



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR**  
**RELATIONS COURT AT MOMBASA**  
**CAUSE NUMBER 854 OF 2017**

**BETWEEN**

**MERCY OYUGI .....CLAIMANT**

**VERSUS**

**KENYA PORTS AUTHORITY.....RESPONDENT**

**RULING**

1. The Claimant is employed by the Respondent State Corporation as a Yard Clerk. She received a letter dated 30<sup>th</sup> October 2017, from the Respondent, asking her to show cause why, she should not be disciplined, on the allegation that she had presented to the Respondent, fake academic and professional certificates. It was alleged by the Respondent that the Claimant presented a Form 4 School Certificate from Coast Girls High School, indicating she obtained Grade D in mathematics, while records from the Kenya National Examination Council, showed she obtained an E. She altered her Index Number. She presented a fake Human Resources Diploma Certificate. She filed this Claim therefore, asking the Court to issue a permanent injunction against the Respondent, restraining the Respondent from terminating the Claimant's contract based on the allegations above.

2. She simultaneously filed an Application under Certificate of Urgency on 13<sup>th</sup> November 2017, asking the Court to issue orders of temporary injunction barring the Respondent from terminating her contract of employment, pending hearing of the Application and the Claim.

3. The Application is based on Claimant's Affidavit sworn on 13<sup>th</sup> November 2017. She explains that the letter to show cause, dated 30<sup>th</sup> October 2017, gave the wrong Employment Number. She was not sure if the letter was meant for her. She was not able to respond within 72 hours as required, but her Advocate replied on 7<sup>th</sup> November 2017, explaining her position. She denied the allegations that she presented fake certificates. Her position is that she only presented Certificate of Secondary Education, showing she obtained grade E in Mathematics. She was not aware of other Certificates presented in her name. She did not hold a Diploma in Human Resources. She was not privy to her Personnel File. The File remains in the custody of the Respondent.

4. The Respondent filed a Replying Affidavit sworn by Human Resources Officer [Discipline Section], Constance Mcharo, on 7<sup>th</sup> December 2017. She confirms that the Claimant is employed by the Respondent.

5. The Claimant filed and signed Respondent's Employee's Details Form, on 1<sup>st</sup> February 2010. She indicated she holds KCSE obtained in 1994, from Coast Girls High School. She also presented Diploma Certificate from Mombasa Polytechnic. These documents were forwarded to the Examining Bodies for authentication, and were found to be fake.

6. The Claimant was asked to show cause why, she should not be disciplined. She did not respond within 72 hours as instructed. She thereafter wrote to the Respondent asking for a personal hearing. The letter to show cause was just the beginning of the disciplinary process. The Claimant has come to Court before exhaustion of the internal disciplinary mechanisms. There is no reason given why the Court should intervene. The Claim is premature.

7. The Respondent also filed Notice of Preliminary Objection dated 7<sup>th</sup> December 2017. It is restated in this Notice that the Claimant has not exhausted internal disciplinary mechanisms, and the Court should therefore decline jurisdiction.

8. Parties agreed in Court on 15<sup>th</sup> February 2018, that the Application, and the Preliminary Objection, are merged and heard through Written Submissions. Advocates for the respective Parties underlined their arguments in brief address to the Court, made on 14<sup>th</sup> June 2018.

**The Court Finds:-**

9. The Claimant has not shown why the Respondent should be barred from terminating the Claimant's contract of employment, pending hearing and determination of the Claim.

10. All the Respondent has done is to initiate disciplinary proceedings against the Claimant, under the Respondent's Disciplinary Handbook. There are specific allegations made against the Claimant. Serious allegations, bordering on criminal activities, have been made against the Claimant. It is in the interest of the Claimant to be heard, and clear her name, before the Disciplinary Committee of the Respondent.

11. The Respondent has the prerogative to investigate these allegations, and discipline the Claimant. Termination of the Claimant's contract is one of the sanctions the Respondent is allowed to impose upon the Claimant, if the allegations against the Claimant are established after hearing. The complaint by the Claimant that the letter to show cause gave the wrong Employment Number is a minor issue, which does not prevent the Claimant from submitting to the disciplinary process. Her denial that she presented fake Certificates to her Employer, should be made at the disciplinary hearing forum. She has already asked for a personal hearing. Why then come to Court, asking the Court to restrain the Respondent from imposing a valid penalty, even before the matter has been heard? The Court does not think that the Claimant has established a *prima facie* case with high probability of success. She has not shown that she stands to suffer irreparable injury that cannot be compensated with damages, if the disciplinary proceedings go on. Should the Respondent terminate Claimant's contract unlawfully and unfairly, the Claimant has the remedies of compensation, reinstatement or re-engagement, under the Employment Act 2007. The Application has no merit.

IT IS ORDERED:-

***a) The Application filed by the Claimant on 13<sup>th</sup> November 2017 is declined.***

***b) No order on the costs.***

Dated and delivered at Mombasa this 27<sup>th</sup> day of July 2018.

**James Rika**

**Judge**