



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS COURT**

**AT KISUMU**

**CAUSE NO. 101 OF 2018**

*(Before Hon. Justice Mathews N. Nduma)*

**JONATHAN KIPCHOGE..... CLAIMANT**

**VERSUS**

**PROF. SYLVESTER KIMAIYO.....1ST RESPONDENT**

**PROF. WINSTONE NYANDIKO.....2<sup>ND</sup> RESPONDENT**

**AMPATH PLUS.....3<sup>RD</sup> RESPONDENT**

**RULING**

1. The Claimant/Applicant filed, Notice of Motion application on 13<sup>th</sup> April, 2018 seeking inter alia an injunction to restrain the Respondent from implementing the notice of termination of the Claimant/Applicant dated 7<sup>th</sup> March, 2018 until the application was heard and determined.
2. The court did not grant interim exparte orders. The Applicant further sought to restrain the Respondent from recruiting and replacing the Applicant from the position of Human Resource Manager pursuant to an advertisement dated 9<sup>th</sup> March, 2018.
3. The basis of the application was that the purported termination was unlawful and unfair since the contract of service of the Claimant/Applicant was due to expire on 31<sup>st</sup> March, 2019.
4. In terms of the end of contract notice/release provided by the Claimant/Applicant dated 7<sup>th</sup> March 2017, the last day of the Claimant/Applicant in office was 30<sup>th</sup> April, 2018 on the basis of none renewal of the current contract of the Claimant/Applicant which was due to expire on that date. A Statement of Claim has been filed simultaneously with the application seeking various reliefs including a declaration that the termination of the contract of service was unlawful, discriminatory and constituted unfair labour practice.
5. The Claimant/Applicant seeks an order of reinstatement to the position he previously held of Human Resource Manager until the expiry of his term. The Claimant seeks payment of all his dues in terms of the contract.
6. The application was opposed vide a Replying Affidavit sworn by Prof. Sylvester Kimaiyo the 1<sup>st</sup> defendant filed on 17<sup>th</sup> July, 2018 in which it is stated that the Claimant/Applicant served on a fixed term contract from 22<sup>nd</sup> August, 2016 until 31<sup>st</sup> December, 2017. That it is not correct that the contract was not to end on 31<sup>st</sup> March, 2019. That renewable of the contract was not automatic.
7. The Respondents allowed the Applicant an extension of four (4) months upon a personal request since the Applicant had been shortlisted for the position of Deputy County secretary in the County Government of Vihiga and he was waiting for a confirmation of appointment.
8. The Respondent has also filed a reply to the statement of claim.

**Determination**

9. The Law as to grant of interim injunctions is very clear in terms of the case of **Giella v Cassman Brown Limited**. The Claimant/Applicant has failed to establish a prima facie case, with a probability of success to warrant grant of an interim injunction.

10. The facts of the case as presented regarding the period of contract of service are highly contentious and require full ventilation at the hearing of the case.

11. An interim injunction would in any event serve no purpose in a case where termination of contract of service has actualized and a replacement already made. However the reliefs sought in the main suit of reinstatement and payment of all terminal dues in the alternative are available to the claimant/Applicant at the end of the trial upon prove on a balance of probabilities.

12. For these reasons the application has no merit. Similarly the application dated 4<sup>th</sup> May, 2018 by the Respondent/Applicant, serves no useful purpose.

13. Both applications are dismissed and the court directs that the matter be transferred to Eldoret for the hearing and determination of the main suit.

**Ruling Dated, Signed and delivered this 4th day of October, 2018**

**MATHEWS N. NDUMA**

**JUDGE**

**Appearances:-**

A. B. L. Musiega & Co. Advocates for Claimant

M/s Cheptinga & Co. Advocates for Respondents

CC. Chrispo Aura