



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT ELDORET

JUDICIAL REVIEW E001 OF 2021

REPUBLIC.....APPLICANT

VERSUS

THE SECRETARY PUBLIC SERVICE BOARD UASIN GISHU COUNTY.....1ST DEFENDANT

COUNTY GOVERNMENT OF UASIN GISHU.....2ND DEFENDANT

COLLINS KIPKOECH.....EX PARTE APPLICANT

PUBLIC SERVICE COMMISSION.....INTERESTED PARTY

RULING

1. By Motion dated 8th June, 2021 the applicant sought orders among others that the court issues an order of *mandamus* compelling the respondent to implement the decision of the Interested Party dated 9th December, 2020 reinstating the applicant to employment with full salary and benefits with effect from 20th November, 2018.

2. The application was based on the grounds among others that:

a) That the ex parte applicant was employed by the 2nd respondent as an assistant Roads Engineer in 2014 under P/No. 2014000346 wherein the ex parte served the aforesaid respondent with loyalty, diligence and full dedication.

b) That on 20th November, 2018 the ex parte applicant received an interdiction letter form the 2nd respondent herein on alleged grounds of insubordination by failure to monitor and supervise departmental projects.

c) That the ex parte applicant was later called for disciplinary hearing before a committee constituted by the 2nd respondent wherein the aforesaid disciplinary committee absolved him form any liability and recommended for his reinstatement.

d) The ex parte applicant was however shocked to receive a dismissal letter on 17th May, 2019 terminating him form service with effect from 19th November, 2018 for allegedly failing to take lawful instructions from his superiors.

e) That being aggrieved by the dismissal decision the ex parte applicant appealed to the interested party herein on the 26th June, 2019 against his termination from service which appeal was determined in his favour vide letter dated 9th December, 2020.

f) That the interested party in its decision allowed the appeal and set aside the decision of dismissal from service by the respondents and instructed the respondents to reinstate the ex parte applicant into service with full pay.

g) That numerous letters and visits by ex parte applicant to the offices of the respondents inquiring about compliance with the decision and directive of the interested party have been futile.

h) That the respondents have acted in breach of the law by failing to reinstate the ex parte applicant into service as directed by the interested party which is the statutory body vested with power to hear matters on termination from employment.

3. The respondent filed a Replying Affidavit through one William Komen who deponed among others that:

a) I am aware that the Ex-parte Applicant (herein referred to as the “Applicant”) is a former employee of the 2nd Respondent where he had been employed as an Assistant Roads Engineer in the year 2014 until the year 2019 when his employment was terminated.

b) I am aware that the Applicant’s employment was terminated in grounds of Gross insubordination after he failed to heed instruction from his Seniors.

c) I am further aware that on 19th November, 2018 the Applicant had been instructed to be at Kaprobu Dam where he was expected to receive and brief senior government officials who were visiting to inspect the progress of the works but he failed to show up as instructed.

d) I am aware that as a result, the Applicant was issued with an interdiction letter dated 20th November, 2018 pending finalization of the investigations. Upon conclusion of the investigation, the Applicant was issued with a show cause letter where he was required to show cause why disciplinary action should not issue. *(Annexed and marked WK 1 is a true copy of the show cause letter dated 27th November, 2018)*

e) I am aware that the Applicant did not respond to the show cause letter and he was subsequently invited to appear and make representations before the Disciplinary Committee which he did.

f) I am aware that at the hearing, the Applicant admitted having failed to go to Kaprobu Dam as instructed but stated that the failure was occasioned by logistical challenges which he did not inform his supervisor about. *(Annexed and marked WK 2 is a true copy of the disciplinary proceedings dated 14th May, 2019)*

g) I am aware that the Disciplinary Committee upon considering the evidence present before it and the representations made by the Applicant, it recommended that the applicant be dismissed from employment on grounds of insubordination, a decision which was duly communicated to him on 17th May, 2019. *(Annexed and marked WK 3 is a true copy of the decision of the Board dated 17th May, 2019)*

h) I am aware that the applicant also appealed against the aforesaid decision to the Public Service Commission where it rendered its decision setting aside the decision of the Disciplinary Commission and reinstating the applicant with full apay. *(Annexed and marked WK 4 is a true copy of the decision from the Public Service Commission)*

i) I know that the respondents being dissatisfied with the aforementioned decision filed an application for review under Section 88 of the public service Commission’s Act on 26th February, 2021 before the interested party. *(Annexed and marked WK 5 is a true copy of the application for review)*

j) I am aware that the applicant is seeking the implementation of the decision of the Public Service Commission which is under review before the Interested party and hence unable to give effect to the decision.

4. The court has reviewed and considered the present application and submission by both counsel and particularly submission by counsel for the respondent and is of the view that there seems to be no dispute to be resolved by the court at this juncture through the issuance of the orders of mandamus sought.

5. By a letter dated 14th July, 2021 attached to the applicant’s supplementary affidavit sworn on 2nd December, 2021, the Public Service Commission disallowed the respondent’s application for review of their decision conveyed through a letter dated 9th December, 2020. For this reason, there is no longer any lawful justification for the respondent not to reinstate the applicant to service as earlier ordered by the public service commission.

6. To this extent, this court hereby orders the respondent to forthwith reinstate the claimant to service as per the decision of the Public Service Commission delivered on 9th December, 2020. In default, the applicant shall have the liberty to commence contempt of Court proceedings against responsible officers of the 1st and 2nd Respondent.

7. **It is so ordered.**

DATED AND DELIVERED AT ELDORET THIS 25TH DAY OF FEBRUARY, 2022

ABUODHA NELSON JORUM

JUDGE ELRC