



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**  
**CAUSE NO. 298 OF 2016**

**JOHN MWANIKI**

**CLAIMANT**

v

**JOSHUA IRUNGU**

**1<sup>ST</sup> RESPONDENT**

**COUNTY GOVERNMENT OF LAIKIPIA**

**2<sup>ND</sup> RESPONDENT**

**RULING NO. 2**

1. John Mwaniki (applicant) was offered the position of County Secretary of the County Government of Laikipia (2<sup>nd</sup> Respondent) through a letter dated 16 June 2015. The appointment was for a 2 year term.
2. On 5 August 2016, the 1<sup>st</sup> Respondent informed the applicant of the termination of his employment, and reference was made to section 44(2) of the County Governments Act and paragraph 6 of the letter of appointment.
3. The termination of employment aggrieved the applicant, and he moved Court on 12 August 2016 under a certificate of urgency seeking

1. ....

2. ...

3. ...

4. *THAT pending inter parties hearing and determination of this application the 1<sup>st</sup> and 2<sup>nd</sup> Respondents by themselves, their agents, servants and or employees be restrained from advertising, recruiting and or in any way filling up the position of County Secretary and Head of Public Service for the County Government of Laikipia.*

5. ...

6. *THAT pending the hearing and determination of the Claim the 1<sup>st</sup> and 2<sup>nd</sup> Respondents by themselves, their agents, servants and or employees be restrained from advertising, recruiting and or in any way filling up the position of County Secretary and Head of Public Service for the County Government of Laikipia.*

7. *THAT the Honourable Court be pleased to quash the Termination Letter dated 5<sup>th</sup> August, 2016*

*pending the hearing and determination of the suit herein;*

8. *THAT the Costs of this application be provided for.*

4. The Court certified the motion urgent on 15 August 2016 and directed that it be served upon the Respondents for *inter partes* hearing on 5 September 2016.

5. On 1 September 2016, the Respondents filed a replying affidavit sworn by the Acting County Secretary, list of authorities and a Notice of Preliminary Objection.

6. The applicant filed a list of authorities and grounds of opposition to the notice of preliminary objection on 5 September 2016.

7. The preliminary objection was taken on 5 September 2016, and in a ruling delivered on 15 September 2016, the Court dismissed it with costs to the Claimant.

8. The applicant's instant motion was then taken on 12 October 2016 and is the subject of this ruling.

9. The Court has given due consideration to the grounds on the face of the motion, the supporting and replying affidavits and the oral submissions made in Court.

10. The Court has also considered the authorities cited by the parties despite not making specific reference to them in this ruling, in order not to enter into the arena of examining the merits of the applicant's cause of action this early.

### **The law**

11. The legal principles applicable to grant of interlocutory restraining orders as sought herein were long settled in the case of *Giella v Cassman Brown & Co Ltd (1973) EA 358*.

12. Briefly, the principles are establishment of a *prima facie* case, demonstration of irreparable injury which cannot be compensated by an award of damages and in cases of doubt, consideration on a balance of convenience.

13. In employment disputes, the legal principles are generally applicable except where due to the nature of the employment relationship, modifications or additional principles are sometimes applied.

### **Evaluation**

14. The applicant was on a 2 year contract.

15. By the time the contract was being terminated, the applicant had about 10 more months to serve.

16. The nature and scope of injury likely to be suffered by the applicant would be the remuneration he would have earned during that period. Any legitimate expectation would be in respect of that lost income.

17. Such damage is capable of precise calculation.

18. Although the applicant has made assertions concerning the detrimental effect on his *reputation, advancement, job security and fulfilment* in the grounds on the face of the motion, no cause of action thereof was advanced in the Statement of Claim, but in any case, there are adequate and appropriate remedies were such a case be proved in Court, apart from the injunctive relief sought at this stage.

19. As regards the attempt to quash the letter terminating the applicant's employment, at this stage that would in effect mean reinstating the applicant to office before a hearing on the merits.

20. Reinstatement, as a remedy is generally a final remedy, and it is only in very clear cases of employment underpinned by specific statutory protections that it would be granted at an interlocutory stage of the proceedings.

21. The upshot of the foregoing is that the Court finds no merit in the motion dated 10 August 2016 and dismisses it, costs being in the Cause.

**Delivered, dated and signed in Nakuru on this 25<sup>th</sup> day of November 2016.**

**Radido Stephen**

**Judge**

**Appearances**

For Applicant Mr. Wanjala instructed by Gumbo & Associates Advocates

For Respondents Mr. Mwangi instructed by Wanjao & Wanjau Advocates

Court Assistant Nixon/Daisy