



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. E546 OF 2020

LINDA INGARI.....CLAIMANT

VERSUS

EQUITY BANK KENYA LTD.....RESPONDENT

RULING

1. Linda Ingari (applicant) was serving as Head of Procurement and Logistics with Equity Bank Kenya Ltd (Respondent) until the termination of her employment on 7 May 2020.

2. The applicant appealed against the dismissal on 19 May 2020. After an appeal hearing, the Respondent informed her that the dismissal had been upheld.

3. The applicant was dissatisfied and she moved the Court on 18 September 2020 alleging unfair termination of contract and breach of contract/statute.

4. Filed together with the Statement of Claim was a Motion under a certificate of urgency seeking orders

1. ...

2. **THAT** the Respondent herein be compelled by way of mandatory injunction to reinstate the Claimant to her employment as Head of Procurement and Logistics/Head of Supply Chain Management along with all attendant salary and benefits pending the hearing and determination of this application.

3. **THAT** the Respondent herein be hereby restrained by way of an order of temporary injunction restraining the Respondent herein whether by themselves, their representatives, employees, agents, servants or any other persons acting on their behalf or claiming through them from advertising or further advertising, or having so advertised from acting thereupon, interviewing, recruiting or otherwise in any manner replacing the Claimant in her position as Head of Procurement and Logistics/Head of Supply Chain Management of the Respondent herein, pending the hearing and determination of this application.

4. **THAT** the Respondent herein be hereby restrained by way of an order of temporary injunction restraining the Respondent herein whether by themselves, their representatives, employees, agents servants or any other persons acting on their behalf or claiming through them from alleging or imputing any wrongdoing on the part of the Claimant, pending the hearing and determination of this application.

5. **THAT** the Respondent herein be compelled by an order of mandatory injunction to furnish the Respondent (sic) with the full signed records of the disciplinary hearing and appeal hearing.

6. **THAT** the Respondent herein be compelled by an order of mandatory injunction to furnish the Respondent with all material in which allegations are claimed to have been made against her in respect of which the decision was made to disengage the Claimants employment.

7. **THAT** the Court do be pleased to grant orders 2, 3 and 4 above pending the hearing and final determination of this suit.

8. **THAT** the Court do grant any further or other orders that the Court deems fit to grant.

9. **THAT** the cost of this application be provided for.

5. When the Motion was placed before the Court on 21 September 2020, it declined to grant any *ex-parte* orders.
6. The Respondent filed on 14 October 2020 a replying affidavit sworn by its Senior Officer- Employee Relations in opposition to the Motion (should have been filed/served before 6 October 2020).
7. The parties' submissions were not on the e-filing portal by the agreed timelines (applicant by 13 October 2020 and the Respondent by 21 October 2020).
8. In support of the Motion, the applicant asserted that the process leading to the termination of her employment was procedurally unfair because it addressed allegations other than those in the *show-cause* notice; documents she had not been furnished with were considered thus prejudicing her defence; there was no compliance with the Respondent's Disciplinary Procedures and that the Respondent did not consider the errors she noted and raised in her appeal.
9. For the Respondent, it was contended that the process leading to the termination of the applicant's employment was procedurally fair because after conducting investigations, it was established that the applicant was involved in procurement irregularities; she was issued with a *show-cause* notice setting out the allegations; she was allowed to make a written response and she did respond; she was allowed to appear for an oral hearing and she did appear and she was informed of a right of appeal and she appealed and the appeal was considered.
10. Regarding the orders sought by the applicant, the Respondent urged that it was improper to grant an order of reinstatement before a hearing on the merits and that no exceptional circumstances had been demonstrated to warrant the issuance of mandatory injunctive orders at this stage.
11. The Court has considered the Motion and affidavits.
12. The general principles governing the grant of interim injunctive orders were outlined long ago in the case of *Giella v Cassman Brown & Co Ltd* (1973) EA 358.
13. In brief, the principles are that the applicant must show a *prima facie* case with a probability of success, or that if the injunction is not granted the applicant will suffer an irreparable injury that cannot be compensated by an award or damages. If in doubt the court shall decide the application on the balance of convenience.
14. The applicant is alleging unfair termination of employment and breach of contract.
15. Under section 49 of the Employment Act, 2007, the primary remedies where the Court finds unfair termination of employment are reinstatement (after a hearing on the merits), re-engagement, and/or compensation.
16. The applicant, in the case at hand, has not demonstrated that compensation, a species of damages would not adequately redress any legal injuries occasioned to her by the Respondent's purported actions/breaches.
17. The applicant also sought mandatory injunctive relief reinstating her to employment at this interlocutory stage.
18. The Court of Appeal in ***Kenya Breweries Ltd & Another v Washington O. Okeya (2002) eKLR stated of mandatory injunctions***

A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances, and then only in clear cases either where the court thought that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could be easily remedied or where the defendant had attempted to steal a march on the plaintiff. Moreover, before granting a mandatory interlocutory injunction, the court had to feel a higher degree of assurance that at the trial it would appear that the injunction had rightly been granted, that being a different and higher standard than was required for a prohibitory injunction.
19. *The applicant did not attempt to demonstrate the existence of any special circumstances in her case.*
20. *In light of the above, the Court finds no merit in the Motion dated 17 September 2020. It is dismissed. No order on costs.*

Delivered through Microsoft teams, dated and signed in Kisumu on this 18th day of November 2020.

Radido Stephen

Judge

Appearances

For applicant Mr. Ojiambo instructed by Ojiambo & Wadeyua

For Respondent Mr. Wangi instructed by Waweru Gatonye & Co. Advocates

Court Assistant Judy Maina