



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS

COURT OF KENYA AT NAIROBI

CAUSE NO. 1627 OF 2016

PETER OLIMA AKEDI CLAIMANT

VERSUS

POSTAL CORPORATION OF KENYA RESPONDENT

Mr. Ochada for claimant/applicant

Mr. Otieno for Respondent/applicant

RULING

1. By a notice of motion application filed on 15th August 2016, the applicant seeks an order;

That this Honourable court be pleased to restrain the respondent by itself or by its servants and or agents from recruiting, interviewing, employing any other person and or replacing the claimant from his position pending the hearing and determination of the claim.

2. The application is supported by grounds set out on the face of the notice of motion and affidavit of Peter Olima Okedi, the claimant, to wit;

- a) the respondent's actions are illegal, unlawful and unconscionable;
- b) the actions are done without the Board's approval;
- c) the applicant stands to suffer irreparable loss and damage.

3. That the applicant has served the respondent for over thirty (30) years and has been manager/supply chain for the last one (1) year and eight (8) months as per the letter of appointment dated 11th December 2014.

4. That by a letter dated 28th July 2016, the respondent have purportedly demoted and transferred the applicant without due process of the law.

5. That the respondent on 1st August 2016 advertised on daily newspapers for employment of a person to fill the position held by the applicant.

The letters and the advert are annexed to the application.

Response

6. The respondent, vide a replying affidavit of the General Manager / Human Resource sworn on 25th August 2016 deposes that the substantive position held by the applicant is Assistant Manager supply chain but has served the respondent in various positions since 2nd January 1985.

7. That on 11th December 2014, the respondent upon restructuring of the organization appointed the applicant to the position of manager supply chain in acting capacity pending the recruitment of the substantive holder of the office.

8. That the applicant was at all material times he held this position paid acting allowance of Kshs.21,740 over and above his substantive salary.

9. That upon the implementation of the new organizational structure and approval by the Board the respondent advertised on 23rd July 2016 for the recruitment of the substantive officer. The applicant was issued a letter dated 15th March 2016 informing him of the development.

10. The applicant was by a letter dated 28th July 2016 informed of his transfer to Nairobi Region as officer in-charge of the Regional supply chain section.

11. The respondent submits that the application has no merit and it be dismissed with costs.

Determination

12. The principles guiding grant of interlocutory injunctions are well settled and were well articulated in the case of **Giella Vs. Cassman Brown & Co. Ltd [1973] EA 358** as follows;

(i) first an applicant must show a prima facie case with a high probability of success;

(ii) an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages; and

(iii) if the court is in doubt, it will decide an application on the balance of convenience, whereas it is settled that at this interlocutory stage, the court will not determine the competing facts of the case, in the present matter, it is not in dispute that the applicant held the contested position in an acting capacity.

Concise Oxford English Dictionary, 12th Edition defines acting as “*temporarily doing the duties of another.*”

Whereas, Black’s law Dictionary, 9th Edition defines acting as “*holding an interim position; serving temporarily.*”

13. From the undisputed facts discernible from the pleadings of the parties and written submissions, it is apparent that the applicant held the position of acting manager/supply chain from which he was removed vide a letter dated 15th March 2016.

14. The applicant has at this stage failed to establish a prima facie case with a probability of success that he was entitled to hold this position other than on temporary or interim basis.

15. The applicant has also not demonstrated that he will suffer loss which would not adequately be compensated by an award of damages.

16. Accordingly, the application lacks merit and is dismissed with costs in the cause.

Dated and delivered at Nairobi this 27th day of January 2017

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE