



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 102 OF 2019

CAROLINE NAMWENYA WANYAMA.....CLAIMANT

v

NATIONAL GOVERNMENT AFFIRMATIVE ACTION FUND....RESPONDENT

RULING

1. Caroline Namwenya Wanyama (the applicant) was offered employment on 9 December 2015 as Coordinator, County of Bungoma by the Affirmative Action Social Development Fund, a Department within the Ministry of Devolution (the Respondent).
2. On 9 November 2018, the Respondent sent the applicant on suspension on allegations of gross misconduct. The suspension letter also called upon the applicant to respond to some 4 allegations within 21 days.
3. The applicant responded on 28 November 2018, but there was no feedback from the Respondent, and she wrote to the Respondent on 19 March 2019 seeking an update on her status.
4. The Respondent replied the same day, indicating that the case had been forwarded to the Board for deliberation.
5. On 29 October 2019, the Respondent issued a formal show-cause to the applicant and gave her 7-days to respond.
6. The applicant moved the Court on 4 November 2019 seeking orders:
 - (i) ...
 - (ii) A temporary injunction do issue directed at the Respondent, its employees, workers, agents and/or whomsoever jointly and severally restraining them from terminating the services of the applicant pending the hearing and determination of this application.
 - (iii) A conservatory order does issue lifting the suspension of the applicant pending the hearing and determination of this application.
 - (iv) A temporary injunction do issue directed at the Respondent, its employees, workers, agents and/or whomsoever jointly and severally restraining them from terminating the services of the applicant pending the hearing and determination of this Cause.
 - (v) A conservatory order does issue lifting the suspension of the applicant pending the hearing and determination of this application.
7. When the Motion was placed before the Court for *inter-partes* hearing on 3 December 2019, the parties suggested, and the Court directed that submissions be filed and exchanged.
8. The also Court ordered that the *status quo* be maintained pending the filing of the submissions.
9. The Claimant filed her submissions on 3 March 2020 while the Respondent filed its submissions on 23 June 2020.
10. Due to COVID19, the next time the file was placed before the Court was on 20 January 2021. The parties confirmed they had filed submissions, and the Court set the Ruling date.
11. The applicant is essentially attempting to have the disciplinary process commenced against her stopped because the suspension exceeded the period provided for in the relevant disciplinary instrument.
12. Jurisprudence is now settled that the Court would intervene in a disciplinary process before it is concluded in very exceptional

circumstances.

13. The applicant did not demonstrate any exceptional circumstances as obtaining in her case. The mere fact that suspension exceeded the prescribed period does not constitute an exceptional circumstance.

14. If the Court finds that such suspension was unlawful at the end of the hearing, it can award the applicant remuneration, which was lost due to the delay on the part of the employer/Respondent.

15. The Motion dated 4 November 2019 is dismissed.

16. Costs in the cause.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN NAIROBI ON THIS 14TH DAY OF APRIL 2021.

Radido Stephen, MCI Arb

Judge

Appearances

For applicant Ms Imbaya instructed by Bruce Odeny & Co. Advocates

For Respondent Ms Essendi instructed by the Office of the Attorney General

Court Assistant Chrispo Aura