



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC APPLICATION NO. 310 OF 2002

**KARUNGO THUKU KABIA .....DEFENDANT**

**VERSUS**

**TEACHERS SERVICE COMMISSION.....RESPONDENT**

**RULING**

Applicants seeks leave to apply for

- (a) An order of certiorari to remove to the High Court and quash Notice of interdiction dated 28.12.2001
- (b) An order of mandamus to compel the respondent to allow applicant to exercise his powers and functions as a teacher and to be properly remunerated as such
- (c) An order of prohibition restraining respondent from deducting any part or the whole of the applicants salary or otherwise from disturbing applicants employment.

I have read the statement to support the application. The letter dated 24.5.2001 KTK4 asked applicant to show cause why he should not be disciplined for breach of Chapter IX section 69 of code of Regulations for teachers which prohibit a teacher from instituting Civil Proceedings connected with his official position without consent of the Attorney General. Applicant concedes that he had instituted HCCC NO. 508/2001 without consent of the Attorney General. By a letter dated 28.12.2001 the Teacher service Commission informed applicant was given a notice of interdiction and notice to sack him as a teacher. The charges against him are stated in the letter. The letter invited him to make a statement to TSC. The letter also informed him that he will be given an opportunity to be heard before case is determined. The intended application for an order of certiorari to quash the Notice dated 28.12.2001 is premature. The basis of the Notice is shown – breach of Regulations 6(a) The applicants case has not been determined. He will be given an opportunity to be heard during the determination as Notice clearly states.

It is wrong to interfere with the internal disciplinary machinery of the respondent at this stage. If an adverse decision is made against the applicant during disciplinary proceedings he will have another chance of filing an application to quash the decision. Regarding leave to apply for orders of mandamus and prohibition an order of mandamus and prohibition cannot issue from in the terms sought. The respondent is employed under a contract of employment. The relationship between applicant and respondent is that of employee and employer. The respondent cannot be compelled to retain a teacher in its employment and pay him. If the respondent has decided that the applicant breached the codes of regulation of employment and if Respondent decides that applicant is not a suitable person as a teacher.

The facts stated to support those orders cannot be determined in a Judicial Review application e.g court cannot decide whether or not applicant deserted duty for 1 ½ years. Those facts can only be determined in a Civil suit. In brief I am satisfied that prima facie there is no valid legal basis for applying for orders of certiorari, and mandamus and prohibition. I dismiss the application.

E. M. Githinji'

Judge

7.5.2002

Mr. Munyondo present