



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 392 OF 2018

NICHOLAS ARANI BASWETI.....CLAIMANT

v

TEACHERS SERVICE COMMISSION.....RESPONDENT

RULING

1. Nicholas Arani Basweti, a teacher (applicant) was nominated by the Amani National Congress to contest for the position of Member of County Assembly on 3 May 2017.
2. On 18 May 2017, the Teachers Service Commission (Respondent) wrote to the applicant demanding that he tenders his resignation as a teacher consequent upon his nomination to vie in the general elections which were coming up in August 2017.
3. In a response dated 5 June 2017, the applicant directed the attention of the Respondent to the decision by this Court in *Eric Cheruiyot & Ors v IEBC & Ors* (2017) eKLR in which the Court had declared as unconstitutional section 43(5) of the Elections Act which required public officers to resign before contesting in elections.
4. As a result of the Court decision, the Head of the Public Service issued a circular directing public officers intending to vie in the elections to resign on or before 8 May 2017 (10 May 2017 for independent candidates).
5. The applicant was issued with a certificate of nomination for county elections by the Independent Electoral and Boundaries Commission on 29 May 2017.
6. At some point, the Respondent stopped the applicant's salary and on 5 December 2017, he wrote to it asking for the reasons for the stoppage.
7. The Respondent replied on 18 December 2017 requesting the applicant to submit a letter from IEBC confirming that he did not participate in the general elections.
8. The applicant responded on 7 February 2018 indicating that he had attended to his teaching duties faithfully as could be confirmed from his head teacher and that confirmation from IEBC would not be necessary.
9. On 13 March 2018, the applicant wrote to the Respondent seeking a meeting, but nothing came out of the meeting.
10. On 22 March 2018, the applicant moved Court seeking orders
 1. THAT the Respondent to reinstate the Applicant's salary and allowances thereof pending the hearing and determination of this application.
 2. THAT the costs of this application be in the cause.
11. When the application was placed before the Duty Judge, it was certified as urgent, and the applicant was directed to serve it for *inter partes* hearing on 10 April 2018.
12. The Respondent filed a replying affidavit sworn by its Director, Human Resource Management in opposition to the application on 9 April 2018, and the Court took submissions on 10 April 2018.
13. The applicant does not deny contesting in the general elections of August 2017.

14. The applicant also appear not to contest the assertion by the Respondent that he did not formally tender a resignation.
15. According to the Respondent, the conduct by the applicant to contest in the elections without formally tendering a resignation was contrary to the employment contract, the Public Officers Ethics Act, the Leadership and Integrity Act, the Code of Regulations for Teachers and the Code of Conduct and Ethics.
16. In sum, the Respondent contended that the applicant was in gross breach of contract/statutory provisions.
17. If the position taken by the Respondent is correct, then it should use the statutory/regulatory mechanisms it has been clothed with as an employer.
18. In the view of the Court, such gross breach ought to be dealt with as a disciplinary issue at the very least.
19. Commencement of investigations cannot by itself be a justification to stop or withhold the applicant's remuneration.
20. The action by the Respondent, in the view of the Court lacks contractual and/or legal backing.
21. The Court will therefore accede to the applicant's request (technically the substantive prayer sought was incompetent as it sought purely *ex parte* orders, and did not anticipate an order after an *inter partes* hearing) and grant an order reinstating the applicant's remuneration until such a time that the Respondent will act strictly in accordance with the applicable statutory provisions.
22. Each party to bear own costs.

Delivered, dated and signed in open Court in Nairobi on this 11th day of May 2018.

Radido Stephen

Judge

Appearances

For applicant	Mr. Abenga instructed by Begi's Law Offices & Chambers
For Respondent	Mr. Anyuor instructed by Stella Rutto, Advocate, Teachers Service Commission
Court Assistant	Lindsey