



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 58 OF 2015

MICHAEL KIIO IRERI.....CLAIMANT

VERSUS

EMBU WATER & SANITATION

COMPANY LIMITED.....1ST RESPONDENT

MARY KAVINDA.....2ND RESPONDENT

JOHN KARIUKI NJINE.....3RD RESPONDENT

JANE WAROGA.....4TH RESPONDENT

STEPHEN NJIRU.....5TH RESPONDENT

JAMES NJERU MUVUTHI.....6TH RESPONDENT

ANTONY MURITHI.....7TH RESPONDENT

RAMADHA NJUGUNA.....8TH RESPONDENT

JOSPHAT NDWIGA.....9TH RESPONDENT

MOSES NAIVASHA.....10TH RESPONDENT

HAMILTON KARUGENDO.....11TH RESPONDENT

JOEL NGATIARI.....12TH RESPONDENT

HELLEN BARINE.....13TH RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday, 4th November, 2016)

RULING

The court delivered the judgment in this suit in favour of the claimant against the 1st respondent for:

a) The declaration that the respondent's letter dated 27.02.2015 purporting to reject renewal of the claimant's contract is null and void *ab initio*.

b) The order of specific performance is hereby issued compelling the reinstatement of the claimant by the respondent to his employment as the respondent's technical manager; and for that purpose the claimant will report to the respondent's managing director on Monday 15.12.2015 to resume duty and to continue in respondent's employment without loss of benefits and in accordance with terms as were applicable before termination on 28.02.2015 or better terms as will be agreed and to continue in employment unless the employment relationship between the parties lawfully terminates.

c) The respondent to pay the claimant his salary and benefits from 1.03.2015 until the claimant's employment is lawfully terminated under Part VI of the Employment Act, 2007; and all due payment to be made by 01.01.2016 failing interest to be paid thereon at court rates from the date of this judgment till the date of full payment.

d) The respondent to pay the claimant's costs of the suit.

The claimant filed an application on 16.03.2016 being a notice of motion claiming that the respondents had disobeyed the orders in the judgment and the decree flowing there-from; the application invoking section 5 of the Judicature Act Cap. 8 Laws of Kenya, Order 52 Rule 2(2) of the Rules of the Supreme Court of England 1965, section 3A of the Civil Procedure Act Cap. 21 Laws of Kenya, and all enabling provisions of law.

Confronted with that contempt application, the respondents have taken the view that the application is premised on the misinterpretation of the judgment and the decree. Thus the respondents filed the notice of motion on 13.10.2016 invoking sections 1A, 1B, and 63 of the Civil Procedure Act, Order 51 (1) of the Civil Procedure Rules, Article 159 of the Constitution and the inherent powers of the court. That notice of motion is subject of the present ruling and seeks substantive orders that:

1.

2.

3. The court be pleased to interpret its judgment dated and delivered on 11.12.2015 and more particularly on whether or not the claimant was reinstated to employment on a one year contract running from 1st February 2015 to 31st January 2016.

4. The honourable court be pleased to grant any other orders and directions as it may deem fit and just to issue in the circumstances.

5. Costs of the application be granted.

The application based on the supporting affidavit of Hamilton Karugendo attached on the application.

It is submitted for the respondents that it is their interpretation that the claimant was reinstated to serve for one year contract from 1.02.2015 to 31.01.2016 and not reinstated to serve on a month to month basis as interpreted for the claimant.

The claimant filed his replying affidavit on 24.10.2016 to oppose the application. At paragraph 4 of the replying affidavit, the claimant states that the court issued an order of specific performance compelling the respondents to reinstate him to employment as the 1st respondent's technical manager and to continue in employment unless the employment was lawfully terminated. In paragraph 5 the claimant states that it was ordered that his salaries would be paid from 1st March 2015 until such a time his employment would be lawfully terminated under Part VI of the Employment Act, 2007.

The court finds that both parties are well founded in stating that the claimant was reinstated to continue in employment until lawfully terminated. Part VI of the Employment Act, 2007 provides for termination and dismissal. The claimant has not invoked the specific provision of that Part that would apply to the lawful termination of his contract of service. Section 35 of that Part provides for the minimum termination notice and section 36 of that Part provides for minimum pay in lieu of the termination notice.

In the present case the court stated thus, **“b)The order of specific performance is hereby issued compelling the reinstatement of the claimant by the respondent to his employment as the respondent’s technical manager; and for that purpose the claimant will report to the respondent’s managing director on Monday 15.12.2015 to resume duty and to continue in respondent’s employment without loss of benefits and in accordance with terms as were applicable before termination on 28.02.2015 or better terms as will be agreed and to continue in employment unless the employment relationship between the parties lawfully terminates.”** It is clear that the claimant was reinstated upon the prevailing terms and conditions of the contract of employment running from 01.02.2015 to 31.01.2016. Within terms of the judgment the 1st respondent issued the letter dated 24.12.2015 in full compliance with the judgment and the decree. In line with the contract between the parties and section 35 (1) of the Employment Act, 2007, paragraph 5 of the letter stated that the contract of service would lapse on 31.01.2016 and by that letter the respondent was serving a one month notice that the 1 year contract would not be renewed but would lapse accordingly on 31.01.2016. The court therefore returns that there has not been established any material provision of Part VI of the Employment Act, 2007 that the respondents may have contravened. Further, the terms of the prevailing 1 year contract of employment were complied with and as per the judgment and the decree the 1st respondent appears to have complied accordingly.

While making this ruling, the court holds that except as may be expressed in terms of a reinstatement order by itself, the reinstatement order returns the employee in employment strictly in line with the terms of the prevailing contract of employment between the parties; the reinstatement order does not usually rewrite the terms and conditions of the contract of employment. The current reinstatement order was meant and expressly reinstated the claimant as per the prevailing terms and conditions of the contract of service which was a 1 year fixed term contract subject to renewal as per the contractual terms. As it is not submitted that the contractual renewal clause was breached, the respondents cannot be said to have disobeyed the court order.

The court considers that the contempt application and the application to interpret the judgment and decree were in furtherance of upholding due process and parties will be encouraged to invoke such proceedings to seek the court’s intervention where the effect and scope of a court order is in doubt. Thus the court considers that in the circumstances of the two applications for contempt and for interpretation of the judgment, parties will bear own costs or there will be no orders on costs.

In conclusion, the application filed for the respondents on 13.10.2016 and dated 12.10.2016 is hereby determined with orders as follows:

1. The judgment delivered on 11.12.2015 and the decree flowing from the judgment are hereby interpreted to have the effect and scope that the claimant was reinstated to serve the one year fixed term contract running from 01.02.2015 to 31.01.2016 accordingly.
2. In absence of any other matter, the contempt application filed on 16.03.2016 and dated 16.03.2016 be marked as determined with no orders on costs.
3. Parties to bear own costs for the respondents’ application dated 12.10.2016.

Signed, dated and delivered in court at Nyeri this Friday, 4th November, 2016.

BYRAM ONGAYA

JUDGE

Advocates for the Parties:

Kinoti & Kibe Company Advocates for the Claimant; and

Ahmednasir, Abdikadir & Company Advocates for Respondents.