



Manyasa v Director, Directorate of Criminal Investigations & 3 others (Cause E862 of 2024) [2024] KEELRC 13574 (KLR) (19 December 2024) (Ruling)

Neutral citation: [2024] KEELRC 13574 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E862 OF 2024
S RADIDO, J
DECEMBER 19, 2024**

BETWEEN

JOSEPH ANDESIO MANYASA CLAIMANT

AND

**DIRECTOR, DIRECTORATE OF CRIMINAL INVESTIGATIONS 1ST
RESPONDENT**

INSPECTOR GENERAL OF POLICE 2ND RESPONDENT

NATIONAL POLICE SERVICE COMMISSION 3RD RESPONDENT

HON ATTORNEY GENERAL 4TH RESPONDENT

RULING

1. Joseph Andeso Manyasa (the applicant) is a Police Officer. He was offered a position as an Intelligence officer by the County Government of Kakamega.
2. Consequently, the applicant requested for transfer of service from the Kenya Police Service to the County Government of Kakamega.
3. The Inspector General of Police recommended the request and on 15 May 2024, the National Police Service Commission (the Commission) approved the request for transfer of service and instructed the Inspector General to facilitate the applicant's exit, discharge from service and transfer of payroll.
4. On 4 June 2024, the County Government of Kakamega requested the Commission to release to it personal file, IPPD data and Last Pay Certificate. The Commission did not respond and the applicant successfully moved the Court which issued an order compelling it to provide the documents in Nairobi Judicial Review No. E044 of 2024, R v Director of Criminal Investigations & Ors ex parte Joseph Andeso Manyasa.



5. The Kenya Police Service (the Service) then issued a Clearance Certificate and Government Liabilities Clearance Certificate to the applicant.
6. Around 14 August 2024, the Directorate of Criminal Investigations Public Complaints Unit sent a Memo to the Director, of Criminal Investigations recommending that the applicant be charged with the offence of Being Absent from duty without leave contrary to Chapter 30 Section 6 subsection (h) of the *National Police Service Act*.
7. A disciplinary committee was therefore set up on or around 8 October 2024. The hearing was set for 14 October 2024.
8. On 11 October 2024, the applicant moved the Court to challenge the disciplinary process. The Court granted an interim stay of the disciplinary process and issued further directions on 22 October 2024.
9. The Director filed a replying affidavit sworn by a Deputy Director of Personnel. In the affidavit, it was deponed that the applicant had not resigned nor retired from service and was therefore still subject to the Service Standing Orders as well as the *National Police Service Act* and National Police Service Discipline Regulations, 2015 and the Human Resource Policies and Procedures Manual for Public Service, 2016.
10. The deponent also stated that a show-cause notice had not been issued to the applicant and that the applicant had relied on confidential documents contrary to Articles 31, 35 and 50(4) of *the Constitution*.
11. The Commission filed a replying affidavit sworn by its Deputy Director, Appeals, Policy and Legal Affairs on 6 December 2024. The affiant deponed that the Commission had the mandate over recruitment and appointment of persons to hold or act in offices within the National Police Service and that it had considered a request for transfer of service from the applicant and approved the same.
12. Accordingly, the Commission asserted that the applicant could not be subjected to disciplinary proceedings on the grounds of desertion.
13. The applicant filed a further affidavit and his submissions on 7 November 2024, and the Director and Inspector General on 13 November 2024. The Commission's submissions were not on record by the agreed timeline of 30 November 2024.
14. The Court has considered the Motion, affidavits and submissions.
15. The applicant is seeking an interim injunctive relief.
16. The threshold the applicant was expected to meet was set out in the case of *Giella v Cassman Brown & Co Ltd* (1973) EA 358. The principles are demonstration of a prima facie case and that unless an injunction is granted, irreparable injury will be occasioned. If the Court is in doubt, it should consider the balance of convenience.
17. Despite asserting that the applicant relied on confidential documents unlawfully obtained, it cannot be gainsaid that the Inspector General recommended a request by the applicant for transfer of service to the County Government of Kakamega. The Commission approved the request and informed the Inspector General through a letter dated 15 May 2024. This can be gleaned from copies of proceedings in Nairobi Judicial Review No. E044 of 2024.
18. The Director and Inspector General cannot run away from the record in the Judicial Review proceedings where the Court expressly ordered:



- (4) The 1st and 2nd Respondents shall immediately issue the applicant a Discharge Certificate following his transfer of service to the County Government of Kakamega.
 - (5) The Respondents shall immediately issue the applicant with the Last Pay Certificate and any other information required by the County Government to facilitate his inclusion in the payroll.
19. The legal question of whether the Director of Criminal Investigations and Inspector General retain disciplinary control over the applicant and the extent of that control becomes germane.
 20. One of the probable outcomes of the disciplinary process is that the applicant may end up losing his service contract.

Orders

21. In light of the above, the Court orders:
 - (i) An order of temporary injunction is hereby issued restraining the Respondents, their staff, subordinates and agents from conducting any intended disciplinary hearing against the Claimant pending the hearing and determination of the Cause.
22. Costs in the cause.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 19TH DAY OF DECEMBER 2024.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For applicant Mr Odhiambo instructed by Odhiambo Owino & Co. Advocates

For 1st 2nd and 4th Respondents Ms Aluoch instructed by the Office of the Honourable Attorney General

For 3rd Respondent Ms Chebet instructed by the National Police Service Commission

Court Assistant

