



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE NO. 777 OF 2018

MARY NYAMBURA NYOIKE.....CLAIMANT

VERSUS

URITHI HOUSING COOPERATIVE

SOCIETY LIMITED.....RESPONDENT

RULING

1. Mary Nyambura Nyoike (applicant) was employed by Urithi Housing Cooperative Society Ltd (Respondent) on 1 March 2016 as an Accountant.

2. On 21 February 2018, the Respondent wrote to the applicant, informing her that her services were no longer required.

3. On 23 May 2018, the applicant moved to Court to challenge as unfair, the termination of her employment and at the same time she filed an application seeking orders

1. ... (spent)

2. ... (spent)

3. **THAT** pending the hearing and determination of this suit this Honourable Court do issue an order that:

a. The Respondent's termination letter dated 21st February 2018 issued to the Claimant be and is hereby suspended forthwith.

b. The Claimant be and is hereby reinstated to her employment position in the Respondent's employment with full pay of salary and allowances and without any loss of privileges, earnings and benefits.

c. The Respondent be and is hereby ordered to settle all the Claimant's salary and commission arrears and to keep making the said payments till further orders of the court.

4. The Respondent to bear the costs of this application in any event.

4. The application was served upon the Respondent on 31 May 2018 but when it came up for *inter partes* hearing on 14 June 2018, the Respondent attempted to get an adjournment in order to file a reply. The

Court declined to grant the adjournment but allowed the Respondent to respond from the bar on legal issues raised.

5. The Court has considered the application, the grounds in support thereof, the supporting affidavit and the oral addresses from the parties.

6. The order the applicant is seeking is to all practical purposes the remedy of reinstatement.

7. Reinstatement as a remedy, and more so in cases of ordinary employment (not regulated by specific statutory provisions but the general law of employment, the Employment Act, 2007) is a final remedy.

8. Granting the order sought by the applicant will in all likelihood determine the substance of the cause of action/dispute without affording the Respondent the opportunity to fully present its case.

9. In the view of the Court, both parties should be given an opportunity to fully present their cases including on the practicality of reinstatement, an advantage which the Court can be seized of only after a hearing on the merits.

10. In the circumstances the Court finds no merit in the application dated 23 May 2018 and orders that it be dismissed with costs to the Respondent.

Delivered, dated and signed in Nairobi on this 6th day of July 2018.

Radido Stephen

Judge

Appearances

For applicant Mr. Nyaanga instructed by Nyaanga & Mugisha Advocates

For Respondent Mr. Mwangi instructed by Mwangi & Partners Advocates

Court Assistant Lindsey