



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kinyanjui v Rural Electrification & Renewable Energy Corporation & another  
(Cause E709 of 2022) [2023] KEELRC 580 (KLR) (10 March 2023) (Ruling)**

Neutral citation: [2023] KEELRC 580 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E709 OF 2022  
SC RUTTO, J  
MARCH 10, 2023**

**BETWEEN**

**LUCY KINYANJUI ..... APPLICANT**

**AND**

**RURAL ELECTRIFICATION & RENEWABLE ENERGY CORPORATION ... 1<sup>ST</sup>  
RESPONDENT**

**FRED ISHUGAH ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Applicant has moved this Court *vide* a Notice of Motion Application dated October 3, 2022 filed under a Certificate of Urgency. The Motion Application is supported by the Affidavit of Lucy Kinyanjui, the Applicant herein.
2. The Application seeks the following main orders;
  1. Spent.
  2. That pending hearing of this Application *ex-parte* this Honourable Court be pleased to issue an order of reinstatement of the claimant to her original position as the Principal Finance Officer at the Respondent's Corporation, and remit salary for August, 2022.
  3. That pending the hearing of this suit inter-parties, this Honourable Court be pleased to issue an order of mandamus to compel the Respondent to remit due remuneration for the month of August 2022 to the Claimant, and reinstatement of duty to her original position as Principal Finance Officer.
  4. That the costs of this Application be provided for.
3. The Application is premised on grounds that: -



1. The Applicant was employed by the Respondent as an Accountant III and rose through the ranks to become Chief Accountant.
  2. The allegations against the Respondent against her are baseless and have no supporting proof of the alleged crimes.
  3. The Internal Audit Report dated July 20, 2022 cannot prove that it was her intention to approve an alleged irregular payment invoices amounting to Kshs 430,000,000/-. There is no proof the Respondent lost such colossal sum of Kshs. 430,000,000/-.
  4. In the absence of any original document that shows any malice or intention to approve the alleged irregular payment invoices the disciplinary committee unfairly conducted the hearing thus the summary dismissal was based on an unfair hearing.
  5. The disciplinary committee panel did not conduct adequate investigations into the allegations.
  6. She has suffered and continue to suffer loss of employment, earnings and reputation.
4. Upon being served with the Application, the 1<sup>st</sup> Respondent responded by filing Grounds of Opposition dated November 22, 2022 while the 2<sup>nd</sup> Respondent filed a Notice of Preliminary Objection similarly dated November 22, 2022.
  5. The 1<sup>st</sup> Respondent's Grounds of Opposition are that: -
    1. The claimant seeks an order of reinstatement at the interlocutory stage. Granting the orders sought will amount to reinstating the claimant at the interlocutory stage contrary to the laid down principles for the grant of interlocutory orders.
    2. The claimant was summarily dismissed for negligently performing her duties as the Principal Finance Officer leading to substantial loss by the 1<sup>st</sup> Respondent. The employment relationship between the claimant and 1<sup>st</sup> Respondent has irretrievably broken down and the remedy of reinstatement is therefore untenable.
    3. There is no lawful basis for the application. The dismissal from employment was lawful and the reasons for the termination were valid and fair as envisaged under section 45 (2) of the *Employment Act*.
    4. The 2<sup>nd</sup> Respondent has been improperly joined to this suit. There is no cause of action against the 2<sup>nd</sup> Respondent neither are there any orders sought against him. The suit as against the 2<sup>nd</sup> Respondent ought to be struck out.
    5. The Application is frivolous, vexatious and an abuse of court process and ought to be dismissed.
  6. The Objection by the 2<sup>nd</sup> Respondent is that: -
    1. Pursuant to section 12 of the *Employment and Labour Relations Court Act*, this Court lacks jurisdiction to determine any dispute between the claimant and the 2<sup>nd</sup> Respondent because there is no employment relationship between the claimant and the 2<sup>nd</sup> Respondent.
    2. The suit against the 2<sup>nd</sup> Respondent is an abuse of court process.
  7. Both the Application and the Objection were canvassed together by way of written submissions which I have considered.



## **Analysis and Determination**

8. On December 1, 2022, the Court directed that upon clearing as appropriate, the 1<sup>st</sup> Respondent to release the Applicant's terminal dues. As the parties did not canvass the issue in their respective submissions, the Court presumes that the Applicant was paid her terminal dues hence the issue is spent.
9. Therefore, the issues that now stand out for determination are: -
  1. Whether the 2<sup>nd</sup> Respondent is a proper party to this suit;
  2. Whether the Application for reinstatement in the interim is merited.

