



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT KISUMU**  
**PETITION NO. 8 OF 2018**

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

**DONALD NYAIRO ONGORI.....PETITIONER**

**VERSUS**

**KISII COUNTY ASSEMBLY SERVICE BOARD.....1<sup>ST</sup> RESPONDENT**

**THE CLERK/SECRETARY KISII COUNTY**

**ASSEMBLY SERVICE BOARD.....2<sup>ND</sup> RESPONDENT**

**THE DIRECTOR, HUMAN RESOURCES MANAGEMENT**

**KISII COUNTY ASSEMBLY.....3<sup>RD</sup> RESPONDENT**

**R U L I N G**

1. The Applicant, a Senior Research Officer, II of Kisii County Assembly from 24<sup>th</sup> July, 2014 was interdicted from service by Director Human Resource Management by a letter dated 11<sup>th</sup> December, 2017 for chronic absenteeism from work on various dates stated in the letter in the month of September, October and November, 2017.
2. The Applicant was given 21 days to respond to the charges. He was placed on half pay and full house and medical allowances pending the hearing and determination of the disciplinary case.
3. The Applicant responded to the allegations on 29<sup>th</sup> December, 2017 giving various explanations for his absence.
4. The hearing of the case was fixed for 27<sup>th</sup> February, 2018. This suit was filed on 28<sup>th</sup> February, 2018. No interim orders were granted.
5. The Respondent has not filed a replying affidavit to the application. The application stands opposed. However, the applicant has not made a prima facie case with a probability of success. That onus remains with the Applicant regardless of whether the application is opposed or not.
6. On the face of the papers presented by the Applicant, there appears to be a valid disciplinary case

pending against the Applicant. The court is slow to interfere with the mandate of the employer to discipline its staff for good cause.

7. The Applicant has therefore not satisfied the requirements set out in the case of **Giella vs Cassman Brown** for grant of interim injunction,

8. The application lacks merit and is dismissed. Costs in the cause.

**Ruling Dated, Signed and Delivered in Kisumu this 6<sup>th</sup> day of December, 2018**

**Mathews N. Nduma**

**Judge**

**Appearances**

Hammerton Maloba & Co. for the Petitioner/Applicant

Chrispo – Court Clerk