



Siso v Governor, County Government of Siaya & 2 others (Cause E085 of 2023) [2024] KEELRC 377 (KLR) (29 February 2024) (Ruling)

Neutral citation: [2024] KEELRC 377 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E085 OF 2023
CN BAARI, J
FEBRUARY 29, 2024**

BETWEEN

CHARLES SISO CLAIMANT

AND

GOVERNOR, COUNTY GOVERNMENT OF SIAYA 1ST RESPONDENT

COUNTY GOVERNMENT OF SIAYA 2ND RESPONDENT

SIAYA COUNTY PUBLIC SERVICE BOARD 3RD RESPONDENT

RULING

1. Before Court is the Applicant’s motion dated 2nd November, 2023, brought pursuant to Section 3 and 3A of the Civil Procedure Act and Section 12 of the Employment and Labour Relations Court Act. The Applicant seeks the following reliefs: -
 - i. Spent.
 - ii. Spent.
 - iii. That pending hearing and determination of this claim, this Court do order stay of the notice of termination of employment dated 4th October, 2023, and communicated through social media and to further stop any other action of replacing the Claimant/Applicant from their position with the 2nd Respondent.
 - iv. That the costs of this application be provided for.
2. The prayer sought is anchored on the grounds set out on the face of the motion and the supporting affidavit sworn by the Applicant on 2nd November, 2023.
3. The applicant avers that he was send on compulsory leave when the 1st Respondent assumed office at the end of the term of the previous government for 30 days to pave way for an audit. It is his case that



- the leave was not a disciplinary step and further that the period of the leave was extended twice to allow the audit team time to present their report.
4. The Applicant states that the audit team found no wrong doing on his part resulting in him being allowed to resume duty with no hindrance whatsoever.
 5. The Applicant avers on 4th October, 2023, he was surprised to see social media reports indicating that he had been sent on terminal leave, and a person appointed to act in his position. He avers that he was no able to obtain the communication on the termination, which was to take effect on the same day (4/10/2023).
 6. The Applicant avers that his termination is contrary to Section 43 of the *Employment Act*, as reasons for his termination were not given as stipulated under Section 45 of the Act. He further states that the actions of the Respondents amount to unfair termination, malicious and contrary to the law, and that this is a proper case for the Court to shield innocent employees that are being unfairly treated.
 7. The Respondents opposed the application vide a replying affidavit sworn on 21st November, 2023, by Joseph Ogutu, the County Secretary of the 2nd Respondent.
 8. It is Respondents aver that the motion herein is an abuse of the Court process for reason that the Applicant had failed to establish a prima facie case with a probability of success, or that he will suffer irreparable injury that cannot be compensated by way of damages should the injunctive orders be denied.
 9. It is the Respondents' position that the termination notice having already crystalized, and the termination having taken effect, it would be impossible to revive an already extinguished employment contract.
 10. The Respondents further avers that granting the orders sought will amount to reinstating the Applicant through the back door. It is their further case that reinstatement is in the nature of a final order that cannot be granted at an interim stage.
 11. It is the Respondents' further case that the Applicant's position has already been filled, and reinstating him would result in an absurdity where a department will have two accounting officers.
 12. Parties canvassed the motion by way of written submissions, and which submissions have bee duly considered.

Analysis and Determination

13. I have considered the Applicant's motion, his grounds and supporting affidavit, the Respondents' replying affidavit in opposition and the written submissions by both parties. The singular issue for my determination is whether to stay the effect of the notice of termination terminating the Applicant's contract with the Respondents.
14. The effect of the termination notice issued to the Applicant, is that it relieved him of his services with the Respondents, hence staying the termination notice simply translates to reinstating the Applicant/ Claimant.
15. The general rule is that the discipline of employees at the work place is the employer's prerogative, and which should be exercised without interference by third parties.
16. Section 12 of the *Employment and Labour Relations Court Act*, however, confers on this Court the power to grant interim orders, including injunctions in cases of urgency.



17. To qualify for grant of interim injunctive orders, the Applicant is under duty to meet the threshold set in *Giella v. Cassman Brown*, by first establishing a prima facie case with a probability of success; and secondly by showing that damages would not be an adequate remedy for the alleged wrong, and finally by demonstrating that the balance of convenience tilts in his favour. (See *Muturi v Havi & 21 others (Civil Application)* E435 of 2021) [2022] KECA 938 (KLR)
18. The Respondents' position is that the Applicant/Claimant has already been terminated, the termination has taken effect and that the position has already been filled. In *Joab Mehta Oudia v Coffee Development Board of Trustees* [2014] eKLR it was held that the Court cannot stay the termination of an employee at an interlocutory stage as it would amount to the court unduly interfering with the decision already made by the management within its discretion.
19. Again, in *Kinyanjui v Rural Electrification & Renewable Energy Corporation* [2023] KEELRC 580 (KLR) the Court held that reinstatement is in the nature of a final order and prudence requires that such an order issues at the time when the matter is finally heard and determined.
20. The Applicant has shown that he had a valid contract with the Respondents and which contract has been terminated prematurely. It is my considered view however, that though the Applicant has established his case prima facie, he has not shown that damages would not adequately compensate him should the court finally find his termination unfair.
21. Further, allowing the application will without a doubt have the effect of concluding the claim without according the parties an opportunity to ventilate their respective cases.
22. It is also not lost on this Court that Section 12(3) of the Employment and *Labour Relations Act*, provides numerous other reliefs that the Court is mandated to award under this section, and hence the Applicant will not be without relief should his claim succeed.
23. The upshot is that the motion fails, and is dismissed with costs in the cause.
24. Orders accordingly.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 29TH DAY OF FEBRUARY, 2024.

CHRISTINE N. BAARI

JUDGE

Appearance:

Ms. Okaka h/b for Mr. Yogo for the Claimant/Applicant.

Mr. Okanda Present for the Respondents

Mr. Erwin Ongor – C/A

