



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAKURU

CAUSE NO. 436 OF 2017

FRANCISCAR JELAGAT KAMUREN.....CLAIMANT

VERSUS

GOVERNOR, COUNTY GOVERNMENT OF NAKURU.....1ST RESPONDENT

COUNTY SECRETARY, COUNTY GOVERNMENT OF NAKURU....2ND RESPONDENT

NAKURU COUNTY PUBLIC SERVICE BOARD.....3RD RESPONDENT

RULING

Judgement herein is due following both parties closing each case. A ruling shall subsist.

The substance of the claim is that the claimant was an employee of the 3rd respondent and by letter dated 6th November, 2016 the claimant gave a written notice of resignation with effect from 7th February, 2017 to join politics in compliance with the provisions of sections 13(5) of the Elections Act.

In Kericho ELRC No.1 of 2017 the provisions of section 43(3) were challenged and the court on 18th January, 2017 issued an order allowing for all public officer servants intending to join politics to continue working notwithstanding the provisions of section 43(5) of the Elections Act.

On 14th September, 2017 the claimant wrote to the respondents seeking reinstatement as member to the 3rd respondent and which was ignored. On 4th October, 2017 the claimant issued the respondents with formal demand notice for reinstatement but they have refused to comply.

On this basis, the claimant moved the court seeking interim orders to be reinstated, to stop the filling of the position she held and seeking to rely on the judgement in Kericho ELRC No.1 of 2017.

The respondent replied to the claim and opposed the same on the grounds that the claimant was appointed as member of the 3rd respondent with effect from 28th May, 2013 and after which she gave a written notice of resignation with effect from 7th February, 2017 to join politics in compliance with section 43(5) of the Elections Act. The resignation was voluntary and pegged on section 43(5) of the Elections Act. The law was in force at the time of the notice and the respondents were bound to comply and enforce the provisions.

The defence is also that by the time the court orders upon which the claim herein is premised were issued, the claimant had resigned and these orders cannot apply retrospectively as the orders were issued after the fact. The subject order relied upon is subject of an Appeal and its execution has been stayed vide **Nyeri Civil Application No.62 of 2017**.

In preparing judgement herein, I made reference to **Civil Application No.62 of 2017 Court of Appeal (Nyeri)** where there is an order of stay of the orders in Kericho ELRC No.1 of 2017 and further there is stay to proceedings with relation to the same.

Thus guided and noting the basis of the claim herein and to ensure the rules of law and completeness, to issue judgement herein would go contrary to matters brought to the attention of the court during these proceedings and such would not aid justice.

As noted above, pending hearing of the claim herein, the claimant was issued with interim orders stopping the filling of position held before resignation. The circulars issued by the Head of Public Service and PS, Devolution and requiring the officers/officer affected by the judgement in Kericho ELRC No.1 of 2017 to reinstate and where such positions have been filled to redeploy officers affected by the provisions of section 43(5) of the Elections Act such as the claimant.

Invariably therefore, upon the Court of Appeal addressing the matters before in in **Civil Application No.62 of 2017 Court of Appeal (Nyeri)**, the subject suit and claims herein shall thus be dealt. The import of the suit herein is far reaching and of public interest, to judge contrary or agree as held in Kericho ELRC No.1 of 2017 would either negate orders due in **Civil Application No.62 of 2017 Court of Appeal (Nyeri)**.

On this basis, the claimant will have her day one way or the other upon conclusion of Civil Application No.62 of 2017 Court of Appeal (Nyeri). For this reason, the interim orders herein will not serve any useful purpose by remaining alive. Such orders are vacated. Matter shall be mentioned for further directions in 45 days.

Delivered in open court at Nakuru this 30th day of July, 2018.

M. MBARU

JUDGE

In the presence of:

Court Assistants: Nancy & Martin

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