



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAKURU
PETITION NO. 13 OF 2016
(Originally NAIROBI HIGH COURT PETITION NO. 572 OF 2015
(HUMAN RIGHTS DIVISION)

IN THE MATTER OF ARTICLES 19, 22, 23, 25, 35, 41, 47,
48 AND 50 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF SECTIONS 27,30,34,34 AND 44 OF THE TEACHERS SERVICE
COMMISSION ACT, SECTIONS 4 AND 5 OF THE FAIR ADMINISTRATIVE

ACTION ACT AND SECTION 41 OF THE EMPLOYMENT ACT

HEZRON MUKOKO SILUNYA.....PETITIONER

v

TEACHERS SERVICE COMMISSION.....1ST RESPONDENT

TRUPHOSA MENGECH.....2ND RESPONDENT

CHEPTORUS LILIAN LOMACHAR.....3RD RESPONDENT

PRISCA SAWE.....4TH RESPONDENT

JANE ROTICH.....5TH RESPONDENT

AWINDA ESTHER AMBROSE.....6TH RESPONDENT

CHARLES SUDI.....7TH RESPONDENT

BEATRICE AGALA.....8TH RESPONDENT

BOARD OF MANAGEMENT

RULING

1. On 24 October 2014, this Court dismissed a Petition presented by the Petitioner in which he had alleged violation of his constitutional rights, on the ground that it was premature.
2. The Petitioner had in that Petition (*Hezron Silunya Mukoko v Teachers Service Commission* (2014) eKLR) challenged the disciplinary process taken by the 1st Respondent against him.
3. It appears that was not the end of the matter for the Petitioner approached the High Court in Nairobi on 1 March 2015 through Wamwayi & Co. Advocates alleging violation and or threatened breach of several of his constitutional rights and freedoms.
4. Filed together with the Petition was a motion dated 15 December 2015 under certificate of urgency seeking
 1.
 2. *Pending the hearing and determination of this Application a temporary injunction be issued restraining the 1st Respondent his agents, servants and or employees from transferring the Petitioner from Moi Girls Eldoret to Kipsangui Boys High School.*
 3. *Pending the hearing and determination of this Application a conservatory order be issued directing the 1st Respondent to reinstate the Petitioner to his previous teaching position at Moi Girls Eldoret.*
 4. *Pending the hearing and determination of this Application the directive by the 1st Respondent suspending the Petitioner be stayed, set aside or revoked.*
 5. *Costs of this suit be met by the Respondents.*
5. From the record, it appears that the motion was dismissed on 11 January 2016, because the Petitioner did not turn up in Court to prosecute it.
6. The Petitioner therefore moved the High Court through a motion on 19 January 2016 to have the motion reinstated on the Court's docket.
7. The High Court thereafter directed that the Petition be transferred to this Court for hearing and determination, but the file got lost and the Petitioner successfully petitioned this Court for reconstruction of the file (this file is a reconstructed file).
8. The original High Court file having got lost, it is not clear whether the High Court reinstated the motion, but because the parties herein did not raise any issue on that aspect, the Court will assume that the motion was reinstated.
9. While allowing the reconstruction on 24 March 2016, the Court directed the Respondents to file all the pleadings and documents they had filed before the High Court in Nairobi.
10. On 29 March 2016, the Petitioner filed a Notice to Act in Person while on 13 April 2016, Stella Rutto, Advocate filed a Notice of Appointment of Advocate to come on record for the 1st Respondent, together with a replying affidavit to the motion dated 15 December 2015.

11. In time, the Court directed the Petitioner to serve all the Respondents with hearing notices for the motion dated 15 December 2015 and after several false starts the motion was taken on 14 September 2016 when the Petitioner and advocate for the 1st Respondent made oral submissions.

12. The 1st Respondent also filed its List of Authorities and further affidavit on the morning of urging the motion.

13. The Court gave the Petitioner time to go through the further affidavit and authorities after which he sought that the same be disallowed but the Court admitted the same.

14. The 2nd to 10th Respondents though served did not appear at the hearing of the motion.

15. The Court has given due consideration to the motion, grounds on the face therein, the supporting affidavit and the replying affidavit of the 1st Respondent's Assistant Deputy Director and the oral submissions, and come to the conclusion that the orders sought cannot be granted at the interlocutory stage for the following reasons.

16. One, reinstatement is always a final remedy and therefore the Court cannot legally grant it on the papers at an interlocutory stage.

17. Two, the suspension of the Petitioner was a sanction after the disciplinary process and it was for a limited duration of 4 months from 19 August 2015 and therefore the suspension lapsed around 18 December 2015, just around the time the Petitioner moved the High Court.

18. The Court would be acting in vain in staying or setting aside a suspension which has been served.

19. As to revocation of the transfer, that is an order which can only be issued after a hearing of the Petition on the merits.

20. In any case, the Petitioner did not demonstrate a *prima facie* case or demonstrate that the 1st Respondent as an employer did not have either statutory or contractual authority to transfer him as an employee.

21. The Court therefore orders that the motion dated 15 December 2015 be dismissed with no order as to costs. It is so ordered.

Delivered, dated and signed in Nakuru on this 28th day of October 2016.

Radido Stephen

Judge

Appearances

For Petitioner In person

1st Respondent Mr. Anyuor instructed by Stella Rutto, Advocate, Teachers Service Commission

2nd to 10th Respondents did not participate

Court Assistant Nixon