



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO.147 OF 2016

MIRIAM NKATHA RIUNGU.....CLAIMANT

VERSUS

MERU COUNTY INVESTMENT AND DEVELOPMENT CORPORATION.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 9th December, 2016)

RULING

The court delivered the judgment in this case on 4.11.2016. Judgment was entered for the claimant against the respondent for:

- a. The declaration that the termination of the claimant's contract of employment by the letter dated 09.06.2016 was unfair.
- b. The claimant is hereby reinstated back to her position as the respondent's Director for Corporate and Support Services effective the date of the dismissal 09.06.2016 upon the terms and conditions of service per the contract of employment dated 11.08.2015 or such better terms as may be agreed or become applicable and to continue in the respondent's employment with full benefits unless lawfully terminated, and, for that purpose, the claimant will report to the respondent's managing director not later than 09.11.2016 at 9.00am for assignment of duty accordingly.
- c. The respondent to pay the claimant **Kshs.800,000.00**(less lawful statutory deductions) by 01.12.2016 failing interest at court rates to be payable thereon from the date of this judgment till full payment.
- d. The respondent to pay the claimant's costs of the suit.

The respondent filed the notice of motion on 08.11.2016 under rule 6(1) of the Employment and Labour Relations Court (Procedure) Rules, 2016 as read with order 42 rule 6 (1) of the Civil Procedure Rules, 2010 and all enabling provisions of law. The substantive prayer was that there be stay of the entire judgment and consequential decree emanating from the judgment of the Honourable Court delivered on 04.11.2016 pending the lodging, hearing and determination of the respondent's intended appeal to the court of appeal.

The application was based on the supporting affidavit of Joel Kinyua Imitira and the following grounds:

- a. The respondent was aggrieved by the judgment and had instructed its advocates to appeal against the judgment.

- b. The claimant was due to report back to work on 09.11.2016 as per the orders in the judgment.
- c. The respondent was willing to secure the payment of all judgment sum pending the hearing and determination of the appeal.
- d. The application had been filed promptly after the delivery of the judgment.

The claimant opposed the application by filing her replying affidavit on 11.11.2015. It is her case that the application is calculated to deny her the fruits of her successful judgment and the orders sought were overtaken by events because she reported on duty on 09.11.2016. Further, it is her case that there was no evidence that the respondent's Managing Director had obtained the resolution of the respondent's Board to appeal against the judgment of the court. Finally, the applicant had confirmed that there had been no replacement of the claimant and therefore it was difficult to show that the respondent will suffer substantial loss.

The court has considered the parties' respective submissions. The court makes findings as follows:

- a. The court finds that there is no dispute that the application was filed promptly and without delay as required in order 42 rules 6 of the Civil Procedure Rules.
- b. The court has considered that the claimant has resumed work effective 09.11.2016. The court considers that in such circumstances the applicant will not suffer substantial loss in view of the orders of reinstatement in so far as the respondent will pay the claimant for the work performed. In balancing justice and convenience between the parties, the court considers that the reinstatement and the claimant's resumption of duty on 09.11.2016 should be left undisturbed. The court has considered that the claimant's continued working will in no manner render the respondent's appeal nugatory especially that, though the applicant is willing to deposit the claimant's monthly pay for security for stay of execution, the court considers that the applicant being an employer in public service, if the appeal fails, it will be unfair to tax-payers' interests to release the pay to the claimant without the claimant having worked in circumstances whereby she was willing to work.
- c. The court has considered that the award of Kshs.800,000.00 was pegged on the reinstatement orders. The reason advanced is that if the appeal succeeds, the same would not be readily recoverable from the claimant and therefore the applicant would suffer substantial loss. The applicant did not provide evidence to substantiate the position that recovery would not be readily possible. The court further considers that the legal basis of such recovery has not been established in view of the prevailing order of reinstatement.
- d. Finally, the court returns that in the present case, it has not been demonstrated that there would be substantial loss if the orders of stay of execution pending appeal are withheld and the application will therefore fail. The court considers that the claimant has disputed that the respondent's board has resolved to appeal against the judgment and absence of evidence of such resolution serves as an impetus to decline the application.

In conclusion the application filed on 08.11.2016 and dated the same 08.11.2016 is hereby dismissed with costs.

Signed, dated and delivered in court at **Nyeri** this **Friday, 9th December, 2016.**

BYRAM ONGAYA

JUDGE