



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 306 OF 2016

(Before Hon. Justice Mathews N. Nduma)

SISTER SARAH ADIPOCLAIMANT

VERSUS

TEACHERS SERVICE COMMISSION..... RESPONDENT

J U D G M E N T

1. Suit commenced by a memorandum of claim on 17th October 2016 in which the claimant prays for:

(a) An order of permanent injunction suspending the contents of the letter of interdiction dated 6th October 2016 pending the hearing and determination of the main cause herein and costs of the suit.

2. The suit was preceded by an urgent application that sought exactly the same prayers sought in the main suit, that is, a temporary conservatory order suspending the contents of the letter of interdiction dated 6th October 2016.

3. The Application and the suit were opposed by the respondent by a Replying Affidavit sworn on 17th November 2016 and a statement of defence.

4. The court delivered a ruling on 18th October 2016 in which it found that it was inappropriate to interdict disciplinary proceedings and direct inter partes hearing to be conducted on 24th October 2016.

5. The parties however consented to have interim orders granted pending the hearing and determination of the suit and subsequently, the parties dispensed with oral evidence and entered into a further consent on 17th September 2018 to have the matter disposed off by way of written submissions.

6. The parties filed their submissions accordingly.

7. The issues for determination are:-

(i) Whether the memorandum of claim as filed discloses a prayer capable of grant by the court.

(ii) If the answer to (i) is in the positive, whether the suit has merit.

Issue 1.

8. The court has earlier alluded to the fact that the claimant only sought interim orders in the main suit couched as follows:

“(a) An order of permanent injunction suspending the contents of the letter of interdiction dated 6th October 2016 pending the hearing and determination of the main cause herein”

9. The court is not persuaded, such a prayer is capable of grant upon final determination of the suit on the merits.

10. Interdiction is one of the disciplinary measures that the respondent lawfully takes pending finalization of intended disciplinary action against an employee or teacher.

11. The letter of interdiction dated 6th October 2016 discloses various offences of alleged breach of clause b (vi), c (iii) and (d) of the third schedule to the Teachers Service Commission Act.

12. These charges, met the threshold set out by *Mbaru – J. in Fredrick Saundu vs Principal Namanga mixed secondary school and 2 others eKLR* where the learned judge stated:

“Suspensions and interdictions are not administrative acts as the detrimental effect of it impacts on the employee’s reputation, advancement, job security and fulfilment....

Therefore, before an interdiction can be found to be valid, the same must be based on fair reasons and must be implemented pursuant to fair procedure. This is what can be cited as the 3 dimension criteria”.

13. We are satisfied that the charges against the claimant have satisfied the aforesaid criteria. The court is loath to interfere unjustifiably on the managerial prerogative of employers unless there are compelling reasons to do so.

14. The respondent has demonstrated that it has commenced a disciplinary process provided by the relevant law and regulations.

15. The claimant has failed to prove a case of unjust and unfair treatment at this early stage of the process on a balance of probabilities.

16. Therefore, the court finds that the prayer sought in the memorandum is misconceived and secondly, there is no merit in issuing a permanent injunction against the intended disciplinary process.

17. The suit is dismissed in its entirety.

Judgment Dated, Signed and delivered this 14th day of March, 2019

Mathews N. Nduma

Judge

Appearances

Mr. Achura for Claimant

Mr. Sitima for Respondent

Chrispo – Court Clerk