### **Whether the 2<sup>nd</sup> Respondent is a proper party to this suit**

10. It is notable that the Applicant has not pleaded the capacity in which she has sued the 2<sup>nd</sup> Respondent. Despite naming the 2<sup>nd</sup> Respondent as a party to the suit, the first part of the Claim is silent on his capacity in the suit. Indeed, in the entire body of the Claim, there is no averment in respect of the 2<sup>nd</sup> Respondent. Further, it is apparent that the Applicant has not sought any reliefs against the 2<sup>nd</sup> Respondent. Suffice to say, there is no cause of action disclosed against the 2<sup>nd</sup> Respondent. It is therefore not clear why he has been sued in the first place.
11. As a matter of fact, the main dispute appears to be between the Applicant and the 1<sup>st</sup> Respondent who was her employer. The Applicant urged that the decisions of the 1<sup>st</sup> Respondent were communicated through the 2<sup>nd</sup> Respondent and that he oversaw, sanctioned and advanced the irregularities of the 1<sup>st</sup> Respondent. That further, he pursued her summary dismissal on his own motion. Despite this assertion, the same is not apparent from the Claim and if anything, the share of blame attributable to the 2<sup>nd</sup> Respondent has not been particularized in the Claim. Therefore, the bone of contention between the Applicant and the 2<sup>nd</sup> Respondent is not evident.
12. In view of the foregoing, I find that the 2<sup>nd</sup> Respondent is not a proper party to the instant claim and consequently, he is struck out from the suit herein.

### **Whether the Application for reinstatement in the interim is merited**

13. The main order sought by the Applicant at this interim stage is an order of reinstatement. The Applicant in her submissions has argued in favour of the reinstatement in the interim, on grounds that she has laid weighty triable issues against the Respondent hence has a *prima facie* case. The Applicant submitted extensively with regards to the substance of her Claim and the procedural issues arising from the disciplinary process she was taken through.
14. She further submitted that the allegations of misconduct and negligence have damaged her reputation. That the longer she stays without reinstatement, the longer her good name continues to be damaged and the same cannot be sufficiently redressed by an award of damages. That she further loses the chance to advance her career.
15. On its part, the 1<sup>st</sup> Respondent has argued against the order of reinstatement and submitted that the same is an exceptional remedy and that the Applicant must show that the termination was patently unfair and that the remedies of compensation and damages would be insufficient to address the injury. That in this case, the termination of the Applicant was not patently unfair.
16. I have considered the issues raised in the Claim and the evidence tendered so far and which I must say, cannot be examined microscopically at this interlocutory stage. It is only following a full trial that the



Court will be able to evaluate and analyse the evidence and arrive at a reasoned determination. The question of whether the termination of the Applicant was unfair and unlawful, can only be determined upon full presentation of facts and evidence by both sides. Indeed, such a determination cannot most certainly be made at this interim stage. Besides, 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.

17. In addition, pursuant to the provisions of Section 12(3) of the *Employment and Labour Relations Court Act*, this court is clothed with powers to grant a wide range of orders ranging from award of damages; reinstatement; prohibitory orders; orders for specific performance and declaratory orders.
18. Indeed, the Applicant will stand to be granted either of the remedies set out above, in the event her Claim succeeds ultimately. This includes an order of reinstatement which she now seeks in the interim and which I also note is part of the prayers she seeks in her Claim. Therefore, it cannot be said the Applicant will stand to suffer irreparable injury in the event she is not granted the orders she seeks at this stage.
19. It is also noteworthy that at the time of filing the Claim and the instant Application, the Applicant had been terminated from employment hence what she now seeks for the Court to undo what has already been done. I reiterate, this can only happen in the ultimate and not at this stage.

### **Orders**

20. The total sum of my consideration is that the 2<sup>nd</sup> Respondent's Preliminary Objection dated November 22, 2022 is sustained and the 2<sup>nd</sup> Respondent is struck out from the suit.
21. The Application dated October 3, 2022, is declined.
22. Costs shall be in the cause.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 10<sup>TH</sup> DAY OF MARCH, 2023.**

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**STELLA RUTTO**

**JUDGE**

### **Appearance:**

Mr. Mathe instructed by Mr. Kamau for the Applicant

Ms. Muthiani instructed by Mr. Makori for the Respondent

Abdimalik Hussein Court Assistant

### **ORDER**

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1** of the **Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B** of the **Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the



duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**STELLA RUTTO**

**JUDGE**

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