



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 209 OF 2018

(Before Hon. Justice Mathews N. Nduma)

NANDEKA DORA ANYANGO.....CLAIMANT

VERSUS

TEACHERS SERVICE COMMISSION.....RESPONDENT

RULING

1. Application dated 8th June 2018 sought an injunction suspending the contents of the letter of demotion dated 5th June 2018 pending the hearing and determination of the main cause.
2. Application is supported by grounds set out in the Notice of Motion and supporting Affidavit of the Claimant/ Applicant.
3. The upshot of the Application is that the respondent interdicted the claimant/Applicant on 5th June 2018 on grounds of failure to handover Nyakach Girls High School on 28th April, 2018 and 30th April 2018 as scheduled and absenting herself from school from 30th April 2018 to 7th May 2018 without due cause.
4. The Applicant states that her absence was due to illness on 28th April 2018 and that she was admitted at the Jaramogi Oginga Odinga Referral Hospital for seven (7) days up to 4th May 2018 when she was discharged. She has annexed copies of a letter dated 4th May 2018 from the Hospital and sick sheet – marked NDA – 2(a) and (b)
5. Respondent filed a replying affidavit in which it states that the applicant deliberately failed, ignored or neglected to attend handing over of the school on 26th April 2018 and 28th April 2018 respectively at Nyamira Girls High School and Nyakach Girls High School respectively. That handing over at Nyakach Girls High School was re-scheduled to 30th April 2018 but again the applicant failed to turn up. That handing over was done in Applicant's absence.
6. That in the process of investigations, Jaramogi Oginga Odinga Teaching and Referral Hospital wrote on 21st and 24th May 2018 stating that the medical report and letter relied upon by the applicant was fake.
7. Applicant was interdicted on 5th June 2018 and was given opportunity to prepare and submit her defence. That the Principal's position at Nyamira girls High School fell vacant and Deputy Principal was appointed to Act. A substantive principal was appointed on 6th June 2018 and posted to take over, which

happened on 7th June 2018.

8. That Interim Orders obtained on 8th January 2018 were gotten by aid of misrepresentation and concealment of material facts by the Applicant. That the orders are causing hardship to the school.

9. That the interdiction was not a demotion as alleged by the applicant but was a disciplinary measure and therefore the interim orders be discharged.

Determination

10. The court has carefully considered the deposition by the applicant and that by the respondent and is satisfied that Interim Orders were obtained on 8th June 2018 by Claimant/Applicant through misrepresentation and concealment of material facts.

11. The Applicant has not satisfied the requirements for grant of Conservatory Orders as set out by the Supreme Court in the case of Munya and in the well-known case of *Giella vs Cassman Brown Ltd*.

12. Accordingly, the application lacks merit and the Interim Orders are discharged pending the hearing and determination of the main suit. The court has no reason to injunct the pending disciplinary process against the Claimant/Applicant.

Ruling Dated, Signed and delivered this 14th day of February, 2019

Mathews N. Nduma

Judge

Appearances

Mr. Amondi for Claimant/Applicant

Mr. Sitima for Respondent.

Chrispo – Court Clerk