

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

CAUSE NO. 26 OF 2019

JOHN NYAGA NDUMA.....CLAIMANT

VERSUS

EMBU WATER AND SANITATION COMPANY LTD.....RESPONDENT

RULING

1. This is an application for injunctive relief. In the said motion dated 26th September 2019 and filed on 27th September 2019, the Applicant seeks relief against the Respondent regarding his contract of employment. He had signed a 3 year contract that ran from 2016 and was to expire on 30th September 2019. In order to obtain a renewal it was incumbent on the Applicant to seek the continuation by seeking an extension not more than 6 months prior to expiry and not less than 3 months to the end of the contract. He did request as expected for a renewal in June 2019. The Respondent sought an appraisal which was undertaken by the Chairman of the Board of Directors and the Claimant.

2. The return was after evaluation, the Claimant's appraisal report was placed before the board for consideration. It was apparently resolved that the contract would not be renewed hence the approach to court. Having approached court for injunctive relief, the Claimant/Applicant was bound to make a full and frank disclosure. The principles for granting an injunction are that there must be a *prima facie* case with a probability of success, that should the injunction not be granted he would suffer irreparable loss that cannot be remedied by an award of damages. Thirdly, where in doubt a court is to consider the balance of convenience and if it tilts in favour of the applicant grant the injunctive order sought. The Claimant was anticipating a renewal no doubt but after the meeting of 16th September 2019 was alive to the fact that the renewal was not forthcoming. He came to court on the eve of the expiry of his contract as 28th and 29th September 2019 were on a weekend. The court notes that by the time this motion is being heard, the contract has ceased to exist and the fact of this is conceded by the Claimant and the Respondent. The court would therefore be unable even where *prima facie* there could be a ground for injunctive relief, grant a remedy post the act intended to be injuncted. We cannot both the stable doors shut to keep in the horse that has already bolted out of the stable. In brief, the Claimant seeks a remedy that would be difficult to grant given the facts as at present.

3. It has been shown that the Respondent has withheld salary of the Claimant which act is unconscionable in an open and democratic society. Failing to pay salary for work done is akin to servitude. Should Respondent not pay salary by Friday October 11th 2019 the Claimant will be at liberty to move the court for execution process to recover the sum owed as it is a debt recoverable summarily. The Respondent should release the salary forthwith but in any event not later than Friday 11th October 2019 by 9.00 am. As the motion before me is unsuccessful the court will order parties to propose the next course in filing pleadings to progress the matter for hearing of the claim on merits. The motion is declined with no order as to costs.

It is so ordered.

Dated and delivered at Nyeri this 9th day of October 2019

Nzioki wa Makau

JUDGE

I certify that this is a

true copy of the Original

Deputy Registrar