



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

PETITION NO. 16 OF 2020

GABRIEL OMOLLO OSIMBO.....CLAIMANT

VERSUS

KENYA POST OFFICE SAVINGS BANK.....1ST RESPONDENT

SIMON P. NJOROGE.....2ND RESPONDENT

ISAAC KOECH.....3RD RESPONDENT

GODFREY K. NGUGI.....4TH RESPONDENT

PETER M. KARANJA.....5TH RESPONDENT

THOMAS K. BETT.....6TH RESPONDENT

SYLVESTER I.J. OBUON.....7TH RESPONDENT

ANNE W. KARANJA.....8TH RESPONDENT

RULING

1. This application was filed on 5/5/2020 seeking an Order in the following terms:-

“ That pending the hearing interparties and determination of this application/petition this Honourable Court be pleased to stay the petitioner’s interdiction of 6/06/2017 vide office letter Ref. KPOSB/RV & WR/53PF:862/2017 by the 1st and 4th respondent and the recommendation of the staff disciplinary committee sitting on 17/10/2017 which its outcome have not been communicated to the Petitioner todate.”

2. The matter was not certified urgent due to the indolence of the applicant in that the application was filed on 5/5/2020 more than two (2) years later from the date of the interdiction.

3. In the replying affidavit by the respondents filed on 19/6/2020 Mr. Hannington Ouko deposes inter alia at paragraph 8 of the replying affidavit

“That I know of my own knowledge and from the 1st Respondent’s record that the Petitioner is no-longer an employee of the 1st Respondent. **The Petitioner was terminated on the 27th day of December, 2017** after a lawful and due disciplinary process was undertaken against him and was found to have incurred Operational shortages and had failed to adhere to the laid operational procedure on regularizing irregular loss of the customer’s funds.” (*emphasis mine*)

4. The respondent in the same breath annexed at page 74 of the replying affidavit the minutes of the meeting held on 17/12/2017 to address the interdiction of the Petitioner/Applicant. The minutes partly reads:-

“The Chairperson briefed the officer that the management had concluded his disciplinary case and decision made was termination.

The officer interjected the meeting insisting that he must be given the original letter indicating the contents and the reasons for his termination.”

5. It is apparent from the above that the application has been overtaken by events and a prima facie case to grant the relief sought has not been made out by the Petitioner/applicant.

6. The issue of termination must be addressed on its merits or otherwise upon the hearing of the petition on the merits.

7. The application having failed the first test laid out in **Gielle –vs- Cassman Brown Co. Ltd. 1973 E.A. 358** lacks merit and is dismissed with costs in the cause.

Dated and delivered at Nairobi this 28th day of January, 2021.

MATHEWS N. NDUMA

JUDGE

ORDER

In view of the declaration of measures restricting court of operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this ruling has been delivered to the parties online with their consent. 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 has 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 18 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.

MATHEWS N. NDUMA

JUDGE

Appearances

Mr. Athung'a & Co. Advocates for applicant

J.K. Kibicho & Co. Advocates for the respondents.

Chrispo Court clerk.