



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

PETITION NO. 9 OF 2018

(Before Hon. Justice Mathews N. Nduma)

DENIS ONYANDO NYAKERURI.....PETITIONER

VERSUS

KISII COUNTY ASSEMBLY SERVICE BOARD.....1ST RESPONDENT

THE SECRETARY TO THE COUNTY

ASSEMBLY SERVICE BOARD.....2ND RESPONDENT

THE DIRECTOR HUMAN

RESOURCE KISII COUNTY ASSEMBLY

FRANSISCAH BHOKE.....3RD RESPONDENT

RULING

1. Notice of Motion dated 22nd February, 2018 seeks interim orders to injunct the Respondent from commencing disciplinary action against the Petitioner/Applicant including suspending or barring the Applicant from discharging his duties. A further order is sought directing the Respondents to release the salary and emoluments withheld by the Respondent from the time the Applicant was interdicted from service.
2. The application is founded on grounds set out in the Notice of Motion and the supporting affidavit of the Applicant.
3. Brief facts are that the Applicant is employed by the Respondents as finance officer II from 19th November, 2015. The Applicant was interdicted from service by the Director Human Resource by a letter dated 11th December, 2017 for defying deployment to Audit Department by management and failure to report to the new work station.
4. The staff advisory committee made the decision to interdict the Applicant pending finalization of a disciplinary case against the Applicant.
5. The Applicant was placed on half salary during the period of interdiction with full house allowance and medical allowance.
6. The Applicant gave an explanation of the allegations made against him by a letter dated 29th December, 2017 in which he states that he has never received a letter of deployment and protesting the interdiction.
7. The Applicant was summoned to appear before the Board of Management and Staff Advisory Committee on 12th February, 2018 for a hearing. The meeting was deferred to 27th February, 2018.
8. The Applicant attached to the Application a letter of deployment to Internal Audit Department as an Internal Auditor II. The letter of interdiction is dated 11th December, 2012 earlier than the letter of deployment.
9. The Applicant has on the facts presented made out a prima facie case for grant of an interim injunction as guided by the case of **Giella vs Cassman Brown**.
10. The Applicant is likely to suffer irreparable harm if the order is not granted.

11. The application has merit and it is granted in terms of prayers 3 and 4 of the Notice of Motion.
12. Accordingly the disciplinary process against the Applicant is injuncted, and it be stopped forthwith pending the hearing and determination of the Petition.
13. The Applicant be paid his full salary in the meantime until this matter is heard and determined.
14. Costs in the cause.

Ruling Dated, Signed and delivered this 6th day of December, 2018

Mathews N. Nduma

Judge

Appearances

Hammerton Maloba for Petitioner/ Applicant

Chrispo – Court Clerk