



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO 1293 OF 2017
SHEM ARTHUR OGAO.....CLAIMANT
VERSUS
KENYA FORESTRY RESEARCH INSTITUTE.....RESPONDENT

RULING

1. The Claimant's application brought by Notice of Motion dated 10th July 2017 seeks an order of injunction restraining the Respondent whether by itself, its agents, servants, employees or whomsoever from filling the position of Deputy Director, Finance.
2. The application, which is supported by the Claimant's affidavits sworn on 10th July 2017 and 25th July 2017, is premised on the following grounds:
 - a. On 6th June 2017, the Respondent advertised a vacancy in the position of Deputy Director, Finance with the application process closing on 26th June 2017;
 - b. The Claimant was employed by the Respondent on 24th September 1987 and promoted to the position of Senior Accountant on 1st November 1998;
 - c. The Claimant was subsequently appointed to head the Accounts Division in an acting capacity after the suspension of the Chief Accountant. The appointment was based on the Claimant's appraisal.
 - d. Upon advice by the Respondent, the Claimant pursued and obtained a Bachelor of Commerce Degree, graduating in December 2007. The Claimant expected to be promoted to the position of Chief Accountant in line with the Civil Service Scheme of Service.
 - e. Under the Civil Service Scheme of Service, the Claimant would have qualified for the position of Chief Accountant. However, under the Respondent's new scheme of service, the minimum academic qualification for this position was enhanced to Masters Degree in Business Administration (Accounting/Finance option) or its equivalent;
 - f. Fair labour practices require that where new qualifications for offices held by employees are introduced, the affected employees be given adequate time and facilities to acquire the new qualifications;

g. The Claimant is entitled to 50% refund of the fees for his Bachelor of Commerce Degree (Accounting option) in accordance with government circular;

h. The Respondent's action contravenes the relevant sections of the Employment Act, 2007, the Fair Administrative Act, 2015 and the Constitution of Kenya, 2010.

3. The Respondent's response is contained in a replying affidavit sworn by its Deputy Director, Human Resources, Evelyn Oroni on 17th July 2017. She depones that the Claimant was employed by the Respondent as a Clerical Officer in 1987. He rose through the ranks to his current position of Senior Accountant.

4. Oroni states that the Claimant is acting on special duty as the Head of Accounts Division. She adds that during the staff evaluation for 2010/2011 conducted in July 2012, the Claimant was advised to obtain a Masters Degree for career progression. This information was conveyed to the Claimant vide staff evaluation feedback letter dated 16th November 2012. To date, the Claimant had not obtained a Masters Degree as advised.

5. Oroni further depones that following the implementation of the Respondent's Strategic Plan (2013-2018) the position of Deputy Director, Finance was advertised internally, in December 2013. The Claimant applied but was not shortlisted because there are several grades between his current position and the position of Deputy Director, Finance. Additionally, the Claimant does not hold a Masters Degree which is a prerequisite for appointment to the position. This was communicated to the Claimant by letter dated 21st February 2014.

6. The Respondent did not get a suitable candidate internally and the position being vacant to date was advertised on 6th June 2017. The requirements for this position are:

a. At least 15 years of relevant experience, 3 years of which must be in the grade of Principal Accountant;

b. A Masters Degree,

7. Oroni states that the Claimant has never qualified for nor held the position of Principal Accountant which also requires a Masters Degree.

8. It is the Respondent's case that its scheme of service adopted in May 2011 has been tested and used for the last 6 years. The Claimant had never challenged it before filing this suit.

9. The issue for determination before the Court is whether the Claimant has made out a case for halting the recruitment process for the position of Deputy Director, Finance within the Respondent's establishment.

10. The conditions for granting of an order of injunction such as the one sought by the Claimant are found in the famous case of ***Giella v Cassman Brown & Company Limited [1973] EA*** as follows:

a. An applicant must show a *prima facie* case with a 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;

c. If the Court is in doubt, it will decide the application on the balance of convenience.

11. My understanding of the Claimant's complaint is that the scheme of service adopted by the Respondent in 2011, placed him at a disadvantage because he does not hold a Masters Degree, which is required for the advertised position. He also faults the Respondent for failing to promote him within the

old scheme of service.

12. There is however evidence that the Claimant was advised to pursue this degree way back in 2012. Having failed to do so, the Claimant cannot now ask the Court to halt the recruitment process for the position of Deputy Director, Finance as he completes his Masters Degree. This is an untenable position to take.

13. No individual has a proprietary interest in a particular job position. Jobs in the market place are advertised and filled fairly and competitively and organisations cannot be held at ransom by the career plans of one individual. From the record, the Claimant does not possess the minimum qualifications for the position in issue and he therefore has no stake in the recruitment process.

14. For this reason the Court finds that he has no *prima facie* case and his application dated 10th July 2017 is dismissed with costs in the cause.

15. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 1ST DAY OF SEPTEMBER 2017

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JUDGE

Appearance:

Mr. Ojienda for the Claimant

Mr. Odukenya for the Respondent