



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW DIVISION
JR CASE NO. 146 OF 2015
REPUBLIC.....APPLICANT
VERSUS
KENYA REVENUE AUTHORITY.....RESPONDENT
EX-PARTE RICHARD SYMON KIMANI NJOROGE

JUDGEMENT

1. The ex-parte Applicant, Richard Symon Kimani Njoroge is an Assistant Commissioner in the Domestic Tax Department of the Respondent, Kenya Revenue Authority. The Applicant is currently on interdiction for reasons that will emerge shortly.
2. The Applicant was on 14th August, 2013 charged before the Milimani Anti-Corruption Court vide **Anti-Corruption Case No.10 of 2013** for offences under the Anti-Corruption and Economic Crimes Act, 2003 (ACECA). Through a letter dated 19th August, 2013, the Applicant was interdicted by the Respondent in connection with his prosecution.
3. Everything went quiet until 19th March, 2015 when the Respondent wrote to the Applicant asking him to show cause why disciplinary action should not be taken against him for soliciting a bribe of Kshs. 5 million from a taxpayer. The notice to show cause was based on the same facts that had led to the Applicant's prosecution. The Applicant promptly responded to the show cause letter.
4. Thereafter, the Applicant was through a letter dated 13th April, 2015 asked to appear before the Respondent's Staff Disciplinary Committee for the hearing of his case on 22nd April, 2015. On 11th May, 2015 the Applicant moved this court for leave to commence these proceedings. Leave was granted on 19th June, 2015. The leave granted was to operate as stay of any disciplinary action against the Applicant.
5. A perusal of the statutory statement dated 4th May, 2015 and the Applicant's verifying affidavit sworn on the same date discloses that the Applicant's application is largely based on his claim that allowing the disciplinary proceedings to proceed concurrently with the criminal trial will result in double jeopardy. He also asserts that the Respondent's action is unfair, arbitrary, capricious, an abuse of authority, made in bad faith and will violate his constitutional rights.
6. The Respondent opposed the application through a replying affidavit sworn on 11th June, 2015 by Matende Evelyne of the Respondent's Human Resources Department.
7. Through the said affidavit, the Respondent's case is that the interdiction of the Applicant was in compliance with Section 62 of ACECA. It is the Respondent's case that after the Applicant was interdicted, internal investigations were conducted which concluded that the Applicant had breached the Code of Conduct hence the letter dated 19th March, 2015 asking him to respond to

- the allegations contained therein.
8. The Respondent's position is that criminal proceedings and decisions from a criminal court do not absolve an employee from being held accountable under the Code of Conduct.
 9. It is the Respondent's case that the violations that the Applicant is accused of are specified in the Code of Conduct and they are different from the criminal charges laid against the Applicant by the Ethics and Anti-Corruption Commission (EACC).
 10. The Respondent contends that there the application is premature as there are no disciplinary proceedings which can be quashed. The Respondent also states that it is not the complainant in the criminal trial. Further, that it is only trying to enforce the contract between it and the Applicant.
 11. The Applicant swore a further affidavit through which he introduced new grounds for seeking relief. He referred the court to the Kenya Revenue Authority Code of Conduct 2005 which at Part 8 deals with disciplinary action. The Applicant averred that clause 8.2.7 required that an interdiction case should be determined within six months. The Applicant's case is that the Respondent had not explained why his disciplinary case had not been determined within six months. He also insisted that the Respondent is the complainant in the criminal trial.
 12. Through the notice of motion dated 28th July, 2015 the Applicant seeks an order to prohibit the Respondent's Staff Disciplinary Committee from proceeding with the charges laid against him. He also prays for an order of certiorari to remove the proceedings before the Respondent's Staff Disciplinary Committee into this court and quash the same.
 13. The new ground raised by the Applicant in his further affidavit of 2nd November, 2015 should not be considered by this Court by virtue of Order 53 rule 4(1) which provides, *inter alia*, that **"...no grounds shall, subject as hereinafter in this rule provided, be relied upon or any relief sought at the hearing of the motion except the grounds and relief set out in the said statement."** The Applicant has thus introduced a new ground without the leave of the court.
 14. I will nevertheless address the new ground least I be accused of being a worshipper of rules at the expense of substantive justice.
 15. Clause 8.2.7 which the Applicant relies on provides that **"cases of interdiction will be determined within six months as much as may be possible."** The provision does not state that cases in which an employee is interdicted must be decided within six months. It recognizes that there are situations when a case cannot be decided within six months.
 16. Even the Code of Conduct exhibited by the Applicant and which is different from that exhibited by the Respondent provides at clause 6A (h) that: **"Cases of Interdiction must be determined within three months. However, where it is not possible, the Commissioner General may at his discretion extend the period depending on the circumstances of the case."**
 17. The Respondent did not offer any explanation for not determining the matter within six months. Even without any explanation, it is apparent that the rule cited by the Applicant is not absolute. I therefore find that the Applicant has failed to demonstrate that the Respondent breached the requirement to dispose of his matter within six months. There is indeed room for extension of time in the two editions of the Code of Conduct exhibited by the parties before the court.
 18. The Applicant's counsel did not submit on the ground of breach of the principle of double jeopardy even though this is the core ground in the statutory statement.
 19. At page 564 of the 9th Edition of Black Law's Dictionary, it is stated that double jeopardy is the **"fact of being prosecuted or sentenced twice for substantially the same offence."**
 20. The disciplinary proceedings which the Applicant seeks to quash and prohibit do not amount to criminal proceedings. His employer is simply enforcing the contract which they entered into at the time of his employment. The outcome of the proceedings will determine whether or not their contractual relationship will continue. This is immaterial of the outcome of the ongoing criminal trial.
 21. Indeed ACECA under which the Applicant is charged is clear at Section 62(4) that prosecution for crimes under the Act is no bar to suspension without pay or dismissal of an accused person under any other law. The doctrine of double jeopardy is thus not applicable to the case at hand.
 22. There remains no other ground upon which the court can grant the orders sought. It therefore follows that the Applicant's case fails and the same is dismissed. Considering the contractual relationship between the parties, I do not deem it necessary to award costs in this matter. There shall therefore be no order as to costs.

Dated, signed and delivered at Nairobi this 26th day of Feb., 2016

W. KORIR,

JUDGE OF THE HIGH COURT