



Obudho v Nairobi City County Government & 8 others (Cause E1022 of 2023) [2024] KEELRC 829 (KLR) (16 April 2024) (Ruling)

Neutral citation: [2024] KEELRC 829 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E1022 OF 2023
NZIOKI WA MAKAU, J
APRIL 16, 2024**

BETWEEN

MERCYLINE ODHIAMBO OBUDHO CLAIMANT

AND

NAIROBI CITY COUNTY GOVERNMENT & 8 OTHERS RESPONDENT

RULING

1. The application before me is the one dated 1st December 2023. The motion seeks in the main reinstatement on the payroll of the Respondents and supports the motion with her own affidavit. The Respondents oppose the motion and assert the Claimant is seeking injunctive relief yet in her claim has not sought any prayers in that regard. They urge the motion be disallowed with costs to the Respondents.
2. The parties were to file submissions and the Claimant in her submissions urges the grant of the relief sought and cites sections 41, of the *Employment Act* as well as sections 86 and 72 of the *County Governments Act*. The Claimant argues that the removal from payroll was contrary to the provisions of Article 41 of *the Constitution* and in support cites the case of Kenya County Government Workers Union v Nairobi County Public Service Board [2019] eKLR where the Court set aside a decision reached by the Respondent without following procedure.
3. The Respondents submitted that the Claimant had sought injunctive relief yet in her claim she had not made any request or prayed for the same. The Respondents cited the case of Nganda Kalandi v Timothy Mutinda Nzioka [2012] eKLR where the court held that where a party has not prayed for an injunction in the main suit they cannot seek an interlocutory relief. The Respondents also cited the case of Galaxy Paints Company Ltd v Falcon Guards Ltd [2000] eKLR which cited with approval the case of Gandy v Caspair [1956] EACA 139 that unless pleadings are amended, parties are bound by their pleadings. The Respondents further argued that the Claimant had not met the provisions for grant of an injunction as held in the cases of Giella v Cassman Brown & Co. Ltd [1973] EA 358 and



Nguruman Limited v Jan Bonde Nielson & 2 others [2014] eKLR. The Respondents submitted that she has a claim whose remedies are not capable of compensation by an award of damages.

4. The Respondents further submitted that the Claimant is not entitled to the relief of reinstatement at the interlocutory stage. They rely on the case of Joseph Kipng'eno Beylon v Kenya Pipeline Company Limited [2021] eKLR which cited the case of Anthony Omari Ongare v Teachers Service Commission [2017] eKLR as well as the cases of Kenya Tea Growers Association v Kenya Plantation & Allied Workers Union [2018] eKLR where the Court of Appeal gave a stamp of approval to the decision of Rika J. in the case of Alfred Nyungu Kimungui v Bomas of Kenya [2013] eKLR. The Respondents urged the denial of the orders sought.
5. Injunctive relief can be sought in appropriate circumstances. This must be underpinned by the claim itself. In the case of the Claimant, she sought under paragraph 20 of her claim to be reinstated on payroll. The Respondent other than citing authorities on the subject of injunctive orders fails to note the prayers in the claim. The Claimant has satisfied the criteria under the Nguruman case above. The remedy sought cannot be deferred to the end of the matter as remedies under section 49 are capped at 12 months yet the Claimant is out of employment and would be away till determination of the claim which may be next year. As the Claimant has hinged her reinstatement to payroll and has made a case for the same in terms of the law, the Court grants prayer 2 of the notice of motion dated 1st December 2023. Costs to the Claimant.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 16TH DAY OF APRIL 2024

NZIOKI WA MAKAU

JUDGE

