



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**  
**AT NAIROBI**  
**CAUSE NO. 1396 OF 2018**

**JOHN K. BIY.....CLAIMANT**

**VERSUS**

**CHIEF OFFICER, PUBLIC SERVICE**

**MANAGEMENT, UASIN GISHU COUNTY.....1<sup>ST</sup> RESPONDENT**

**UASIN GISHU COUNTY**

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

**THE COUNTY GOVERNMENT OF UASIN GISHU.....3<sup>RD</sup> RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 19<sup>th</sup> July, 2019)

**JUDGMENT**

The claimant filed the memorandum of claim on 17.08.2018 through M'Njau & Mageto Advicates. The claimant prayed for judgment against the respondent for:

- a) A permanent injunction to restrain the respondents and their agents and or servants and or representatives from removing the claimant's name from the payroll and stopping the claimant's salary and allowances or dismissing the claimant from employment.
- b) Any other relief which the Court may deem fit and just to grant.
- c) The costs of the claim be awarded to the claimant as against the respondents.

The respondents filed the response to the memorandum of claim on 07.03.2019 through Gumbo & Associates. The respondents prayed that the claim be dismissed with costs. The claimant filed on 01.03.2019 the reply to the statement of defence.

The claimant's alleged case is that he is as at the time of hearing of the suit an employee of the 2<sup>nd</sup> respondent. His case is that he was once dismissed on 06.10.2015 and he challenged his dismissal in cause no. 369 of 2015 at Nakuru. Radido J ordered on 28.04.2017 that the dismissal was not in accord with justice and equity and awarded the claimant to be paid in lieu of notice Kshs.76, 560.00; wages due to suspension Kshs.918, 720.00, total Kshs.995, 280.00; and no orders on costs.

The claimant's case was that after the order he was called by the human resource manager to be reinstated per the orders by the Court. He says he was reinstated and he worked for 14 months. Thereafter his union Secretary General one Seth Panyako of Kenya National Union of Nurses (KNUN) wrote a letter to county government of Uasin Gishu. The claimant is the chairman of the KNUN. The letter by Seth Panyako dated 03.07.2018 conveyed that the claimant had been irregularly reintroduced in the county government's payroll and the letter was being written to safeguard public resources. The letter was copied to the Ethics and Anti-corruption Commission to investigate the matter. The evidence is that the claimant was subsequently removed from the county government payroll hence the present case.

The evidence is that the investigations by the respondents discovered that the Court in cause no. 369 of 2015 at Nakuru had not ordered a reinstatement and that indeed the claimant had been introduced back to the payroll irregularly.

The Court has considered the material on record and indeed, the claimant was irregularly reintroduced in the payroll as he had not been reinstated by court order in cause no. 369 of 2015 at Nakuru.

Accordingly the claimant is not entitled to any of the remedies as prayed for and his suit is liable to dismissal with costs. The respondents' submissions are upheld accordingly. In conclusion, the claimant's suit is hereby dismissed with costs in favour of the respondents.

**Signed, dated and delivered in court at Nairobi this Friday 19<sup>th</sup> July, 2019.**

**BYRAM ONGAYA**

**JUDGE**