



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA**

**CAUSE NO. E001 OF 2020**

**EMILY ESOKOMI .....CLAIMANT**

**VERSUS**

**WEVARSITY SACCO SOCIETY LIMITED.....RESPONDENT**

**RULING**

1. Emily Esokomi (the applicant) was appointed as Deputy Chief Executive Officer by Wevarcity Sacco Society Ltd (the Respondent) in 2019.
2. On 24 July 2020, the Respondent issued a show-cause to the applicant, and she responded on 4 August 2020.
3. The Respondent followed up on the show-cause with a letter dated 12 October 2020 notifying the applicant that she had been surcharged for some 2 fraudulent transactions. The surcharge was to be paid within 2 months.
4. The letter also notified the applicant that she had been suspended for 3-months to facilitate further investigations.
5. The applicant moved the Court on 24 November 2020, alleging that the suspension and surcharge were unlawful.
6. At the same time, the applicant filed a Motion under a certificate of urgency seeking orders:
  1. ...
  2. ...
3. THAT a temporary order of injunction be issued restraining the Respondent and its lawful agents, representatives and assigns from suspending, surcharging and in any way interfering with the Claimant's/applicant's employment pending the hearing and determination of the main suit.
7. The Court directed that the Motion be served.
8. On 14 December 2020, the Court directed the parties to file and exchange further affidavits and submissions.
9. The Respondent filed a replying affidavit and grounds of opposition on 22 December 2020. It filed its submissions on 26 January 2021.
10. The applicant's submissions were not on record by the agreed timeline.
11. The Court has looked at the material placed before it and concluded that the application has no merit for three reasons.
12. One, the Respondent's Human Resource Policy & Procedures Manual at section 6 11.2 envisages suspension and interdiction of employees pending investigations.
13. The suspension of the applicant was, therefore, lawful as it was provided for in the contract in place.
14. Two, the suspension of the applicant was to last for 3-months, which is now long past. The Court would be acting in futility in stopping what has lapsed.

15. Three, the applicant has not demonstrated any exceptional circumstances to warrant the order sought in the Motion, which would needlessly restrict the Respondent from exercising disciplinary control over the applicant, its employee.

16. The Motion dated 23 November 2020 is dismissed with costs in the cause.

**Delivered through Microsoft teams, dated and signed in Nairobi on this 31<sup>st</sup> day of March 2021.**

**Radido Stephen, MCI Arb**

**Judge**

**Appearances**

For applicant            J.B. Otsiula & Associates Advocates

For Respondent        Abok Odhiambo & Co. Advocates

Court Assistant        Chrispo Aura