



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 1119 OF 2018

SAIMA J. ONDIMU.....CLAIMANT

VERSUS

PRINCIPAL SECRETARY MINISTRY OF SPORTS,

CULTURE & THE ARTS.....1st RESPONDENT

ATTORNEY GENERAL.....2nd RESPONDENT

RULING

1. On 28 March 2018, the Cabinet Secretary, Ministry of Sports, Culture and the Arts wrote to Saima J. Ondimu (applicant) informing her of the extension of her contract as acting Director General of Sports Kenya for 1 year.
2. The Board of Sports Kenya ratified the re-appointment on 3 April 2018.
3. In the meantime, Petition No. 28 of 2018, *Okiya Omtatah v Saima J. Ondimu & Ors* had been filed challenging the retention of the applicant in office yet she had reached the retirement age (the Petition, the Court was told is still pending).
4. On 28 June 2018, the 1st Respondent wrote to the applicant to inform her that the Public Service Commission of Kenya had disallowed a recommendation that she be appointed on local agreement terms. The letter requested her to hand over. The applicant responded to the letter on 29 June 2018.
5. On 3 July 2018, the applicant moved Court seeking orders
 - i. ...
 - ii. **THAT** the Claimant/Applicant's handing over process as directed by the 1st Respondent Principal Secretary in a letter dated 28th June, 2018 be stayed and/or stopped in the interim pending hearing and determination of this suit inter-parties.
 - iii. **THAT** further, this Court be pleased to restrain the Respondent Ministry through the Principal Secretary either by himself or his agents, servants or authorized persons from replacing the Claimant/Applicant pending the hearing of the instant application.
 - iv. **THAT** an order of injunction do issue restraining the Respondents their servants and/or agents from harassing, intimidating the Claimant through actions of forceful eviction from her lawful office and performance of her official duties and responsibilities.
- v.
6. The Court directed the applicant to serve the application upon the Respondents, and this morning the Court heard addresses from the parties.
7. It is not in dispute that the Respondents issued to the applicant a 1 year contract effective 1 April 2018 and that the Respondents have now attempted to renege from the contract ostensibly on the grounds that the applicant had reached retirement age and that the Public Service Commission of Kenya was not consulted and/or disallowed the recommendation for appointment on 1 year contract.
8. The applicant, for what it is worth, had a 1 year contract and it is not clear what processes were followed by the Respondents in purporting to bring the contract to an end.

9. If the contract was being brought to an end on the basis of applicable statutory provisions on retirement, it is not clear whether appropriate notices were issued.

10. The Court is therefore satisfied that the applicant has made out a case for grant of orders (ii) and (iii) as proposed in the application dated 2 July 2018.

11. This Court has been informed that Ongaya J has conduct of Petition No. 28 of 2018 where the question of the applicant's competence to continue serving is under litigation and in order to avoid possibility of conflicting orders, direct that this file be placed before him for further orders.

12. Costs in the Cause.

Delivered, dated and signed in Nairobi on this 4th day of July 2018.

Radido Stephen

Judge