



REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 381 OF 2015

(Before Hon. Lady Justice Hellen S. Wasilwa on 8th December, 2016)

ALLAN MWANGI MUTURICLAIMANT

VERSUS

KENYA AIRPORTS AUTHORITYRESPONDENT

RULING

1. The Application before Court is the one dated 15th August, 2016 where the Applicants sought the following prayers:

1. That the Honourable Court be pleased to hear prayer 2 here below ex-parte in the first instance due to its urgency.

2. That the Honourable Court be pleased to issue an order of temporary injunction restraining the Respondent by itself, its servants and/or agents from recruiting, employing or otherwise filling the position of the General Manager, procurement and logistics, pending the hearing and determination of prayers 3,4 and 5 here below.

3. That the Honourable Court be pleased to issue an Order of temporary injunction restraining the Respondent by itself, its servants and/or agents from recruiting, employing or otherwise filling the position of the General Manager, Procurement and Logistics, pending the hearing and determination of the main cause herein.

4. That the Honourable Court be pleased to give such further or better reliefs as it may deem fit and just to.

5. That the costs of this application be provided for.

2. Prayer 1 and 2 were granted ex-parte and now the remaining prayers are prayer 3, 4 and 5. The Application was filed through a Notice of Motion dated 15.8.2016 brought under Rules 16 and 27(1) of the Employment and Labour Relations Court Act (Procedure) Rules, 2010 and all other enabling provisions of the law.

3. The Application is supported by the annexed affidavit of Allan Mwangi Muturi and on the following grounds:

a) That the Applicant/Claimant was promoted to the position of General Manager, Procurement and Logistics on 14th March, 2011.

b) That the Applicant/Claimant served in the said position until his services were irregularly, unfairly and unlawfully terminated vide a letter dated 6th January, 2014, which was mailed to him on 17th January, 2014.

c) That having been aggrieved and dissatisfied with the said irregular, unfair and unlawful termination of services the Applicant/Claimant filed the cause herein wherein his main prayer is for reinstatement to his position of General Manager, Procurement and Logistics.

d) That Applicant/Claimant has just become aware of an advertisement made by the Respondent in the Daily Nation of 12th July, 2016, indicating that it intends to fill, inter alia, the position of General Manager, Procurement and Logistics.

e) That if the Respondent fills the said position, the Claim herein shall be rendered nugatory.

f) That it is in the interest of justice that the Claim herein be allowed.

4. The Affidavit reiterates the averments in the grounds on the face of the application.

5. The Applicant contends that he has a legitimate expectation of being reinstated if the claim succeeds and hence his prayers.

6. The Application was opposed by the Respondents herein through their response dated 13.9.2016 and served upon the Applicants. They aver that the application is an afterthought geared at preventing the Respondent from filling position of General Manager which has been vacant since Claimant was terminated on 6.1.2014.

7. They aver that the Respondent is a public entity with an important position in the Country's sector. They therefore aver that failure to fill up the position will not enable them fulfill their mandate.

8. They state that it is in the public interest to fill up the position and that the Claimant can be compensated other than reinstatement.

9. The Respondent cited case No. 928/2013 **Festus Muthiani vs. Kenyatta National Hospital (2013)eKLR** and state that the position to be filled is not in any way unique and that in a balance of convenience the matter be resolved in their favour.

10. The Applicant insists that the application is valid and should be allowed.

11. Having heard both parties, I find the application though merited cannot bear any trust. The Applicant having been dismissed in January 2014, for him to succeed in a reinstatement claim, he should be reinstated by the Court by January 2017. The case has not yet been heard and it is unlikely that it will be heard by January 2017. The Court will not give any order in vain seeking the impossibility of a reinstatement in one month time.

12. The Applicant can be compensated in damages. I find the application unmerited and I dismiss it accordingly.

13. Costs in the cause.

Read in open Court this 8th day of December, 2016.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Kamande for Applicant – Present

No appearance for Respondents