



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CONSTITUTIONAL PETITION NO. 48 OF 2018

(Before Hon. Justice Mathews N. Nduma)

IN THE MATTER OF THE ALLEGED INFRINGEMENT AND VIOLATION OF RIGHTS

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA: ARTICLES 10, 19, 20, 21, 22, 23, 27, 28, 41, 174, 183, 232, 235, 236, 258 and 259

AND

IN THE MATTER OF THE COUNTY GOVERNMENT ACT NO. 17 OF 2012

AND

IN THE MATTER OF THE EMPLOYMENT ACT NO. 11 OF 2007

AND

IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT NO. 4 OF 2015

BETWEEN

FRANCIS WESIELA CHEMASWETI.....PETITIONER/APPLICANT

VERSUS

THE COUNTY EXECUTIVE COMMITTEE MEMBER

HEALTH SERVICES, KAKAMEGA COUNTY.....1ST RESPONDENT

COUNTY PUBLIC SERVICE BOARD

KAKAMEGA COUNTY.....2ND RESPONDENT

COUNTY GOVERNMENT OF KAKAMEGA.....3RD RESPONDENT

R U L I N G

1. Application dated 2nd July, 2008 and filed on 3rd July, 2018 seeks for orders that –

...An order be issued reinstating the Petitioner/Applicant to his position as the County Medical Laboratory Coordinator Kakamega County pending the hearing and determination of the Petition.

2. The application is opposed vide grounds of opposition in response to the application to wit that it offends the principles governing the grant of mandatory injunctions in that the right of the Petitioner/Applicant were not violated at all. He was simply deployed in the same job group as he held prior nor did he lose any salary or benefits by fact of the deployment. Furthermore the Applicant seeks final orders before

the petition is heard and determined. The Application is also opposed vide a replying affidavit of Dr. Beatrice Etemesi the Chief Officer in charge of Medical Services as well as the accounting officer in the health docket.

Determination

3. Upon a careful consideration of the application, the court is satisfied, the applicant seeks grant of final orders of reinstating the Petitioner/Applicant to his former position as the County Medical Laboratory Co-ordinator Kakamega County at the interlocutory stage.
4. This order cannot be granted at this stage of the case. The application does not satisfy the Legal requirements that must be satisfied before an interim injunction is granted as set out in the case of **Giella v Cassman Brown**.
5. Furthermore, grant of a mandatory injunction requires a more rigorous test to be applied since it seeks to undo that which has already happened.
6. In the final analysis the application is dismissed with costs in the cause.

Dated, Delivered and Signed in Kisumu this 20th day of December, 2018

Mathews N. Nduma

Judge

Appearances

Mrs. Malasi for Petitioner/Applicant

Mr. Shitsama for Respondent

Chrispo – Court Clerk