



**REPUBLIC OF KENYA**  
**EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT NAIROBI**

**CAUSE NO. 2311 OF 2014**

**(Before Hon. Justice Hellen S. Wasilwa on 4<sup>th</sup> April, 2016)**

**PETER MAINA MWANIKI.....CLAIMANT**

**VERSUS**

**PRINCIPLE SECRETARY,**

**MINISTRY OF INTERIOR AND COORDINATION**

**OF NATIONAL GOVERNMENT.....1<sup>ST</sup> RESPONDENT**

**DIRECTOR, PROBATION AND**

**AFTERCARE SERVICE.....2<sup>ND</sup> RESPONDENT**

**MS. ELIZABETH JUMA KHADULI**

**DPO KAJIADO.....3<sup>RD</sup> RESPONDENT**

**MR. HENRY N OMOSA DHRM.....4<sup>TH</sup> RESPONDENT**

**MINISTRY OF INTERIOR & COORDINATION**

**OF NATIONAL GOVERNMENT.....5<sup>TH</sup> RESPONDENT**

**MR. S.M. MANG'ALE.....6<sup>TH</sup> RESPONDENT**

**MRS.M.W. NDEGWA.....7<sup>th</sup> REpondent**

**P.S MADAM JOSEPHTA MUKOMBE**

**MINISTRY OF INTERIOR & CO-ORDINATION**

**OF NATIONAL GOVERNMENT.....8<sup>th</sup> RESPONDENT**

**PUBLIC SERVICE COMMISSION (PSCK).....9<sup>th</sup> RESPONDENT**

## RULING

1. The Application before the Court is a Chamber Summons dated 26<sup>th</sup> of January 2016 brought under Section 3A of the Civil Procedure Act, Cap 21 of the Civil Procedure Rules, Constitution of Kenya 2010, Articles 20(1) & (2), 21 (1) & (3), 22, 23, 25, (a), (b) & (c), 27 (1),(4) & (7), 29 (d) & (f), 33 (1) (c), 35 (2), 40 (1)(a) 43(1)(a), (b), (c), (e), & (f) and 50 (1), Employment and Labour Relations Act, Articles 17, (1)(b), 10 (a) & (b), 18 (4), 31,32,33,34 and 44, Work Injury Benefit Act (WIBA) Articles, 10(1) & (2), 22(1), 23(1) 24(1) & (2), 26(1), (2) & (6), 28, 46 (1) & (2), 47, (1)(a)(b)(c)(d)(e), 2 and (3) and all other enabling provisions of law where the applicant seeks orders:

***1. That the Honourable Court be pleased to order the 5<sup>th</sup> and 8<sup>th</sup> Respondent to release his 13 months salary immediately to enable him to get treatment for his leg and blood pressure and meet his financial obligations.***

***2. That the Honourable Court orders the 2<sup>nd</sup> Respondent to fill his accident/medical/ DHOS forms to enable him to be compensated.***

***3. That the Honourable Court orders the 5<sup>th</sup> and 8<sup>th</sup> Respondent to pay him periodic payments as the law demands.***

***4. That the Honourable Court be pleased to order the 2<sup>nd</sup> Respondent to approve his course approval forms for a law degree from Mount Kenya University.***

***5. That the Honourable Court be pleased to order the Respondents to appear before it on a date convenient to the Court to answer to this application.***

2. The Application is supported by the following grounds on the face of it and the verifying affidavit of Peter Maina Mwaniki sworn on the 25<sup>th</sup> of January 2015:

***1. That the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 8<sup>th</sup> Respondents without notice, dishonestly, maliciously and without any lawful reason, conspired to stop the Claimant's salary on the 1<sup>st</sup> of December 2013 which was in retaliation to a complaint he had filed with the Principle Secretary Ministry of Interior and Co-ordination of National Government for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent for their abuse of office making frivolous and vexatious allegations against the claimant and taking disciplinary action against him and transferring him to Marsabit District Probation Office, without giving him a chance to be heard as the Constitution demands.***

***2. That on the 14<sup>th</sup> of February 2014, while on duty in Marsabit, he was involved in a car accident that left him with serious injuries that forced the Marsabit referral hospital to give him a referral letter to Kitengela Medical where he was admitted.***

***3. That while at hospital, he was informed that his NHIF was inactive and that his employer had failed to remit his contributions and contacted his office for clarification.***

***4. That on the 27<sup>th</sup> of March 2014, he received a letter that claimed his salary had been stopped for desertion of office on the 23<sup>rd</sup> of November 2013.***

***5. That he got a P3 and abstract form from the police and hospital in Marsabit which he took to the County Director of Probations Mr. Gutola to forward to the Director for compensation.***

***6. That the said letters were instead forwarded to the Ministerial Headquarters.***

***7. That he later got a dismissal letter from the Registry which he appealed but his appeal was dismissed.***

**8. That he is demanding his 13 months' salary that has been withheld without explanation but his pleas are yet to be met.**

