



**REPUBLIC OF KENYA**

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

**PETITION NO.9 OF 2018**

*(Before Hon. Justice Mathews N. Nduma)*

**DENNIS ONYANDO NYAKERURI .....PETITIONER**

**VERSUS**

**KISII COUNTY ASSEMBLY SERVICE BOARD.....1<sup>ST</sup> RESPONDENT**

**THE CLERK/SECRETARY KISII COUNTY ASSEMBLY**

**SERVICE BOARD.....2<sup>ND</sup> RESPONDENT**

**THE DIRECTOR, HUMAN RESOURCES MANAGEMENT**

**KISII COUNTY ASSEMBLY.....3<sup>RD</sup> RESPONDENT**

**RULING**

1. The application dated 4<sup>th</sup> February 2019 seeks review of the ruling of the court delivered on 6<sup>th</sup> December 18 on the grounds that the court made an error on the face of the record to wit that the letter of interdiction dated 11<sup>th</sup> December 2017 pre-dated deployment of the petitioner to the Audit department, which deployment had in fact happened earlier on 6<sup>th</sup> December 2017. The applicant further states that the court ignored his evidence in the Replying Affidavit hence arriving at an erroneous decision.
2. Upon considering arguments by the parties the court finds that, it is not correct for the applicant to assume that the court erroneously stated that the letter of interdiction dated 11<sup>th</sup> December 2017, pre-dated the letter of deployment dated 6<sup>th</sup> December 2017. The court considered evidence by the claimant that indeed he had not received the said letter of deployment as at 11<sup>th</sup> December 2017. See Annex 'Don 5' to the supporting affidavit.
3. At the time the matter was reserved for ruling on 15<sup>th</sup> March 2018, the respondent had not filed any replying affidavit to the application. The application was therefore unopposed at that time. Counsel for the Petitioner/Applicant Mr. Maloba informed court that the application had been served and the respondent's counsel did not appear before court.
4. The court relied on the case of *Giella vs Cassman Brown Limited* to find that the pre-requisites of granting a temporary injunction pending the hearing of the petition had been satisfied. The court in particular considered the argument by the petitioner that he had not received the said letter of deployment before he received the letter of interdiction in weighing the merits of the application. The petitioner was still in the employ of the respondent and so the submission that the court reinstated him to his position lacks any merit.
5. The court holds the view that there are no sufficient grounds to review its decision. The merits of the case shall be determined upon hearing the petition.
6. It is in the interest of justice that this petition be heard and determined expeditiously.
7. The application is dismissed with costs in the cause.

**Ruling Dated, Signed and delivered at Nairobi this 13<sup>th</sup> day of May, 2020**

**Mathews N. Nduma**

**Judge**

**ORDER**

In view of the declaration of measures restricting court of operations due the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15<sup>th</sup> 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. Musolo for 1<sup>st</sup> Respondent/Applicant

Mr. Maloba for Petitioner/Respondent

Chrispo – Court Clerk