



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 236 OF 2020

IRENE ITOTO ECHAKARA.....CLAIMANT

VERSUS

LAW SOCIETY OF KENYA.....RESPONDENT

RULING

1. The applicant in the Application dated 12th June, 2020 prays for an Order in the following terms *interalia*:-

(a) The court be pleased to issue an Order of injunction restraining the Respondent from advertising, recruiting and/or offering employment for the position of Program officer (Parliamentary Affairs and Legislation) to any person other than the Applicant pending the hearing and determination of the claim herein.

2. The application is based on grounds set out on the face of the Notice of Motion and in the supporting affidavit of the Applicant, sworn to on 12th June, 2020 to wit:-

(i) The respondent employed the claimant/applicant in the position of Program Officer (Parliamentary Affairs and Legislation) on a fixed term two years contract commencing on 17th June, 2014.

(ii) The contract was extended by the respondent's Council due to her good performance for a further period of three (3) years.

(iii) That on 1/6/2017, the contract was further extended for a period of 3 years to end on 1st June, 2020.

(iv) That on 9th April, 2018, the respondent by its Council's decision varied the terms and conditions of the Applicant's services from a contractual period of three (3) years to permanent and pensionable employment with effect from 1/4/2018.

(v) That the applicant accepted the offer.

(vi) That the applicant had during her tenure received a high rating of about 80% in the performance of her contract.

(vii) That on 15th May, 2020 the respondent terminated the employment of the claimant with effect from 30th May, 2020.

3. The claimant states that the termination was unlawful and unfair since the respondent had no valid reason to terminate the employment of the Claimant/Applicant and did not follow a fair procedure in effecting the termination.

4. The claimant/Applicant earned Kshs.239,657/= per month at the time of termination comprising of Kshs.199,771, basic pay, Kshs.20,000 house allowance and 15,000 non-practising allowance.

5. That the decision to terminate the employment of the claimant was not sanctioned by the Council and so was ultravires and unlawful *ab initio*.

6. That the application be granted.

7. The claimant/applicant was granted interim orders by Ongaya, J. pending the hearing and determination of the application.

Replying Affidavit

8. Mercy Wambua the Secretary of the respondent deposed to a replying affidavit Sworn on 14/7/2020 as follows:-

- (a) That at all material times the applicant served the respondent on a fixed term contract that was renewed from time to time until the Council in a decision made on 23/3/2018 varied the terms of the Claimant's contract to permanent and pensionable terms with effect from 1/4/2018.
- (b) That the applicant despite being asked to accept the variation of the terms of employment by Council in a letter dated 9/4/2018, the applicant accepted the terms of the variation on 11/5/2020, two (2) years after the said letter of variation of her terms.
- (c) That therefore, the fixed contractual terms contained in the contract dated 2nd June, 2017 continued to apply.
- (d) The Committee of Council namely staff Finance and Budget Committee was delegated to deal with the matter of renewal of the contract of the applicant and the committee sat on 14/5/2020 and decided that the delay by the claimant to accept the Permanent and Pensionable terms was inordinate and therefore unacceptable.
- (e) That the fixed term contract of the applicant was to end on 30/5/2020 and same would not be renewable.
- (f) This decision by Council was communicated to the claimant by the Chief Executive Officer. The resolution by the Committee was adopted by Council and ratified in a meeting of Council held on 8/6/2020.
- (g) That the application lacks merit and it be dismissed with costs.

9. The criteria for grant of interim injunction in a matter such as this one is as was established in the case of **Giella –vs- Cassman Brown Co. Ltd. [1973]**. That the applicant must establish a prima facie case; the applicant must show that she would suffer irreparable loss not remediable by damages in the event the injunction is not granted and the applicant is eventually successful in her suit and in case of doubt the matter to be determined on balance of convenience.

9. In the present suit, and without pre-empting determination of facts on the merits, it is apparent that the applicant is no longer in the employment of the respondent and the Court shall have to deal with the factual question whether or not the termination of employment of the claimant was lawful and fair.

10. An Interim injunction at this point would amount to an Order for reinstatement when the lawfulness or otherwise of the termination has not been conclusively determined. The balance of convenience is in favour of maintaining the status quo, which is that the claimant who has already left employment does not go back to work pending the hearing and determination of the suit on the merits.

11. Therefore, the application is dismissed with costs in the cause.

Dated and delivered at Nairobi this 8th day of February, 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. Wanyanga for Claimant

Mr. Wetangula for Respondent

Ekale – Court clerk.