



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT NAIROBI**

**CAUSE NO 961 OF 2018**

**ABIGAIL AYAKO.....CLAIMANT/APPLICANT**

**VERSUS**

**KENYATTA INTERNATIONAL CONVENTION CENTRE...RESPONDENT**

**RULING**

**1. By a notice of motion dated 14<sup>th</sup> June, 2018 the claimant sought orders among others that:-**

a) This Honourable court be pleased to issue interim orders of injunction directed at the respondent restraining them, their servants or agents from constituting a panel/committee or purporting to discipline the claimant, of stay of any of the proceedings or decisions arrived therefrom and the same be declared null and void and of no legal consequence pending hearing and determination of this suit.

b) This Honourable court be pleased to issue interim orders of injunction restraining the respondent's board, their servants, employees and or agents from in any way harassing and/or victimizing the claimant pending the hearing and determination of this suit.

**2. The application was based on grounds among others that:-**

a) The claimant/applicant is the current Human Resources manager of the respondent and has served in different capacities since 2005 when she was first employed.

b) The claimant has served under 3 previous CEO's /MD's of the respondent and is currently serving under the current CEO, Nana Gecaga.

c) The respondent's Chief Executive Officer has issued a show cause letter dated 4<sup>th</sup> June 2018 to the claimant requiring her to show cause to the respondent's board.

d) The respondent's CEO on 11<sup>th</sup> may 2018 issued 3 warning letters at once to the claimant against the respondent's own procedures.

e) The claimant has been victimized, intimidated and is under constant threat of dismissal and her dismissal/termination on unlawful grounds is imminent and a foregone conclusion.

f) The disciplinary process is a sham merely meant to rubberstamp the action of the CEO who has been extremely hostile to the claimant thereby frustrating her employment.

**3. The application was further supported by the claimant's affidavit in which she factually expanded on the grounds upon which the application was based.**

**4. The respondent opposed the application and filed a replying affidavit through Nana Gecaga in which she deponed in the main that:-**

a) That I am the chief executive officer of the respondent herein, duly authorized by respondent herein, familiar with the facts in issue and hence competent to swear this affidavit.

b) That the claimant/applicant is the human resource manager of the respondent and among her duties is to ensure that the human resource department is run professionally and efficiently with the aim of achieving the vision of the corporation.

c) That upon my appointment as the chief executive officer Of the respondent I had to appraise- myself with the working of the corporation and the human resource department was one of the organs of the corporation I interacted with often.

d) That soon thereafter I realized there was lack of effective communication with the head of the human resource department, the office of the chief executive officer and the board of directors of the corporation where board papers were not up to date and secondly the

11. The court has stated severally that it cannot interfere with a disciplinary process where such process has been properly initiated and for good reason. The court will however intervene where it is ably demonstrated that the process has been unreasonably invoked and driven by malice and bad faith. In other words the process just like termination of employment must be invoked for good reason and further it must be executed in accordance with the rules of natural justice which underpins most of human resource policy and procedure manuals for many organizations.

12. The claimant has complained that the respondent through the CEO has inudated her with show cause letters and warning letters and that the show cause letter dated 4<sup>th</sup> June, 2018 is the culmination of the process of harassment and a consistent plan to separate her from her employment. The claimant therefore complained that the intended show cause before the respondent's board of directors might not be fair.

13. On 30<sup>th</sup> April, 2018 the claimant was issued with a show cause letter over alleged unprocedural resignation and exit process of the respondent's security manager, one Andrew Oti. She was required to respond to the accusations surrounding the resignation by 30<sup>th</sup> April, 2018. On 3<sup>rd</sup> May, 2018, the claimant received another show cause letter concerning her request for leave and approval of absence. She was expected to respond to the accusations on 9<sup>th</sup> May, 2018. On 7<sup>th</sup> May, 2018, the claimant received yet another show cause letter concerning preparation of urgent board papers and re-alignment of staff structure. She was yet again expected to respond to the allegations contained in this letter by 9<sup>th</sup> May, 2018.

14. According to the claimant, considering the number of the show cause letters, she could not respond as per the deadline of 9<sup>th</sup> May, 2018 but did so on 11<sup>th</sup> May, 2018 and was on the same day issued with 1<sup>st</sup> and 3<sup>rd</sup> warning letters.

15. The show cause letter of 4<sup>th</sup> June, 2018 which invited the claimant to show cause before the respondent's board contained the same allegations in the letters referred to earlier in the ruling and in respect of which she responded and was issued with 1<sup>st</sup> and 3<sup>rd</sup> warning letters. This letter was issued on 4<sup>th</sup> June, 2018, barely a month after the claimant's response to the same accusations and issuance of the warning letters. Further, the letter of 4<sup>th</sup> June makes no reference to the claimant's response to these accusations and whether the respondent found the responses unsatisfactory to warrant the escalation of issues to the respondent's board.

16. Clause 10.13 of the respondent's human resource manual provides that:-

The Corporation may undertake in response to an employee's breach of rules and regulations any of the following measures;

- a) Warning
- b) Interdiction
- c) Suspension
- d) Surcharge
- e) Termination
- f) Summary dismissal
- a) Warning

An employee whose work or conduct is unsatisfactory or who otherwise commits a misconduct which, in the opinion of the managing director, does not warrant summary dismissal shall be warned in writing and the following procedures shall apply;

- The first, second and final warnings shall be entered in the employee's employment record and be valid each for 12 months' from the date of issue.
- If an employee who has already received a final warning commits a further misconduct, he/she shall be liable to termination of service.

17. A reading of this section yields an understanding that a warning letter is one of the sanctions the respondent can mete out to an errant employee. Further an employee who has already received final warning and commits a further misconduct shall be liable to termination of

service.

**18.** As observed earlier, the letter of 4<sup>th</sup> June, 2018 does not contain allegations of new infractions by the claimant. It is as if it were a rehearing of accusations the claimant had responded to and for which she had been punished through the warning letters.

**19.** In an application for interlocutory injunction, the applicant needs to show that he or she has a prima facie case with probability of success and that if successful in the main claim, damages would not be an adequate remedy. The claimant has no doubt demonstrated that she has a prima facie case with probability of success. On the adequacy of damages as compensation if successful, the claimant has stated that she is 50 years old and if exited from her employment she would not be able to secure alternative employment of the same cadre. This sounds plausible and raises a valid reason that damages may not be an adequate remedy if she proves successful at the full trial.

**20.** In conclusion the court finds the application merited and hereby grants prayer 3 and 5 of the motion.

**21.** Costs in the cause.

**22.** It is so ordered.

**Dated at Nairobi this 7<sup>th</sup> day of December, 2018**

**Abuodha Jorum Nelson**

**Judge**

**Delivered this 7<sup>th</sup> day of December, 2018**

**Abuodha Jorum Nelson**

**Judge**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.