



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE NO. 372 OF 2016

LUCY WANGARI METHU

CLAIMANT

v

COUNTY COMMISSIONER NYANDARUA

COUNTY

1ST RESPONDENT

CABINET SECRETARY, MINISTRY OF INTERIOR AND

COORDINATION OF NATIONAL GOVERNMENT

2ND RESPONDENT

PUBLIC SERVICE COMMISSION

3RD RESPONDENT

HONOURABLE ATTORNEY GENERAL

4TH RESPONDENT

HONOURABLE WANJIKU MUHIA NYANDARUA COUNTY

WOMEN REPRESENTATIVE

5TH RESPONDENT

RULING

1. Samuel W. Kimiti, the County Commissioner, Nyandarua County (1st Respondent) informed Lucy Wangari Methu (applicant) of her interdiction through a letter dated 6 September 2016.

2. The applicant being dissatisfied with the interdiction moved Court through a certificate of urgency on 23 September 2016 seeking

a). ...

b) *THAT pending the inter partes hearing of this Notice of Motion a preservatory order be and is hereby issued suspending the decision by the 1st Respondent purportedly acting on behalf of the 2nd Respondent made on 06.09.2016 interdicting the claimant from exercising the powers and duties of the office of the Chief, Kipipiri Location Nyandarua County until the hearing and determination of this application.*

c) *THAT pending the hearing and determination of this Notice of Motion and the suit hereof the*

Claimant be and is hereby reinstated to the office of the Chief, Kipipiri Location Nyandarua County with all the benefits accruing thereto including the withheld salary and the privileges enjoyed by the holder of the office.

d) THAT a prohibitory order do issue prohibiting the 1st Respondent his agents, servants or anybody claiming to be acting on their behalf from investigating, harassing, intimidating, threatening, dismissing, interdicting or passing any decision whatsoever against the Claimant and/or interfering with the Claimants employment until the hearing and determination of the suit herein.

e) THAT a prohibitory order do issue directed to the 5th Respondent requiring the 5th Respondent to desist from politically interfering, meddling, harassing and bullying the Claimant in her exercise of the powers, functions and duties of the office of the Chief, Kipipiri Location.

f) THAT an order do issue directing the 3rd Respondent to conduct fresh investigations on the alleged Claimant's misconduct through other independent and impartial authorised officers who have not dealt with the matter in issue before as provided under regulation 33(1) and (5) of the Public Service Commission Regulations, 2005.

3. The Court certified the motion urgent and directed that it be served for *inter partes* hearing on 6 October 2016, but it could not proceed as not all the Respondents had been served.

4. The application was therefore urged on 24 October 2016.

5. The Court has given due consideration to the application, affidavits filed, authorities cited and oral submissions made in Court.

6. That the orders sought were inelegantly drafted need not be gainsaid.

7. The applicant disclosed to Court during submissions that she was seeking proposed orders c), d) and f).

8. This being an application seeking interlocutory injunctive relief, the legal principles outlined in *Giella v Cassman Brown & Co. Ltd* (1973) EA 378 are implicated.

9. The applicant contends that her interdiction was tainted because the 1st Respondent had no power to interdict her as he was not an *authorised officer* in terms of the Public Service Commission Regulations, 2005. According to the applicant, the power to interdict is reposed in the Public Service Commission and which power could only lawfully be delegated to the Principal Secretary, Ministry of Interior.

10. The applicant also decried the fact that the 2nd Respondent issued another interdiction letter dated 17 October 2016 and submitted that that fact went to show the impropriety of the initial interdiction on 6 September 2016.

11. The Respondents in opposing the motion contended that the 1st Respondent acted pursuant to his powers under the Human Resource Policies and Procedures Manual for the Public Service (May 2016) and Delegation of Public Service Commission Human Resource Functions to the Cabinet Secretary (Revised August 2015).

12. In terms of the material placed before Court, disciplinary control over public officers/service is reposed in the 3rd Respondent. There are Regulations governing the process published in 2005.

13. The 3rd Respondent who has disciplinary control generally over the public service has delegated the power to interdict officers in Job Group T and below to *authorised Officers*. It has also published Policies and Manuals to guide the delegated powers.

14. The Human Resource Policies and Procedures Manual for the Public Service has not defined who an *Authorised Officer* is.

15. However, the Delegation of Public Service Commission Human Resource Functions to the Cabinet Secretary (Revised August 2015) indicate that the 3rd Respondent has delegated certain functions to Cabinet Secretaries in terms of Article 234(5) of the Constitution.

16. The power over discipline in terms of the Instrument has been delegated to Ministerial Human Resource Management Committee with recommendations to be made to the Cabinet Secretary for approval; and in the counties, a County Human Resource Advisory Committee has been established under the chairmanship of the County Commissioner.

17. Although it is not clear on the material placed before Court whether the 1st Respondent is an *Authorised Officer* in terms of the Public Service Commission Regulations, there is nothing at this stage to suggest that the County Human Resource Advisory Committee met and resolved that the applicant be interdicted.

18. The legal consequence of the interdiction of the applicant by the 1st Respondent in terms of irregularity or a nullity can only be determined after a hearing on the merits.

19. On that score, the Court finds at this interlocutory stage that the applicant has satisfied the legal test for the grant of order c) but in an amended version (Court already referred to inelegance in drafting the orders).

20. Before concluding the Court notes that the attempt to regularise the interdiction through the letter of 17 October 2016 before revoking the impugned interdiction came after the launch of these proceedings and might have prejudiced the applicant.

21. The Court therefore orders that

THAT pending the hearing and determination of this suit the interdiction of the Claimant be and is hereby suspended and the Claimant to continue serving in the office of Chief, Kipipiri Location, County of Nyandarua with all the benefits accruing thereto including the withheld salary and the privileges enjoyed hereinbefore.

22. Costs in the Cause.

Delivered, dated and signed in Nakuru on this 26th day of October 2016.

Radido Stephen

Judge

Appearances

For applicant Mr. Kihiko instructed by Stanley Henry Advocates

For 1st – 4th Respondents Mr. Nguyo, Senior Litigation Counsel, Office of the Attorney General

For 5th Respondent Ms. Gachanja instructed by Katwa Kigen & Co. Advocates

Court Assistant Nixon