



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW DIVISION
JR CASE NO. 294 OF 2013

STAN MUSYOKA MANTHIAPPLICANT

VERSUS

EXECUTIVE DIRECTOR,

ANTI-COUNTERFEIT AGENCY1ST RESPONDENT

ANTI-COUNTERFEIT AGENCY2ND RESPONDENT

RULING

By way of the chamber summons application dated 8th August, 2013, the Applicant (Stan Musyoka Manthi) seeks the leave of the court to commence judicial review proceedings with a view to prohibiting the Executive Director of Anti-Counterfeit Agency and the Anti-Counterfeit Agency, the 1st and 2nd respondents respectively, from dismissing him or taking disciplinary proceedings against him in respect of the circumstances leading to his arrest and prosecution in Anti-Corruption Criminal Case No. 1 of 2013 at Nairobi Milimani Chief Magistrate's Court.

From the pleadings, it emerges that the Applicant is an employee of the 2nd Respondent. On 23rd January, 2013 he was arrested by officers of the Ethics and Anti-Corruption Commission and later charged at Nairobi Milimani Chief Magistrate's Court with offences under the Anti-Corruption and Economic Crimes Act Cap 65. (the Act). As required by Section 62(1) of the Act, he was suspended at half pay. However, through a letter dated 22nd July, 2013 the Applicant was summoned to appear before the 2nd Respondent's Staff Disciplinary Committee on 26th July, 2013 with a view to answering to the following charges:-

“a) Soliciting a bribe from Isaac Muthama Wolile, a member of the public, on 23rd January 2013 (full particulars are within your knowledge).

b) Accepting a bribe from Isaac Muthama Wolile, a member of the public, on 23rd January 2013 (full particulars are within your knowledge).

c) Receiving money by false pretences from Isaac Muthama Wolile, a member of the public, on 23rd January 2013.”

In the said letter the Applicant was warned that:-

“The above offences attract summary dismissal as a penalty and you are reminded that attendance is mandatory and a decision will be made, your absence notwithstanding.”

The above quoted letter has brought the Applicant to this court. It is his case that the respondents’ actions are a blatant breach of the clear provisions of Section 62(1) of the Act which state that:-

“A public officer who is charged with corruption or economic crime shall be suspended at half pay, with effect from the date of the charge.”

The Applicant argues that no disciplinary proceedings can be taken against him so long as the matter is pending before the magistrate’s court.

The respondents opposed the application through a notice of preliminary objection dated 13th August, 2013. In my view the said grounds of objection are ideal for the substantive notice of motion.

At this stage, the court is only concerned with establishing whether the Applicant has established an arguable case. Once a prima facie case has been established, leave should be granted.

In order to understand the Applicant’s case, one must consider Section 64(4) of the Act. It provides that:-

“This section does not derogate from any power or requirement under any law under which the public officer may be suspended without pay or dismissed.”

It is therefore clear that Section 64 (4) is a proviso to Section 64 (1) and on the face of it the respondents have not breached any law in moving to take disciplinary action against the Applicant.

The Applicant cannot claim that the respondents are acting contrary to the law when it is clear that the law allows them to take disciplinary action against him notwithstanding the existence of the criminal proceedings in the magistrate’s court.

From the material placed before the court it is clear that the Applicant has not established any grounds for the grant of leave. He has no arguable case. His application for leave to commence judicial review proceedings is therefore dismissed with no order as to costs.

Dated, signed and delivered at Nairobi this 14th day of August, 2013

W. K. KORIR,

JUDGE