



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CIVIL CASE NO. 45 OF 2005

PETER OTIENO OPOLLO PLAINTIFF

-VERSUS-

BOARD OF GOVERNORS

KISUMU POLYTECHNIC COLLEGE DEFENDANT

RULING

Coram

J. W. Mwera Judge

Plaintiff in person

Mr. Otete for defendant

CC. Raymond.

The plaintiff, acting in person filed a chamber summons, without stating under what provisions of the Civil Procedure Rules, dated 19.1.2007. The main prayer therein was:

1. That the court be pleased to make the defendant to show cause why it cannot be condemned for contempt of court, having disobeyed the lawful court orders dated 28/4/2006, which orders compelled the defendant (board) to reinstate the plaintiff into employment without conditions.

That is as best as the plaintiff's main prayer can be put here. Of course, he also prayed for costs.

The grounds on which the application rested included an averment that the plaintiff/applicant's judgment of 28/4/2005 had not been varied or reviewed. Here the applicant elaborated that he sued the defendant board for orders that the dismissal it had slapped on him be set aside so that he could resume his duties. That the respondent board reinstated him but imposed conditions which included reducing salary and refusing to put him in the job that was contained in the plaintiff's appointment letter. Then later the defendant terminated the plaintiff's services without cause or anything to warrant such an act. It was added that the defendant also refused to pay salary arrears due to the plaintiff/applicant. The oral submissions followed a similar line. There was a supporting affidavit plus annexures.

On his part Mr. Otete referred to the replying affidavit sworn by the secretary to the defendant board and also the college principal. His reply was brief in that the applicant was duly reinstated following the court judgment of 28.4.2006. He thanked the defendant for that gesture and even was granted a salary

advance. Thus there was nothing that the defendant did in contempt of court orders.

From perusing the file and having heard the applicant and Mr. Otete for the defendant/respondent, it is not in doubt that the former sued the latter on 14.4.2005, claiming that the defendant had dismissed him unlawfully, and so court should find so and reinstate him. The prayer read:

“1. An order to set aside the dismissal of the plaintiff and he be reinstated.”

The plaintiff averred that he had held the job of Artisan Grade III. The defendant board did not file a defence to the claim and on 28/4/2006 Warsame Judge entered judgment for the plaintiff.

The court heard that the plaintiff served the judgment together with a copy of the decree on the defendant and he was reinstated on 15.6.2006 – but placed in the college library – not the workshop. Then his services were terminated on 24.11.2006. He did not appear to contest this second dismissal/termination.

It was with the foregoing that Mr. Otete submitted that he was unable to grasp what orders the plaintiff was seeking, having been reinstated as the court ordered on 28.4.2006.

In this court’s view, the plaintiff has lodged the present application without any merit. He was dismissed. He brought this suit. He got judgment that he be reinstated; he was reinstated and the following letters attest to that.

On 15.6.2008 the defendant wrote to the plaintiff in the pertinent parts of the letter headed **“REINSTATEMENT”**, reading:

“In compliance with the court judgment of 28th April 2006 on (sic) the case HCCC 45 of 2005 at Kisumu, you are hereby reinstated.”

The letter added that its contents overrode any other communication which had earlier come from the defendant. This should include the initial notice of intention to appeal the judgment of 28.4.2006, dated 8/5/2006.

On the 16.6.2006 the plaintiff responded to his reinstatement with much **“APPRECIATION.”** He had asked his employer to give him a salary advance. He was given and he acknowledged on the same 16.6.2006 as **“ADVANCE APPRECIATION.”**

So far whether the plaintiff was placed to work in the college library or wait there until a place was found for him in the workshop where he was an artisan, does not matter. He had been reinstated as per the judgment of 28.4.2006 and that is all indeed he said as much in his application and submission. That chapter was closed. After 5 months the plaintiff’s services were terminated again but that is not of our concern here.

In sum this application had no merit and it is dismissed with costs.

Orders accordingly.

Delivered on 21/5/2008.

J. W. MWERA

JUDGE

