



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT KERICHO

PETITION NO. 6 OF 2017

(Before D. K. N. Marete)

ANNE CHEPKORIR TURGUT.....CLAIMANT

VERSUS

COUNTY GOVERNMENT OF BOMET1ST RESPONDENT

COUNTY PUBLIC SERVICE BOARD – BOMET COUNTY.....2ND RESPONDENT

JONATHAN SOI3RD RESPONDENT

RULING

This is an application dated 6th April, 2017 seeking the following orders of court.

1. ***THAT*** this Application be certified urgent, service thereof be dispensed with and the same be heard ex-parte in the first instance.
2. ***THAT*** conservatory orders be and hereby issued restraining the Respondents by it selves, their agents, representatives or any other person whatsoever from suspending the Petitioner pending the hearing and determination of this application.
3. ***THAT*** conservatory orders be and hereby issued refraining the Respondents by itself, its agents, representatives or any other person whatsoever from suspending the Petitioner pending the hearing of the Petition.
4. ***THAT*** an order for full payment of salary.
5. ***THAT*** this Honourable court be pleased to grant any other orders and/or relief befitting the circumstances.

It is grounded as follows:

- a) ***THAT*** the Petitioner is an employee of the 1st Respondent.
- b) ***THAT*** on 4th April, 2017, the 2nd Respondent through its Board Secretary wrote a letter asking the 3^d Respondent to interdict the Petitioner herein.

c) ***THAT*** the Petitioner herein has never been issued with a Show Cause Notice by the Respondents.

d) ***THAT*** assault allegations by one Emily Chepkemoui Mosonik filed against Petitioner at Bomet Chief Magistrate Court are pending Court's determination (Criminal Case Number 311 of 2017).

e) ***THAT*** the Petitioner herein appeared before the Chief Magistrates Court on the 30th March, 2017 and a plea of not guilty was entered.

f) ***THAT*** the Petitioner is apprehensive that the Respondents herein will interdict her and or suspend her based on the assault proceedings by Emily Chepkemoui Mosonik filed against her at Bomet Law Courts.

g) ***THAT*** the Petitioner is apprehensive that the Respondents are likely violate her rights by suspending and or interdicting her without according her a fair hearing and following the due procedure of the law.

h) ***THAT*** out of the said interdiction and or suspension the petitioner will only entitled to half of her basic salary.

i) ***THAT*** as per the Human Resource Manual the Petitioner can only be suspended after she has been convicted of a serious criminal offence.

j) ***THAT*** unless this application is heard urgently and orders granted the Respondents will unlawfully move with speed to suspend the Petitioner causing her to suffer irreparable loss and harm.

k) ***THAT*** it is in the interest of justice that the Respondents be restrained from suspending the Petitioner herein as a result of the assault allegations by one Emily Chepkemoui Mosonik filed against her at Bomet Chief Magistrates Court are pending Courts' determination (Criminal Case Number 311 of 2017) pending the hearing of the Petition.

The Respondent in a Replying Affidavit sworn on 20th April, 2017 avers that the application is unmeritorious and incompetent, bad in law, frivolous or vexatious, fatally defective and or an abuse of the court process and prays that the same be dismissed. This is because the action partaken by the respondent in interdicting the Claimant/Respondent was in all respects legitimate bearing in mind that the claimant had been charged with a criminal offence.

The application came for hearing on 24th April, 2016 when it was heard ex-parte due to the absence of the Claimant/Respondent. In the absence of a rebuttal of the defence by the Claimant/Respondent, I am inclined to dismiss the application with cost to the respondent.

Delivered, dated and signed this 26th day of April 2017.

D.K.Njagi Marete

JUDGE

Appearances

1. Mr. Agura holding brief for Kurgat for the Petitioner/Applicant.
2. Mr. Orina for the 1st and 3rd Respondents.