



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
Miscellaneous Application 15 of 2009

REPUBLICAPPLICANT

VERSUS

KENYA PORTS AUTHORITYRESPONDENT

ALEX KAZONGOEXPARTE APPLICANT

RULING

By an ex parte Chamber Summons dated 21st January 2009, and taken out pursuant to Order LIII rule 1(2),(3) and (4) of the Civil Procedure Rules and Under Sections 8 and 9 of the Law Reform Act, Alex Kazongo, the ex parte applicant herein applied for the following orders:

1. That the Applicant herein ALEX KAZONGO be granted leave to apply for:

a) An Order of Certiorari to remove to this court for purposes of quashing the decision of the Respondent, its Board, its officers and agents contained in the letter dated 8th December, 2008 referenced MPE/7/560655/CON dismissing the Applicant from the position of financial controller and/or the services of the Respondent with immediate effect.

b) An Order of Prohibition prohibiting the Respondent from arbitrary dismissing and/or depriving and/or from continuing to deprive the Applicant the enjoyment of all the entitlements, emoluments, benefits and privileges applicable to the grade of Senior Public Office of a Financial Controller with the Respondent.

c) An Order of Certiorari to remove to the High Court for purposes of quashing the decision of the Respondent contained in the Disciplinary Handbook 2008 to the extent that the same is inconsistent with the Respondent's existing Staff Regulations made pursuant to the Kenya Ports Act, [Chapter 391 of the Laws of Kenya].

2. The grant of leave herein do operate as a stay of dismissal of the Applicant from the Respondent's employment and discontinuance of enjoyment by the Applicant of all the entitlements, emoluments, benefits and privileges applicable to the great/senior public office of a Financial Controller with the Respondent.

3. The costs of the Application be awarded to the Applicant.

The application is supported by the verifying affidavit of Alex Kazongo sworn on 21.1.2009.

I have perused the material placed before this court plus the oral submissions made by Mr. Mabeya, learned advocate for the ex parte applicant. At this ex parte stage, the applicant must show that he has a prima facie case which is arguable when the substantive application is filed. It is arguable that the ex parte applicant is a departmental head with Kenya Ports Authority, the Respondent herein. In such cases any disciplinary action against such an employee can only be undertaken under strict rules. It is said that it is only the Managing Director who can cause a disciplinary action to be commenced. The ex parte applicant claims that the Permanent Secretary, Ministry of Transport interfered with the ex parte applicant's employment. He purported to replace him while he was on leave. He was summarily dismissed on the basis of staff regulations which were developed between the months of September and December 2008. The applicant will be seeking for those Staff Regulations to be quashed. It is the ex parte applicant's submission that the new regulations were meant to be used to ratify his unlawful dismissal. The applicant said that he will at the substantive stage

show that the Managing Director acted without jurisdiction.

I have anxiously considered the submissions. I am convinced that the applicant has shown that he has an arguable case. It is possible that he may convince the judge who will hear the substantive application to quash to new staff regulations which were developed in 2008 which regulations were used to dismiss the applicant. It is also possible that the ex parte applicant may establish that The Permanent Secretary, Ministry of Transport and the Managing Director, Kenya Ports Authority had no power to dismiss the Ex parte Applicant. In the end I am convinced that the applicant should be granted leave as prayed in prayer 2 of the summons.

I have been urged to direct the order of leave to operate as a stay. Basically, the purpose of such orders is to ensure that the status quo is maintained pending the hearing and determination of the substantive application. I am aware that the orders sought if successful will mean that the applicant will be reinstated. I direct the order for leave to operate as a stay that is to say that the applicant should continue enjoying his entitlements, emoluments benefits and privileges as at the time of his dismissal until the substantive application is heard and determined without the necessity of him being in employment.

In the end the applicant is granted leave of 21 days to institute judicial review proceedings as prayed in prayer 2. Leave is directed to operate as a stay as earlier proposed in this ruling.

Dated and delivered at Mombasa this 21st day of May 2009.

J. K. SERGON

J U D G E

In open court in the presence of Mr. Mogaka for Ex-parte Applicant.