



**REPUBLIC OF KENYA**

**Industrial Court of Kenya**

**Cause 391 of 2012**

**REPUBLIC OF KENYA  
IN THE INDUSTRIAL COURT  
AT NAIROBI  
CAUSE NO. 391 OF 2010**

*(Before: D.K.N. Marete)*

**BANKING, INSURANCE & FINANCE UNION (K).....  
Claimant**

**Vs**

**KENYA COMMERCIAL BANK LTD .....  
.....Respondent**

**RULING**

The bone of contention in this matter is one of a transfer of the Claimant by the Respondent to Wajir.

The suit is in court by way of a Notice of Motion dated 9th March, 2012 at filed on the same date under a certificate of urgency. It was heard on 13th March, 2012 whereby interim injunction orders were issued restraining the Respondent from transferring, dismissing, terminating or harassing the grievant until the suit is suit is heard *inter parties*.

Regrettably, an *inter partes* hearing of this application was not had until the 2nd October, 2012 and thus occasioning today’s ruling on the issues in dispute.

Mr. Kubai for the grievant employee protests the transfer of his client on grounds that the transfer to Wajir is a molestation and abrogation of the grievant’s rights as she had already served at Marigat for an extensive period less than a year ago. He further, submitted that the problems with the grievant are visualized as emanating from misunderstanding and confusion arising between the grievant’s husband, one, Kenneth Chesoro Kimechwa who was an employee of the Respondent and whose services and employment was terminated on 12th August, 2012 and is the subject matter of a different court cause. It is the feeling of the grievant, persuaded by the threats, bad blood and agitation for her resignation from employment that this intended transfer is a consequence of the Respondent’s relationship with her husband and should be restrained. The grievant is also apprehensive that if this is allowed to continue, there is a high likelihood that she is going to lose her employment.

The grievant’s case is supported by various documents marked DJT 1 – DJT 2 all intended to demonstrate the actions of the Respondent *vis-à-vis* the guidelines for this kind of action on her employees.

The grievant testifies in her affidavit and through submissions that she is not *per se* against a transfer, if this is normal and in accordance with the exigencies of service. What she cannot fathom is a situation where the Respondent employer gets out of his way to effect punitive measures against herself in the guise of a transfer. In her submissions, she deems the transfer oppressive, malicious and a witch hunt intended to injure her feelings towards the Respondent employer. It has neglected to take into account that the grievant is a sole breadwinner with a young family, her husband having faced the wrath of the Respondent and now jobless. She also has young baby and would find it difficult to adjust to a new life in an extreme hardship area like Wajir. She therefore prays that this court grants her an injunction restraining her employer from transferring her to Wajir and particularly in terms of prayer 2 of the Notice of Motion dated 9th March, 2012 aforesaid.

Mr. Ngira for the Respondent submitted that this application is disqualified as the prayers being sought are not capable of being granted under the provision of the law cited. He goes on to distinguish the various provisions of the law – S – 46 (g) and Article 27(4) of the Constitution of Kenya, 2010 as being irrelevant to the application and issues in dispute.

He also disputes that Marigat was or is a marginalized area in accordance with the Respondent regulations on transfer and service or that there is malice on the transfer of the grievant.

The matter must be decided on the law applicable but particularly on the preponderance of evidence. The submissions of the grievant speak volumes about her helpless position as an employee and thus the possibility of this kind of conduct by the Respondent employer, the more powerful of the antagonists. The experience of the grievant's husband though denied by the Respondent is suspected to bear a hand in the grievances of the grievant employee. Is it a mere coincidence that her tribulations, which are not preceded in her employment history came shortly after her husband's quarrel with the Respondent?

I find for the grievant employee and order that injunction issues against the Respondent restraining her whether by themselves, their servants, employees and servants from transferring, dismissing, terminating, intimidating and or harassing the grievant in the cause of her employment.

The court order should not be construed to restrain the Respondent from a prudent and ordinary routine exercise of her functions if this is backed by the law. The Respondent can deal on this subject *vis-à-vis* the grievant but this should be reasonable, considered above board and in accordance with the rule of law.

**DATED** and given at Nairobi this 4th day of October, 2012.

**D.K.N. Marete**  
**JUDGE**