



REPUBLIC OF KENYA



KENYA LAW
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**Muinde v Kenya Roads Board & another (Cause E610 of 2022)
[2023] KEELRC 120 (KLR) (26 January 2023) (Ruling)**

Neutral citation: [2023] KEELRC 120 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E610 OF 2022
MN NDUMA, J
JANUARY 26, 2023**

BETWEEN

MARGARET MWIKALI MUINDE CLAIMANT

AND

KENYA ROADS BOARD 1ST RESPONDENT

RASHID MOHAMMED 2ND RESPONDENT

RULING

1. The applicant filed a notice of motion application dated October 28, 2022 seeking for an Order in the following terms:-
 1. Spent
 2. Spent
 3. That pending hearing and determination of this suit, this honourable court be pleased to issue orders of permanent injunction restraining the 1st, and 2nd respondents whether by themselves, their agents and servants and/or whomsoever is acting upon their instructions or on their behalf from barring the claimant from accessing her office at Kenya Re-Towers 3rd Floor in Nairobi.
 4. That pending hearing and determination of the petition herein, the honourable court be pleased to issue orders of permanent injunction restraining the 1st and 2nd respondents, whether by themselves, their agents and servants and/or whomsoever is acting upon their instructions or on their behalf from terminating the claimant's employment contract.
 5. That pending hearing and determination of the suit filed herewith, this honourable court be pleased to issue orders of permanent injunction restraining the 1st respondent, from harassing, sexually harassing and/discriminating against the claimant in whatsoever manner.



6. Any other orders and directions as this honourable court may consider appropriate in the circumstances to issue or grant.
7. Costs of the petition be provided for.
2. The application is premised on grounds set out on the notice of motion numbered A to N the nub of which is that on August 26, 2022, the applicant was barred by the 2nd respondent from accessing office where she works for the 1st respondent. That on September 6, 2022, the 2nd respondent terminated the employment of the applicant upon hearing of her going to court to enforce her rights.
3. That the termination is unlawful and unfair and has rendered the applicant jobless. That the termination is part of a series of harassment, intimidation and vendetta weighed by the 2nd respondent against the claimant. That the action by the respondents violate Fair Administration Actions Act No 4 of 2015 and is an affront to article 47 of the Constitution.
4. That the application is buttressed in the supporting affidavit of the applicant whose contents reinforce the grounds set out in the notice of motion.
5. That the application be allowed.
6. The application is opposed vide a replying affidavit of 1st and 2nd respondent who depose that this application is the third application filed by the claimant herein in a span of 3 months. That the 7 reliefs sought in the instant application were previously sought verbatim by the claimant in earlier application dated August 31, 2022.
7. That on October 25, 2022, the court entered a consent order to the effect that:-
 4. The instant application comes on the heels of directions of this honourable court issued when the matter came up in court on October 25, 2022 where, by consent of all the parties herein the court directed that:-
 - a. All the applications pending before the court be held in abeyance and the *status quo* maintained to pave way for expeditious hearing and determination of the main suit on its merits. The applications affected by this direction were the claimant's application for injunctive relief dated August 31, 2022 and her contempt of court application dated September 20, 2022 which sought to set aside the interim injunction granted on September 6, 2022.
 - b. The claimant be granted leave to amend her pleadings within 14 days and the 1st and 2nd respondents to thereafter also have commensurate amount of time to amend their pleadings accordingly.
 - c. The suit be set down for pre-trial directions on December 6, 2022.
8. The instant application thus has the effect of turning back the clock on months of proceedings and all the gains made thus far culminating in the directions of the court given on October 25, 2022 which directions were heartily accepted by all the parties herein.
9. That the application be dismissed it being a brazen abuse of court process.
10. The court has carefully considered the court record; the depositions and submissions by the parties and is satisfied that the directions the court gave on October 25, 2022 remain in place and the same constitute a bar to the parties to the consent to file an application ventilating the same issues pending for determination in the pending main suit.



11. Indeed, this application is an outright abuse of the court process and the court does not hesitate to dismiss it with costs to the applicant. The applicant is barred from bringing any other application seeking same reliefs as in the earlier 3 applications whilst the orders given by the court on October 25, 2022 remain in place.
12. The main suit to proceed for hearing and determination as was agreed upon by the parties on October 25, 2022.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 26TH DAY OF JANUARY, 2023.

MATHEWS NDERI NDUMA

JUDGE

Appearances

Mr. Kaingu for Claimant/Applicant

Mr. Oundu for the 1st and 2nd Respondent

