



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE NO. 266 OF 2017

RACHEL THIRA GITAU

CLAIMANT

v

RIFT VALLEY SPORTS CLUB

RESPONDENT

RULING

1. Through a motion dated 23 June 2017 and filed under certificate of urgency, Rachel Thira Gitau (applicant) sought

1. ...

2. THAT this Honourable Court be pleased to reinstate the claimant back to her employment forthwith and all consequential Orders arising there pending the hearing and determination of the Application herein.

3. THAT this Honourable Court be pleased to order for a full remittance of the claimant's salary for the month of June pending the hearing of this application.

4. THAT the Honourable court be pleased to order for an unhindered access of the respondents premises by the claimant.

5. THAT the costs of and incidental to this Application be provided for.

2. On the same day, the Court certified the motion as urgent and also granted an order allowing the applicant to access the work place to pick her personal effects.

3. The applicant was directed to serve the application for *inter partes* hearing on 19 July 2017.

4. Despite being served on 28 June 2017, the Respondent did not file any replying affidavit or grounds of opposition to the application. The Court however, allowed it to address it on legal issues.

5. The Court has given due consideration to the material placed before it.

6. Orders 2 and 3 as proposed by the applicant and as drafted sought orders of an *ex parte* nature pending the hearing of the application and not the Cause (substantive suit).

7. In that regard, the said orders became spent immediately the Court declined to allow them at the *ex parte* stage.

8. On the merits, an order for reinstatement, especially in ordinary employment is a final remedy, which is granted after conclusion of hearing of a substantive Cause.

9. On the question of remuneration for June 2017, the Court notes that the applicant appears to suggest that her contract was terminated but without setting out the precise details of when the termination occurred.

10. Without a determination of the effective date of separation after presentation of evidence, and considering that the Cause is still at an interlocutory phase, the Court cannot accede to the prayer by the applicant for payment of June 2017 remuneration.

11. On the order seeking unhindered access to the Respondent's premises, it would not be a prudent order to grant considering that the employer/employee relationship between the parties is pleaded as having ended.

12. In conclusion, the Court finds no merit in the motion dated 23 June 2017 and orders that it be dismissed with costs in the Cause.

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

Radido Stephen

Judge

Appearances

For Applicant Mr. Biko instructed by Odhiambo & Odhiambo, Advocates

For Respondent Ms. Kerubo holding brief for Mr. Masese.

Court Assistants Nixon/Martin