



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

PETITION NO 90 OF 2015

KENYA ASSOCIATION OF PRIVATE EMPLOYMENT AGENCIES THROUGH FABIAN K. MULI....1ST PETITIONER

**FORBES GLOBAL AGENCY.....2ND
PETITIONER**

VS

**CABINET SECRETARY MINISTRY FOR LABOUR SOCIAL SECURITY & SERVICES...1ST
RESPONDENT**

**THE ATTORNEY GENERAL.....2ND
RESPONDENT**

**THE INSPECTOR GENERAL OF POLICE.....3RD
RESPONDENT**

RULING

1. The Petitioners' application brought by way of Notice of Motion dated 4th November and filed in Court on 6th November 2015, seeks the following orders:

- a. That the Court be pleased to grant conservatory orders restraining the Respondents, their employees or agents from arbitrarily invading the Petitioners' premises, searching and/or seizing the Petitioners' goods and/or irregularly interfering with and harassing the Petitioners pending the hearing of this petition;
- b. That the Court be pleased to order the Respondents, their agents, servants or employees to return to the Petitioners all goods and effects irregularly and forcefully taken from their offices in Embassy House, Harambee Avenue, Mezzanine Floor, Room 1 on 30th October 2015.

2. The application which is supported by the affidavit of Fabian K. Muli is based on the following grounds:

- a) On 30th October 2015, policemen in the company of hired goons arbitrarily, forcefully, unlawfully and without cause stormed the 2nd Petitioner's offices at Embassy House, Harambee Avenue, Mezzanine Floor, Room 1 purporting to enforce the 1st Respondent's directive allegedly suspending accreditation licences for private recruitment employment;
- b) This is an unmitigated violation of Article 47(1) of the Constitution as read with

Section 4(2) of the Fair Administrative Action Act which obligates all administrative bodies to give written reasons for any administrative action that is taken against an entity;

c) The said goons and police officers proceeded to harass and intimidate the 2nd Petitioner and thereafter confiscated the Petitioners' office equipment which remains in the custody of the police which act is arbitrary, capricious, oppressive and punitive;

d) The police further on the instructions of the 1st Respondent directed the Chairman of the 1st Petitioner to instruct the staff of the 1st Petitioner not to report to work at Uchumi House, Aga Khan Walk, 12th Floor and that if they did they would be arrested and as a result, the staff of the 1st Petitioner, which is an umbrella body for ventilating the rights of private recruitment agencies cannot go to work for fear of being arrested and harassed by the police contrary to their right to work;

e) To date no reasons have been given to the Petitioners for the arbitrary, forceful and unlawful attack on their offices and the Respondents are adamant that the 1st Petitioner should not conduct any business and the losses occasioned to the Petitioners are monumental;

f) The Petitioners stand to suffer great prejudice and loss if the orders sought are not granted.

3. In the supporting affidavit sworn by Fabian K. Muli sworn on 4th November 2015, it is deponed that the 1st Petitioner is a duly registered legal entity whose membership constitutes of over 55 duly registered private employment agencies throughout the country.

4. Being an umbrella society of private employment agencies duly licenced as such in Kenya, the 1st Petitioner has instituted these proceedings on its own behalf and for its membership and public interest. Muli also depones in his capacity as Director of the 2nd Petitioner which itself is an employment agency.

5. In the body of his affidavit, Muli complains about the action by the 1st Respondent's failure to renew accreditation licences for the 1st Petitioner's members. He states that this has occasioned great loss to the employment agencies.

The Respondents' Reply

6. In a replying affidavit sworn by Principal Secretary of the Ministry of Labour, Social Security & Services, Ali Noor Ismail on 19th November 2015, it is deponed that in order to facilitate and monitor the movement of Kenyan migrant workers, the Ministry is mandated to licence private employment agencies, regulate their operations and attest to foreign contracts of service.

7. In discharging its mandate, the Ministry approves applications and issues accreditation licences for private employment agencies on annual basis. The accreditation licences expire on the last day of the year and are subject to renewal.

8. Ismail further depones that the Ministry has diligently and dutifully carried out its mandate and has endeavoured through collaboration with the respective foreign countries, Kenyan foreign missions and migrant workers to ensure mutual cooperation towards protection of the workers.

9. In the course of its work, the Ministry has received complaints on poor working conditions, harassment and mistreatment of Kenyan migrant workers in foreign countries. In this regard and following public outcry especially with regard to migrant workers working in the Middle East and the Gulf Regions, the Ministry imposed a ban on recruitment of Kenyans to work in those Regions from September 2014.

10. The Ministry also revoked all accreditation licences issued to private Employment Agencies. The Ministry then went ahead to constitute a task force to review the administration of foreign employment and management of labour migration. The task force completed its work and submitted a report to the Ministry in September 2015 which report is pending approval by the Cabinet.

11. Further, pursuant to the provisions of the Security Laws (Amendment) Act No. 19 of 2014, the Ministry constituted an inter-ministerial committee to vet applications for accreditation licences by private Employment Agencies. The applications would also be subjected to security vetting by the National Intelligence Service. It follows therefore that no new licences have been issued yet and the ban remains in force, the result being that no private Employment Agency is licensed to carry out recruitment of Kenyans to work in the Middle East and the Gulf Region.

12. Despite the ban and the fact that no accreditation licences had been issued, it had been brought to the attention of the Ministry that some private Employment Agencies had continued to recruit workers and the relevant institutions including the police had been detailed to pursue the matter.

Determination

13. The issue for determination in this application is whether the Petitioners have made out a case for grant of the interim orders sought. Although description of the Petitioners' property alleged to have been seized by the police is not given either in the Notice of Motion or the supporting affidavit, it was submitted on behalf of the Petitioners that some passports had been taken away by the police.

14. In a supplementary affidavit sworn by Fabian K. Muli on 27th November 2015, he depones that on 23rd November 2015, he received a telephone call from a Police Constable by the name Wanjala based at CID Headquarters in relation to passports confiscated by the police on 30th October 2015.

15. According to Muli, he was asked to report to Police Constable Chesebe based at the Economic and International Relation Claim Unit at CID Headquarters on this issue.

16. Police Constable Chesebe is said to have informed Muli that the passports could not be released to him except on the strength of a court order.

17. I have considered the Petitioners' application and find that the prayers sought are similar to those in the main petition. To grant the prayers would therefore amount to determination of the petition at the interlocutory stage which is an abuse of the court process. With regard to the issue of the passports allegedly seized by the police, the only order I will make is that any passports held be released directly to the holders upon adequate proof of ownership.

18. The rest of the application fails and is dismissed with no order for costs. The interim orders granted on 10th December 2015 are hereby set aside.

19. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS

18TH DAY OF DECEMBER 2015

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JUDGE

Appearance:

Mr. Ochieng for the Petitioners

Miss Mbilo for the Respondents