



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE NO. 92 OF 2014

JOSEPH KIPRONO KOECH

CLAIMANT

V

COUNTY GOVERNMENT OF TURKANA

1ST RESPONDENT

HONOURABLE JOSPHAT KOLI NANOK

2ND RESPONDENT

RULING NO. 2

1. There have been applications galore in this Cause. The one under consideration in this ruling was filed by the Claimant on 10 August 2016 and it seeks

a) THAT this application be certified as urgent and service thereof be dispensed with in the first instance.

b) THAT the 2nd Respondent be committed to civil jail for a term of six (6) months for contempt of court for having deliberately disobeyed orders of this court issued on 17th October, 2014.

c) THAT the costs of this application be provided for.

2. The Respondents after being served with the motion opted to file their own motion on 31 August 2016 seeking the striking out of the Claimant's application, instead of filing a replying affidavit and or grounds of opposition.

3. Despite not filing any replying affidavit or grounds of opposition, the Court allowed the Respondents counsel to make oral submissions on 7 September 2016 when the Claimant's motion was urged.

4. The judgment from which the contempt application springs made the following orders

1. The declaration that the claimant is legitimately employed in the service of the respondents as the Interim Chief Finance Officer.

2. The declaration that the respondents' barring of the claimant from accessing the office was unlawful.

3. The declaration that the suspension of the claimant's services and employment was in contravention of the law. 4. The declaration that the claimant was never removed from the position as interim Chief Finance Officer and the claimant is entitled to continue in that service unless lawfully terminated from such service.

5. *The order of permanent injunction barring the respondents jointly and severally from arbitrarily suspending the employment of the claimant.*

6. *The order that the claimant is entitled to all withheld salary and allowances with due annual increments including the Kshs 60,000.00 per month for extra responsibilities all paid from the date of the suspension to date; and the claimant to compute the due sum of money, file and serve upon the respondent within 7 days from the date of judgment for recording the quantum on a convenient mention date.*

7. *The respondents to pay the money in order 6 above by 1.12.2014 failing interest at court rates to be paid thereon from the date of the judgment till full payment.*

8. *The declaration that the appointment of a person to hold the office of chief finance officer while the claimant was holding the office of interim finance officer was irregular and null.*

9. *The respondents to pay the claimant's costs of the suit.*

5. The Court has keenly perused through the grounds on the face of the motion, the supporting affidavit and oral submissions urged in Court and makes the following observations.

6. The Claimant was an employee of an organ within the county public service and the said employment was underpinned by the Constitution 2010 and statute.

7. The primary statute being the County Governments Act.

8. Part VII of the Act has made elaborate provision for the public service within the county government structure and the functions of the county public service board. The Act has assigned different roles and functions to different bodies/offices.

9. Some of the functions and powers of the Governor (2nd Respondent) have also been outlined in the Act.

10. Under the arrangement set out in the Act, a Governor and in the present Cause, the 2nd Respondent has no power or authority over implementation or compliance with the judgment of the Court in respect of employees under the county public service board.

11. The Court therefore reaches the conclusion that the attempt to cite the 2nd Respondent for contempt cannot succeed. The attempt is not merited and is based on a misapprehension of the statutory framework governing the functions and powers of county public service boards, and administrative management at the county government level generally.

12. The upshot of the above being that the Court reaches the conclusion that the motion dated 29 July 2016 and filed in Court on 10 August 2016 must be dismissed with costs to the Respondents.

13. It is so ordered.

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

Radido Stephen

Judge

Appearances

For Claimant Ms. Mukira instructed by Elizabeth Wangari & Co. Advocates

For Respondents Mr. Change instructed Arwa & Change Advocates

Court Assistant Nixon