**9. That the director abandoned him after the accident and had to call in a friend to assist him at the hospital, he was not paid his periodical payments and was only given sick sheet forms to fill at the hospital every two weeks.**

**10. That the salary is being illegally withheld by the Respondent without any reasons subjecting him to abject poverty.**

**11. That he needs drugs on a daily basis to regulate his hypertension and is unable to buy the drugs due to lack of money.**

**12. That his son who completed his primary education last year, is due to join form one and he needs his salary to be able to take him to his next level of education.**

3. In their submissions, the Respondents state that the Claimant was dismissed for warranted reasons and that it was procedural as he was granted fair hearing when he was given the chance to make his representations in accordance with Section 41 and 45 of the Employment Act.

4. The Claimant was requested to submit his representations which he did and determination was made on the basis of that representation.

5. The Respondents further state that several inappropriate actions of the Claimant warranted his employer to write several show cause letters that is:

***A letter of cautioning dated 5<sup>th</sup> of September 2013, cautioning the claimant from involvement in any form of impropriety in the new work station.***

- ***A letter itemizing abuse of power by the Claimant dated 17<sup>th</sup> of March, 2014.***
- ***A letter itemizing several acts of misconduct dated 7<sup>th</sup> of February, 2014.***
- ***A letter itemizing several integrity concerns dated 27<sup>th</sup> June, 2013.***
- ***A letter to show cause dated 20<sup>th</sup> of January, 2014.***

6. Additionally they claim that the Claimant deserted duty from the 22<sup>nd</sup> of November 2013, until the 3<sup>rd</sup> of January 2014, contrary to Regulation G19 (1) of the Code of Regulations which provide that: ***“where an officer is absent from duty without leave or lawful or reasonable or lawful cause for a period exceeding twenty four hours and the public officer cannot be traced within a period of ten days from the commencement of such absence, or if traced no reply to a charge of absent is given, the authority empowered to dismiss him may summarily do so”.***

7. They state that upon his transfer to Marsabit, the Claimant reported late and gave false information that he was on a 45 days leave which was not sanctioned. This behaviour is contrary to Article 10 and Chapter 6 of the Constitution of Kenya which provides for the national values and principles of governance and leadership and integrity respectively.

8. They further state that the Claimant failed to give proper information of his criminal record, before he got employed. He has a previous conviction and consequent judgment on Criminal Case No. 6625 of 2005 at Kibera Law Courts where charge of giving information to a person employed in the civil service was brought against him. This was going against Section G.37 (4) of the code of regulations revised in 1992 which provided that:

***“If criminal proceedings are instituted against an officer or where an officer has been acquitted of a criminal charge in a court of law, the Authorized Officer shall not however, be prevented from dismissing him or otherwise punishing him on any other charge arising out of his conduct in the matter..”***

9. They further state that the interim orders at number 2 to 3 sought by the Claimant are not interim but permanent and final in nature. They rely on the case of **Sella Matarimo & 16 Others v Bakhresa Food Products** where Nduma J in determining whether to grant interim relief stated: It is well settled in **Giella vs Cassman Brown & Company Limited [1973] E.A. 358 at 360** that an Applicant who seeks interim relief has to show:

*i. A prima facie case with a probability of success.*

*ii. Irreparable harm would be suffered by the Applicant if the relief sought is not granted.*

*iii. The balance of convenience favours the grant of interim relief.*

10. The Respondents state that judging from the above matter, the Claimant’s case fails in all these three tests.

11. Moreover, they rely on the case of **National Union of Mineworkers and Another and the Commission for Conciliation and Arbitration Case. No JR 2512 of 2007** where the court observed that an employment relationship can only exist in an atmosphere of trust and subject to an employee acting in good faith.

12. They state that the Claimant does not deserve the prayers sought as they are misplaced since they are entitlements of an employee and he was summarily dismissed.

13. I have considered the submissions of both parties and note that on 22.10.2014 the Applicant was dismissed from service but he avers that his salary had been withheld before this period. The reasons why this was done have not been established.

14. That Applicant has asked this Court to ask the 5<sup>th</sup> and 8<sup>th</sup> Respondents to release his withheld salaries but circumstances under which his salaries was done must be laid down.

15. On the Application to have 2<sup>nd</sup> Respondent fill his accident/medical forms, I note that the Claimant was involved in an accident on 17/2/2014 and this was while on duty as his dismissal letter is dated 22.10.2014. The 2<sup>nd</sup> Respondent therefore has a duty and obligation to fill up his accident/medical forms to enable him be compensated and I order that this should be done immediately by the 2<sup>nd</sup> Respondent as is the norm.

16. The other prayers sought are prayers which can only be made upon hearing this claim to its conclusion and are therefore untenable at the moment.

17. Costs of this application to be borne by the Respondents.

Read in open Court this 4<sup>th</sup> day of April, 2016

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Claimant in person - Present

No appearance for Respondent