



REPUBLIC OF KENYA



KENYA LAW
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**Ouma & another v Migori County Assembly Service Board & 6 others (Petition
E032 of 2022) [2022] KEELRC 12818 (KLR) (6 October 2022) (Ruling)**

Neutral citation: [2022] KEELRC 12818 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
PETITION E032 OF 2022
CN BAARI, J
OCTOBER 6, 2022**

BETWEEN

EVANS OGUTU OUMA 1ST PETITIONER

ORWA ODONGO MICHAEL 2ND PETITIONER

AND

MIGORI COUNTY ASSEMBLY SERVICE BOARD 1ST RESPONDENT

MIGORI COUNTY ASSEMBLY 2ND RESPONDENT

DURO GEORGE OKINYI 3RD RESPONDENT

OUMA EDWARD OORO 4TH RESPONDENT

RIOBA NICHOLAS NGABIYA 5TH RESPONDENT

GRACE AKINYI ODHIAMBO 6TH RESPONDENT

ONANDA CHRISTOPHER ODIRA 7TH RESPONDENT

RULING

////ARGUMENTS

1. The petitioners/applicants by a motion dated July 7, 2022, brought pursuant to articles 23(1) and 159(1) of the Constitution and order 40 rules 1,2,3 & 4 of the Civil Procedure Rules, seek the following orders:
 - i. Spent
 - ii. Spent



- iii. That this honourable court be pleased to temporarily suspend the operation and/or effect of the respondents' letters dated July 4, 2022, purporting to summarily dismiss the petitioners pending hearing and determination of the petition.
 - iv. This honourable court be pleased to find the respondents to be in contempt of the court orders made herein on July 5, 2022 and in Kisumu JR No 10 of 2022 of similar date.
 - v. The respondents be condemned to pay the costs of this application.
2. The motion is supported by grounds on the face thereof, and the affidavit of Evans Ogutu Ouma, the 1st petitioner herein. The crux of the motion being that this court issued *status quo* orders on July 5, 2022, but in disregard of those orders the respondents purported to dismiss the petitioners/applicants herein *vide* letters of dismissal that were backdated to July 4, 2022.
 3. It is the applicants position that their employment with the respondents had been put at great risk requiring the intervention of this court, as the respondents not only issued them with dismissal letters, but also proceeded to publish their photographs in the print media as persons who were no longer in the service of the respondents.
 4. The petitioners/applicants state that the respondents had knowledge of the *status quo* orders as the same orders were also issued in JR No 10 of 2022, which was an application by the respondents.
 5. The respondents opposed the application through a replying affidavit sworn by one Vincensia Awino Kionge on July 15, 2022.
 6. The respondents aver that the orders of *status quo* subject of this application were not served upon them. They further aver that the petitioners were suspended and summoned to appear before the board for disciplinary action on July 4, 2022, and that they rushed to court for orders instead of appearing before the board.
 7. It is the respondents' position that the orders issued in JR No 10 of 2022, and those in the instant application are unrelated as the former were in respect of occupation of the office of clerk, county assembly service board and that of speaker, yet the applicants did not occupy any of these offices.
 8. The application was urged orally on July 19, 2022. The applicants sought to adopt their grounds and affidavit in support of the application. They further argued that upon grant of the orders of *status quo*, the respondents had no power to dismiss the petitioners/applicants and cannot feign ignorance of the orders.
 9. The applicants expressed fear that their positions may be filled during the pendency of this suit and hence the instant application.
 10. The respondents likewise adopted their replying affidavit whose contents have been highlighted herein above.

Determination

11. I have considered the application, the grounds and affidavit in support, the respondents replying affidavit and the oral submissions by counsels for both parties. The issue for determination is whether the court should grant temporary orders staying the letters of dismissal issued to the petitioners pending hearing and determination of the petition.



12. It is not in dispute that this court granted *status quo* orders on the July 5, 2022, whose effect was to preserve the applicants/petitioners employment status pending the hearing and determination of this application interparties.
13. The respondents case is that they moved to dismiss the applicants from office *vide* letters dated July 4, 2022, following their failure to appear before the board of the 1st respondent even after being invited to appear for the disciplinary hearing.
14. The criteria for the grant of interlocutory injunctions was well stated in *Giella v Cassman Brown & Co Ltd*[1973] EA 358. The principles set out in this case are that first, the applicant must establish a *prima facie* case with a probability of success, show that they will suffer irreparable injury which would not adequately be compensated in damages if the orders sought are granted, and where the court is in doubt, it will decide the application on the balance of convenience.
15. The evidence before court show that the applicants were issued letters of summary dismissal authored by one Vincensia Awino Kionge who was said to be the Ag clerk of the assembly. The record further indicates that the author of the letters of dismissal was herself suspended from duty *vide* a letter dated July 1, 2022, signed by the chairperson of the board and one Orwa Odongo Michael, who is the 2nd applicant/petitioner herein, who signed off as the acting clerk of the assembly.
16. It is not disputed that the applicants are employees of the respondents and that they were issued with letters of summary dismissal during the pendency of *status quo* orders granted by this court. That the applicants/petitioners were summarily dismissed during the pendency of orders barring their dismissal, coupled with the eminent wrangles in the county assembly at the time, is prove of a *prima facie* case against the respondents.
17. In *Mrao Ltd v First American Bank of Kenya Ltd & 2 ors* Civil Appeal No 39 of 2002, the court described *prima facie* case as:

“In civil cases, it is a case in which on the material presented to the court a tribunal properly directing itself will conclude that there exists a right which has been infringed by the opposite party as to call for an explanation or rebuttal from the latter”
18. The respondents’ actions against the applicants no doubt points to an infringement of their right to fair administrative action amongst other rights conferred on account of a contract of employment.
19. Further, the applicants’ potential loss of their employment and their sources of livelihood satisfies the requirement in *Giella v Cassman Brown & Co Ltd*[1973] EA 358 that a party must show that they will suffer irreparable injury.
20. The court notes that the 2nd applicant/petitioner withdrew his case against the respondents. The orders herein will thus only be applicable to the 1st applicant/petitioner.
21. In conclusion, i find that the applicant’s application of July 7, 2022, has merit and is hereby allowed in the following terms:
 - i. That the operations and/or effects of the respondents’ letters dated July 4, 2022, purporting to summarily dismiss the 1st applicant/petitioner is hereby suspended pending hearing and determination of this petition.
 - ii. The costs of the application shall abide the petition.

It is so ordered.



SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 6TH DAY OF OCTOBER, 2022.

CHRISTINE N. BAARI

JUDGE

Appearance:

Mr. Evans Ogutu Applicant/Petitioner present in person

Mr. O. Obiero present for the Respondents

Ms. Christine Omollo-C/A

