



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1754 OF 2016

CHARLES KAMANDE CLAIMANT

VERUS

TEACHERS SERVICE COMMISSION RESPONDENT

Mr. Owino for claimant/applicant

Mr. Obura for respondent

RULING

1. The claimant/applicant seeks an interlocutory order of reinstatement to work in the position of Senior Deputy Director supply chain management services with full pay pending the hearing and determination of the suit.
2. It is common cause that the employment of the claimant was terminated on 24th August 2016 for various reasons and the claimant filed a statement of claim on 30th August 2016 in which he seeks an order for reinstatement to work upon declaration that the dismissal was unlawful, null and void.
3. Under Section 12 (3) (vii) of the Employment and Labour Relations Court Act, 2011 as amended by Misc. Amendment Act No. 18 of 2014, the court may make “*an order for reinstatement of any employee within three years of dismissal, subject to such condition as the court thinks fit to impose under circumstances contemplated under any written law.*”
4. Furthermore, Section 49 (1) (c) of the Employment Act, 2007 provides for compensation to an employee whose employment is found by the court to have been unlawfully terminated for compensation “*the equivalent of a number of months wages or salary not exceeding twelve (12) months based on the gross monthly wage or salary of the employee at the time of dismissal.*”
5. Keeping the foregoing in mind, in the case of **Giella Vs. Cassman Brown & co. Limited EA 358**, has set the preliquisites of granting interlocutory conservatory relief as follows;
 - a) first an applicant must show a *prima facie* case with a high probability of success;
 - b) 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

c) if the court is in doubt, it will decide an application on the balance of convenience.

6. The claimant has established a prima facie case with a probability of success but in view of the applicable law, cited above has failed to demonstrate that he is likely to suffer harm that cannot be remedied by way of damages.

7. Clearly, in the event the claimant's case is successful he will not only be entitled to an order for reinstatement to his previous job but is entitled in the alternative to compensation equivalent to a maximum of twelve (12) months salary.

8. The claimant therefore has failed to demonstrate that he has met the aforesaid preliquisites for grant of interim relief.

9. It must be noted that it is in very extra-ordinary circumstances that the court will issue a mandatory injunction to reinstate an employee who has been dismissed pending the hearing of the case on merits.

10. The application is dismissed with costs in the cause.

Dated and delivered at Nairobi this 3rd day of February 2017

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE