would be in the interest of the School where the *ex-parte* Applicant is the Principal, to have him back at the helm, while he is still facing the allegations of rape or indecent act. To grant him leave, and order such leave operates as stay, would result in the *ex-parte* Applicant going back to the School, and discharging his role, as if nothing is amiss.

19. In Industrial Court at Nairobi ***Cause Number 1661 of 2013 between Sammy Gatimu Karanja v. Teachers Service Commission (2016) e-KLR***, the Claimant was dismissed by the TSC, and deregistered as a Teacher, on an allegation of having carnal knowledge of his 12-year old, Class 7 Pupil. He filed a Claim for unfair termination. The Court reinstated him to his teaching job, and restored him to the Register of Teachers, upon finding he had been absolved of the allegation. He was paid salaries and allowances back-dated to the date of dismissal.

20. The *ex-parte* Applicant has not been heard by the TSC. He has not been dismissed or deregistered. If he is unfairly dismissed, it is open to him to approach this Court. The remedy of reinstatement, with back salaries and allowances, is available to him. He is not prejudiced by not having the orders of judicial review.

IT IS ORDERED:-

***a) The Application filed by the ex-parte Applicant on 27<sup>th</sup> November 2017, seeking leave to apply for judicial review orders, and for such leave to operate as stay of operation of the interdiction letter dated 10<sup>th</sup> August 2017, is declined.***

***b) No order on the costs.***

Dated and delivered at Mombasa this 15<sup>th</sup> day of December 2017.

James Rika

Judge