



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS**

**COURT OF KENYA AT MERU**

**SUIT NO. 44 OF 2018**

**FRANCIS KIONGO NGATIA.....CLAIMANT**

**VERSUS**

**THE COUNTY SECRETARY THARAKA**

**NITHI COUNTY GOVERNMENT.....1<sup>ST</sup> RESPONDENT**

**COUNTY PUBLIC SERVICE BOARD.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Claimant/Applicant seeks through the Notice of Motion Application dated 18<sup>th</sup> May 2018 for the restraint and/or issue conservatory orders directed against the Respondents prohibiting them from harassing, threatening to dismiss, initiate any disciplinary proceedings against the Claimant on same counts which the criminal court determined on merits, dismissing and/or terminating and/or filing the position of the Claimant as Chief Accountant pending the hearing and determination of the application and/or cause. He also sought the reinstatement into the payroll on interdiction pending the hearing and determination of the claim. He prayed that the court be pleased to direct and/or compel the Respondents to compute and pay to the Claimant/Applicant all withheld half salary from the month of July 2015 to date pending the hearing and determination of the application and/or cause. The motion is supported by the Claimant/Applicant's grounds on the face of the motion and the affidavit sworn on 18<sup>th</sup> May 2018.

2. The application was not opposed by the Respondents despite the Respondents having been offered an opportunity to file a reply as required in law. The Claimant/Applicant seeks orders in the nature of injunctive remedy. As the threshold in **Giella v Cassman Brown (1973) E.A. 358** relating grant of injunctions has not been met, I would be reluctant to issue conservatory orders directed against the Respondents prohibiting them from harassing, threatening to dismiss, initiate any disciplinary proceedings against the Claimant on same counts which the criminal court determined on merits, dismissing and/or terminating and/or filing the position of the Claimant as Chief Accountant pending the hearing and determination of the application and/or cause or order the reinstatement into the payroll on interdiction pending the hearing and determination of the claim; direct and/or compel the Respondents to compute and pay to the Claimant/Applicant all withheld half salary from the month of July 2015 to date pending the hearing and determination of the application and/or cause. In the final analysis I will dismiss the motion but make no order as to costs as it was not opposed. The parties to proceed to take directions in the suit herein as the matter should be heard in the next term here at Meru.

It is so ordered.

**Dated and delivered at Meru this 9<sup>th</sup> day of November 2018**

**Nzioki wa Makau**

**JUDGE**