



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

J.R NO. 1 OF 2015

THE REPUBLIC.....CLAIMANT

VERSUS

THE ATTORNEY GENERAL.....1ST RESPONDENT

THE SECRETARY, PUBLIC SERVICE COMMISSION OF KENYA.....2ND RESPONDENT

THE PRINCIPAL SECRETARY MINISTRY OF INTERIOR AND COORDINATION

OF NATIONAL GOVERNMENT.....3RD RESPONDENT

DIRECTORATE OF PUBLIC SERVICE MANAGEMENT SERVICE.....4TH RESPONDENT

THE REGIONAL COORDINATOR NAIROBI AREA.....5TH RESPONDENT

JUDGMENT

1. The application in this Judicial Review application seeks an order of Certiorari and injunction to remove from this Court and quash, nullify and stay the decision of the respondent to transfer, stop the promotions, dismiss, stop and terminate the employment of the applicant at the Ministry of Interior and Coordination of National Government vide letters dated 2nd April, 2012, 9th May, 2012, 4th December, 2013, 24th April, 2014 and 17th September, 2014. He further sought an order of mandamus to compel the respondent to reinstate the applicant back to his employment at Ministry of Interior and Coordination of National Government.

2. He further sought an order that his personal file be brought to Court for inspection to enable him ascertain and correct his records and eliminate any information that may be untrue, misleading, incorrect. The Court must however observe at this stage that the orders sought by the applicant are numerous, intertwined and in some cases convoluted but doing the best I can, I identified the foregoing. The application was brought on twenty four grounds most of which were factual issues already deponed to in the affidavit in support of the application. The affidavit itself consisted of some 59 paragraphs most of which were complaints over the applicant transfer to Garissa and what in his view he considered was

refusal by the 2nd respondent to promote him.

3. The respondents through the Attorney General objected to the orders sought through a reply affidavit sworn by Alice Atieno Otwala who in effect stated that the applicant was dismissed for absconding duty and unsuccessfully appealed against the dismissal.

4. In their submissions in opposition to the application the Attorney General raised a fundamental point which the Court must consider before anything else. That is that the Judicial Review Application was filed more than 6 months after the date of the proceedings the applicant is seeking to quash.

5. The Court has reviewed this argument in the light to the letters referred to and is of the view that the final decision on the applicants' fate was made on 17th September, 2014 when he was informed that no new ground had been raised to warrant review of the decision to dismiss him from service. By filing this application on 20th January, 2015, the claimant was still within the 6 months limitation period. The decision made on 4th December, 2013 and the one of 24th April, 2014 could only crystalize after the decision on review which the applicant was asked to make after one year from the date of rejection of his appeal. However, the decisions contained in the letters dated 2nd April, 2012 and 9th May, 2012 concerning the applicant's promotion are caught by limitation hence unsustainable by way of Judicial Review Application.

6. However, another aspect of this application which the respondent has not raised but is important, is whether the nature of the applicants complaints are remediable by Judicial Review application. Judicial review applications are normally brought against public bodies exercising their public functions or duties. They are in essence public law remedies and are normally invoked to supervise the decision making process of public bodies or tribunals to ensure they do not act ultra vires. They cannot issue in respect of contractual duties. These are enforceable as matters of private law by ordinary contractual remedies such as damages, injunction, specific performance and declaration. These remedies are not enforceable through judicial review orders which in the first place are confined to public duties and are not granted where there are other adequate remedies.

7. Whereas the applicant was an employee of the 2nd respondent which is no doubt a public body, his relationship and dispute with the 2nd respondent was purely a matter of contract of employment hence a private law matter which is remediable through ordinary private law remedies. In this regard, I will associate myself with the holding by Visram JA in the case of the **Staff Disciplinary Committee of Maseno University & 2 Others v. Prof. Ochong' Okello (2012) eKLR** where the learned Judge observed as follows:-

“...Orders of Judicial review are orders used by the Court in its supervisory jurisdiction to review the lawfulness of an act or decision in relation to the exercise of a public act or duty. In this case, the contract of employment between the respondent and Maseno University was contractual relationship governed by private law. While it is true that the public has general interest in the University being run properly, that interest does not give the public any rights over contractual matters involving the University and other parties...”

8. From the foregoing, the application as filed is found incompetent and the same is hereby struck out with costs.

9. It is so ordered.

Dated at Nairobi this 5th day of February 2016

Abuodha J. N.

Judge

Delivered this 5th day of February 2016

In the presence of:-

.....**for the Claimant and**

.....**for the Respondent.**

Abuodha J. N.

Judge