



**REPUBLIC OF KENYA**

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

**CAUSE NO. 10 OF 2019**

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

**JOSEPHAT SHIKONDE.....CLAIMANT**

**VERSUS**

**TEACHERS SERVICE COMMISSION.... RESPONDENT**

**RULING**

1. Application dated 4<sup>th</sup> February 2019 was brought on a certificate of urgency seeking issuance of a Mandatory Conservatory Injunction directed at the respondent to reinstate the claimant to his position as the principal of Shikhokho Secondary School on full pay and allowances inter alia.
2. The brief facts of the case are that the applicant was interdicted from his employment vide a letter dated 10<sup>th</sup> December 2018 on allegations that he had participated and/or condoned malpractices in respect of KCSE examinations for the year 2018.
3. Serious allegations are made in the said notice to show cause why disciplinary action should not be taken against the claimant for negligence of duty. The required response was to be done to the respondent within 7 days. The claimant filed a response.
4. The claimant was summoned to appear before the County Disciplinary Panel on 21<sup>st</sup> November 2018 to defend himself against the examination malpractice contravening *TSC Code of Regulation part III Section 34(2) the third schedule (B), KNEC manual of KCSE Examination 2018 and KNEC Act 2012 part iv Section 27*.
5. The claimant was advised to carry with him documentary evidence for his defence. This was a preliminary inquiry of the matter.
6. The claimant subsequently received a formal letter of interdiction from TSC County Director dated 10<sup>th</sup> December 2018 and was invited to make a defence statement to the TSC within 21 days. The alleged malpractices are set out in the letter. The applicant responded to TSC by a letter dated 24<sup>th</sup> December 2018 denying the charges.
7. Criminal investigations that were under consideration against the claimant and two others were meanwhile dropped on 17<sup>th</sup> January 2019. This suit was filed on 4<sup>th</sup> February 2019 whilst the disciplinary process is pending at the TSC.
8. The respondent filed a replying affidavit by Grace Kageha Amira, Senior Deputy Director in charge of field services-Discipline, at the TSC. The deponent confirms the history of the matter aforesaid and of importance is that the claimant appeared before the TSC County Disciplinary Panel for preliminary inquiries upon making a written response to the notice to show cause. The applicant was interviewed and a decision was made that the applicant had a case to answer before the commission.
9. The respondent has since responded to the charges directed at him by TSC and the only matter pending is the conduct of the disciplinary hearing by the TSC disciplinary panel. This is the process the applicant seeks to injunct.

**Determination**

10. The Supreme Court of Kenya in *Gitirau Peter Munya vs Dickson Mwendu Githinji & 2 others 2015 eKLR* set out the requirements for granting interim orders with regard to public institutions as follows:-

***“(86) Conservatory orders bear a more decided public law connotation for there are orders to facilitate ordered functioning within public agencies, as well as to uphold the adjudicatory authority of the court, in the public interest. Conservatory orders,***

***therefore are not unlike interlocutory injunctions' linked to such private party services as "prospects of irreparable harm" occurring during the pendency of a case or "high probability of success" in the applicant's case for orders of stay. Conservatory orders, consequently should be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values and the proportionate magnitudes and priority levels attributable to the relevant causes."***

11. In the light of the following, and bearing in mind the need not to dwell on the disputed facts at this stage of the hearing, the court is of the considered view that the inherent merit of this case, bearing in mind the public interest that rampant malpractices in conduct of examinations in the recent past pose a great danger to the quality of education and the future of the youth in this country and that the custodians of the conduct of examinations who are largely teachers employed by TSC need to be above reproach like Ceasar's wife, the balance of convenience is in the favour of allowing the disciplinary process to continue to conclusion.

12. The court is satisfied at this stage that the respondent has followed proper procedure in the conduct of the disciplinary case thus there is no compelling reason to injunct the process pending the hearing and determination of the suit.

13. Accordingly, the application lacks merit and is dismissed.

14. Costs in the cause.

**Ruling Dated, Signed and delivered this 7<sup>th</sup> day of March, 2019**

**Mathews N. Nduma**

**Judge**

**Appearances**

Mr. Kadenyi for Applicant.

M/S Ruto for the Respondent

Chrispo – Court Clerk