



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Case 185 of 2007**

**BENARD ONDARI RATEMO.....PLAINTIFF**

**VERSUS**

**KENYA POWER & LIGHTING CO. LTD.....DEFENDANT**

**RULING**

The Plaintiff by way of this Chamber Summons dated 22<sup>nd</sup> February 2007 and expressed to be brought under Section 3A of the Civil Procedure Act seeks orders that he be given his unpaid salary and that costs of this application be provided for.

The application is based on the grounds:-

- (a) That the Plaintiff who is the bread winner of his family has unjustifiably and in total breach of his employment agreement, been suspended indefinitely from his employment without pay to the detriment of his family.
- (b) That the Plaintiff was not given a chance to defend himself.
- (c) That the suspension was biased.
- (d) That if the orders sought are not granted the Plaintiff and his family shall continue to suffer.

The application is also supported by an affidavit sworn by the Applicant in which he avers that he was employed by the Defendant on 10<sup>th</sup> October 1997; that on 2<sup>nd</sup> January 2007 he was served with a suspension letter dated 29<sup>th</sup> December 2006; that he was not given any reason for his suspension nor is he getting any payment at all and that the said suspension violated the Terms of Staff Regulations and Procedures of the Company.

The application is opposed by the Defendant who has filed a Replying Affidavit sworn by SIGILAI KIRUI on 2<sup>nd</sup> March 2007 in which he avers that the Applicant was lawfully suspended in accordance with the Respondent's Staff Regulations and Procedure to which the applicant subscribed to and agreed to be bound and that the suspension of the applicant followed his implication in defrauding the Defendant/Respondent Company in the course of his employment and that the Defendant is holding to the Plaintiff's salary to off-set the loss incurred by the Defendant due to the Plaintiff's fraudulent actions.

Miss Amani learned counsel for the Applicant submitted that the Applicant while on suspension is entitled to payment as provided for under Clause 1 Part IV (a) which provides:-

**“(a) where the company deems it to be expedient to suspend an employee on Standard Terms of**

**Service from duty pending investigations of a disciplinary offence such suspension shall be on full pay and benefits for the first three months and half pay for the next two months and thereafter no pay until the case is determined.”**

This fact is admitted by the Respondent in paragraph 10 of the Replying Affidavit while Mr. Okeyo learned counsel for the Respondent submitted that the Plaintiff is seeking a mandatory orders pending the hearing of the suit so that granting the orders sought would mean that final orders would be given at the Preliminary Stage and there are no circumstances to warrant a mandatory injunction.

The test to grant a mandatory injunction or not is correctly stated in Vol.24 Halsburys Laws of England 4<sup>th</sup> Edition par. 948 which reads:-

**“A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one which the court thinks it ought to be decided at once, or if the act alone is a simple and summary one which can be easily remedied, or if the Defendant attempts to steal a march on the Plaintiff.....a mandatory injunction will be granted on an interlocutory application.”**

Applying the above principle to the present case the Plaintiff has stated that he was employed by the defendant and he was subject to the Staff Regulations And Procedure of the Defendant which provided that where the Defendant suspends an employee on Standard Terms of Service from duty pending investigations of a disciplinary offence, such suspension shall be on full pay and benefits for the first two months and half pay for the next two months and thereafter no pay until the case is heard and determined.

The Defendant admits that it suspended the Plaintiff and he was not paid as is stipulated in the Staff Regulations and Procedures.

It would therefore be just and equitable to grant the orders of mandatory injunction as prayed. I grant the Plaintiff the orders sought in the following terms:-

- (i) Full pay and benefits for 2 months.
- (ii) Half pay and benefits for another 2 months.

The above to be calculated in terms of paragraph 5 of the Supplementary Affidavit sworn by the Applicant on 23<sup>rd</sup> February 2007 as follows:

(i)  $Kshs.157,159/= \times 2 = Shs.314,318/=$

(ii)  $Kshs.157,159/= \times 2 - \frac{1}{2} = \underline{Shs.157,159/=}$

Total = Shs.471,577/=

The Applicant is also entitled to costs of this application and it so ordered.

Dated and delivered at Nairobi this 3<sup>rd</sup> day of May 2007.

**J.L.A. OSIEMO**

**JUDGE**