



REPUBLIC OF KENYA
EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 567 OF 2013

(Before Hon. Justice Hellen S. Wasilwa on 7th April, 2015)

FRED JONA OCHANDA.....CLAIMANT

VERSUS

KISUMU POLYTECHNIC BOARD OF GOVERNORS....RESPONDENT

RULING

1. The application before court is the one dated 4/2/2015. The application was filed under a certificate of urgency and brought through a Notice of Motion dated 4/2/2015. The Applicant seeks order that:

1. The application be certified urgent and service be dispensed with in the first instance and the application be heard ex-parte.

2. This Honourable Court be pleased to issue an order requiring the Respondent to pay the Claimant/Applicant his half salary arrears accruing from 28th February 2011 till 30th January 2015 including interest and thereafter to continue remitting the half salary in full pending the hearing and full determination of this application.

3. This Honourable Court be pleased to issue an order requiring the Respondent to withhold any precipitate action in respect of a letter of termination of employment dated 20th February 2013 pending hearing and determination of the suit herein.

4. The costs of this application be provided for.

2. The application is based on the grounds that:

1. By letter dated 20th April 2011 the Respondent without any notice and/or reasonable cause whatsoever suspended the Claimant from its employment.

2. The Respondent has to date failed to remit to the Claimant his half salary and allowances which are due to the Claimant every month pursuant to the law as provided under Section 62(1) & (2) of the Anti-Corruption and Economic Crimes Act, 2003.

3. The Respondent's action has caused the Claimant to suffer serious economic hardship since his only source of income has been curtailed.

4. The actions of the Respondent are in complete disregard to the provisions of the law and/or in violation of the Claimant's basic human rights.

3. The application is also supported by the Supporting Affidavit of one Fred Jona Ochanda the Applicant herein dated 4/1/2015.

The Applicant's case is that on 31/8/2001 he was employed by the Respondent as a Finance Officer earning a salary of 53,881.80 per month as at 27th February 2011. That in the month of February 2011, the Applicant with 4 others were charged in court with corruption related offences as per copy of the charge sheet marked FJO-2. On 20th April 2011 the Respondent without any notice purported to suspend him from work. Upon the said suspension however, the Respondent failed to remit his half salary and allowances as provided for under Section 62(10 & (2) of the Anti-Corruption and Economic Crimes Act 2003.

4. The Applicant's claim is for payment of this half salary which is in arrears and now amounts to 1,707,700.80/=. The Applicant wants the Respondent to pay him ½ salary and withdraw the termination letter issued to him pending hearing and determination of this suit.

Respondent's case

5. The Respondent opposed this application. They filed their grounds of opposition and submissions on 21/2/2015 through the Federation of Kenya Employers. They contend that the prayers sought are tantamount to reinstating the Claimant at an Interlocutory stage after being terminated on 20th February 2013 – over 2 years.

They further contend that the Claimant has not demonstrated any urgency to warrant the grant of orders sought before final determination. They want this application dismissed and the case transferred to Kisumu for determination.

6. I have considered the submissions from both parties. Under Section 62 of the Anti-Corruption & Economic Crimes Act:

“ (1) A public officer who is charged with corruption or economic crimes shall be suspended, at half pay, with effect from the date of the charge.

(2) A suspended public officer who is on half pay shall continue to receive the full amount of allowances.

(3) The public officer ceases to be suspended if the proceedings against him are discontinued if he is acquitted.

(4) This section does not derogate from any power or requirement under any law under which the public officer may be suspended without pay or dismissed---“.

7. From the reading of this section, the Application herein when suspended was entitled to ½ pay with full allowances. In the letter of suspension addressed to the Applicant dated 20/4/2011, the Applicant was informed as follows:

“In furtherance to the letter Ref No. KP/FJO/064/30 of 28th February 2011, and in line with the Polytechnic Terms of Conditions of employment the Board has decided that you be put on suspension from your duties as Finance Officer with effect from 1st March 2011 until your case is fully determined by the Court (emphasis is mine).

Further note that since your suspension is linked to financial impropriety on your part, your suspension holds no payment upto and including the final conclusion of your court

case-----“.

8. From this letter too, the suspension was to hold until final determination of the court case.

However it appears that the Respondent beat a retreat and started some disciplinary process against the Applicant which culminated in his employment being terminated on 20/2/2013.

Having considered the provisions of the law – in this case the Anti-corruption and Economic Crimes Act and the suspension letter directed at the Respondent, it is the finding of this court that the Claimant was entitled to payment of half salary while on suspension. No other action should have been initiated against him unless another law provided otherwise which this court has not been advised about.

I therefore find that the prayers sought are merited. I order that the Applicant be paid half salary and allowances which the Respondent have conceded to since time of suspension and the same to continue being paid until final determination of this suit. The arrears be paid within 30 days from today.

Dated and delivered in open court this 7th day of April, 2015.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

No appearance for Claimant

No appearance for Respondent