



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT NAIROBI
CAUSE NUMBER 1409 OF 2015

BETWEEN

HENRY MUEMA KIMATHI.....CLAIMANT

VERSUS

NAIROBI CITY WATER AND

SEWERAGE COMPANY LIMITED.....RESPONDENT

RULING

1. This Claim was dismissed by the Court [Hon. Ongaya J.] on 26th June 2020.
2. The Claimant had sued the Respondent upon the Respondent's failure to renew his contract of employment.
3. The Court states in its Judgment that “ *the contract of service lapsed by effluxion of time, and the Claimant has therefore failed to establish justification for the remedies as prayed, except for a certificate of service as per Section 51 of the Employment Act, 2007.*”
4. The Claimant filed a Notice of Appeal. He applied for Proceedings of the Court, which from the record, appear to have been typed and are ready for collection.
5. He has also filed an Application under Certificate of Urgency, dated 28th May 2021, which is the subject of today's Ruling.
6. He prays for an order of injunction, to restrain the “*Respondent and or their agents, and or their servants, and or representative, or any other officers acting on their command from harassing, intimidating, and or coercing and or trespassing into or evicting or in any manner whatsoever, interfering with the Applicant's right to exclusive possession and quite enjoyment of his residence known as House Number 37 Ruai Sewage Staff Quarters.*”
7. The Application is founded on the Grounds on the face of the Motion, and on the Affidavit of the Claimant, sworn on 28th May 2021.
8. He restates his employment history with the Respondent, and that he was provided residence named above, under his contract of employment. He challenged non-renewal of his contract in this Claim. The Claim was declined. He has issued Notice of Appeal and applied for Proceedings.
9. On 28th May 2021, he received a Notice from the Respondent, to vacate the residence he has called home for 28 years. He was notified to move out within 3 months, in default he would be evicted. He states that eviction would be illegal wrongful and unlawful.
10. The Claimant also filed a Supplementary Affidavit sworn on 25th August 2021. He disputes that the Human Resource Policy and Procedure Manual of the Respondent, requires an Employee whose contract has lapsed, to vacate Respondent's residence within 3 months. He argues that such a clause is not applicable to an Employee who has challenged termination, whose Claim has been dismissed, and who has lodged an Appeal at the Court of Appeal.
11. The Respondent is opposed to the Application. It relies on a Notice of Preliminary Objection dated 7th July 2021. The Application as drawn is incapable of invoking the Court's jurisdiction on account of Articles 162 [2] and 165[5] of the Constitution of Kenya, Section 150 of the Land Act 2012, and Section 13 of the Environment and Land Act Cap 12 A. The Application is a blatant abuse of the court process. The Claimant and the Respondent are no longer in an employer-employee relationship.

12. Parties agreed in Court on 23rd September 2021 to have the Application considered and determined on the strength of their Affidavits and Submissions on record.

The Court Finds: -

13. The prayer for injunction relates to a benefit which accrued in an employer- employee relationship. It is not true that the E&LRC is deprived of jurisdiction, because the Claimant ceased to be an Employee of the Respondent.

14. If this was correct, the E&LRC would not have jurisdiction to hear any Claims for unfair termination or payment of terminal benefits, because at the time these Claims are filed, Parties are no longer in an employer-employee relationship. The right to bring employment claims, is not confined to an ongoing employer-employee relationship. It can be founded on potential, present or past employer-employee relationship.

15. The concern of the Court is whether the Parties are or were, in an employer-employee relationship, and whether the subject-matter is a benefit or was a benefit, claimed to accrue from the employer-employee relationship.

16. The Court does not think there is merit on the Preliminary Objection. A dispute of staff housing, is an employment dispute. It would be totally against constitutional order, to have issues arising out of the Judgment delivered herein, taken before another Court for consideration as suggested in the Preliminary Objection.

17. The Parties were in an employer-employee relationship. Housing benefit claimed, is a statutory benefit conferred by the Employment Act.

18. The issue is whether that benefit, should be extended beyond the lapse of the contract of employment. Did the Parties themselves intend that the housing benefit extends beyond the lapse of the contract?

19. There was no such intention shown by the Parties, with respect to the expired contract of employment. Section 31 of the Employment Act does not compel Employers, to provide reasonable housing accommodation to Employees after termination of the contract of employment.

20. The Claimant is not suggesting that he was let into the Respondent's residence in a staff house purchase scheme. He does not claim to have acquired any legal or equitable interest in the residence. He has lived there for 28 years, but only by virtue of his employment. He ought to have taken steps to acquire the house in those 28 years, instead of waiting after termination, to resist moving out. An injunction would be a viable relief, if the Claimant was in an arrangement with the Respondent, for acquisition of the residence. The Court would be obliged to protect any proprietary right or interest deemed to have accrued to the Claimant over the 28 years. Unfortunately, the Claimant does not claim any proprietary right; he just wishes to hang on to the residence on the strength of his expired contract of employment. He hopes the Court of Appeal will pave way for renewal of the contract.

21. Even if the Court of Appeal finds his contract should be renewed, it would not compel the Respondent to continue accommodating him; Section 31 of the Employment Act allows the Employer the option of paying such sufficient sum as rent, to an Employee, in addition to the basic salary, as will enable the Employee to obtain reasonable housing accommodation. The law does not compel an Employer to avail accommodation to an Employee.

22. The Court does not see in what way, the Appeal would be rendered nugatory, by the Claimant letting go, or being compelled to let go, an employment benefit, which he clearly is no longer entitled to. His Claim and Judgment on record, is not centred on housing. If the Court of Appeal allows his Appeal, he can be availed reasonable housing accommodation or rent, by the Respondent. And if he wishes to continue occupying the residence pending his Appeal, he has the option of persuading the Respondent, to enter into a tenancy agreement with him.

IT IS ORDERED: -

a. The Application filed by the Claimant, dated 28th May 2021, is declined.

b. Costs to the Respondent.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 9TH DAY OF FEBRUARY 2022.

James Rika

Judge