



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS

COURT OF KENYA AT NAIROBI

CAUSE NO. 1681 OF 2014

ROBERT MOFAT ODHIAMBO CLAIMANT

VERSUS

HARAMBEE SACCO LTD RESPONDENT

Mr. Omino for the Claimant/Applicant

M/s Opollo for the Respondent

RULING

1. The Claimant/Applicant filed a Notice of Motion under Certificate of Urgency dated 30th September, 2014 seeking for orders *inter alia*:
 - a. that the court do make an interlocutory order of a declaration that the Claimant is entitled to his salary and benefits while on suspension and that the same be payable to him pending the determination of the suspension.
 - b. that the court do make an interlocutory order of injunction or prohibition restraining the Respondent from suspending or keeping the Claimant on suspension before issuance of notice to show cause why he should not take disciplinary action.
2. Interim orders were granted as above but the same were stayed by another Judge pursuant to an Application by the Respondent. This was unwarranted situation for a Judge of equal status, to stay interim orders of another and should be discouraged for good order.
3. That notwithstanding, the parties subsequently agreed to deal with the first application and filed written submissions accordingly.
4. The issue for determination is whether the suspension of the Claimant and stoppage of salary is lawful before subjecting the Claimant to the disciplinary procedure that appertains at the work place.
5. It is common cause that the Claimant was suspected of being involved in irregular fraudulent transactions by the employer and on 12th August, 2014, management resolved to institute investigations in the matter.
6. As a result the Claimant, Senior Security Officer and Acting ICT Manager were suspended from duty in terms of Clause 30.5(a) & (b) of the Respondent's Human Resource Policy, Regulation and Procedure

Manual (2010).

7. The provisions reads;

- a. if in any case the society management is satisfied that an employee should cease forthwith to execute the function of his/her office, the Chief Executive Officer or Human Resource Manager, will suspend the employee for a period of not more than three months, while investigating the matter which may lead to his/her dismissal or criminal proceedings being instituted against him or her.
- b. an employee who is suspended shall not receive any salary or allowances.

8. It is common cause that suspension was effected by a letter dated 12th August, 2014 written by the Acting Chief Executive Officer pending conduct of investigations.

9. In the letter of suspension produced in court, the Claimant was not asked to show cause why he should not be disciplined for alleged misconduct.

10. As at the time he came to court on 30th September, 2014, he was still under suspension.

Regulations & Procedure Manual (2010)

11. At the time the Respondent filed its Replying Affidavit on 3rd December, 2014, the Claimant was still under suspension without pay.

12. The Respondent did not indicate how far the investigations had gone nor had it commenced any disciplinary action against the Claimant by issuing him with a notice to show cause or a notice of alleged charge with a view to conduct a disciplinary hearing.

13. At the time the final submissions were filed on 26th January, 2015 by the Claimant and 9th February, 2015 by the Respondent, it is apparent from the submissions that the Claimant was still under suspension without pay. This was a period of seven (7) months from the date of the suspension.

Determination

14. Clearly, the Respondent was in violation of Clause 30.5 of its own Human Resource Policies which provides for a maximum period of suspension of three months without pay.

15. Clause 30.5(c) provides that *“where the disciplinary or criminal proceedings have been taken or instituted against an employee under suspension and such an employee is neither dismissed nor otherwise punished under these regulations, the whole or any of the salary withheld under paragraph (b) shall be restored to him/her upon the termination of such proceedings.”*

16. It being common cause no disciplinary action or criminal proceedings have been commenced against the Claimant within the three months of suspension, the said suspension is in violation of the Respondent’s own policy and is unlawful to this extent.

17. Furthermore, the salary stoppage for the entire period of suspension is unlawful since no disciplinary action or criminal proceedings were commenced against the Claimant during the period.

18. Accordingly, the Respondent is directed to pay the Claimant his full salary for the entire period he has been on suspension.

19. The Respondent is further directed to lift the suspension of the Claimant as it contravenes the Respondent’s Human Resource Policies, Regulation & Procedure Manual (2010).

20. The Respondent to pay the costs of the Application.

Dated and Delivered at Nairobi this 17th day of April, 2015.

MATHEWS N. NDUMA

PRINCIPAL JUDGE