

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT NAIROBI
JUDICIAL REVIEW APPLICATION NO. 12 OF 2020

BETWEEN

BETH MUSHI SOLOMON
APPLICANT

VERSUS

THE KENYA NATIONAL COMMISSION FOR UNESCO RESPONDENT

AND

1. INSPECTORATE OF STATE CORPORATIONS
2. DR. EVANGELINE NJOKA PROPOSED INTERESTED PARTIES

RULING

1. The dispute herein is principally between the Applicant and the Respondent State Corporation.
2. The Applicant was employed by the Respondent as its Legal Officer, in a contract dated 20th June 2019.
3. Her Claim is that she was placed on extended probation unreasonably. She seeks orders compelling the Respondent's Chief Executive Officer to confirm her to the position, and to compensate her for unfair labour practices.
4. The 1st Proposed Interested Party is the Inspectorate of State Corporations, which is an Office created under the State Corporations Act, charged with the responsibility of investigating State Corporations and reporting to the Government, on a broad spectrum of governance issues. The only relevant thing the 1st Proposed Interested Party was

alleged to have done, touching on the dispute, was to issue a notice to show cause to the Applicant, on matters which are subject of the Judicial Review Application.

5. The Court made a Ruling on this, dated 3rd December 2021, staying implementation of the letter to show cause issued by the 1st Proposed Interested Party.
6. The 2nd Proposed Interested Party, is the CEO of the Respondent. She applies through her Application dated 15th September 2022 for joinder, on the basis that she is the CEO of the Respondent, and that prayer 3 of the Application, seeks an order of mandamus against her, to confirm the Applicant to her position.
7. It was agreed on 5th October 2022, that the prayers for joinder be considered and determined on the strength of the record. Parties, except the Respondent, confirmed filing of their Submissions at the last mention on 22nd November 2022.

The Court Finds: -

8. The reasons joinder of the Proposed Interested Parties is sought, are not sufficient to warrant joinder.
9. The contract of employment at the heart of the dispute, is between the *ex-parte* Applicant and the Respondent.
10. The CEO signed the contract and has made other decisions relevant to the dispute, as an Officer of the Respondent. She is mentioned in the Judicial Review Application, by virtue of her Office. If her term expires, and she is no longer in Office, the Application will proceed against the Respondent. The responsible Officer shall remain the CEO, who does not have to be the person of Evangeline Njoka. Compelling orders sought are against the CEO of the Respondent. There is nothing personal against the 2nd Proposed Interested Party, to make her a Party to the Application. She, like the Applicant is an Officer of the Respondent. The Respondent has juristic identity. It can sue and be sued in

its own name. The Proposed 2nd Interested Party, he can conveniently participate as a Witness for either Party, who may deem her an appropriate Witness. Her Application for joinder is declined.

11. The 1st Proposed Interested Party similarly has no stake in the Judicial Review Application. It became involved in the Application through its interference with the orders issued by the Court on 23rd April 2020, staying the decision to extend the Applicant's probation. Interference was by way of a notice to show cause to the Applicant, relating to the same matters that are subject of the Judicial Review Application. The Court gave orders against the Proposed 1st Interested Party on its interference. There is no dispute of a substantive nature, between the Applicant and the Proposed 1st Interested Party.

12. The Court has not seen any other way in which the 1st Proposed Interested Party would be a Party. Like the 2nd Proposed Interested Party, the 1st Proposed Interested Party can be called as a Witness by either Party, if they are minded to do so. They are no substantive orders sought against the 1st Proposed Interested Party. Both Proposed Interested Parties do not have identifiable and substantive interest in the dispute.

IT IS ORDERED: -

- a. The Applications seeking to join the Interested Parties are declined.***
- b. The ex-parte Applicant to prosecute her Application solely against the Respondent.***
- c. No order on the costs.***

Dated, signed and released to the Parties electronically at Nairobi, under the Ministry of Health and Judiciary Covid-19 Guidelines, this 31st day of January 2023.

James Rika
Judge

Hummer