



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT NAIROBI
CAUSE NUMBER E722 OF 2020

BETWEEN

JOSEPHINE WAMBUI KIRUMBA CLAIMANT

VERSUS

HFC LIMITEDRESPONDENT

RULING

1. The Claimant worked for the Respondent as Learning and Development Manager, until 16th April 2020, when her contract was terminated by the Respondent.
2. She was advised in a letter dated 16th April 2020, that the Respondent had carried out structural changes in its business, resulting in the Claimant's position becoming redundant.
3. She filed an Application under Certificate of Urgency, dated 29th October 2020, seeking an order of reinstatement.
4. She also filed a Statement of Claim on the same date, seeking the same order of reinstatement.
5. The Respondent entered Appearance, and filed its Statement of Response, on 10th March 2021.
6. It was agreed by the Counsel for respective Parties, that the Application is canvassed by way of Written Submissions.
7. These were confirmed to have been filed and exchanged, at the last virtual Court session, on 10th June 2021.
8. Ruling was reserved for 23rd September 2021, but has been readied well in advance, and the Court has no reason to keep its delivery pending. It has directed its Registry to issue notices to the Parties for delivery on the date indicated below.

The Court Finds: -

9. The Application dated 29th October 2020 seeks in main, the same substantive order of reinstatement, sought in the Claim.
10. If granted there would be nothing left for trial.
11. The Claimant is impatient.
12. She needs to prosecute her Claim, marshal evidence, and establish unfair termination has taken place; while the Respondent must be accorded the full opportunity of justifying its termination decision, in accordance with Section 40, 43 and 47 [5] of the Employment Act.
13. Unless the Parties have agreed to proceed under Rule 21 of the E&LRC [Procedure] Rules, 2016, the issues in dispute cannot be determined based on Affidavits alone. There is no shortcut for the Claimant returning to work.
14. The Pleadings and Submissions filed by the Parties leave no doubt, that the orders sought in the Application, cannot issue without the benefit of a full hearing.

15. The Application such as is brought by the Claimant, is to be discouraged. It results in delaying the hearing of the substantive dispute. It works against the Claimant's interest, in having the order of reinstatement, within the prescribed 3-year period from the date of termination.

16. Let the Claimant patiently process her Claim for hearing, or negotiate and reach consensus with the Respondent, that the Claim is determined under Rule 21.

IT IS ORDERED: -

a. The Application dated 29th October 2020 is declined.

b. No order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT CHAKA, NYERI COUNTY, UNDER MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 20TH AUGUST 2021.

JAMES RIKA

JUDGE