



**Odongo & another v Governor, County Government of Siaya & 2 others
(Petition E084 of 2023) [2024] KEELRC 911 (KLR) (25 April 2024) (Ruling)**

Neutral citation: [2024] KEELRC 911 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
PETITION E084 OF 2023
CN BAARI, J
APRIL 25, 2024**

BETWEEN

JAMES ONYANGO ODONGO 1ST CLAIMANT

ELIZABETH ANYANGO ODUOR 2ND 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 Applicants/Claimants motion application dated 31st October, 2023, brought pursuant to Sections 3 & 3A Civil Procedure Act and Section 12 of the Employment and Labour Relations Court Act 2011. The Applicants seek orders that: -
 - i. Spent.
 - ii. Spent.
 - iii. Pending the hearing and determination of this claim, this court do order for 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 Claimants/Applicants from their positions with the 2nd Respondent.
 - iv. That costs of this application be provided for.
2. The application is supported by grounds on the face thereof and the affidavits of Joseph Onyango Odongo and Elizabeth A. Oduor, the Applicants herein. The crux of the application is that the



- Applicants were sent on compulsory leave when the 1st Respondent assumed office after the term of the previous government ended with the elections of the 1st Respondent.
3. The Applicants aver that the 30 days compulsory leave was meant to allow for an audit by a task force, and which the 1st Respondent made clear was not a disciplinary step.
 4. It is their case that the said leave was extended twice until the said audit team presented its report, which found no wrong doing on the part of the Claimants/Applicants and they were dully allowed to resume their work with no hindrance whatsoever.
 5. The Applicants states that they were surprised while at work to see on social media an alleged press statement by the Director of Governors Press Unit dated 4th October, 2023 stating that they had been sent on terminal leave, and other persons appointed to act in their place.
 6. They aver that they later received notices of termination of contracts of service effective 4th October, 2023 and which notices were to lapse in 30 days.
 7. It is their contention that the terminations were contrary to Section 43 of the *Employment Act*, as no reason for termination was given as stipulated in Section 45 of the *Employment Act*.
 8. They aver that the actions of the Respondents amount to unfair termination, is malicious and made contrary to the law and that this court ought to halt and injunct the Respondents from enforcing the said termination notices until this matter is heard and determined.
 9. The Respondents opposed the motion *vide* a replying affidavit sworn on 21st November, 2023 by one Joseph Ogutu, the County Secretary of the County Government of Siaya, the 2nd Respondent herein.
 10. The Respondents aver that the Applicants have failed to demonstrate that they have established a *prima facie* case with a probability of success, and that they will suffer irreparable injury which is incapable of compensation by an award of damages should the injunctive orders be denied.
 11. It is their assertion that the notice of termination of employment having already crystallized, and the contract of employment extinguished and as a result, staying the said termination would in essence be reviving a non-existent contractual relationship.
 12. The Respondents further state that the effect of the orders sought herein is that it is in the nature of a final order which cannot be granted at an inter locutory stage
 13. It is the Respondents' assertion that the positions previously occupied by the Claimants/Applicants have since been filled, and reinstating the Applicants would occasion an absurdity where one department of the County Government would be forced to have two Chief Officers/accounting officers, contrary to the law and the County Government's staff establishment.
 14. Parties canvassed the motion by way of written submissions. The submissions have been duly considered.

Analysis and Determination

15. To qualify for grant of an injunctive relief, the Applicants application has to have satisfied the conditions set out in *Giella vs Cassman Brown & Co. Ltd* [1973] EA 358 where the court held thus: -

“The conditions for the grant of an interlocutory injunction are now well settled in East Africa. First, an applicant must show a *prima facie* case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant



might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt it will decide the case on the balance of convenience.” (followed in *Kenya Commercial Finance Co.Ltd v Afraba Education Society* (2001) IEA 86 at page 89d).”

16. The Applicants’ herein, seek an order suspending the decision of the Respondents, terminating their employment as communicated *vide* a letter dated 4th October, 2023, and further stop the Respondents from replacing them.
17. The Respondents on their part, opposed the application on the basis that the employment relationship between the Applicants and themselves has already been extinguished, and staying the said termination would in essence be reviving a non-existent contractual relationship.
18. Indeed, staying the termination notices, which I note have since lapsed, will have the effect of reinstating the Applicants. The issue then, is whether this relief is available to the Applicants at this juncture.
19. In the case of *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.
20. Further, 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.
21. Again, in *County Executive of Kisumu & 2 Others v. Kisumu County Assembly Service Board & 5 Others* CA No. 4 & 5 of 2015 it was held that it is not in the public interest to reinstate county officials pending hearing and determination of cases or appeals.
22. In my view, once a termination is pronounced by the employer, there is nothing left to stay, and as such, an injunctive or conservatory order would not amount to setting aside the decision to terminate.
23. Further, granting a reinstatement at an interlocutory stage, will as correctly submitted by the Respondents have the effect of concluding the case without according the parties an opportunity to ventilate their respective cases.
24. Suffice it to say that by dint of Section 12(3) of the *Employment and Labour Relations Court Act*, the Applicants will not be without remedy if their claim succeeds, going by the numerous other reliefs that the Court is mandated to award under this section.
25. In the upshot, I find the Applicants motion devoid of merit and is hereby dismissed.
26. Costs shall abide the cause.
27. It is ordered.

DATED, SIGNED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 25TH DAY OF APRIL, 2024.

C. N. BAARI

JUDGE

Appearance:

Ms. Okaka h/b for Mr. Ojuro for the Claimants/Applicants

Mr. Okanda present for the Respondents



