



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 998 OF 2018

DR EDWIN GICHANGI.....CLAIMANT

v

KENYA CULTURAL CENTRE.....RESPONDENT

RULING NO. 4

1. For determination are 2 applications.

Respondent's application

2. First application dated 19 July 2019 is by the Respondent and seeks orders

1. ...

2. **THAT** the Court be pleased to immediately stay the reinstatement order given on 5th July 2018 and affirmed on 8th July 2019 pending the hearing and determination of this application.

3. **THAT** the Court be pleased to review and set aside in its entirety the order given on 5 July 2018 and affirmed on 8 July 2019 reinstating the Claimant to employment as the Respondent's Executive Director.

4. **THAT** without prejudice to (3) above, the Court be pleased to review the reinstatement order and in **lieu thereof** order that reinstatement order shall lapse upon the expiry of the Claimant's fixed-term contract on 31 August 2019.

5. **THAT** the Honourable Court be pleased to issue such other orders as may befit the circumstances.

6. **THAT** the costs of this application be provided for.

3. The determinative ground in support of the application was that the applicant's fixed-term contract which the Court had ordered preserved on 5 July 2019 through (reinstatement) pending the hearing and determination of the Cause was set to lapse on 31 August 2019, and it was therefore unlikely that the Cause would be heard and concluded before 31 August 2019.

4. When the Court made the order reinstating (preserving the contract), the applicant to his position as Executive Director of the Respondent on 5 July 2019, it was not seeking to rewrite the contract between the parties.

5. The Court was only issuing an order to enable the fulfilment by each of the parties of their contractual duties and obligations, and since the contract upon which the order was anchored was expiring on 31 August 2019, the reinstatement order could not, logically survive beyond 31 August 2019.

6. The Court so clarifies.

Applicant's application

7. The second application is dated 28 August 2019 and is by Dr. Edwin Gichangi (applicant) seeking orders

1. ...

2. Pending the hearing and determination of this application, an order be and is hereby issued barring the advertising for and/or recruitment of the Chief Executive Officer of the Respondent either by the Respondent themselves, or through their servants, agents and representatives and/or by any other person (natural or juridical) pending the hearing and determination of this application.

3. An order be and is hereby issued setting aside the 2nd limb of the order given on 13th August 2019, to wit, **that the application and order of reinstatement will not affect the date of expiry of the Claimant's contract.**

4. An order be and is hereby issued directing the Respondent to release all salaries accrued to the Claimant amounting to **Kenya Shillings Three Hundred Million, Seven Hundred and Thirteen Thousand and One Hundred (Kshs 3,713,100/-)** being the Claimant's salary for the period commencing July 2018 and ending August 2019 (exclusive of July 2019) in full compliance with the Court orders issued on 5th July 2018.

5. An order be and is hereby issued directing the Respondent to immediately reverse its decision arrived at by the Special Governing Council on 22nd August 2019 and unconditionally reinstate the Claimant back to work restoring all assets bestowed on the Claimant by virtue of his office.

8. The principal ground advanced in support of the application were that the Respondent had on 2 April 2018 extended the applicant's contract for another term to expire in March 2023.

9. It was also contended that the Respondent had misled the Court on 13 August 2019 to issue orders indicating that the applicant's contract was expiring on 31 August 2019.

10. The Respondent caused a replying affidavit sworn by Nicholas Ole Moipei, a member of its Governing Council to be filed on 5 September 2019 in opposition to the application.

11. In the affidavit, Mr. Moipei denied that he extended the applicant's contract beyond 31 August 2019.

12. He further deposed that the Respondent had advertised for the position of Executive Director pursuant to the power given to the Council by section 5 of the Kenya Cultural Centre Act.

13. The Court has looked at the letter dated 2 April 2018 which the applicant asserts extended his contract. The letter is referenced *To Whom It May Concern.*

14. In the view of the Court, and considering the senior position the applicant held in the Respondent, the letter of 2 April 2018 does not conform to a contract extension or renewal document. The letter is suspect.

15. The Court has also keenly perused the *Statement of Claim* filed by the applicant on 20 June 2018 and the annexures thereto.

16. The applicant's assertion in the pleadings were that he was issued with a 3 year fixed term contract commencing on 31 August 2016 and therefore expiring on 31 August 2019.

17. The applicant did not attempt to explain why he did not plead or disclose in the pleadings that the contract had been extended on 2 April 2018 or why his contract was purportedly being extended after only 2 years of the 3 years provided for in the contract.

18. Further, the Court has looked at email exchanges between the applicant and the Respondent's employees in August 2019 on handing over.

19. The emails suggest to the Court that the applicant was aware that his contract was expiring at the end of August 2019.

20. In the circumstances, the Court finds that there is a strong probability as suggested by the Respondent that the letter of 2 April 2018 was a forgery (investigations by the Police are pending).

21. Consequently, there is no basis upon which the Court can stay the decision of the Respondent not to renew the applicant's contract and/or reinstate him to office as sought in proposed order 5.

22. The applicant also sought Kshs 3,713,100/- being accrued salaries and/or dues.

23. In response to the plea for accrued salaries, the Respondent did not deny that the applicant was owed the dues but rather contended that the applicant would only be paid upon handing over.

24. The applicant filed in Court communication and records to show that he handed over and also directing the Respondent to where some of the assets were (vehicles were undergoing service).

25. The Court is satisfied that the applicant handed over and should be cleared and paid his accrued salaries and dues.

Conclusion and Orders

26. Save for the clarification outlined herein before, the Court finds no merit in the Respondent's application dated 19 July 2019.

27. The Court equally finds the applicant's application dated 28 August 2019 devoid of merit save for the finding that he had handed over and is entitled to accrued salaries/dues up to 31 August 2019.

28. Each party to bear own costs.

Delivered, dated and signed in Nairobi on this 6th day of December 2019.

Radido Stephen

Judge

Appearances

For Claimant Mr. Majimbo/Mr. Aduda instructed by Majimbo A.G. & Co. Advocates

For Respondent Mr. Ochieng instructed by Rachier & Amollo Advocates LLP

Court Assistant Lindsey