



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
JUDICIAL REVIEW NO. 6 OF 2016
(Originally Kitale High Court Misc. Cause No. 34 of 2014)

IN THE MATTER OF

AN APPLICATION BY JACKLINE LUCY MARAKA TO APPLY FOR JUDICIAL REVIEW FOR ORDERS OF CERTIORARI, PROHIBITION AND MANDAMUS AGAINST THE TEACHERS SERVICE COMMISSION TO PROHIBIT THEM FROM INTERDICTING AND COMMENCING INVESTIGATION PROCEEDINGS AGAINST HER WITH AN INTENTION OF REMOVING HER NAME FROM THE TEACHERS REGISTER

AND

IN THE MATTER OF EMPLOYMENT ACT CAP 26 LAWS OF KENYA

AND

IN THE MATTER OF TEACHERS SERVICE COMMISSION ACT 2012 AND ARTICLE 237 CONSTITUTION OF KENYA

BETWEEN

REPUBLIC

AND

JACKLINE LUCY MARAKA.....APPLICANT

VERSUS

TEACHERS SERVICE COMMISSION.....RESPONDENT

JUDGMENT

1. Jackline Lucy Maraka (*ex parte* applicant) moved the High Court sitting in Kitale on 13 June 2014 seeking

1. **AN ORDER OF CERTIORARI** to remove to this honourable Court to be quashed the decision of the Teachers Service Commission dated 31/3/2014 interdicting the applicant's Service/Employment.

2. **AN ORDER OF PROHIBITION** Prohibiting the Teachers Service Commission from

investigating and instituting proceedings against JACKLINE LUCY MARAKA with the intention of removing her name from the Teachers Register.

3. **AN ORDER OF MANDAMUS** compelling the Teachers Service Commission to withdraw their decision dated 31st March 2014 unconditionally.

2. The Respondent filed a replying affidavit sworn by Simon Musyimi Kavisi, a Deputy Director opposing the motion on 28 July 2014.

3. The *ex parte* applicant filed a further affidavit on 7 August 2014 after securing leave of Court, and this prompted the Respondent to file a further replying affidavit on 29 October 2014.

4. On 17 May 2016, the Respondent filed a Notice of Preliminary Objection on the jurisdiction of the High Court to deal with the proceedings which it asserted belonged to the Employment and Labour Relations Court.

5. However, the High Court ordered that the suit be transferred to this Court on 17 June 2016, thus compromising the preliminary objection.

6. On 30 June 2016, the Respondent again filed a Notice of Preliminary Objection on the ground that the proceedings had been filed in a Court without jurisdiction.

7. When the file was placed before this Court on 21 September 2016, directions were given as to the filing of submissions and highlighting. The submissions were highlighted on 2 November 2016.

8. The Court has given due consideration to the motion, the affidavits filed, the submissions and authorities.

9. Because of the view the Court has taken on the substantive issues raised, it will not deal with the preliminary objection taken by the Respondent except to observe that the *ratio* by Court of Appeal in the case of *Daniel N Mugendi v Kenyatta University & 3 Ors* (2013) eKLR that

in order to do justice, in the event where the High Court, the Industrial Court or the Environment & Land Court comes across a matter that ought to be litigated in any of the other courts, it should be prudent to have the matter transferred to that court for hearing and determination would militate against upholding the preliminary objection.

10. Regarding the substantive issues, it is not in dispute that the Respondent as an employer has both constitutional/statutory and contractual authority and mandate to exercise disciplinary control over teachers.

11. The submission by the *ex parte* applicant that the Respondent being the *complainant, investigator and judge* in its own cause contrary to the tenets of natural justice therefore cannot hold. The employee has been afforded safeguards and protections through the supreme law and employment laws both of general application or specific statutes, like Teachers Service Commission Act and the Regulations made thereunder, in the case of teachers.

12. In the Court's view, the classic (common law) principle of natural justice does not universally hold true in the employment relationship.

13. And it is noteworthy that in employment law, the tenor is on *procedural fairness* as opposed to natural justice, as commonly understood.

14. Therefore in so far as the Respondent interdicted the *ex parte* applicant pending investigations and further disciplinary action, the said action had contractual and statutory foundation in the Teachers Service Commission Act and the Code of Regulations.

15. There is nothing presented to Court to show that the action taken by the Respondent pursuant to legal and contractual authority in interdicting the *ex parte* applicant was *irrational, unreasonable or illegal* to be quashed or stopped.

16. The Court therefore reaches the conclusion that the motion is not merited and orders that it be dismissed with no order as to costs.

Delivered, dated and signed in Nakuru on this 20th day of January 2017.

Radido Stephen

Judge

Appearances

For *ex parte* applicant Mr. Machage instructed by R.M. Machage & Co. Advocates

For Respondent Mr. Anyuor, Advocate

Court Assistant Nixon/Daisy